



## MAITLAND & ASSOCIATES INC.

### News Round up February 2021

Welcome to provisional tax and budget season! May the second wave continue to lessen and the vaccines become available soon.

#### COVID issues

##### Provisional Tax concessions

We are now entering the time where a large number of second provisional tax returns are going to be due. Please keep a look out when submitting these for some of the known problems that have already been encountered:

- The tax compliance status of the individual is queried because the due date of an income tax return is incorrectly reflected on the eFiling system.
- The SARS official reviewing the case has not consistently/correctly calculated the amount due, resulting in a professed underpayment.
- If there is an ongoing dispute about the first provisional payment, the second will not be granted.
- Random unpaid amounts that crop up on the SOA.

Please let me know if you have any more.

#### Exchange Control – SARB

Big news on this front! 2 Circulars have been issued in January:

- [Exchange Control Circular No. 20/2020 - Systems governance requirements and procedures](#)
- [Exchange Control Circular No. 1/2021 South African resident individuals and companies - loop structures](#)

Key point – as of 1 Jan 2021 all restrictions on loop structures have been lifted. There are however a number of reporting requirements that have been introduced for this. I am planning on doing a more in depth update on Exchange Control once the big changes are promulgated in February regarding individuals.

#### Tax issues

##### VAT 201's

There are still ongoing issues with the form and submissions. Please escalate those as soon as possible!

##### IT12 changes

As I'm sure you are aware by now, the filing deadline for individual's 2020 tax returns has been moved from the 31<sup>st</sup> of January to 15<sup>th</sup> of February. More detail available here: <https://www.sars.gov.za/TaxTypes/PIT/Tax-Season/Pages/default.aspx>





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### Latest news on the Flash issues

SARS has now released a SARS Browser solution that only works with eFiling:

- The SARS Browser enables access to all eFiling forms, including those that require – otherwise would have required – the Adobe Flash Player software, thus maintaining compliance with taxpayer filing obligations.
- The SARS Browser was created in order to successfully view, complete and submit SARS forms that have not yet been migrated to Hyper Text Markup Language (HTML5) on eFiling. In the interim, SARS will still continue the migration process.
- Click here to download the SARS Browser, should you require guidance on the process, you can access the steps on how to download the browser here. The SARS Browser is currently compatible with Microsoft Windows devices.
- SARS has had various external security checks of this solution and is satisfied with the security outcomes of the product.
- The SARS Browser may be used to access forms not yet migrated, which include:

FORM CODE	FORM DESCRIPTION
RAV01	Registration, Amendments and Verification Form
TDC01	Transfer Duty
IT3-01	Financial Certificate Information
IT3-02	Financial Declaration
TCR01	Tax Compliance Status Request
DTR01	Dividends Tax Transactions Information
WTI	Withholding Tax on Interest

- Existing browsers such as Chrome and Edge will continue to work for all forms already migrated with the major and high volume forms, which are Income Tax (Personal Income Tax (PIT), Provisional Tax, Corporate Income Tax (CIT) & Trusts), Value Added Tax, Pay as you Earn and Excise.
- The SARS Browser is deployed as a separate application and can only be used to access the SARS eFiling website and SARS website. As such, it cannot be used as a browser for general internet browsing.

If you want the most up to date information, please check here:

<https://www.sars.gov.za/ClientSegments/Individuals/How-Register-Tax/Pages/eFiling-Compatibility-Guidelines.aspx>

The following guide may also be useful: <https://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-ELEC-21-G01%20-%20How%20to%20download%20the%20new%20SARS%20eFiling%20Browser%20-%20External%20Guide.pdf>

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### Odds and sods

- The relevant Amendment Acts were promulgated on the 20<sup>th</sup> of January. The updated EM's and response documents have also now been published.

### Tax Cases

#### *Rappa Resources (Pty) Ltd v CSARS (20/18875) [2020] ZAGPPHC (5 November 2020)*

SARS does not have a right to extend audits indefinitely. This is one of those cases to keep in the arsenal where SARS is delaying the response to an audit. It confirms that while SARS does have significant leeway under the law about the scope of audits, this does not go as far as never concluding an audit, particularly where significant refunds are due.

#### *Consol Glass (Pty) Ltd v The Commissioner for the South African Revenue Service (1010/2019) [2020] ZASCA 175 (18 December 2020)*

Beware input VAT claims. The essence of this case was that Consol Holdings had entered into a leveraged buyout of the historic Consol business in the form of a Pty. A significant amount of work was done by both internal and external consultants to procure and sign on the debt needed to finance the acquisition of the business.

The taxpayer claimed the input VAT charged on those fees. SARS proceeded to decline the input VAT claim and raised import VAT on the services procured internationally. SARS's contention was that the services were procured to produce exempt supplies in the form of financial services (the dividends and interest income on debt) or alternatively that it was part of the reorganisation costs, not the enterprise.

