



# Tax Issues for SMMEs 2021

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# Outline

- Tax risk management
- Tax administration
- VAT issues and current challenges
- PAYE, UIF and SDL obligations
- Small business corporations
- Micro business turnover tax
- Dividends tax
- Interest-free and low-interest loans
- Provisional tax
- CGT issues
- Assessed losses
- Business rescue, liquidation and winding up
- Tax incentives for SMMEs?

# Programme (approximate times)

09.00 – 10.20 Session 1

10.20 – 10.35 10-15 minute Break

10.35 – 11.45 Session 2

11.45 – 12.00 10-15 minute Break

12.00 – 13.00 Session 3

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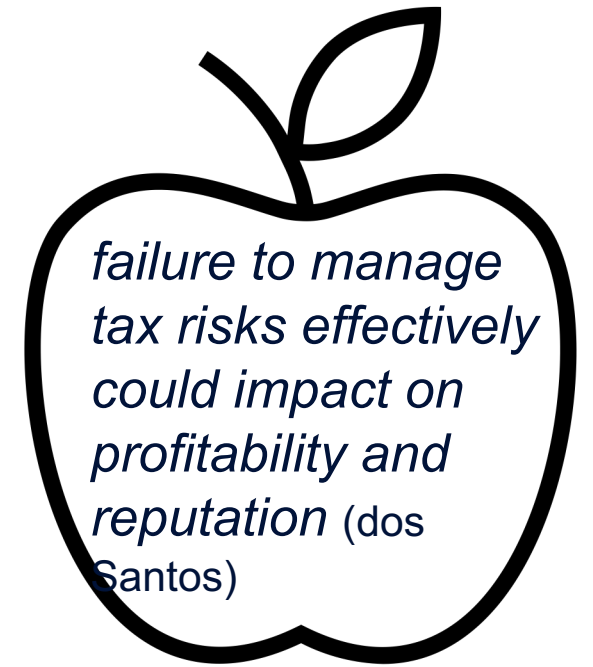
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# Tax risk management for SMMEs

- Know the business and know the law
  - Use an expert advisor where necessary
- Tax risk: underpayment or overpayment of tax
- Tax strategy
  - Why
  - What
  - Processes
  - Roles and responsibilities
  - Accountability



# Stated objectives in a tax strategy include -

- Comply with all tax laws
- Ensure proper record keeping and processes that will enable accurate completion of returns including
  - VAT
  - PAYE
  - ITR
  - Provisional tax
- Submit all returns and make all payments on time
- Always tax compliant
- Tax planning within legal parameters
- Use of external/second opinions on complex matters
- Tax aspects of transactions considered and evaluated before signing any contracts

# Tax administration provisions that affect small businesses include -

- Income Tax Act
  - Registration and returns
  - Fourth Schedule
    - Employees' tax
    - Provisional tax
- VAT Act
- Tax Administration Act

# Administrative Penalties (TAA Chapter 15)

## Fixed amount penalties – s 210 & 211

- Incidences of non-compliance as per Public Notices
  - Overdue Personal Income Tax (PIT) returns (2<sup>nd</sup> or subsequent) (Notice 790 – 2012)
  - Overdue company tax returns (Notice 642 – 14/12/2018)

## Reportable arrangement penalty – s 212

## Percentage-based penalties on late payments – s 213

# Fixed amount penalty table (TAA s 211)

Item	Assessed loss or TI for 'preceding year'	Penalty
(i)	Assessed loss	R 250
(ii)	R0 - R250 000 ( <i>or unknown</i> )	R 250
(iii)	R250 001 - R500 000	R 500
(iv)	R500 001 - R1 000 000	R1 000
(v)	R1 000 001 - R5 000 000	R2 000
(vi)	R5 000 001 - R10 000 000	R4 000
(vii)	R10 000 001 - R50 000 000 ( <i>plus s 211(3)</i> )	R8 000
(viii)	Above R50 000 000	R16 000



# Percentage-based penalty (TAA s 213)

- 10% penalty on late payment of tax as required under a tax Act, eg –
  - Employees' tax (Fourth Schedule to the Income Tax Act)
  - Value-Added Tax (VAT Act)
  - Provisional tax (Fourth Schedule to the Income Tax Act)
  - Withholding tax on sale of immovable property by a non-resident (s 35A of the Income Tax Act)

# Requesting remittance of a penalty: TAA Ch 15 administrative penalties

- After penalty assessment:
  - Submit a request for remission on the prescribed form (RFR01 – Request for Remission)
- Grounds for remittance – s 217 & 218 (see next slides)
- Payment of the penalty is automatically suspended from the day the request to remit is received by SARS until 21 business days after SARS notifies the taxpayer/vendor of the decision whether to remit the penalty or not (TAA s 215)

# Grounds for remittance of penalties

## Chapter 15 of the TAA – ss 210 and 217

- SARS may remit the penalty or a portion thereof, if satisfied that
  - the penalty has been imposed in respect of a ‘first incidence’\* of non-compliance or involves an amount of less than R2 000; and
  - reasonable grounds for the non-compliance exist; and
  - the non-compliance has been remedied
    - not required in the case of ‘not liable’, SARS error or death of the taxpayer.

### \* First incidence:

No penalty assessment issued in the preceding 36 months

Excluding a penalty that was fully remitted under s 218  
(extraordinary circumstances)

# Remittance in exceptional circumstances TAA s 218

SARS must upon receipt of a remittance request, remit part or all of a Ch 15 penalty if any of the following circumstances rendered the person incapable of complying with the relevant obligation:

- natural or human-made disaster  
(Theft/Hijacking/Elements of nature e.g., fire/floods, etc.)
- civil disturbance or disruption in services  
(Strikes/marches/riots)
- serious illness or accident/ serious emotional or mental distress (Hospitalisation of business owner or representative/ Person dealing with tax affairs was seriously ill and is the only person working with it/ Serious accident Stroke, Death; etc)

# Exceptional circumstances (cont.)

- errors by SARS (capturing error/ processing delay/ Provision of incorrect information in an official publication issued by SARS/ Delay in providing information to any person/ Failure by SARS to provide sufficient time for an adequate response to a request for information by SARS. )
- serious financial hardship, such as –
  - Individual: lack of basic living requirements; or
  - Business: immediate danger that the continuity of business operations and the continued employment of its employees are jeopardised; or
- any other circumstance of analogous seriousness.

# Exceptional circumstances (cont.)

- NB: If the RFR is based on exceptional circumstances, must explain the exceptional circumstances and how they led to the non-compliance.

# Understatement penalty (TAA Ch 16 - ss 221-224)

- “Understatement” (s 221):
  - any prejudice to SARS in respect of a tax period as a result of
    - a default in rendering a return,
    - an omission from a return,
    - an incorrect statement in a return,
    - failure to pay the correct amount of tax where no return is required, OR
    - an ‘impermissible avoidance arrangement’.

