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Dear Member

The Tax Administration Act requires that tax practitioners be registered with a recognised controlling body. SAIPA is a SARS-recognised professional controlling body. As a Professional Accountant (SA) you have the benefit of acquiring a further prestigious designation, Professional Tax Practitioner (SA) or Professional Tax Specialist (SA), at a cost of only R448 per year (incl. VAT), if you hold the required level of experience and educational qualifications.

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Till next time

Faith
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In line with the Tax Administration Act, tax practitioners will have to register with SARS from this tax season. To do so, they will have to be members of a SARS-recognised controlling body. On 2 September, the South African Institute of Professional Accountants (SAIPA) along with IAC, ICSA, SAICA and SAIT became recognised by SARS as controlling bodies. Now, all tax practitioners including those that are currently registered with SARS, have to apply for re-registration as tax practitioners.

“One cannot, however, assume that all tax practitioners have read the Tax Administration Act, or are existing members of professional bodies that will have kept them abreast of developments,” warns Faith Ngwenya, Technical and Standards Executive at SAIPA. “That could mean that many tax practitioners may not even be aware of the registration requirements at all.”

“We urge taxpayers to enquire about the registration status of their tax practitioners,” says Ngwenya. “If business and individual taxpayers don’t do this they run the risk of, come August, finding that the practitioner they usually use is no longer allowed to operate, and will then have to scramble to find a registered practitioner.”

“Those tax practitioners who are not already members of a professional body, or who are members of a professional body that is not recognised by SARS, have a real challenge in obtaining the requisite membership come tax season,” Ms Ngwenya points out. “Time is short, so I am advising all tax practitioners to make their plans now.”

SAIPA, for example, has rigorous entry requirements. A potential member must have a relevant academic qualification; years of verifiable experience, as well as write a SAIPA examination to be admitted for membership to the SAIPA Centre of Tax Excellence.
SAIPA positions itself to help alleviate public sector skills gap in accounting

In March this year, Auditor-General Terence Nombembe noted that less than a quarter of government entities had been given a clean audit. A key contributing factor is a lack of basic accounting skills in government. The skills gap also contributes to government’s ongoing inability to spend and account for its budgets.

At the same time, Public Service and Administration Minister Lindiwe Sisulu said she would amend the law to make directors-general responsible for the level of skills in their departments.

“In response to this crisis, the South African Institute of Professional Accountants (SAIPA) are making it our business to help government overcome this challenge,” says Navin Lalsab, Accreditation, Compliance and Development executive at SAIPA. “We have a number of initiatives under way to help current finance department employees improve their skills, and to improve the supply of suitably trained accountants to the public sector.”

Lalsab explains that while the private sector typically uses International Financial Reporting Standards (IFRS), the public sector uses the Generally Recognised Accounting Practices (GRAP) standard. GRAP is issued by the Accounting Standards Board in terms of the Public Finance Management Act.

“GRAP was originally based on IFRS, but the two standards are starting to diverge in certain areas,” Lalsab says. “Training in public sector accounting and GRAP is necessary to enhance the versatility of Professional Accountants.”

In response, SAIPA is proposing to add a GRAP module to its Professional Accountant (SA) training curriculum. The thinking behind this approach is to give Professional Accountants even more career mobility, not to channel them in one specific direction.

“The public sector offers many career opportunities for accountants, and it’s also very worthwhile,” Lalsab says. “We want to make our members aware of these opportunities, and give them the skills they need to explore them.”

SAIPA is currently piloting a project at the Gauteng Treasury which seeks to improve the accounting skills of their staff. The Treasury has been accredited as a SAIPA training centre, and 19 employees are undergoing training under SAIPA supervision with a view to qualifying for the Professional Accountant (SA) designation. Lalsab believes that this model could be rolled out to other public entities who want to upgrade their existing skills.

“The Professional Accountant (SA) designation is well established in both the mid- and upper tiers of the accounting profession, and is backed by rigorous, dedicated training and ongoing professional development,” says Lalsab. “We offer public sector finance staff a great way to upgrade their skills in line with the challenges of their jobs—and we hope to persuade many of our members to consider a career in the public sector as well.”

Professional accountants play essential role in small business sustainability

Small and medium enterprises (SMEs) are the engine of most African economies, yet the majority do not survive to celebrate their fifth anniversary, according to the South African Institute of Professional Accountants (SAIPA).

Accounting services are the key to sustainability, says Navin Lalsab, Accreditation, Compliance and Development Executive of SAIPA. “Professional accountants have a vital role to play in advising and supporting SMEs, and in imparting the financial and accounting knowledge essential to business success. The ability for accountants to integrate academic skills from tertiary institutions with practical skills needed in the market is, therefore, crucial.”

Almost 200 candidates passed the most recent SAIPA four-hour rigorous professional evaluation (PE) assessment, joining more than 400 who successfully completed the course in November 2012.

“The successful candidates are of the highest calibre and will contribute greatly to the sustainability of the small businesses they serve through business advisory services, professional judgements, logical communication and the ability to apply learned knowledge in a dynamic business environment,” says Lalsab.

Each candidate can now use the designation Professional Accountant (SA), and can register with the South African Revenue Service (SARS) as a tax practitioner as per Section 240A of the Tax Administration Act (2011).

The new registration requirements will ensure that, through alliance with the selected bodies, tax practitioners possess minimum education qualifications and experience to provide adequate tax advice and tax practitioners’ tax knowledge remains relevant and current.

According to Lalsab, benefits of SAIPA membership include access to continuous professional development (CPD) programmes designed to keep skills current and relevant.

“This is particularly important given the rate at which modern business and accounting regulations change,” he says.
It’s been several months since the most recent amendment to the Tax Administration Act came into full affect. Expected to have a significant impact on not only the tax sector, but the country as a whole, industry bodies speculate that the new change in legislation will have far-reaching consequences which are both positive and negative.

As of 1 July 2013 every tax practitioner within the country should have been registered with one of the industry’s controlling bodies in order to remain legally compliant. The Tax Administration Act 2011, which originally stated that any person providing tax-related advice to another person for reward, must be registered as a tax practitioner with SARS, was amended earlier this year to include the provision that they also register with a controlling body. The amendment is a key component of the SARS Compliance Programme which will be carried out in a two-phase approach. “This first phase which leverages existing bodies, will provide a framework for us to ensure that tax practitioners are appropriately qualified and that there is a mechanism available to both taxpayers and SARS to ensure that any misconduct is addressed,” says SARS Deputy Spokesperson, Marika Muller.