On appeal, the Courts upheld the SARS viewpoint and took as spurious the newly submitted claim that the financing was used to buy assets and therefore should be considered part of the enterprise. The key point for us – don't take VAT inputs for granted and most importantly, be consistent in your arguments before the Court.

#### *Mobile Telephone Networks (Pty) Limited v CSARS (79960/2019) [2021] ZAGPPHC (12 January 2021)*

This is a VAT case dealing with the question of if/when VAT should be raised on the sale of airtime vouchers. MTN had subscribed to the idea that the vouchers were more like gift cards and therefore the VAT should only be recognised when the service/good has been rendered. In other words, the voucher is a financial service and the service is making a call. This argument was not accepted by the Court.

[33] The applicant issued two categories of vouchers the one granting the holder thereof to acquire specified services or products and the other voucher is a multipurpose voucher, which once activated for its monetary value the holder is entitled to use it for any service or product on the applicant's network. The later voucher is the 4 Commissioner for the South African Revenue Service v Bosch and Another 2015(2) SA 174 SCA at





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para 9. 11 bone of contention in this case. The multi-purpose voucher is termed by the applicant as 'airtime' voucher. Once the 'airtime' voucher is used for a service or product, the holder is charged at the prevailing rate and such amount is deducted from the value of the 'airtime' voucher.

[34] The applicant contends that on issuing the multi-purpose voucher to the voucher holder it does not equate to revenue and only when the voucher is activated and in fact used that is when it is considered as revenue. In my view, this cannot be correct as in terms of section 9(1) of the VAT Act the applicant is entitled to account for VAT charged on the sale of a voucher in the period in which the voucher was sold. As the supply of 'airtime' in the form of a voucher attracts revenue for the applicant, in terms of section 7(1)(a) of the VAT Act tax is levied 'on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him'.

[35] In addition, the voucher supplied is specifically an 'airtime' voucher. It cannot be said that an 'airtime' voucher is akin to a gift voucher, which is a means of payment for goods or services, as is proposed by the applicant. This is so as the 'airtime' voucher can be used to make calls, receive calls, send messages, use the internet and for data and as such does not take away from the fact that the supply of 'airtime' falls within the category of specific goods or service.

[36] The 'airtime' voucher as a specific good or service could be used for multipurpose. However, this does not change the nature of the voucher being specifically an 'airtime' voucher. Thus, the respondent was correct when it ruled that the 'airtime' voucher falls within the ambit of section 10(19).

[37] I need to make mention of the fact that from the time 'airtime' vouchers were introduced by the applicant and over the many years of its usage the applicant acceded to the interpretation ascribed by the respondent for such 'airtime' voucher. This is a vital and ought to be factored in when addressing a statutory interpretation and examining of the words, their contexts, the determination of their meaning and purpose of the statutes.

### *Public Protector v CSARS and Others (CCT63/20) [2020] ZACC 28 (15 December 2020)*

To quote SARS:

The Commissioner of South African Revenue Service (SARS) Mr Kieswetter welcomes the unanimous judgment of the Constitutional Court handed down by Judge Madlanga on 15 December 2020 in Public Protector v CSARS and others.

Commissioner Kieswetter says: "This case is about the fundamental principle that taxpayer information is confidential, and a sacrosanct pillar our quest to achieve Voluntary Compliance. Every taxpayer must have the confidence that SARS will fight to protect this right without fear, favour or prejudice." There is a strict duty on SARS to preserve and protect taxpayer confidentiality. "This case" he says, "has never been about defying the Public Protector, nor about protecting the interest of any particular taxpayer. Every taxpayer is equal before the law, and SARS has the duty to protect taxpayer confidentiality irrespective of their position in society, and apply the law evenly regardless of the persons involved."





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The Constitutional Court judgment firmly confirms the confidentiality of taxpayer information as contained in the Tax Administration Act of 2011. "This confirms my position to resist the Public Protector's subpoena to access taxpayer information. I welcome the Constitutional Court's judgement provides the clarity on this important principle of taxpayer confidentiality. This was the substantive aspect of the declaratory we sought from the courts in the first place."

SARS also respects the other conclusions contained in the Court's judgment.

SARS acknowledges the remarks by Judge Madlanga that the Public Protector's Office "is an important cog in our constitutionalism" and that the efficacy of the Office must be preserved for posterity. Commissioner Kieswetter adds "In this respect, I accept and endorse the Constitutional duty of every organ of state, including SARS, to assist and promote the functions of the Office of the Public Protector. We are committed to contribute to a well-functioning democracy.

Keep safe and may 2021 be everything you hoped.

Carmen

