



TAX CAFÉ – APRIL 2022

Individuals and other taxpayers

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Overview

- Thank you for your questions!
- Agenda for today:
 - Things worth knowing
 - Income Tax queries
 - VAT queries
 - Admin queries
 - Other
 - Open Mike Q&A

Things worth knowing!

- Amended Monetary Amounts Bill has been tabled.
 - Sugar Tax delayed to 2023.
 - Fuel levy relief for 2 months.

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Income Tax Queries received:

- PAYE and IRP 5's for individuals – why are SARS not recognising the PAYE?
 - EMP501 not submitted
 - Proof of payment not submitted
 - This also means that if SARS is not recognising the PAYE, it's generally an issue with the employer
- Linked question – what happens when the employer won't submit EMP501's? This impacts IRP5's and the employees ability to submit returns.
- What happens if there's an error on the year of the IRP5.
 - Issue 1 – not all amendments to IRP 5 pull through to efiling.
 - Current issue with no resolution: IRP 5 correct, EMP501 submitted, but PAYE not pulling through.

Code for directors?

- Key question – for what?
 - Executive services?
 - Non executive services?
 - Are they an employee?
 - Consulting services?
 - Once you know what – you can determine the what on here:
<https://www.sars.gov.za/types-of-tax/personal-income-tax/tax-season/find-a-source-code/>
 - If employee income, code should be set in IRP 5.

Errors on pull through

- Tax directives that don't pull through to IT12's.
 - Two possible options:
 - Person didn't lodge the directive correctly
 - IT error on e-filing.
- Why does only the interest of an entity pull through on investments but the REIT and dividends don't?
 - Please raise a query with your RCB as all amounts should pull through. There is clearly a tech problem in the background.
- Fixed percentage directive:
 - Please be clear why?

Offshore earnings

- Remember residency trumps all
 - If RSA resident, then all receipts and accruals must be declared here, with a potential DTA/s 6quat relief
 - If not RSA resident, then only RSA source income is declared.
 - Please look into the residency webinars – they go into the intricacies of “formal” or “other” emigration.
 - Please remember that RSA does not have 183 days residency rule.

Offshore earnings

What about offshore earnings where no IRP5 is issued/income is above R1,25 million

- Please see last months session
- Or:
<https://www.sars.gov.za/individuals/tax-during-all-life-stages-and-events/foreign-employment-income-exemption/>
- Also look at IN 16

Offshore earnings

- My question relates to Section 10 (1)(0)(ii). My client is an SA Tax resident who passes the 183/60 day presence test.
 - He earns commission and has residency in both the SA and the UK.
 - He earns commission in the UK and is paid by a UK registered company and has UK PAYE and NHI deducted off his monthly commission.
 - He also earns commission in SA and is paid by the SA registered company after deducting PAYE off his gross.
 - My confusion arises on the IT12 form and the IN 16, paragraph 4.3 (apportionment). The IT 12 asks for total number of working days in the year and total number of working days outside SA in the tax year. SARS then apportions the R1250000 exemption based on these days. My client earns all his UK commission, say R1000000, whilst living in UK which was 200 working days in that tax year. He earned R350000 whilst in SA (50 working days). My contention is that the full R1000000 earned in UK is exempt, because it's below the R1250000 and all 200 working days were spent in the UK earning that commission. The 50 days spent in SA was earning commission from a different SA tax resident company. If one however takes the strict interpretation of the IT 12 and IN 4, then SARS will reduce the R1250000, by 200/250. This in my view would not be correct as all the 200 days outside were used to earn UK income. Surely the apportionment only applies if one is seconded overseas by a SA company as apportionment can only apply to income earned both inside and outside SA from the same employer.

Offshore earnings

- Please remember that residency has nothing to do with 183 days for RSA purposes.
- Apportionment?
 - Idea is that the exemption only applies to income actually earned abroad!
 - So yes, you need to be clear – what was earned where? Which employer paid for work while worked where?

Foreign dividends

- If exempt under s10B, declare under s10B

Income Tax and Estates

- Estate case where SARS corrected the 2004 return onto the new tax number after the Tax Payer were declared insolvent on 17/2/2004. SARS were supposed to split the income between the 2 tax numbers which were not done. They did a 100% assessment onto the new tax no. No objection can be filed because of the tax year. SARS correction date were on 13/2/2020. An amount of R29 206.47 were debited onto the Tax Payer acc. This has an effect on the refund amount for the estate.
 - My argument would be prescription

Retirement funds

- Please remember that retirement fund taxes are based on the tables.
 - <https://www.sars.gov.za/tax-rates/income-tax/retirement-lump-sum-benefits/>
 - If you have a government pension, then look here:
 - <https://www.gepf.co.za/benefits-calculator/>

Crypto

- SARS default setting is the most crypto trades will be revenue in nature.
- See here for more detail:
 - <https://www.sars.gov.za/individuals/crypto-assets-tax/>

Home office expenses

- Per rules, should apply to 3601 income if you can prove you are required to work from home.
 - Expenses should be disclosed against code 4028
- Please remember that the rules are the rules. Even if you believe you qualified years ago, SARS can still query submissions prior to prescription with no question on your part.

SARS is not always right...