In line with its minimum criteria, SARS initially recognised five, and then later another two, controlling bodies in terms of the new Act requirements, namely the South African Institute of Professional Accountants (SAIPA), the South African Institute of Chartered Accountants (SAICA), the South African Institute of Tax Practitioners (SAIT), the Institute of Accounting and Commerce (IAC), Chartered Secretaries Southern Africa (CSSA), and then later followed by the Association of Chartered Certified Accountants (ACCA) and the Chartered Institute of Management Accountants (CIMA). “Each controlling body has their own pre-admission requirements which will relate predominantly to the tax practitioner’s qualifications, practical training, and continued professional development (CPD),” reveals Faith Ngwenya, Technical and Standards Executive for SAIPA. Indeed, SARS listed the four general areas in which controlling bodies must ensure that they remain relevant as minimum qualifications and education, code of conduct, disciplinary code and procedures, and CPD.
Minimum qualifications
CEO of IAC South Africa, Ehsaan Nagia details SARS’s minimum requirements as an NQF 4 qualification which is the equivalent of a matric certificate and a minimum of five years working experience across tax-related areas including income tax, VAT and capital gains tax. While these are the absolute minimum requirements and some controlling bodies may have stricter regulations, Nagia reveals that certain bodies such as IAC have taken cognisance of the old dispensation within South Africa and the fact that many tax practitioners may not be able to produce high standards of qualification but still possess a significant amount of work experience. “In order to cater to these individuals we allow technical tax practitioners to undergo an entry exam to become registered members of IAC,” he explains. “Though we do, of course, have to limit what they are able to work on.”

SAIPA’s minimum entry requirement is a National Diploma. However, Ngwenya confirms that SAIPA has put similar measures in place, allowing for the submission of verifiable experience in lieu of its minimum qualification requirements in order to become a registered member of the SAIPA Centre of Tax Excellence (CoTE). The submission is then heavily scrutinised by the body in order to approve membership. Candidates are also expected to write an entry examination in order to test their competency. “We pride ourselves on our strict standards and our insistence on conclusive evidence that each practitioner can meet our requirements,” she comments.

Higher standards
When it comes to code of conduct, the various bodies have their own set of ethics that they believe their members should subscribe to. Sharon Smulders, Head of Tax Technical Policy and Research at SAIT, explains that honesty and integrity play a major part in SAIT’s code of conduct, noting that the controlling body is particularly strict about the screening of its members in this area. “First and foremost, this means that we need to ensure our members are compliant in their personal capacity, and so we ask them for a certificate of compliance before they are able to join,” she reveals.

The Act is expected to bring a higher standard of professionalism to the industry by ensuring that tax practitioners who do not meet these requirements are no longer allowed to practise. Joel Wolpert, Technical Adviser, CSSA points out that the Act will help weed out those who are not adequately qualified to provide professional advice on tax matters. “It also provides taxpayers with a formal way to address issues of misconduct on the part of their tax practitioners,” he comments.

SAIPA believes that this is a highly positive move from the Treasury Department. “This amendment has been long overdue, and with the increased degree of professionalism that it will bring to the country’s revenue services, I think we will see increased opportunities arise in a whole number of different areas,” maintains Ngwenya.

Taking a closer look at section 223(3) of the Act which increases the validity of the opinion of a practising tax professional, Smulders points out that this will serve as a value-add for clients, as certain existing penalties must be remitted by SARS if a tax opinion is obtained from a tax practitioner.

CPD requirements
With regards to the new CPD requirements in particular, Nagia is of the opinion that the Act will benefit not only taxpayers, but also tax practitioners. “By insisting on minimum CPD requirements it forces members to remain knowledgeable and well-informed,” he explains, though he points out that the Act places significant burden on the shoulders of both the controlling bodies and tax practitioners. “There is a significant amount of adaptation which will need to take place for those individuals who were not previously members of a controlling body. Now, subject to CPD, they will find themselves incurring extra time and cost.”

Further to this is the challenge for regulatory bodies to ensure that their members are acutely aware of the Act’s requirements. “It’s now our responsibility to see to it that members understand the full impact of this legislation, that it’s not simply business as usual and that non-compliance will result in exclusion from the profession,” asserts Ngwenya.

“Each controlling body has their own pre-admission requirements which will relate predominantly to the tax practitioner’s qualifications, practical training, and continued professional development (CPD)”

Reduced number of professionals
SAICA’s Project Director for Tax, Piet Nel raises the important question of what becomes of all the clients who were previously serviced by tax practitioners who do not belong to a controlling body. “The most significant impact of the Act is that it has reduced the number of professionals who are able to assist taxpayers. This in turn will affect the cost of tax-related services as the demand for tax practitioners who belong to professional bodies increases,” he informs. “Further to this, compliant tax practitioners

TAX PROFESSIONAL
will need to maintain additional proof of their transactions in case they are questioned about their due diligence in the performance of their services.”

Smulders concurs, saying that one of the primary challenges for tax practitioners will be possession of contradictory evidence should a complaint be lodged against them. “As such, tax practitioners need to ensure that they have proper papers which comply with the necessary guidelines,” she warns.

Indeed, the new amendment to the Act has received substantial attention from the media, placing tax practitioners under significant scrutiny. “The public is aware of this new avenue for reporting unprofessional conduct and they will ensure that the very highest standards within the industry are maintained,” comments Wolpert.

Tax practitioners will need to ensure that they are up-to-date and at the cutting edge of the profession, but as Nel points out, it’s the controlling bodies that must provide the supporting framework for them to get this right. “Right now, the significant challenge for us is to manage SARS’ expectations and to make sure that when dealing with any complaints lodged by SARS, that we effectively identify and discipline our members who are not providing professional services,” he maintains.

**Impact on SA tax industry**

What possible effects will the Act have on the future of the South African tax industry? Ngwenya speculates that future developments include stricter controls on regulating bodies. “Already we’re required to be incredibly strict, and we could see current requirements tightening in a move towards professionalising the industry,” she says.

Nagia foresees the same outcome, commenting that this is just the beginning stage as greater and greater demands will be placed on controlling bodies. “There has already been talk around the establishment of a more senior controlling body to control the controlling bodies. While no actual steps have been taken to bring this about, the mere fact that it has been spoken about hints at the potential for over-regulation, which can sometimes be just as bad as under-regulation,” he asserts.

However, Muller reveals that the second phase of SARS’ Compliance Programme already involves the establishment of an independent regulatory board for tax practitioners. “This will begin in 2014 with a review of the results from the first phase,” she explains.

While the new amendment to the Tax Administration Act brings about a considerable number of challenges for tax practitioners and controlling bodies alike, ultimately it is expected to have a positive impact on the tax industry which, in turn, will positively affect the country as a whole. “Because practitioners will need to remain at the forefront of industry developments, I believe that this can only serve to enhance South Africa’s world-class revenue services,” concludes Ngwenya.
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A PROPOSED NEW TOOL AVAILABLE TO THE SOUTH AFRICAN REVENUE SERVICE TO EXTEND THE LEGISLATED PRESCRIPTION PERIODS.

By Taryn Solomon – ENS

Prescription of a tax assessment is an important and powerful tool for a taxpayer when it comes to obtaining certainty in respect of one’s tax affairs and can serve as an important defence when disputing an assessment. Prescription is governed by section 99 of the Tax Administration Act No. 28 of 2011 (“TAA”).