# Understatement penalty

- There is no understatement penalty where an understatement arises from a “bona fide inadvertent error” (s 222)
  - Ordinary meaning: innocent misstatement by a taxpayer on their return, resulting in an understatement, while acting in good faith and without the intention to deceive
- Penalty is levied according to the table in s 223
  - % based on behaviour category
- Onus on SARS (s 102)



# Understatement penalty table (TAA s 223)

Item	Behaviour	Standard case	Obstructive or a repeat case	Voluntary disclosure 1	Voluntary disclosure 2
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position'	50%	75%	25%	0%
(iv)	Impermissible avoidance arrangement	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional evasion	150%	200%	75%	10%

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# 'Substantial understatement' (TAA s 221 definition)

- If no other behaviour defines the facts of a case, then an understatement penalty will be triggered if there is a substantial understatement, i.e., the prejudice to SARS exceeds the greater of –
  - 5% of the tax properly payable; or
  - R1 000 000.

# 'Substantial understatement'

Special remittance rule (s 223(3)):

- if SARS is satisfied that the taxpayer -
  - made full disclosure of the arrangement that gave rise to the prejudice to SARS or the fiscus by no later than the date that the relevant return was due; and
  - was in possession of an opinion by a registered tax practitioner
    - issued by the date that the relevant return was due,
    - took account of the specific facts and circumstances of the arrangement; and
    - confirmed the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.

# Disputing an understatement penalty (TAA s 224)

- A taxpayer may object to or appeal against the imposition of an understatement penalty (s 224)
- Dispute may be on the basis of
  - Penalty – if there was a bona fide inadvertent error
  - Behaviour category selected by SARS
  - ‘substantial understatement’ – full disclosure and a tax opinion
- Normal objection rules apply:
  - Carefully explain the grounds of objection or appeal on a technically correct basis
  - Specify all relevant grounds of objection in the notice of objection

# Avoiding the understatement penalty: Voluntary disclosure program

- Who may apply
- Requirements for a valid VDP application
- Relief
- Practical aspects

# VDP: Who may apply? (TAA s 226)

- Any person: whether in a personal, representative, withholding or other capacity
  - Excluding: A person aware of a pending audit or investigation, or of an audit or investigation that has commenced but has not yet been concluded by SARS.
    - A “verification” or “inspection” procedure that was not preceded by the commencement of an audit or by a notice of an impending audit is not regarded as an “audit” for this purpose.
- SARS may permit a person who would otherwise be excluded as a result of the audit or pending audit rule, to apply for VDP relief where SARS believes that:
  - the default would not otherwise have been detected during the audit or investigation; and
  - the application would be in the interest of good management of the tax system and the best use of SARS’ resources.

# Requirements for a valid VDP application (TAA s 227)

- Disclosure must be voluntary
- Must involve a default which has not previously been disclosed by the applicant or representative
  - 'Default'
  - No similar default in the last 5 years
- Full and complete in all material respects
- Disclosure must involve the potential imposition of an understatement penalty in respect of the default
- May not result in a refund due by SARS
- Must be made in the prescribed form (VDP01) and manner (through e-filing)

# Voluntary disclosure relief (TAA s 229)

- No criminal prosecution
- Lower penalty on understatement penalties as per column 5 or 6 of the s 223 table
- 100% relief from administrative non-compliance penalty imposed under Chapter 15 or a penalty imposed under a tax Act, excluding penalties for the late submission of a return



# Payment arrangements (TAA ss 167 & 168)

- SARS may enter into an agreement allowing a taxpayer to settle a “tax debt” in instalments.  
“Tax debt” refers to any amount of tax due or payable and could therefore be interpreted as including amounts due under the provisional tax provisions.
- SARS is only permitted to enter into an instalment payment agreement in the following circumstances:
  - The taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future.
  - The taxpayer anticipates income or other receipts which can be used to satisfy the tax debt.
  - The prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future.
  - Collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection, or
  - The taxpayer provides security as may be required by SARS.
- See <https://www.sars.gov.za/individuals/how-do-i-pay/owing-sars-money/>

# Record retention (TAA ss 29 – 33)

- Duty to keep records, books of account or documents
- Applies to a person who
  - has submitted a return;
  - is required to submit a return and has not submitted; or
  - is not required to submit a return but has received income, has a capital gain or capital loss, or engaged in any activity subject to tax or would be subject to tax but for the application of a threshold or exemption

# Record retention periods (TAA s 29(3))

- A person who has submitted a return
  - 5 years from date of submission
- A person required to submit a return but has not submitted
  - Indefinite until a return is submitted, then above period applies
- A person not required to submit a return but has received income, CG/CL or engaged in a taxable activity
  - 5 years from end of tax period
    - Failed to submit : End of tax period
- A person notified or aware that records are subject to an audit or investigation
  - Later of: conclusion of the audit or above period
- A person who has lodged an objection or appeal
  - Later of: when the disputed assessment or decision becomes final or above period

# VAT issues and current VAT challenges

- Registration
- Current issues



# VAT registration rules (VAT Act s 23)

## Compulsory registration

- taxable supplies > R1 million over 12 months; and
- businesses with a contractual obligation in writing to exceed R1 million in a future period of 12 months (e.g. government tender)

## Voluntary registration

- taxable supplies > R50 000 over 12 months (or reasonable expectation)
  - Small businesses with taxable supplies <R50 000 must register on the payment basis until R50 000 threshold is met
  - Can remain on the payment basis on taxable supplies up to R2,5m



# Sale of going concern (ss 11(1)(e) & 18A)

Zero-rated supply IF -

- Written contract that business sold as going concern
- Income-earning activity on date of transfer
- All necessary assets disposed of
- Supply inclusive of VAT at 0%
- Both parties registered VAT vendors
- Seller gets copy of purchaser's VAT registration form
- Enterprise remain active & operating until transfer
  
- Where any of the above requirements are not met, the supply of the enterprise will be subject to VAT at the standard rate of 15%



# PAYE, UIF and SDL obligations

- Employer obligations
  - 2021 Extension of Covid relief
    - ETI
    - PAYE Deferral relief
- See 2021 Draft Amendments (not promulgated yet, thus not discussed)



# PAYE, SDL and UIF obligations

- Employees tax (PAYE) must be deducted from remuneration paid to an employee
- Employers must
  - Register for PAYE, SDL and UIF
  - Deduct the correct amount
  - Pay the amount over to SARS
  - Issue IRP5/ IT3 certificates
- 10% penalty for late payment
- Interest on late payment





# Skills development levy (SDL)

- An employer must pay SDL (1%) if the employer pays annual salaries, wages and other remuneration in excess of R500 000
- Employers with an annual payroll of R500 000 or less (whether registered for employees tax purposes with SARS or not) are exempt



# Unemployment Insurance Fund Contributions (UIF)

	<b>2020/21</b>	<b>2021/22</b>
Rate (employer + employee)	1% + 1%	1% + 1%
Monthly remuneration threshold	R14 872	R17 712 from 1 June 2021



A large, irregular teal watercolor splash is centered on a white background. The splash has a soft, painterly texture with some darker and lighter areas. The text "Small business corporations" is written in white, sans-serif font across the center of the splash.

