DAVEY'S Locker

14 NOVEMBER 2025

6.2025

Editor's Note:

In this sixth newsletter for 2025 we consider the following:

Income transfers to Non-Residents : New SARB/SARS Excon Criteria.

Foreign Pensions Proposal Withdrawal – Tax Exemption to Remain.

SARS Draft IN on "Readily Apparent Undisputed Error".

Tax Court Case on GAAR.

SARS Ins, Draft Ins, Guides and BGRs Noter-Up

Tony Davey – Editor

Duncan McAllister – Co-Editor

tonyd@harding.co.za / www.tonydavey.com

To subscribe free (or unsubscribe) please email cherylh@harding.co.za

---

INCOME TRANSFERS TO NON-RESIDENTS : NEW SARB/SARS EXCON CRITERIA

SARB's Financial Surveillance Department issued an update on 28 October 2025 to the Excon Manual, impacting upon distributions from a RSA source to non-residents. Previously, income transfers to non-residents could be remitted abroad without a SARS authorised international transfer (AIT) tax compliance status PIN.

The new requirements apply to certain categories of income, including dividends, directors fees, rental income and trust income distributions.

Non-residents who are not SARS registered as taxpayers must now obtain a Manual Letter of compliance – International Transfer from SARS. Non-residents who are still registered on the SARS database require a TCS-AIT PIN which is a simpler, swifter electronic e-filing process.

Curiously, interest, salaries, fees and annuities are not subject to the above SARS AIT requirements.

FOREIGN PENSIONS – TAX EXEMPTION TO REMAIN

National Treasury has withdrawn its proposal to tax amounts from foreign retirement funds pertaining to past employment outside the RSA.

The draft Taxation Laws Amendment Bill (TLAB) published 16 August 2025, proposed an amendment to remove the exemption under section 10(1)(*g*C)(ii). In essence, if enacted, lump sums, pensions and annuities received by RSA residents from foreign retirement funds as consideration for past employment outside the RSA would have become subject to tax in the RSA.

We note that if such amounts emanated from the social security system of a foreign country (as distinct from consideration for past employment), such amounts also still remain tax free under section 10(1)(*g*C)(i) of the Income Tax Act as such were not in any event subject to the now withdrawn proposal.

SARS DRAFT IN ON "READILY APPARENT UNDISPUTED ERROR"

Under section 93(1)(*d*) of the Tax Administration Act 28 of 2011 SARS may make a reduced assessment if it is satisfied that there is a readily apparent undisputed error in the assessment by –

- SARS; or
- the taxpayer in a return.

However, under section 99(1) SARS may not make a reduced assessment if more than three years have elapsed from the date of assessment of an original assessment.
The three-year limitation will not apply if SARS becomes aware of the error before the elapse of the three-year period.

The main advantage of section 93(1)(*d*) is that the taxpayer can avoid the more rigid objection and appeal process when there is an undisputed readily apparent error that needs to be rectified. If the taxpayer is outside the 80-day period for lodging an objection, they do not have to show exceptional circumstances as would be the case with an objection.

In 2021 SARS issued a draft interpretation note on section 93(1)(*d*) for comment. One of the most contentious views expressed in this IN was that an error excluded an omission, which would have meant that a taxpayer that forgot to claim a deduction would not be allowed to request a reduced assessment without lodging an objection. On 16 October 2025 SARS reissued a much-improved version of the IN for further comment. The IN now accepts that both errors of commission and omission qualify for consideration under section 93(1)(*d*).

The request for a reduced assessment must be in writing and can either be lodged at a SARS service centre with supporting documentation or by eFiling using the RRA01 form for natural persons, or a RRA02 form for trusts and companies.

To qualify, the error must be readily apparent, which SARS takes to mean easily determinable based on a face value review of the facts and documentation. If the matter involves uncertainty over interpretation of the law or complexity and voluminous documentation, it will be rejected because the error will not be readily apparent.

The revised IN adopts a more reasonable and nuanced approach to section 93(1)(*d*) and is to be welcomed. We caution, however, that care needs to be taken when drafting such requests to ensure that they are explained in a clear and simple manner together with relevant documentation to avoid rejection.

TAX COURT CASE ON GAAR

The Tax Court (Cape Town), Case No IT24502, 30 September 2025, Mr Taxpayer G vs Commissioner SARS, ruled on the application of the tax General Anti-Avoidance Rules (GAAR) embodied in Sections 80 A-L of the Income Tax Act (ITA). Given the paucity of case law on GAAR (historically Section 103 of the ITA) this judgment provides some welcome clarity on these rules which empowers SARS to re-characterise an arrangement or parts thereof, as an impermissible avoidance arrangement, re-determine the tax treatment and raise additional assessments. (We note that Tax Court judgements are of persuasive value only and not binding precedent).

The facts pertained to a complex scheme, which created a pool of secondary tax on companies (STC) credits which could be used to offset STC liabilities arising on future dividend declarations, by utilising foreign companies which were not subject to STC. (We note that Dividend Withholding Tax (DWT) replaced STC on 1 April 2012).

SARS contended that:

a. the avoidance arrangements' sole or main purpose was to obtain a tax benefit, both for the foreign companies and taxpayer.

b. The avoidance arrangements in fact gave rise to tax benefits for the foreign companies and the taxpayer.

c. The avoidance arrangements, as contemplated by section 80A of the ITA were, in the context of business, entered or carried out by means or in a manner that would not normally be employed for *bona fide* business purposes, other than obtaining a tax benefit.

d. The avoidance arrangements lacked commercial substance, taking into account the provisions of section 80A of the ITA. (Our underlining).

The taxpayer disputed the above criteria being satisfied and contended that GAAR was thus not of application.

On the facts, the Court held that all the criteria were satisfied and thus GAAR applied.

We shall analyse the application of the criteria in a future newsletter but the important observation is that SARS is now clearly prepared to apply GAAR to set aside for tax purposes, various transactions which *prima facie* appear valid.

INTERPRETATION NOTES

Date of issue	IN	ITTax	Section	Description
31.10.2025	141	IT	23(e)	The meaning of reserve fund under section 23(e)
16.10.2025	140	IT	22(1)(*a*)	Diminution in the value of closing stock
29.09.2025	119 (Issue 2)	IT	12N and 12NA	Deductions in respect of improvements to land or buildings not owned by a taxpayer (replaces PN 36 dated 13.01.1995)

DRAFT INTERPRETATION NOTES

Date of issue	Draft IN	Tax	Section	Description
16.10.2025	-	IT	93(1)(*d*)	Reduced Assessments: Meaning of 'Readily Apparent Undisputed Error'

GUIDES

Date of issue	Description
07.11.2025	Reportable arrangements external guide

BINDING GENERAL RULINGS

Date of issue	BGR	Tax	Section	Description
06.10.2025	4 (Issue 5)	VAT	17(1)	Apportionment Methodology to be applied by a Municipality