A three year prescription period applies where the South African Revenue Service (“SARS”) has had a previous opportunity to assess a taxpayer (such as in the case of income tax) and a five year prescription period applies in the case of a self-assessment tax (such as value-added tax (VAT) and employees’ tax (PAYE)).

Generally, the prescription period that prohibits SARS from issuing an assessment does not apply if the reason why the full amount of tax was not charged was due to fraud, misrepresentation or non-disclosure of material facts. When the tax is a self-assessment tax, the basis on which the period of limitation does not apply differs in that it refers to fraud, as well as intentional and negligent misrepresentation or non-disclosure.

The prescription period that prohibits SARS from issuing an assessment will also not apply where SARS and the taxpayer so agree prior to the expiry of the limitations of time. Practically, such agreements are often entered into when SARS is conducting an investigation into a complex matter which involves the auditing of substantial information and facts.

Clause 34 of the 2013 Draft Tax Administration Laws Amendment Bill (“the Bill”) provides for an additional circumstance where the period of prescription can be extended. It proposes to amend section 99 of the TAA by inserting a new subsection (3) which will provide for the extension of the prescription periods where “a taxpayer without just cause fails to submit relevant material requested by SARS for purposes of verification, inspection or audit ... commencing on the day that the relevant material was required to be submitted and ending on the day that the taxpayer submits the relevant material.”
The proposed amendment accordingly appears to have the effect of allowing SARS to extend the prescription periods provided for in section 99 of the TAA where a taxpayer exhibits a certain behaviour vis-a-vis the provision of information to SARS, assuming SARS was entitled to request the information in the first place. What is unclear from the provision is what would constitute “without just cause” where there is a delay in a taxpayer providing information and practically, what interaction is required, if any, where the period for prescription is extended in terms of this provision. In challenging any assessment, a taxpayer can raise prescription as a ground of objection. Accordingly, where SARS has relied on this proposed new provision in issuing an adverse assessment on the basis that the period of prescription has been extended due to the taxpayer’s behaviour, this should be able to be dealt with by a taxpayer in the objection and appeal process.

This new proposed provision certainly places an additional burden on taxpayers as regards the timeous provision of information to SARS and may have the effect of weakening the important defence for a taxpayer which prescription presents. It is certainly a departure from the tool which is currently available to SARS to extend a prescription period which involves participation by the relevant taxpayer, namely where SARS and a taxpayer may enter into an agreement in respect thereof and it could be used by SARS to its strategic advantage when it comes to late requests for information when the prescription date for an assessment is looming. Due to the important role which prescription can play in tax disputes, it is crucial for taxpayers to be aware of the prescription status of assessments and what rights are available in respect thereof. Should the new proposed amendment to section 99 of the TAA be adopted by Parliament in the form discussed in this article, taxpayers should be vigilant in respect of information requests from SARS and deal with same fully and timeously.

Source: As posted in www.taxmansa.co.za 28 August 2013
Question posed:
At what stage may the taxpayer declare output tax since the taxpayer is frequently in receipt of 50% deposits from customers? Further, it is given that once the advanced deposit is received, it is not placed in a separate account or trust, but placed in the same bank account as any other cash received. The question is when must the taxpayer account for the output tax for the advanced payment received? Should the taxpayer pay the output tax on receiving the ‘advanced payment’? Or should the taxpayer account for the output tax after completing the installation of the security system?

Answer:
This question requires an interrogation of the concept of ‘deposit’ in terms of the VAT system. Below is the definition of ‘consideration’ as per the latest edition of the VAT Act.

Consideration
In relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited.

For easy and quick references the relevant component of the definition is emphasised. A deposit paid – not referring to a deposit paid on a returnable container – is not subject to VAT as it is not a consideration for the Value-Added Tax purposes. However, when a deposit on a returnable container, for example, is forfeited, it becomes a consideration and output tax must be accounted on the forfeited amount.

In practice, the concept of a deposit is not the same as the concept of advance payment. This difference can best be explained by way of an example. If a hotel charges a key deposit, it is likely that the guest will use the key during the time that the guest stays in the hotel. Only if the guest does not return the key, then will the deposit be consequently forfeited and a consideration, as defined in the VAT Act, will arise. Output tax must be accounted on the forfeited amount.

At this juncture, it is necessary to refresh one’s memory. What is it that triggers VAT? The rule is simple but easily forgotten. Supply as per the VAT Act stipulates that a VAT-able supply is triggered by the earlier issuing of a ‘tax invoice’ or the payment made by the customer (not necessarily on payment of the full amount) of a future supply.
Returning to our hypothetical example, it is given that:

a) No tax invoice was issued, and
b) The deposit is largely a security deposit which normally is a refundable amount.

In this situation, the supply rule – a requirement for a VAT event – is not triggered by the failure to issue a tax invoice. In addition, it is more than likely that the key will be returned and there will not be a supply of a good or service – an indispensable requirement for a Value-Added Tax outcome. In fact, the guest paying the deposit has an option of surrendering from the ‘agreement’ at no further cost by simply returning the key.

Returning to our main query, targeted for interrogation, the following is observed:

- An invoice is issued, and
- The customer or the taxpayer cannot ‘opt’ out of the agreement without incurring additional cost.

In other words, the advance payment prompted by an invoice is undertaken by the expectation of a future supply of security installation. The difference between this scenario and the hypothetical scenario is that the advance payment is a consideration for the future supply of security installation. The payment (aptly described as a deposit) for the key is to ensure a safe return of the key and the deposit is not utilised to pay other expenses incurred by the hotel owner – the deposit is refundable.

In the query under investigation, an additional factor justifies the fact that the advance payment is undertaken in favour of a taxable future supply. As it often happens in the construction industry, the advanced payment is utilised to purchase materials required to install the agreed security equipment. The advance payment is utilised to defray expenses incurred by the taxpayer. Advance payment in this context means any amount received that in practice has the effect of reducing or discharging the obligation relating to the purchase price.

The advance payment received by the taxpayer has reduced the amount ultimately owed by the customer in respect of the purchase price of the construction company’s quote. This practice is defined as ‘consideration’ as cited above – see the underlined words!

So it is likely that the taxpayer has recorded the deposits received as liability in the financial statement since the task remains unfinished; this accounting norm must not be conflated with the Value-Added Tax convention. The latter is driven by the issuing of tax invoices and the VAT legislation. Therefore, it is logical that the status of deposit has ceased to exist as envisaged in the definition of consideration because the amount received is actually a part payment or a consideration for a future taxable supply. If the taxpayer is registered as a vendor on the invoice basis, then output tax must be accounted for on the full-value of the invoice. If the taxpayer is registered as a vendor on the payment basis, then output tax must be accounted for to the degree that payment is received.