# Small business corporations

# Small business corporations tax table

<b>Years of assessment ending between 1 April 2021 and 31 March 2022</b>	
<b>Taxable income (R)</b>	<b>Rate of tax</b>
0 – 87 300	0% of taxable income
87 301 – 365 000	7% of taxable income above R87 300
365 001 – 550 000	R19 439 + 21% of taxable income above R365 000
550 001 and above	R58 289 + 28% of taxable income above R550 000

# Small Business Corporation Definition (s 12E(4))

- CC, co-operative or private company as defined in the Companies Act (personal liability company, state-owned company, public company or private company)
- All the shareholders / members must be natural persons at all times during the year of assessment
- No member or shareholder may hold any interest in any other company
  - other than permitted investments,
  - at any time during the year of assessment
- Gross income may not exceed R20 million
  - pro-rated for periods less than 12 months
- Investment income + income from rendering personal services may not comprise more than 20% of
  - all receipts and accruals (excluding capital)
  - PLUS all capital gains
- Not a 'personal service provider'

# Permitted investments (s 12E(4)(a)(ii))

- No shareholder / member may, at any time during the year of assessment, hold a share or interest in the equity of any other company, except -
  - Companies listed on the JSE
  - Portfolio in a collective investment scheme in securities or property
  - Body corporate, share block company or non-profit company contemplated in s 10(1)(e)
  - <5% interest in a qualifying social /consumer co-operative, co-operative burial society or primary savings co-operative bank
  - Friendly society
  - Venture capital company as defined in s12J
  - Company that has never traded nor owned assets with MV exceeding R5000
  - Company in the process of liquidation or winding up (and not withdrawn).

# 'Investment income' (s 12E(4)(c))

- any income in the form of –
  - dividends
  - foreign dividends
  - royalties
  - rental derived from immovable property
  - annuities or
  - similar income
- any interest (other than interest income of co-operative banks)
- any proceeds from investment or trading in –
  - financial instruments (including futures, options and derivatives),
  - marketable securities or
  - immovable property

# 'Personal service' (s 12E(4)(d))

- If -
- that service is performed personally by any person who holds an interest in the company; and

in relation to the company, means any service in the field of ...

accounting	actuarial science	architecture
auctioneering	auditing	broadcasting
consulting	draftsman ship	education
engineering	financial service broking	health
information technology	journalism	law
management	real estate broking	research
sport	surveying	translation
valuation	veterinary science	

- AND the company does not throughout the year of assessment employ 3 or more full-time employees
- other than any shareholder / member of the company / connected person in relation to a shareholder or member
  - engaged on a full-time basis in the business of that company of rendering that service



# SBC Tax concessions

- Special tax rates
- 100% write-off in year 1 on manufacturing plant or machinery
- Non-manufacturing assets: SBC can elect either
  - the 50/30/20 deduction or
  - the s11(e) wear-and-tear allowance
    - 100% write-off of small items: R7 000 for assets acquired on/after 1/3/2009 (Interpretation Note 47)

# Turnover tax on micro businesses

<b>Year of assessment ending 28 February 2022</b>	
<b><u>Taxable turnover (R)</u></b>	<b><u>Rate of tax</u></b>
0 – 335 000	0% of taxable turnover
335 001 – 500 000	1% of taxable turnover above 335 000
500 001 – 750 000	R1 650 + 2% of taxable turnover above R500 000
750 001 and above	R6 650 + 3% of taxable turnover above R750 000

# Micro businesses

## Sixth Schedule, s 48, 48A, 48B, 48C

- Who qualifies?
  - natural persons
    - deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency
  - companies (includes CCs)  
where the qualifying turnover of that person for the a year does not exceed R1 million (pro-rated for periods less than 12 months)
- Disqualifications.

# Taxable turnover (Sixth Schedule Paras 5, 6 & 7)

- In relation to a year of assessment –
  - All amounts received from carrying on business in the Republic, excluding capital receipts
- Including
  - 50% of any capital receipts from disposal of immovable property or any other asset used mainly for business, excluding financial instruments
  - Companies / CCs: investment income other than dividends
- Excluding
  - Natural persons: investment income
  - Government grants exempt under s 12P
  - Amounts received after registration as a micro business, but accrued and included in taxable income prior to registration
  - Refunds received for goods or services supplied.

# Interim payments

- 1st interim payment
  - Within 6 months from the beginning of the year of assessment
  - 50% of TT payable on the estimated taxable turnover for the year
  - Estimated taxable turnover must not be less than the taxable turnover for the previous year of assessment unless SARS accepts the lower estimate
- 2nd interim payment
  - By the end of the year of assessment
  - 100% of TT payable on the estimated taxable turnover for the year less the first interim payment

# 6-monthly returns (Sixth Schedule paras 11(4) & (4A))

- A micro business may elect to pay PAYE, UIF & SDL
  - with regard to amounts deducted or withheld during the first 6 months of the year of assessment, within 7 days after the end of such period; and
  - with regard to amounts deducted or withheld within the next 6 months, within 7 days after the end of such period.
- If a registered micro business has made this election it must apply to all amounts deducted or withheld in terms of the applicable provisions.

# Record-keeping (Para 14)

- A micro business must retain a record of the following documents for audit purposes:
  - Amounts received during a year of assessment
  - Dividends declared during a year of assessment
  - Each asset as at the end of a year of assessment with a cost price of more than R10 000; and
  - Each liability as at the end of a year of assessment exceeding R10 000

# Dividends tax

- Overview
- Dividends tax on
  - Cash dividends
  - Dividends in specie
  - Returns of capital and contributed tax capital
- Deemed dividends
- Administration aspects





# Dividends tax (s 64E(1))

- Dividends tax is payable on any “dividend” paid by a “company”
- Rate: 20%
  - unless an exemption or lower rate applies (foreign shareholder eligible for a lower rate under a DTA)
- “Company” means (s 64D) –
  - Any resident company
  - Any foreign company listed on the JSE (dual listed company)
  - Other than a “headquarter company” – see s 9l(1) (s63E(1))



# What is a “dividend”? (s 1)

- Any amount
- transferred or applied by a company (resident)
- for the benefit or on behalf of any person (note: the payment does not necessarily have to be to a shareholder)
- in respect of any “share” in that company (eg, not in respect of interest or services rendered)
- But excluding –
- any reduction of contributed tax capital of the company
- capitalisation issues
- general repurchase of shares by a listed company



# Dividends Tax is levied on -

- Cash dividend: amount distributed
- Dividends in specie: market value of asset
- Deemed dividend on low-interest loan: value forgone (interest benefit) i.e. difference between market-related interest & interest actually charged on the loan
- Deemed dividends under s 9H, s 31 or s 24BA: amount of adjustment.