I help a sole proprietor with her bookkeeping. She is a cook. Cooks in her kitchen & deliver home meals as well as catering for functions..... She was also asked on Sundays to run the tuckshop for a club. All her cooking gets done at home so all her house expenses were apportioned.... she gets charged rent at the club & pays for the stock of beverages sold on the day as well as the ladies working in the kitchen. they are not hired by her. SARS asked to upload all the relevant documents (it was done many times) They disallowed every single expense & they say she is liable for a huge sum of money... I have been disputing on line & uploading documents as they request them. The last request was to upload the ladies that worked in the kitchen their details ID etc, which is impossible as the club used to hire casuals & were not working for her as such only on the Sundays. the dispute for that year is closed now... Is there a way I can complain about this as uploading documents didn't help & now the request is not entertained. would a 'correction' help the issue to bring it back in the que??

- Please consider Tax Board/Court. It's your only real next option.

Medical credits

Under what circumstances can a taxpayer claim medical aid payments for their 2 adult son's, in his tax return? Background. Have a tax payer who is registered on his own medical aid. His 2 son's (both adult), have their own medical aids, but couldn't afford their payments for a year or so. They were thus dependent on their dad for these payments and other living expenses. Accountant completed taxpayer's income tax return, by ticking the block - "... have you paid medical expenditure/contributions...in respect of immediate family who is dependent on you for family care..". Proof of these medical aid contributions together with affidavit was uploaded to SARS when they requested additional documentation. SARS disallowed these additional contributions, with no reason given. This was for the 2020 tax year. Taxpayer has now changed accountants and I've just picked up on this whilst familiarizing myself with his tax affairs. The 30 days objection period has lapsed, so I can't raise an objection. Is this correct what SARS has done, and what would my next course of action be, if any?

Medical credits

- If can show the dependancy
- And that kids didn't pay the policy themselves
- No reason to disallow
- However accept that SARS will query.

VAT queries

If you're getting VAT audits on old returns:

- Check prescription
- If not prescribed, you have to comply.

Apportionment

See s17 of the VAT Act

- If SARS disagrees, turnover is not the only basis
- If turnover is not the basis, please be prepared to show direct/indirect split

Admin queries

How do we get a registered representative updated on efiling? I have done telephonic meeting and sent documents, but I still do not have access?

- 2 separate issues
 - The actual representative change
 - Linking to your profile
- In theory – can be done online:
<https://www.sars.gov.za/client-segments/registered-representatives/#:~:text=To%20register%20or%20update%20the,on%20the%20SARS%20home%20page>.
- Could be an efiling issue if not linking. Step one is always to ensure the change has actually gone through. This could be due to a number of issues.
- Please remember the huge fraud risk that SARS has seen in this space.
- CIPC and SARS working on better documentation/interface of information

Transfer of profiles

- Known issue if the taxpayer does not release profile.
- Also a known issue if the TP is difficult.
- Has already been escalated at a national level
 - PS: The recent spate of refund fraud was from people registering TP profiles and submitting fraudulent returns together with changes in banking details.
- If the issue is the taxpayer not being deactivated, please check the current status of the taxpayer.
 - Will follow up
 - This also applies to currently inactive clients

Refunds

- Taxpayer/bank account details?
 - SARS super cautious about these due to the large number of fraud cases in the few years.
 - These are checked randomly for all taxpayers.
 - How do we get a registered representative updated on e-filing? I have done telephonic meeting and sent documents, but I still do not have access?

Registration for taxes

Applied for tax reference number through eFiling, I am now registered for eFiling but still no Tax Reference Number.

- Tax Reference number should be linked to your ID number. If not, will need a separate appointment to get that registered.
- Registration for eFiling access does not equal to registering for income tax.

Admin penalties

- SARS is taking a super hard line in this respect.
- Yes, there were some errors in eFiling.
- Technically SARS is entitled to charge penalties for someone who submitted a provisional tax return without actually being a provisional taxpayer.
- Non compliance penalties can only be remitted for bona fide errors or first incidence of non compliance.
- Please remember that remittance is only step one in the process and is prior to the standard objections process. So paying does not prejudice you.

Objections

- SARS not applying their mind to objections received:
 - Previous issue with SARS just stating invalid rather than disallowed.
 - Known issue, particularly when the same auditor is considering the issue.
- Disallowance of expenses
 - Technically SARS is allowed, especially with changes to s95.
 - Please remember to submit details then object.

Complaints

- SARS not giving timeframes for when complaints are raised.
 - Part of Service Charter (<https://www.sars.gov.za/about/service-charter/>)
 - Standard 21 days – please consider branch managers, RCB's and OTO

Debt management

- Please remember that once assessed and finalised, the only debt option is installment plan or compromise.

Service level timeframes

- Please look at SARS Charter vs TAA legislated timeframes.
- If SARS Charter, very little legal recourse, would have to go with the traditional escalation process.
- If TAA – then have additional legal recourse under rule 56 or PAJA.

Admin

- What is the turnaround time for IT14SD for individuals?
 - IT14SD's can only be issued for companies.

Changing your RCB

- It should be as simple as changing your details on the RAV01. If not, please escalate with me as there may be a technical issue.

What happens to fraud reports?

- We're not always going to get feedback.
- The wheels of justice grind slowly, but finely

TP's and fraud

- Please always look to your RCB specific code of conduct.
- YMMV based on how involved/responsible you are for the return.

Other

If a taxpayer made donations under section 56 prior to her death but never declared them to SARS and now the estate needs to be finalized. Do we still declare the donations? And if yes who will be responsible for signing the donation forms and who is liable for paying donation taxes due now that the taxpayer is deceased.

Questions?



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