By implication, the only occasion a deposit is still a deposit is when it is not used to reduce the final purchaser’s price. The only occasion when this outcome is achieved is when the amount received is held in trust. On the subject of funds held in trusts, two observations require attention:

- If the taxpayer, the supplier, maintains funds in trust, this would mean that the amount received – which is alleged as the deposit - must be kept in an account which is separate, different, and identifiable from the taxpayer’s normal banking account.
- Some tax specialists argue that for a taxpayer to maintain account in trust, it must be held by an independent party such as an attorney. The status of a trust is diminished if it is held and managed by the supplier of the construction company goods.

It is obvious, that the taxpayer has not done any of the above; it is given that the taxpayer has not kept the 50% of the total cost – the deposit payment – in a separate bank account, but has applied the amount received as consideration which would unavoidably reduce the final liability of the debtor.

Whatever option is pursued, the real challenge is to demonstrate to SARS that the advance payment has not been utilised to defray expenses of the taxpayer, and if this can be done irreputably and unambiguously, even utilising the first option, the taxpayer could still have a compelling case. In other words, funds held in trust would not trigger the time of supply rule until such time as the funds are actually at the disposal of the supplier and have been applied as a consideration received which reduces or discharges the obligation of the debtor of the taxpayer’s construction services. In this instance, no payment has occurred and, therefore, there will be no liability to declare output tax until the amount received (deposit) has been released to the taxpayer – the construction company.

Alternatively, the taxpayer may accept the receipt of the advance payment not in response to a tax invoice, but to another document, such as a written agreement, stipulating that an advance payment is required and any other rules in relation to the installation of the security equipment. In this way, the status of a deposit as envisaged in the definition of consideration is retained and the taxpayer will not have to account for the output tax on receipt of the 50% deposit.
A dividend tax is a withholding tax – it is a final non-refundable tax.

Disclosure of the dividend received in the ‘non-taxable income’ field of the IT12R would not have adverse tax implication because the dividend is taxed and paid already by the company declaring the dividends.

SARS will - via the Dividends Tax Transaction(s) Information declaration (DTR01) and the prescribed dividends tax return (DTR02) – access the information whether or not the withholding tax was paid already. Therefore, there would not be a need to disclose the dividend withholding tax paid on behalf of the taxpayer in the IT12.

But there is still a requirement that the dividend received must be disclosed in the appropriate non-taxable-income field in the IT12.

The tax accountant is advised that there are two possible scenarios:

1st scenario: if dividend is declared and paid before completion of financial statement

Credit bank:

- Dividends paid to SARS (15%)
- Dividend Paid to Shareholders (85%)

Debit:

- Payment to SARS (15%)
- Shareholders account (85%)

To close the account: end of financial year

Credit:

- Payment to SARS (15%)
- Shareholders account (85%)

Debit:

- Income Statement

2nd scenario: if dividend is declared before completion of financial statement but paid in the next financial year

The financial statement will disclose the following:

Liabilities:

- SARS (15%)
- Shareholders (85%)

Yes! It is a requirement that the withholding tax be disclosed in the IT12.

The taxpayer is reminded that in terms of section 10(1) (k) dividends – not dividends paid and declared by a head quarter company – received by a taxpayer is exempt from normal tax. The dividend received should therefore be disclosed in the appropriate field – non-taxable income.
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From time to time the SAIPA-CoTE Help Desk receives a one-liner question: Do Non-Governmental Organisations (NGOs) pay taxes? SAIPA members often expect a definitive ‘Yes’ or ‘No’ answer, but often are dissatisfied with the response they receive. The response from the Tax Help Desk is an unhesitant, ‘it depends’. The ambiguous response becomes clarified only after lengthy discussions between the SAIPA-CoTE Help Desk and the questioning member. Hence, the following discussion has now become relevant.

First, it is necessary to highlight the fact that the entity in question is recognised, in terms of the Income Tax Act, as an NGO. An NGO enjoys preferential tax treatment after it has successfully applied for approval as a Public Benefit Organisations (PBOs) by the SARS Tax Exemption Unit. Section 30 and Section 10 (1) (cN) of the Income Tax Act is relevant to the question. The Section 30 of the Income Tax Act lists the conditions and requirements that must be complied with before an entity can be approved as a PBO. Section 10 (1) (cN) of the Income Tax Act details the exemption from normal tax of receipts and accruals of approved
PBOs. The reader is reminded that certain receipts and accruals from trading or business activities of NGOs will be taxable.

It is further stated that it is not sufficient for a PBO to conduct commercial business activity only, and subsequently use the derived-profits to finance a PBO or a Public Benefit Activity (PBA) in order to gain the status of PBO as per section 30 of the Income Tax Act.

The following activities are recognised in the Income Tax Act and permissible for PBO status in terms of the Act:
- Welfare and humanitarian
- Health care
- Land and housing
- Education and development
- Religion, belief or philosophy
- Cultural
- Conservation, environment and animal welfare
- Research and consumer rights
- Sport
- Providing funds, assets and other resources to approved organisations carrying on PBAs

Please note the following:
- The activities of the PBO must be undertaken in a non-profit manner;
- The PBO must not promote the self-interest of an employee;
- The benefits of a PBO must be available to the general public (must not be a small ‘boys’ or ‘girls’ club);
- Dissolution-benefits must not be made available to private entities;
- Donations to PBO must not be recalled by donor except when PBO’s constitution is violated; and
- PBO must not be used as instrument to avoid tax.

Tax implications
Generally, the receipts and accrual of NGO will not be taxed under the following circumstances:
- The trading activity is integral to the objectives of the PBO;
- The trading activity is undertaken on a cost-recovery basis - goods sold not for profit maximisation but to recover costs;
- Trading activity should not promote unfair competition with private section trading activities. It would be acceptable for a PBO to host a Fun Day and trade donated items in a school ground on a Saturday morning. Should a PBO trade in a mall in competition with other trading activities of private sector (who are taxpayers) for example, Edgars, then such activity will be taxed.

Conclusion
Generally any trading activity that does not subscribe to the aforementioned circumstances will be taxed.

“it is not sufficient for a PBO to conduct commercial business activity only, and subsequently use the derived-profits to finance a PBO or a Public Benefit Activity (PBA) in order to gain the status of PBO as per section 30 of the Income Tax Act.”

The balance of the receipt or accrual from trading activities will be taxed at 28% - applicable to a PBO irrespective of whether it is a Trust or a non-profit company. If the PBO is recognised as per Section 30 of the Income Tax Act, then it will not be declared as a Provisional Tax payer. All of the aforementioned requirements must be honoured before an NGO may obtain preferential tax status.
While SARS has been on a drive to simplify the income tax process for the taxpayer, SAIPA’s Etienne Retief urges tax professionals to hone their internal processes and procedures in preparation for tax season. After all, he argues, the more efficient the tax practitioner is when filing personal income tax returns on behalf of his clients, the less exposed he is to risks and penalties.

Moreover, with the Tax Administration Act coming down hard on tax professionals, efficient and consistent processes are essential to shield tax professionals from being held liable for incorrectly filed tax returns.