# Person liable for dividends tax

- Cash dividend: beneficial owner (BUT there is a withholding obligation on the company paying the dividend)
- Dividends in specie: company
- Deemed dividends: company



# Obligation to withhold dividends tax (s 64G)

GENERAL RULE: A company that declares and pays a dividend must withhold DT at 20%

EXCEPTIONS:

- Dividend in specie (company retains the liability)
- Exemption IF
  - the person to whom the dividend was paid has provided the required declaration and undertaking to the company by due date stating that they are exempt; or
  - the beneficial owner is part of the same group of companies as the company paying the dividend; or
  - dividends paid by a company to a regulated intermediary.

Reduced rate IF declaration and undertaking.



# Exemptions from dividends tax: cash dividends (s 64F)

If the beneficial owner of the dividend is –

- a resident company
- Government - national, provincial or local; PBO
- s 37A (rehabilitation) trust
- exempt institutions (s 10(1)(cA), 10(1)(d)(i) or (ii) (retirement funds), s10(1)(d)(iii) fidelity/indemnity fund, s10(1)(t) entities (CSIR, Armscor, etc), s10(1)(cQ) (small business funding entity)
- shareholder in a micro business paying dividends up to R200 000 per year
- non-resident shareholder of foreign company
- any person to the extent to which the dividend is “income” of that person
- tax-free investment holder



# EG (SARS Guide to Dividends Tax)

- Company G distributed an asset with a market value of R250 000 to the sole holder of its shares, a natural person who is a resident, on 30 June year 1.
- Company G failed to pay dividends tax to SARS on the distribution of the asset and did not submit a return for dividends tax.



# Result:

- The distribution of the asset in specie constitutes a 'dividend' as defined in ss 1(1) and 64D.
- Under s 64E(3)(b) the amount of the dividend in specie is deemed to be equal to the market value of the asset on date of distribution.
- Company G is deemed to have paid a dividend of R250 000 on 30 June year 1 under s 64E(2)(b). Company G is liable to pay dividends tax under s 64EA(b) of R 50 000 ( $R250\ 000 \times 20\%$ ) to SARS by 31 July year 1 under s 64K(1)(b).





# Consequence:

- SARS is entitled to –
  - issue an estimated original assessment to Company G for dividends tax of R50 000 ( $R250\ 000 \times 20\%$ ) under s 91(4) read with s 95(1)(a) of the TAA;
  - levy an understatement penalty under s 222(1) of the TAA; and
  - charge interest on the late payment of dividends tax under s 64K(6) from 1 August year 1 until the date of payment of the dividends tax.



# Waiver of a loan owed to a company by a shareholder

- 'dividend' as defined in s 1(1) includes any amount transferred or applied by a company 'for the benefit or on behalf of any person in respect of any share of that company'.
- The ambit of the definition is wide and includes, for example, the waiver of a loan owed by a beneficial owner of a share to the company if the reason for the waiver is causally related to and hence in respect of a share in that company. The waiver represents the transfer of an amount by way of a distribution by the company



# EG Waiver of loan SARS Guide to Dividends Tax

- E held all the shares in Company B and owed Company B R500 000. Company B reduced the debt owing by E by R300 000 for no consideration.

Result:

- The reduction of the debt by R300 000 by Company B is in respect of the shares held by E in Company B and therefore constitutes a 'dividend' as defined in s 1(1).
- This amount does not constitute a 'donation' as defined in s 55(1) for purposes of donations tax, since the debt was reduced because of E being the sole holder of shares in Company B. The reduction of the debt was not motivated by pure liberality.



# Donations by a company at the instance of a shareholder

- The transfer or application of an amount to or on behalf of a person who is not a holder of shares will comprise a dividend to the extent that it is causally related to a shareholding in the company and is therefore 'in respect of' a share.

*(SARS Guide to Dividends Tax )*



# SARS Guide to Dividends Tax

- A donation made by a company to a person at the instance of a holder of shares would constitute a 'dividend' and may also have a donations tax implication.
- When an amount is transferred or applied by a company at the instance of a holder of shares as a donation to a third party, two transactions will effectively occur:
  - The amount transferred or applied by the company represents a dividend in relation to the holder of shares which is potentially subject to dividends tax.
  - The donation by the company is deemed to be a donation by the person at whose instance the donation was made (in this case the holder of shares) under s 57 for purposes of donations tax.



# EG

- E holds 60% of the shares in Company B. At the instance of E, Company B makes a donation of R100 000 to C who is E's son.

## Result:

- The amount of R100 000 is 'transferred' to C as a consequence of E's shareholding in Company B and therefore constitutes a 'dividend' as defined in s 1(1). The amount of R100 000 transferred to C is deemed to be disposed of under a donation by E for donations tax purposes under s 57.

*SARS Guide to Dividends Tax*



# Liability for dividends tax debt (TAA s 180)

- A person is personally liable for an outstanding dividends tax debt to the extent that the person's negligence or fraud resulted in the failure to pay dividends tax if –
  - the person controls or is regularly involved in the management of the overall financial affairs of a company; and
  - a senior SARS official is satisfied that the person is or was negligent or fraudulent in respect of the payment of the tax debts of that company.



# Duty to keep records (TAA s 29)

- A person must keep the records, books of account or documents that –
  - enable the person to observe the requirements of ss 64D to 64N;
  - are specifically required under ss 64D to 64N or by public notice; and
  - enable SARS to be satisfied that the person has observed these requirements.
- Applies to a company, regulated intermediary or beneficial owner who –
  - has submitted a return for dividends tax for the tax period;
  - is required to submit a return for dividends tax for the tax period and has not submitted such return; or
  - is not required to submit a return for dividends tax but has, during the tax period, received dividends or engaged in any activity that is liable to dividends tax.





# Interest-free and low interest loans

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# Loans and interest

- Loan

“[m]oney lent on condition that it is repaid, either in instalments or all at once, on agreed dates and usually that the borrower pays the lender an agreed rate of interest (unless it is an interest-free loan)”

(A Dictionary of Finance and Banking (1997)  
([www.oxfordreference.com](http://www.oxfordreference.com)).

- No compulsion to charge interest but there may be tax consequences for charging interest at less than the market-related rate (“official rate” is used in some provisions)

# Tax implications include -

- S 7 deemed accrual provisions
- S 7C deemed donation
- S 64E deemed dividend
- Donations tax

# Deemed donation on loans to trusts and certain companies (s 7C)

- Structure of s 7C:
  - S 7C(1), (1A) & (1B): sets the scope of the provisions
  - S 7C(2) prohibits any deduction, loss, allowance or capital loss on any
    - (a) disposal, including by way of a reduction or waiver; or
    - (b) failure, wholly or partly, of a claim for the payment, of any amount owing in respect of a loan, advance or credit referred to in s 7C(1).
  - S 7C(3) provides for the effect of an arrangement that comes within the scope: i.e. a deemed donation (see later).
  - S 7C(4) provides for apportionment where there is more than 1 person behind the loan.
  - s 7C(5): exemptions from s 7C(2) and (3).
  - S 7C(6): definition of 'preference share'.

# Scope of 7C

(1) Applies to any loan, advance or credit provided by -

A natural person OR

At the instance of that person, a company in relation to which that person is a 'connected person' in terms of para (iv) of the definition

to

(i) a trust in relation to which -

(aa) that person or company, or

(bb) any person that is a connected person in relation to the person or company referred to in item (aa),

is a connected person

OR

(ii) a company if at least 20% of -

the equity shares or voting rights in that company are held by a trust referred to in (i) whether alone or together with a beneficiary of that trust or the spouse of a beneficiary or any person related to a beneficiary/spouse within the second degree of consanguinity.

# Scope of 7C

(1A) Loans acquired

(1B) Preference shares

# EG

- Joe and Sue are directors of ABC (Pty) Ltd
  - Alpha Trust holds all the shares in ABC (Pty) Ltd
  - Joe and Sue are the beneficiaries of Alpha Trust
  - Joe and Sue each advanced an interest-free loan to ABC (Pty) Ltd in 2010
- 
- Result:
  - Interest-free loans advanced by Joe and Sue
  - Joe and Sue are beneficiaries of Alpha trust (also connected persons)
  - Trust holds 100% of the shares in ABC
  - Therefore, s 7C applies to the loans from Joe and Sue to ABC (Pty) Ltd

# Deemed donation: s 7C(3)

- The amount of the deemed donation made by the person to the trust is the difference between the interest charged on the loan and the interest that would have been payable by the trust had the interest been charged at the “official rate of interest” (defined in s 1) (see next slide).
- The interest benefit on the loan is treated as an ongoing and annual donation made by the natural person to the trust on the last day of the year of assessment of the trust.
- Donations tax @ 20% on the deemed donation
  - 25% on donations exceeding R30million (Measured cumulatively from 1 March 2018).
- Each year, the donations tax liability must be settled by the end of the month following the trust’s financial year-end.



# Official rate of interest as defined in s 1

- Rand-denominated loans: The “official rate” as defined in s 1 of the Act is linked to the repurchase rate plus 1%.
  - The official rate is adjusted at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.
  - From 01.08.2020 4,5% p.a.
- Debt denominated in another currency: interest rate equivalent to the SA repurchase rate applicable in that currency plus 100 basis points.

# Low-interest loans: deemed dividend (s 64E(4))

A company is deemed to have paid a dividend in specie where –

- A debt is owing to the company by a person that is –
  - not a company; and
  - a resident; and
  - a connected person in relation to the company OR a connected person in relation to that connected person;  
IF the debt arises by virtue of a share held in the company by the resident who is a connected person in relation to the company).
- Timing: the dividend in specie is deemed to have been paid on the last day of the year of assessment (dividends tax must be paid to SARS by the end of the following month).

# Deemed dividend (s 64E(4))

- Amount of the deemed dividend =  
Market-related interest in respect of that loan or advance  
Less: actual interest payable

Dividends tax = 20% on the amount of the deemed dividend

Must be paid to SARS by the end of the month following the year-end

# EG

A (Pty) Ltd advanced a loan of R1m to the sole individual resident shareholder on 1/7/2020. The loan was repaid on 30/3/2021. 31/3 is the last day of the financial year. No interest was charged on the loan

Year ended 31/3/21

- Interest at official rate =

1/7/20 – 31/7/20: R1m x 4,75% x 31/365 =	R 4 034,25
1/8/20 – 30/3/2020: R1m x 4,50% x 242/365 =	<u>R29 835,62</u>
=	<u>R33 869,87</u>

Actual interest = Nil
- ABC is deemed to have paid a dividend of R33 869,87
- Date of payment is deemed to be 31/3/2021 (last day of financial year)
- ABC must pay dividends tax of R5 967,12 (R33 869,87 x 20%)  
DT must be declared to SARS and paid by 30/4/2021
- Shareholder: no tax effect (no dividend actually paid)
- Note: if ABC declared a dividend on 30/3/20 that was used to settle the loan account, dividends tax would be payable on the actual dividend.

# Should the lender charge interest or not?

- If interest is charged at a market-related rate
  - No 7C deemed donation
  - No attribution rules (income - s 7(3)-(8) & 25B(2A), etc; capital gains - paras 68-72 & para 80)
  - Interest income is taxed in the lender's hands at his/her marginal rate e.g. 45%
    - Local interest exemption (R23 800/R34 500)
    - Provisional tax estimates to be considered
- If no interest is charged
  - S 7C: 20%/25% donations tax on annual interest benefit (official rate of interest)
  - Attribution rules: 'income' + capital gains up to the interest differential (market-related interest rate) i.e. taxed at: income - 45%; dividends - 20%; capital gains – up to 18%

# Provisional tax

- Who is a "provisional taxpayer"
- Requirements of a provisional taxpayer
- Calculating estimated taxable income and provisional tax liability
- Covid-19 relief
- Interest
- Penalties



# Who is a provisional taxpayer?

## Fourth Schedule para 1

- Any person other than a company who earns income by way of –
  - (i) remuneration from an employer that is not registered as an employer in terms of para 15; or
  - (ii) any amount other than remuneration or an allowance or advance contemplated in s 8(1);
- Any company; and
- Any person notified by the Commissioner.



# Who is NOT a provisional taxpayer?

- An individual who derives **no income from carrying on a business** IF -
  - **taxable income** for the year of assessment will not exceed the tax threshold (2021: R83 100/ R128 650/ R143 850); **or**
  - **taxable income** for the year of assessment from
    - **interest, dividends, foreign dividends, rental from the letting fixed property + remuneration from an unregistered employer**  
does not exceed R30 000
- PBOs, recreational clubs, body corporates, share block companies or associations of persons exempt under s 10(1)(e)
- Non-resident ship-owners
- Small business funding entities
- Deceased estates





# EG: Person under 65 years of age

Salary income		R 840 000
SA interest income	R 36 000	
<i>Less: Exempt</i>	<u>R 23 800</u>	
Taxable income from interest		<u>R 12 200</u>
Total Taxable Income		<u>R 852 200</u>

This person will not be a provisional taxpayer as -

Although he earns income other than from remuneration

- he is not deriving any income from carrying on a business and
- taxable income from [interest, dividends, foreign dividends, rental from letting fixed property & remuneration from an unregistered employer] does not exceed R30 000 for the year



# Required from a provisional taxpayer

- Para 17: must make provisional tax payments
- The liability must be estimated based on -
  - the taxpayer's estimated taxable income as determined under para 19(1); or
  - if SARS has estimated the provisional taxpayer's taxable income in terms of para 19(2); or
  - any increased estimate under para 19(3) using the applicable tax tables for that year.
- Para 19 requires a provisional taxpayer to submit to SARS (unless the Commissioner directs otherwise) a return of an estimate of the total taxable income for the year of assessment in respect of which provisional tax is or may be payable by the taxpayer  
in a year of assessment in which a person dies, no estimate is required for the period ending on the date of death of that person.