A new approach needed
Retief maintains that when it comes to filing tax returns, the industry suffers from what he terms an ‘outcome bias’ whereby tax practitioners fall into a comfort zone – doing things the same way every year to achieve the same results, simply because it’s the way it has always been done. He points out, however, that filing income tax returns in today’s environment is vastly different to the way it was done as little as five years ago, and as such, a new approach is called for.

“A few years back everything was handed to the tax professional in a hard copy format. Today, however, the system is completely electronic and there is a great need to streamline the efficiency of the process,” he says. “In the past, it would be the responsibility of the tax payer to ensure that all the correct documentation was handed over to the tax professional. Currently, however, the tax payer will e-mail the paperwork to his accountant and it becomes his job to print out the documents, collate them and check that everything is accounted for. It’s the first challenge we face as tax professionals in the digital age, and one that calls for more structured processes.”

To this end, Retief recommends a one-touch approach, whereby the client will send all the relevant information to the tax professional who will then collate it, subsequently meeting with the client to discuss the information and compile it in the correct format to send to SARS. “In this way, the tax professional is spared the burden of dealing with requests from SARS for supporting documentation and the inefficient time management in dealing with the same documents repeatedly,” he says.

Faith Ngwenya, Technical and Standards Executive at SAIPA adds that it is crucial to get a signed disclaimer from clients guaranteeing that all documentation submitted to SARS on their behalf is true and valid in all respects. “Equally important is to ensure that the engagement letter the clients sign when they take on the services of a tax professional is explicit in terms of the roles and duties of each party, and that the tax professional is given a signed power of attorney by his client,” she continues.

Importance of record keeping and paperwork
Record keeping can become an additional bone of contention between tax practitioners and tax payers. “The burden to keep the record of all documentation and tax returns lies with the tax payer,” Retief stresses. Ngwenya concurs, adding that many tax payers may not be aware that they are legally required by SARS to keep tax returns and relevant supporting documents for five years.

“If the tax practitioner takes on the responsibility of keeping records for his clients, it brings us into a different realm of risk entirely,” Retief points out. For example, by agreeing to keep records for clients, it becomes the burden of the practitioner to back up filing systems and implement security and controls to protect the documents – “essentially you are becoming a ‘metro-file’ system for your clients,” he argues. Ultimately, through a process of education and engagement, the tax professional must be clear about where his duties begin and end, setting the correct boundaries from the outset.

An important part of filing efficient tax returns is to understand and examine every document objectively, without simply accepting paperwork...
from clients at face value. To this end, the tax practitioner needs to understand every transaction, check every code on every certificate and be certain of the true activities of the tax payer during the past year before filing the tax return. “It is not enough to simply file and hope for the best,” says Retief.

“SARS insists on more disclosure than in previous years, which means that the tax professional needs to do his homework by identifying all the risks and the treatment thereof. Enquiry is crucial here. Question the client on his transactions. In this way, if SARS calls on the tax professional to justify any element of the return, he is able to do so and remain compliant with all regulations.”

**Legal liability**

Of course, as a tax practitioner, there are certain behaviours that can get one into trouble. “Don’t be tempted or pressurised by a client who is not happy with an outcome, or who asks for assistance in terms of paying less tax. “Ultimately, the outcome of a transaction cannot be changed. However, it is up to the practitioner to disclose that outcome to SARS or not,” says Retief, pointing out that under the Tax Administration Act, there is a provision that exonerates the tax payer if he claims to have acted on advice from his tax practitioner. “In this case, a complaint could be filed against the tax practitioner with the relevant regulatory body, and that regulatory body is obligated to undertake a disciplinary enquiry, which could even result in that individual losing his licence to practice.”

Provisional tax is an additional area of caution. “Should the tax professional estimate the return by 20% lower than the actual final return for taxable income that is less than R1m, or by 10% for over R1m, SARS will institute additional penalties. Ultimately, there is a legal liability for filing incorrect information on a tax return and the tax practitioner is SARS’ first port of call,” Ngwenya cautions.

On the upside, mitigating these risks is as simple as implementing systems and processes. “Systems and processes help the tax professional to become more effective and manage these risks more efficiently,” Retief believes. Indeed, it is systems and processes that create uniform and consistent methods, allowing tax professionals to monitor their performance and keep track of the risks involved in the job. Of course, these systems must be tested and regularly updated to accommodate changes in risk and compliance laws.

**Process in practice**

Kantha Naiker and Gopi Reddy of Reddy’s Financial Services have firsthand experience of protecting their business from the risks associated with inefficient tax returns and making the firm compliant with the Tax Administration Act.

“Since the Tax Administration Act was passed, one of the biggest jobs we’ve had to do was go back to basics in terms of the way in which we engage with our clients,” Naiker reports. To this end, the firm has created a checklist that must be given to the tax payer, which, if populated accurately will contain all the information and supporting documentation necessary to file an accurate tax return.

The firm has also created a system which allows them to track the way in which clients are billed, according to the complexity of their tax returns. “We have three tiers when it comes to billing clients,” Naiker explains. “The simple return is usually the tax return of a salaried employee, and is our lowest fee. Intermediate returns include factors such as medical aid, retirement annuities and the like, and these fall into the second tier. Finally, complex returns include elements such as travel log books, investment income, capital gains tax and interest from investments.”

“with the Tax Administration Act coming down hard on tax professionals, efficient and consistent processes are essential to shield tax professionals from being held liable for incorrectly filed tax returns.”

She adds that once the initial process of collating the documents for the tax return has been completed, the process becomes challenging in terms of the amount of administration required. “To this end, we have introduced an administrative role. It is the duty of our administrator to scan all supporting documents into a file, deal with queries from SARS, follow up with clients in terms of missing documentation, receive all documentation and, essentially, guide the process.”

Billing at Reddy’s Financial Services is done according to the initial submission and what additional work in terms of sourcing supporting documents has been required. “Most tax payers are not aware that they are required to keep all documentation for five years and they don’t retain the information from previous tax returns. The challenge comes in when SARS has a query regarding a past return and the tax practitioner has to find the documents – it becomes extremely costly for the tax payer,” Reddy comments.

**On the same side**

“There is a great deal of liability for the practitioner,” Naiker points out. “As such, it is our policy to check and recheck every tax return that we submit on behalf of our clients, to ensure that we are compliant.”
THE TREATMENT OF INTEREST AND LOANS IN COMPLYING WITH TAX LEGISLATION

Toinette Beckert, Associate and Nina Keyser, Partner - Webber Wentzel

There are a number of provisions in the Income Tax Act (the Act) dealing with the accrual and incurral of interest. Some of these provisions are of general application, while others apply to very specific scenarios only. In this article, we will summarise the general provisions as well as highlight some of the specific instances of which tax advisers should be aware.

Interest on loans in general
Interest on loans is generally covered by section 24J of the Act. Section 24J regulates the timing of the accrual and the incurral of the interest and spreads the interest over the period of the loan on a ‘yield to maturity’ basis. Accordingly, section 24J is not concerned with the actual amounts of interest that has been received or paid during a year of assessment, but it effectively deems an amount of interest to have accrued or been incurred during a year of assessment.