# Estimating taxable income

## Para 19 of the Fourth Schedule

- NB: You must submit your IRP6 return with an estimate of your taxable income, even if the calculation results in the total amount payable equal to Nil.
- NB: The estimated taxable income of an individual must exclude any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit (lump sums that are taxed at source and special tables apply).



# Estimating taxable income (cont.)

- 1st period

The estimated taxable income may not be less than the basic amount (see later slide) unless the circumstances of the case justify the submission of an estimate of a lower amount

- 2nd period

Different rules for taxpayers with

final assessed taxable income up to R1m; and

final assessed taxable income for the year of assessment exceeding R1m



# 2nd provisional payment: estimated taxable income

- Taxable income up to R1m  
Estimated taxable income must not be less than the lower of -
  - the basic amount (adjusted) or
  - 90% of actual taxable income for the year
- Taxable income more than R1m  
Estimated taxable income may not be less than an amount equal to 80% of actual TI for the year



# Basic amount Para 19(1)(d) of the Fourth Schedule

- Basic amount = taxable income (excluding taxable capital gains and special lump sums + 8% adjustment\*)
  - as assessed for the latest preceding year of assessment
    - the latest year preceding year of assessment in respect for which an assessment has been issued not less than 14 calendar days before the date on which the estimate is due to be submitted
- EG:
  - 31 August 2020 (Monday); latest date = 17 August 2020
  - 26 February 2021 (Friday); latest date = 12 February 2021
    - Note: extended submission deadline for 2020 IT12s: 15 February 2021



# 8% adjustment

## Proviso to para 19(1)(d)

- If an estimate is due more than 18 months after the end of the latest preceding year of assessment, the basic amount must be increased by 8% per annum on that amount
  - 202102 for individuals - due (Friday) 26/2/2021:
    - 8% adjustment if the latest assessment is for a year of assessment ended February 2019 or earlier
- 8% x Number of years: calculated
  - from the end of the latest preceding year of assessment
  - to the end of the year of assessment in respect of which the estimate is made



# EG: 202102 estimated taxable income

IF the latest preceding year of assessment is the 2019 tax year

- 28/2/2019 to 26/2/2021 = 24 months
- The 202102 estimate is due more than 18 months after the end of the 2019 tax year
- Therefore, the 8% basic amount increase **will apply**
- The basic amount for the 202102 return will be based on the 2019 assessed taxable income (excluding taxable capital gains & special lump sums) PLUS 8%





# EG (cont.)

The basic amount for the 202102 return is calculated as follows:

2019 Taxable income	R1 200 000
Less: Taxable capital gain	(100 000)
Less: Severance benefit	<u>(250 000)</u>
Basic amount before adjustment	R850 000
Add: 8% adjustment	
8% for each year from 2019 to the end of the 2021 year	
i.e. $2 \times 8\% = 16\%$	
$R850\ 000 \times 16\% = R136\ 000$	<u>136 000</u>
Adjusted basic amount: 202102 return =	<u>R986 000</u>

NB: IF final TI for 2021 is more than R1m, can't use basic amount for the 2nd estimate



# SARS' estimates

- Para 19(3):
  - SARS may request a provisional taxpayer to justify an estimate made or to furnish full particulars of income, expenditure and/or any other particulars that may be required.
  - If SARS is not satisfied with the response, the estimate may be increased to an amount which SARS considered reasonable.
  - SARS increased estimate by SARS is not subject to objection and appeal.
  - SARS will notify the taxpayer and issue a revised estimate which will be used to calculate the provisional liability.



# SARS' estimates (cont.)

- Para 19(2): If a provisional taxpayer fails to submit an estimate, SARS may estimate the taxable income and determine the amount payable thereon
- Para 19(6):  
Subject to para 19(2), deemed estimate of Nil taxable income if the estimate is not submitted within four months after the last day of the year of assessment



# Third provisional payment

- Voluntary topping-up payment
- May reduce s 89quat interest (as only becomes payable on amount outstanding after the effective date)
- No reduction in penalties



# Covid-19 relief

- 2020 Disaster Management Tax Relief Act
  - Deferral relief



# “Qualifying taxpayer” for provisional tax deferral

- Company, trust or individual
  - (a) a taxpayer as defined in s 151 of the Tax Administration Act (TAA) that conducts a trade;
  - (b) gross income of R100 million or less during the year of assessment ending between 1 April 2020 and 31 March 2021;
  - (c) gross income for the year of assessment does not include more than 20% in aggregate derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property\*, annuities and any remuneration received from an employer; and
  - (d) is tax compliant as referred to in s 256(3) of the TAA.

\* Unless main business is letting property



# Tax compliant as per the TAA

- The taxpayer must be
  - (a) registered for tax as required in terms of a tax Act;
  - (b) no outstanding tax debt, excluding a tax debt—
    - contemplated in s 167 (Instalment payment agreement) or 204 (compromise agreement); or
    - that has been suspended under s 164; or
    - that may not be recovered for the period specified in s164(6) (from date of lodging request for suspension to 10 business days after notice of SARS' decision or revocation); or
    - that does not exceed the amount referred to in s 169(4) (R100); and
  - (c) no outstanding return, unless an arrangement with SARS has been made for the submission of the return.

Check compliance on the day the taxpayer submits the return and claims the relief.