Pre-trade interest
It is a requirement of the general deduction formula that expenditure and losses must be incurred ‘from
Interest on shareholder loans

Loans are often advanced by shareholders to the company without specifying any fixed repayment terms. Such loans are either repayable when the shareholders demand repayment or when the board of the company decides that the company has sufficient funds to repay the loans. Where these shareholder loans were acquired at a discount, the discount will constitute ‘interest’ as defined in section 24J. The question now is how to calculate the interest accrual on a yield-to-maturity basis when there is no specified maturity date. Section 24J determines that where an instrument does not specify a fixed repayment date, or if the repayment date is subject to change, one must determine the date which on a balance of probabilities all liability to pay the amounts is likely to be discharged.

Loans advanced by the company to its shareholders could give rise to dividends tax consequences. In terms of section 64E(4) where a company provides a loan to a resident shareholder that is not a company and is connected in relation to the company (in other words a shareholder who holds 20% of the shares or voting rights in the company), the company could be deemed to have paid a dividend to the shareholder. This dividend will be a dividend in specie, meaning the company will be liable for the dividends tax thereon. The amount of the dividend will be the greater of (i) the market-related interest (which is set at 6%) less the amount of the interest that is payable to the company on the loan for that year of assessment and (ii) nil. If the amount owing to the company was subject to secondary tax on companies (STC), this deeming provision will not apply.

Interest on cross-border loans

Where non-residents provide loans to residents, interest withholding tax will be applicable to interest payments made to the non-resident lender. The interest withholding tax provisions were supposed to become effective on 1 July 2013. However, in terms of the Budget Speech 2013, it was announced that the withholding tax will become effective from 1 March 2014. At the moment, it is not quite clear whether the interest withholding tax provisions have become effective or not. It seems to be SARS’ view that it will only become effective during 2014. Once the withholding tax on interest becomes effective, the payers of interest to non-residents must withhold and pay over to SARS an amount equal to 15% of the interest from a source in South Africa. Non-residents who have a permanent establishment in South Africa may be exempt from this withholding tax. Furthermore, a double taxation agreement between South Africa and the country of residence of the non-resident may also provide relief from (or reduce the rate of) the withholding tax.

Another aspect to consider when dealing with cross border loans is transfer pricing. Section 31 of the Act deals with ‘affected transactions’. These are, amongst other, transactions between a person that is a resident and any other person that is not a resident if those persons are connected persons in relation to one another and any term of the transaction is different from a term that would have existed had those persons been independent persons dealing at arm’s length. Where a term of an affected transaction results in a tax benefit being derived by a party, the taxable income, or tax payable by any person that derives a tax benefit, must be calculated as if that transaction had been entered into on terms that would have existed between independent parties dealing at arm’s length. For example: Company A (incorporated in Mauritius) holds 100% of the shares in Company B (incorporated in South Africa). Company A and Company B is, therefore, connected persons in relation to each other. Company A lends R100, 000 to Company B at an interest rate of 20%. This is an affected transaction, as Company A and Company B is connected persons. Company A is a non-resident and the interest rate of 20% is probably not an interest rate that would have existed if Company B borrowed the money from an independent third party. (Company B would probably have been able to obtain a lower interest rate from an independent third party). Accordingly, Company B is deriving a tax benefit as its taxable income is lower than what it would have been if a lower interest rate was charged. SARS will, therefore, adjust Company B’s taxable income to reflect interest income as it would have been between independent parties. In other words, Company B’s taxable income will be increased.

It also needs to be analysed whether the company could be considered being thinly capitalised. In other words, the company is too heavily financed through debt instead of through equity. A company that is considered to have too little equity is said to be thinly capitalised for tax purposes. In terms of previous practice note, SARS considered an acceptable debt to equity ratio to be 3:1. However, this practice note no longer applies, and SARS issued a draft interpretation note on thin capitalisation. In terms of this interpretation note, taxpayers will now have to determine the acceptable amount of debt on an arm’s length basis. The result will be that SARS will not allow interest deductions for the borrower on the excessive debt.
collection of important international tax principles and concepts; a very useful reference guide for SAIPA members, who are also Tax Practitioners, kindly supplied by Musa Manyathi, Associate Director: International Tax, Deloitte.

Outbound Investments
This refers to a situation where a South African resident exports capital and other resources to invest in a foreign country. There are a number of reasons why this would happen, i.e. to enter new markets for future growth where the local market is already saturated.

Inbound Investments
This would be a scenario where a non-South African investor imports capital and other resources to invest in South Africa. This would happen because a non-resident investor believes that South Africa offers good investment opportunities, i.e. in the mining industry, etc.

Taxable Presence/Permanent Establishment

THE TREATMENT OF INTEREST AND BACK TO BASICS: PRINCIPLES OF INTERNATIONAL TAX
This refers to a level of activity which a taxpayer is required to have in a foreign country before it can trigger a tax liability in that country. Double Taxation Agreements, discussed below, usually define the required threshold to create a taxable presence/permanent establishment.

**Double Taxation Agreements**

Double Taxation Agreements (‘DTA’) are bilateral tax agreements concluded by States, and these agreements play an important role in the international tax arena as they allocate taxing rights in respect of the income of a taxpayer between the source State (the country where a taxpayer derives income) and residence State (the country where a taxpayer has its place of residence). There are two model tax conventions which can be used as a framework to negotiate and conclude a DTA, namely, United Nations Model Tax Convention and the Organisation for Economic Co-operation and Development (‘OECD’) Model Tax Convention. Most of the South African DTAs are based on the OECD Model.

**International Double Taxation**

Cross-border trading in an international arena has an inherent risk of international double taxation. The term double taxation may be used in either a juridical/legal or an economic context. In a juridical context, this refers to a situation where the same income is being taxed twice in the hands of the same taxpayer in two different countries. This may arise, inter alia, where a country taxes its residents on a world-wide income, and the foreign country in which income is generated taxes non-residents on income derived within its jurisdiction. In an economic sense, this may arise where the same income is taxed in the hands of two different taxpayers, for example in the hands of a company and, when the company distributes dividends, in the hands of the shareholders.

**Elimination of International Double Taxation**

Relief from international double taxation may be provided under domestic law or under a tax treaty/double taxation agreement. In a domestic context, three alternative methods are used to provide relief:

- Credit method (under this method residents are provided a credit for taxes which are paid/payable to a foreign State on foreign sourced income);
- Deduction method (under this method residents are allowed to claim a deduction for taxes paid to a foreign State on foreign sourced income); and
- Exemption method (under this method foreign sourced income is exempt from tax in a country of residence).

Of the three methods explained above, credit is generally the most effective. Double taxation under the DTA is generally provided under the exemption and credit methods.

**Controlled Foreign Company (‘CFC’)**

From a South African perspective, this refers to a foreign company in which South African residents hold more than 50% of the participation rights or more than 50% of the voting rights. Section 9D of the Income Tax Act provides the framework and the mechanics of the application of Controlled Foreign Company principles. The effect of being a CFC is that income accruing to or received by a CFC is taxed in the hands of a South African resident, unless certain exemptions are claimable.