# Deferral relief

- 1ST provisional tax payments due 1 April - 30 September 2020
  - based on 15% (instead of 50%) of the estimated total tax liability less: PAYE paid and s 6quat rebate
- 2ND provisional tax payments due 1 April 2020 - 31 March 2021
  - based on 65% (instead of 100%) of the estimated total tax liability less: PAYE paid, s 6quat rebate and 1st period payment (paid by due date)
- Remaining 35% tax liability payable by the date of the 3RD provisional tax payment (6 or 7 months after year end).
- S 89quat interest will apply to amounts outstanding after the effective date





# Deferral of provisional tax payments (cont.)

- Deferred provisional tax will be due and payable by the qualifying taxpayer on the effective date (6 or 7 months after year-end)
- No paragraph 20 or 27 penalties on valid deferred provisional tax payments
- No interest on valid deferred provisional tax payments
- Balance outstanding after effective date will be subject to interest
  
- Note: a provisional could qualify for the deferral on the 2<sup>nd</sup> provisional tax payment even if not eligible for deferral on the 1<sup>st</sup> provisional tax payment



# Example Employers COVID-19 Tax Relief User Guide

Year of assessment ending 28 February 2021				
Estimated Taxable income		R10 000 000		
Tax @ 28%		R2 800 000		
1 <sup>st</sup> Provisional payment (31/8/2020)	15% x R2 800 000 =	R420 000	Amount paid by 31/8/20 =	R420 000
2 <sup>nd</sup> Provisional payment (28/2/2021)	65% x R2 800 000 =	R1 820 000		
	Less: 1 <sup>st</sup> provisional paid	<u>(R420 000)</u>	Amount payable by 26/2/21 = (R1 820 000 – 420 000)	R1 400 000
3 <sup>rd</sup> Provisional payment (30/9/2021)	100% x R2 800 000 =	R2 800 000		
	Less: 1 <sup>st</sup> & 2 <sup>nd</sup> provisional payments	<u>(R1 820 000)</u>	Amount payable by 30/9/21 =	R980 000

# Provisional tax penalties

- Late payment – 1st or 2nd
  - 10% of the amount not paid by due date (including additional payment on an increased estimate not paid by date notified)
  - Deemed to be a percentage-based penalty under Ch 15 of the TAA
- Underestimate – 2nd provisional payment
  - incorporates 'failure to submit'
  - para 20 of the Fourth Schedule



# Underestimate penalty para 20 of the Fourth Schedule

- IF final assessed taxable income exceeds R1m, the penalty is:
  - 20% of the difference between
    - Normal tax liability (after rebates) calculated on taxable income equal to 80% of actual taxable income; and
    - *less:* employees' tax and provisional tax in respect of such year of assessment **paid by the end of the year of assessment**
- Deemed to be a penalty charged under Ch 15 of the TAA



# Underestimate penalty para 20 (cont.)

- IF final assessed taxable income does not exceed R1m, the penalty is :
  - 20% of the difference between
    - the lesser of
      - Normal tax liability (after rebates) on taxable income equal to 90% of actual taxable income ; and
      - Normal tax liability (after rebates) on the basic amount
    - *less:* employees' tax and provisional tax in respect of such year of assessment **paid by the end of the year of assessment**
- Deemed to be a penalty charged under Ch 15 of the TAA



Company: Assessed taxable income for 2021 year of assessment = R1,5m	
Normal tax liability on 80% of taxable income = R1 500 000 x 80% = 1 200 000 x 28% =	R336 000
1 <sup>st</sup> and 2 <sup>nd</sup> provisional tax payments (based on estimated taxable Income of R1m: payments made by 28/2/2021)	(280 000)
Shortfall =	R56 000
Penalty @ 20% =	X 20% = <u>R11 200</u>



# Underestimate penalty: administrative provisions

- SARS may remit
  - if the estimate was seriously calculated with regard to relevant factors and not deliberately or negligently understated (para 20(2)); OR
- Any para 20 penalty must be reduced by any late-payment penalty (para 27) penalty in respect of a second provisional tax payment (para 20(2B))
- SARS may remit part or all of the penalty arising on a deemed Nil estimate if satisfied that the failure to submit an estimate was not due to any intent to evade or postpone the payment of provisional or normal tax (para 20(2C)).



# CGT issues

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# Small business asset exclusion (Eighth Schedule para 57)

- R1,8m capital gain disregarded (per lifetime)
- Disposal by an individual of
  - Active business asset/s of a small business of a sole proprietor
  - Interest in active business assets of a partnership that qualifies as a small business upon that person's withdrawal
  - Entire direct interest in a company to the extent that the interest relates to active business assets of the business, which qualifies as a small business
  - Person must hold at least 10%
- IF -

# Small business asset exclusion (cont.)

IF -

- Held asset/interest continuously for at least 5 years
- Substantially involved in business operations during that period
- Attained 55 years of age or younger if ill-health, other infirmity, superannuation or death
- All capital gains must be realised within 24 months from the first disposal

# CGT on Distributions in specie (Eighth Schedule para 75)

- A company making a distribution of an asset in specie to a person holding a share in that company is treated as having disposed of that asset to that shareholder
  - on the date of distribution
  - for an amount equal to the MV of that asset on that date

And

- The recipient is treated as having acquired the asset on the same date and for the same expenditure for the purposes of para 20(1)(a)

# EG

A (Pty) Ltd has 100 issued ordinary shares owned by L

- Amongst other assets, A owns -
  - Shares in Z (Pty) Ltd, an unconnected company
    - current market value of R200 000 and a base cost of R300 000
  - Land: current market value of R400 000 and a base cost of R80 000.
- A distributes the shares and the land to L (no return of CTC)

# Result:

- Dividends tax

Dividend = R600 000 (R200 000 + 400 000)

A is liable for dividends tax at 20% on MV: R600 000 x 20% = R120 000

- CGT

A is deemed to have disposed of the shares and land on the date of distribution

	<u>Shares (R)</u>	<u>Land (R)</u>
Proceeds (MV)	200 000	400 000
Base cost	(300 000)	(80 000)
Capital gain/loss	(100 000)	320 000

- L is a connected person in relation to A therefore A may only set off the capital loss of R100 000 against capital gains arising from future transactions with L (para 39(2)).

# Assessed losses

# Set-off of assessed losses

- Section 20(1)(a)(1):  
For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to s20A, be set off against the income so derived by such person -
  - any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment

# 2021 Draft Bill: Restricted set-off of assessed losses

- Section 20(1)(a) to be amended by adding a paragraph:
- There shall be set off against the income of such person ..
  - (i) that is a company, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed 80% of the amount of taxable income determined before taking into account the application of this provision;
  - (ii) that is not a company (as before).
- To come into operation on 1 April 2022 and will apply in respect of years of assessment commencing on or after that date.