**Withholding Taxes**

This is a prevalent tax collecting mechanism imposed by governments to collect taxes on payments to non-residents. It is an ideal cost-effective and simple mechanism to levy taxes on income derived by residents of foreign countries from source States. This mechanism has an inherent drawback that it is always imposed on the gross amount paid to non-residents with no deductions being claimed.

**Intermediary Holding Company**

An intermediary holding company is a foreign company incorporated outside the investor country which is used to hold the controlling shares in one or more other companies so that they form part of the same group of companies. The purpose of an intermediary holding company would normally be to acquire, manage or sell investments in foreign companies. Generally an intermediary holding company would be located in a tax haven in order to provide a group with tax planning opportunities.

**Transfer Pricing**

Transfer pricing is a price set by a taxpayer when selling to, or buying from, or sharing resources with a related person. This price makes it possible for a multinational group of companies to price intra-group transactions so that profits are taxed in low tax jurisdictions while deductions are obtained in high tax jurisdictions. In the South African context, the rules dealing with transfer pricing issues are contained in section 31 of the Income Tax Act.

**Thin Capitalisation**

In the South African context this is dealt with under section 31 (3) of the Income Tax Act. It relates to the funding by a foreign investor of a local company with a disproportionate degree of debt in relation to equity so as to confer to the company the tax advantage relating to the deductibility of interest payments on the debt. Consequently, thin capitalisation provisions are applied to limit the deductibility of interest on the excessive debt funds, thereby protecting the South African tax base.

**Tax Havens**

A tax haven is generally a country or State which has a lower rate of taxation than that generally prevailing. It is able to finance its public services with no or nominal income taxes and which actively makes itself available to non-residents for the avoidance of tax which would otherwise be paid at a relatively high tax rate. In the African context, Mauritius is one of the internationally recognised tax havens.
Since the release of the renegotiated Double Taxation Agreement (DTA) between South Africa and Mauritius, there has been speculation as to whether Mauritius will still be a viable investor’s destination into South Africa and Africa.

The new DTA was signed on 17 May 2013 and will come into force in January 2015. The most significant changes in the new DTA concern the treatment of dual residency as well as the withholding tax rates on dividends, interest and royalties. Changes have also been made to the capital gains Article and the exchange of information provisions.

Uncertainty around tax residency
The change which has received the most attention is the tie-breaker clause which sets out the test to be applied to determine which jurisdiction will have sole taxing rights over a company which is tax resident in both jurisdictions (i.e. dual residency). The revised DTA provides that in the case of the dual residency of a company, its tax residence will be decided by the two contracting states. If an agreement cannot be reached, the entity will not be entitled to benefits under the treaty. Under the current DTA, the tie-breaker clause provides that a company will be treated as being tax resident solely where it has its place of effective management.

The general consensus is that the move away from the place of effective management test will create uncertainty, especially where a conclusive agreement cannot be reached by the two states. At this stage the South African Revenue Services (SARS) has provided no further indication of the parameters to be applied in resolving the issue of dual residency.
Clearly, the South African test of tax residency will still depend on where the entity has its place of effective management. Currently, in terms of Interpretation Note 6 issued by SARS in 2002, SARS states that a company’s place of effective management is the place where the day-to-day operational decisions of the business are made. SARS contends that the place of effective management differs from the place of shareholder control or control by the board of directors.

A discussion paper was issued by SARS in 2011 which indicates their interpretation of the term will now be more in line with the OECD’s recommended approach. It seems, therefore, that SARS will in the future be focusing more on where the actual decision-making takes place and where the senior executives who are responsible for operational strategies and policies are located.

The senior executives will include those who:
- Develop or formulate key operational and commercial strategies and policies regardless of where these policies are formally approved; and
- Ensure that these strategies and policies are carried out.

In contrast, the Mauritius Revenue Authorities (MUR) has confirmed the place of incorporation or central management and control will continue to be used for purposes of determining tax residency. This is an easier test to meet. Accordingly, it is clear that the parameters used by SARS and the MUR for testing effective management will differ substantially. It is, therefore, not inconceivable that a disagreement could arise between the two contracting states. Should this happen, the entity will not be entitled to rely on the DTA at all. One impact would be that withholding taxes payable on dividends, interest and royalties remitted from South Africa would not be reduced under the DTA.

SARS has stated that the change made to the tie-breaker clause on dual residency in the new DTA is in line with the standard test provided for in the OECD Model Convention. The OECD Model Convention provides for dual residency to be resolved by way of effective management or by a ‘mutual agreement’ procedure. In relation to the mutual agreement procedure, paragraph 24.1 of the commentary to article 4(3) of the OECD model convention reads as follows:

Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

There are clear differences between the recommended wording as set out above to that used in the new DTA. The first sentence in Article 4(3) of the new DTA does not mention any factors that should be taken into account by the contracting states when determining the residency. Furthermore, the Article states that the competent authorities will decide the mode of the application of the DTA to the entity. It may, therefore, be difficult for the taxpayer to challenge the decision and it is not clear how this can be done.

A concern was also raised that the dual residency Article could result in double taxation. However, the rebate of foreign taxes as set out in the South African and Mauritian Income Tax Acts should provide relief subject to the various requirements being met.

Going forward, significant substance should be added to Mauritius structures so that there is no doubt as to the place of effective management of these entities. Agreements which outsource core activities to South African persons (related or unrelated) should be avoided. The outsourcing of significant back office functions to South Africa should also be revisited. Strategic policies for the Mauritian entities and offshore groups should be developed outside South Africa and preferably in Mauritius. It will not be sufficient to merely implement the strategies and policies by way of Board meetings and resolutions in Mauritius. In addition to this, the authority and skill level of the Mauritian employees should be revisited to ensure they are the driving force of the policies for the Mauritian operations.

Having said this, the place of effective management is already a significant exposure in terms of the current DTA. SARS is actively challenging Mauritian entities with ties to South Africa and adopting a restrictive interpretation regarding issues such as outsourcing of obligations and activities back to South Africa. The new provisions, therefore, do not impose any additional risk in this regard. However, the uncertainty around what factors will be used in determining the place of effective management, and how the decision may be challenged, is certainly new.

In summary, therefore, as long as adequate substance is added to the operations in Mauritius, Mauritius will still remain a useful holding company jurisdiction for investment into South Africa and Africa, despite the provisions of the new DTA.
Funding considerations
Another factor which should be borne in mind is that the new DTA has increased the withholding tax rate on interest from 0% to 10%.

As the domestic tax regime of Mauritius does not provide for withholding taxes, the increased rate would only be an issue in respect of interest flows from South Africa to Mauritius. The new DTA will, therefore, have an adverse effect on funding structures from Mauritius into South Africa. As the effective date of the DTA will be January 2015 - which coincides with the proposed introduction of the South African withholding tax of 15% on interest - there is still time to restructure the funding arrangements depending on commerciality requirements. Until then there should be no withholding tax on interest payments from South Africa. Funding structures into Africa remain viable depending on the withholding tax rates in a particular jurisdiction and whether these are reduced under a DTA.

Capital gains on immovable property implications
Mauritius has been an established investment route into property-rich structures, including mining operations, in South Africa. The change to the capital gains Article in the new DTA will effectively put an end to the benefits derived from these investment structures.

In terms of the South African Income Tax Act, non-residents will only be subject to capital gains tax (CGT) if the non-resident disposes of an asset attributable to a permanent establishment in South Africa or sells immovable property situated in South Africa or an interest in immovable property. Immovable property includes land as well as mining and prospecting rights. An ‘interest in immovable property’ is defined to include a direct or indirect interest of at least 20% held by a person (together with a connected person in relation to that person) in the equity share capital of a company, where 80% or more of market value of the company at the time of disposal is attributable directly or indirectly to immovable property situated in South Africa.

Currently, the existing DTA provides relief from South African CGT on the sale of shares by a Mauritian entity in an immovable property company situated in South Africa. In terms of the new DTA, the CGT exemption will no longer be available where more than 50% of the shares derive their value directly or indirectly from immovable property. This will clearly impact on those structures that have used Mauritius as a holding company jurisdiction for the investment into property-rich entities in South Africa.

Other changes
The dividends tax of 15% will be reduced to 10% where less than 10% of the capital in the company declaring the dividend is held. The dividends tax remains at 5% where at least 10% of the capital of the company paying the dividend is held. Royalty withholding tax which is currently 0% under the DTA will be increased to 5%.

In order to benefit under the existing and the new DTA, it is necessary that the recipient of the dividend, interest and royalty income is the beneficial owner of the income stream. This is an important consideration and should be investigated, particularly in respect of Mauritius structures which have limited substance and back-to-back arrangements with other group entities. Factors to prove beneficial ownership include, for example, the taking on of risks (such as contractual, credit and forex risks) as well as the ability to deal with the income without any contractual obligation to remit the income or pay it to another entity. This will soon become a focus area of SARS once the withholding tax regime is fully operational.

The new DTA contains exchange of information provisions, which grant SARS the right to request information regardless of whether the other contracting state has any interest in such information. SARS will, however, still have to request information in accordance with the agreed procedures such as lodging specific requests with the competent authority in Mauritius.

In conclusion, Mauritius remains a viable investment structure both into South Africa and Africa. However, the cost of establishing the requisite substance to ensure effective management is in Mauritius will have to be weighed against the benefits derived under the DTA. Mauritian funding structures and the investment into property-rich companies will, however, no longer be beneficial and should be reconsidered before the introduction of the new DTA.
Throughout history there have been many strange, unusual, and weird taxes. Many of them were implemented to raise additional revenue, while the purpose of others was to promote social change. Here are some of the strangest ones:

- In Ancient Egypt, cooking oil was taxed, and on top of that, people had to buy their taxed cooking oil from the Pharaoh’s monopoly, and were prohibited from reusing previously purchased oil.
- During the 1st century AD, Roman emperor Vespasian placed a tax on urine. At the time, urine was collected and used as a source of ammonia in such tasks as tanning hides and laundering garments. Therefore, those who obtained valuable urine from collectors were charged a tax.
- In Ancient Rome, it was not uncommon for slave owners to free their slaves after a certain number of years of work, and/or the payment of a certain fee. Slaves could pay that fee because many of them had the opportunity to work in several places, and thus could earn the money used to obtain their freedom. The Roman government required the newly freed slave to pay a tax on his or her freedom.
- During the Middle Ages, European governments placed a tax on soap. It remained in effect for a very long time. Great Britain didn’t repeal its soap tax until 1835.
- King Henry I allowed knights to opt out of their duties to fight in wars by paying a tax called ‘scutage’. At first the tax wasn’t high, but then King John came to power and raised it to a rate of 300%. Some claim that the excessive tax rate was one of the things that contributed to the creation of the Magna Carta, which limited the king’s power.
- Oliver Cromwell placed a tax on Royalists, who were his political opponents, taking one-tenth of their property. He then used that money to fund his activities that were aimed against the Royalists.
- Playing cards were taxed as early as the 16th century, but in 1710, the English government dramatically raised
taxes on playing cards and dice. This led to widespread forgeries of playing cards to avoid paying taxes. The tax was not removed until 1960.

In 1660, England placed a tax on fireplaces. The tax led to people covering their fireplaces with bricks to conceal them and avoid paying the tax. It was repealed in 1689.

In 1696, England implemented a window tax, taxing houses based on the number of windows they had. That led to many houses having very few windows in order to avoid paying the tax. Eventually this became a health problem and ultimately led to the tax's repeal in 1851.

In the 1700s, England placed a tax on bricks. Builders soon realized that they could use bigger bricks (and thus fewer bricks) to pay less tax. Soon after, the government caught on and placed a larger tax on bigger bricks. Brick taxes were finally repealed in 1850.

In 1705, Russian Emperor Peter the Great placed a tax on beards, hoping to force men to adopt the clean-shaven look that was common in Western Europe.

The French had a salt tax called the gabelle, which angered many and was one of the contributing factors to the French Revolution.

In 1712, England imposed a tax on printed wallpaper. Builders avoided the tax by hanging plain wallpaper and then painting patterns on the walls.

England introduced a tax on hats in 1784. To avoid the tax, hat-makers stopped calling their creations ‘hats’, leading to a tax on any headgear by 1804. The tax was repealed in 1811.

In 1789, England introduced a tax on candles. People were forbidden from making their own candles unless they obtained a licence and then paid taxes on the candles they produced. The tax was repealed in 1831, leading to a more widespread popularity of candles.

In 1795, England put a tax on the aromatic powders that men and women put on their wigs. This led to a dramatic decline in the popularity of wigs.

In 1885 Canada created the Chinese Head Tax, which taxed the entry of Chinese immigrants into Canada. The tax lasted until 1923 when a law was passed banning Chinese people from entering Canada altogether, with a few exceptions.

Johnstown, Pennsylvania was devastated by a flood that killed nearly 2,000 people in the late 19th century, and in 1936 another flood damaged the town. That led to the state of Pennsylvania passing a tax on alcohol, the proceeds of which would be used to rebuild the city. By 1942, enough money was raised to rebuild Johnstown, yet the tax exists to this day, and brings in around $200 million a year for Pennsylvania.

Salt was a very popular thing to tax because consuming it is necessary to humans. The British placed a tax on salt, and the salt tax gained worldwide attention when Ghandi staged nonviolent protests against it.

Extract taken from ‘Strange and unusual taxes throughout history from around the world’ http://www.efile.com/unusual-strange-funny-taxes-throughout-the-world-and-history
BQSystems takes the hassle out of issuing EME certificates through a user friendly, intuitive 3 step process.

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