# Carry forward of assessed loss by a company (s 20(1)(a))

Trade requirement:

- a company that does not carry on a trade during a year of assessment forfeits the right to carry forward its assessed loss from the immediately preceding year of assessment.
- A further question arises whether a company that has traded during the current year but has derived no income from trade during that year is denied the opportunity to carry forward its assessed loss from the preceding year (the “income from trade” requirement). (IN 33)

# Assessed losses – disallowed set-off (s 20A)

Applies –

- To natural persons with taxable income exceeding the threshold at which the maximum rate applies (R1 656 600 for 2021/22)
- In 2 situations / circumstances:
  - '3 out of 5-year' time rule; or
  - 8 'suspect trades' rule (see next slide)

Except where s 20A(3) applies (see later slide)

*See SARS Guide on Ring-fencing of Assessed Losses*

# 8 Suspect trades (s 20A(2)(b))

- Rental of residential accommodation
  - unless at least 80% is used by non-relatives for at least half of the year of assessment
- Rental of vehicles, aircraft or boats
  - unless at least 80% used by non-relatives for at least half of the year of assessment
- Farming or animal breeding unless on a full-time basis
- Sport practiced by the person or any relative
- Dealing in collectibles by the person or any relative
- Animal showing by the person or any relative
- Performing or creative arts by the person or any relative
- Betting or gambling by the person or any relative

# Ring-fencing provisions do not apply if – (s 20A(3))

- Trade constitutes a business with a reasonable prospect of deriving taxable income (excluding taxable capital gain)
  - Within a reasonable period
  - Having regard to various factors (profitability, activity, etc)

BUT

- This escape hatch is not applicable if –
  - Incurred assessed losses in any 6 years out of a 10 year period ending on the last day of the year of assessment
    - except for farming

# Tax challenges in business rescue, liquidation and winding up



- Impact on the creditor
  - Bad debt deduction (s 11(i))
  - VAT: input tax
  - Capital loss
- Impact on the debtor
  - Debt relief provisions
- Impact on shareholders
  - Liquidation distributions

# Debt relief provisions (s 19 and Eighth Schedule para 12A)

- Apply to the debtor
  - Possible
    - Recoupment of past deductions/allowances
    - Capital gain
- Key concepts
  - Debt
  - Concession or compromise
  - Debt benefit

# Debt relief provisions (s 19 and Eighth Schedule para 12A)

- Tax implications on debt benefits depend on whether the debt originally funded
  - tax deductible expenditure or
  - capital expenditure that was not tax deductible.
- Section 19 - tax implications in respect of debt relief on a debt used to fund tax deductible expenditure:
  - reduce cost price of trading stock still held by the debtor
  - recoupment of previous deductions.
- Para 12A of the Eighth Schedule - tax implications in respect of debt relief on a debt used to fund a capital or an allowance asset that is still held
  - reduce the base cost of held by the debtor; excess - recoupment of past allowances (s 19).

# Example – Debt benefit arising while asset still held *(SARS Guide to CGT)*

- Year 1: Company A acquired land on loan account from Company B for R1 million.
- Year 4: Company B waived R600 000 of the debt because of Company A's inability to pay.
- Year 5: Company A disposed of the land for R1,2 million.
  
- None of the exclusions in s 19/para 12A(6) apply.



# Result:

- Year 4

Company A must reduce the base cost of the land by R600 000 under para 12A(3).

- Year 5

Company A will realize a capital gain as follows:

Proceeds	R1 200 000
Less: Base cost (R1 million – R600 000)	<u>(400 000)</u>
Capital gain	<u>R800 000</u>

# Allowance asset disposed of in a prior year (s 19(6A) & para 12A(4))

- Where -
  - (a) a debt benefit arises during a year of assessment; and
  - (b) the debt funded expenditure incurred in respect of an asset that was disposed of in a prior year of assessment, if the recoupment/CG/CL determined on disposal was less than what the recoupment/CG/CL would have been if the debt benefit had been taken into account in the year of disposal,the difference is treated as a recoupment/capital gain in the year that the debt benefit arises.

# Exclusions (s 19(8) and para 12A(6))

- Heir/legatee of a deceased estate for debt owed to the estate and forming part of the estate for Estate Duty purposes.
- Debt reduced by donation in respect of which donations tax is payable .
- Employee debt subject to Seventh Schedule.
- Debt between group companies IF
  - the creditor company has not traded in the year the debt benefit arises and in the prior year;
  - The debt did not fund an asset that was subsequently disposed of under s 42, 44, 45 or 47; and
  - The debt did not fund/replace any debt of another group company or a CFC.
- Debt within a group of companies that settled by the issue of shares (with conditions).
- Debt that excludes interest, that is settled by the issue of shares.

# Exclusion from para 12A only (para 12A(6)(e))

- Debt owed by a company to a connected person,
  - reduced in the course of liquidation, winding up, deregistration or final termination of existence
  - limited to the base cost of the debt for the creditor
  - with provisos.

# Example *(SARS Guide to CGT)*

- Company A acquired second-hand machinery at a cost of R1 million on loan account from Company B on 1 March 2017.
- Company A and Company B are part of the same group of companies as defined in s 41(1) and both traded during the 2018 and 2019 years of assessment.
- Company A is entitled to a s 12C allowance of 20% per year on the cost price of the machinery.
- On 30 April 2018 Company B waived the outstanding balance on the loan account which at that stage stood at R700 000, because of Company A's adverse economic position.
- Company A's year of assessment ends on 28 February.

# Result:

- Company A: s 12C(1) allowances = R200 000 per year for 2018 and 2019 years of assessment (R400 000 in total).
- When the debt benefit arose, the base cost of the machinery for purposes of para 20 was R600 000 (R1 million – R400 000).
- Debt benefit on 30 April 2018 = R700 000.
- Base cost of the machinery must be reduced to nil under para 12A(3)
- Para 12A(6)(d) exclusion N/A as Company A traded during the 2019 and 2018 years of assessment.

# Result (cont.):

- 2019 year:
  - To the extent that para 12A has not been applied, the debt that funded the expenditure on the machinery and was the subject of a debt benefit, is deemed to be recouped under s8(4)(a) in the of assessment
    - limited to any allowances previously granted under the Act (s 19(6)).
  - The recoupment under s 19(6) is:

• Debt benefit (amount of loan waived)	R700 000
• Less: Base cost reduction under para 12A(3)	<u>(600 000)</u>
• Amount recouped under s 8(4)(a) (limited to R400 000) =.	<u>R100 000</u>

# Waiver of debt: creditor's capital loss (Eighth Schedule Para 56(1))

- Where a creditor disposes of a debt owed by a debtor who is a connected person in relation to the creditor, that creditor must disregard any capital loss determined in respect of the disposal.
- N/A to the extent that the amount of that debt so disposed of represents, inter alia, an amount which is applied to reduce the expenditure in respect of an asset of the debtor or any assessed capital loss of the debtor in terms of para 12A, or an amount that must be or was included in the gross income of the debtor.



# Waiver of debt: donations tax?

- Donation = any gratuitous disposal of property including the gratuitous waiver or renunciation of a right.
- A waiver of a loan may constitute a donation.
- However, s 56(1)(r) provides that no donations tax shall be payable in respect of a donation by a company to another company that is a resident and is a member of the same group of companies as the company making the donation.

*See SARS Binding Private Ruling #252*

# Liquidation distributions (Eighth Schedule para 77)

- A shareholder of a company that is being wound up, liquidated or deregistered is treated as having disposed of all the shares held by him in that company at the earlier of -
  - (a) the date of dissolution or deregistration; or
  - (b) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the shareholder of the company (or shareholders holding the same class of shares) will receive any further distributions in the course of the liquidation or winding-up of that company.

# What's the possible way forward with tax incentives for SMMEs?

# QUESTIONS?

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# THANK YOU!

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