DAVEY'S Locker

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<u>**(A Quarterly Newsletter on Contemporary Tax Developments)**</u>

<u>Editor's Note:</u>

In this third newsletter for 2026 we consider, *inter alia*, the draft Taxation Laws Amendment Bill 2026 proposals pertaining to the following:

- SARS Living Annuity Commutation threshold.
- Donations Tax inter-spouse Exemption Limitations.
- Advance Pricing Agreement (APA) Eligibility.
- SARS Interpretation Note (IN) 145, re the ETI.
- SARS Ins, Guides, Draft Guides, BGRs, Draft BGRs, BPRs and VAT Rulings Noter-Up

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SARS LIVING ANNUITY COMMUTATION THRESHOLD

Paragraph (*c*) of the definition of "living annuity" in Section 1(1) of the Income Tax Act (ITA), is amended, effective 1 March 2026, to the following effect –

- The amount referred to in paragraph (*c*) is now R150 000 (previously R125 000). This value is the threshold at which a lump sum commutation of a living annuity remaining asset value balance is permitted. The threshold limit applies on a per-insurer or per-fund basis. Thus, where an annuitant holds multiple living annuities with the same insurer or fund, the annuities must be aggregated in determining the threshold limits.

DONATIONS TAX INTER-SPOUSE EXEMPTION LIMITATIONS

Effective 20 February 2026, new provisos to Section 56(1)(a) and (b) of the ITA disallow the donations tax exemption between spouses in circumstances in which the recipient donee spouse is a non-resident.

This is to combat a Donations Tax and Section 9H Capital Gains Tax (CGT) avoidance scheme which arises when there is a staggered cessation of tax residence by spouses.

In essence, the donee spouse first becomes a tax non-resident and the resident donor spouse then makes a donations tax exempt donation to the non-resident spouse. Subsequently, due to the donor resident spouse's reduced asset value, there is a lesser deemed disposal value of the resident spouses' estate, for purposes of the Section 9H CGT (the so-termed exit charge) thereby resulting in a reduced capital gain.

The amendments thus provide that donations to a non-resident spouse do not benefit from the donations tax exemption.

ADVANCE PRICING AGREEMENT (APA) ELIGIBILITY

In Davey's Locker 6.2023 we noted the introduction of the APA contained in Sections 76 A – P of the ITA.

In essence, this pertains to multinationals that wish to create certainty on valuation methodology and pricing in international transactions, by obtaining an Advance Pricing Agreement from SARS, pertaining to transfer pricing under Section 31 of the ITA.

The eligibility monetary threshold criterion was a R50 billion turnover in the year of assessment preceding the APA application request to SARS. This has been reduced to R10 billion - effective 7 August 2026. Other amendments have also been made regarding SARS fees and the Application methodology.

We note that SARS retains a discretion, based on the nature of the "affected transaction" as defined in Section 31, as to whether to accept or reject an application.

<u>SARS INTERPRETATION NOTE (in) 145, 27 JULY 2026 RE THE ETI</u>

SARS has issued an IN on its interpretation of the definition of "employee" in the context of the Employment Tax Incentive Act 26 of 2013 (ETI) as amended. Importantly, the ETI contains its own definition of "employee" for purposes of the ETI and thus this context does not extend to the general definition of "employee" in other tax contexts, such as employees' tax (Fourth Schedule) and fringe benefits (Seventh Schedule).

SARS considers that in some instances, taxpayer employers have become party to composite arrangements which abuse the tax incentive.

To quote, "These composite arrangements typically involve a learning institution, an organisation, and a person for a limited period of either 12 or 24 months. Under the arrangement, the organisation is responsible for paying an agreed-upon training fee to the learning institution, on behalf of that person. Contractually the parties refer to this training fee as the person's basic remuneration. The learning institution is responsible for providing the person with training, mostly in the form of an accredited SETA training course, as well as all the lectures, and training facilities for the duration of the arrangement. In some cases, practical field training is included. Notwithstanding that an employment contract may have been entered into under this composite arrangement, no work is carried out by the person for the organisation and the person is not assisting in carrying on or conducting the business of the organisation.

Under these arrangements, the person generally does not render any services to the organisation and does not obtain practical work experience."

In an attempt to curb the apparent abuse of the ETI, a number of amendments were introduced to the ETI Act, effective 1 March 2022, under the Tax Laws Amendment Act 20 of 2021, namely –

• an amendment to the definition of "employee" by inserting additional requirements;

• the inclusion of the proviso to the definition of "monthly remuneration"; and

• the inclusion of the proviso to section 6.

In summary, under the definition of "employee" a person must –

- be a natural person.
- work for another person, assisting in carrying on the business of that person. In this regard, the person may not be mainly involved in the activity of studying.
- receive remuneration from that person.
- be documented as per the BCEA.
- not be an independent contractor.

INTERPRETATION NOTES

Date of issue	IN	Tax	Section	Description	
27.07.2026	145	ETI	Section 1(1) Definition of "employee", proviso to the definition of "monthly remuneration", & proviso to s 6	Meaning of "employee" for purposes of the Employment Tax Incentive Act	
17.07.2026	31 (Issue 5)	VAT	11(3) read with s 11(1) & 11(2)	Documentary proof required for the zero-rating of goods or services	[sars.gov.za]
26.06.2026	69 (Issue 4)	IT	26 & the First Schedule	Game farming	
28.05.2026	144	IT	10(1)(*c*A)(i)	Income Tax Exemption: Bargaining Councils	

GUIDES

Date of issue	Description
07.08.2026	Advance Pricing Agreements – External Guide
06.08.2026	Tax Guide for Share Owners (Issue 9)
17.06.2026	VAT Reference Guide Schools Exiting the VAT System
15.06.2026	Guide on the Determination of Medical Tax Credits (Issue 18)
15.06.2026	Guide on Income Tax and the Individual (2025/26)
28.05.2026	Guide for Tax Rates, Duties, Levies (Issue 18)
21.05.2026	Guide to the Voluntary Disclosure Programme (Issue 2)

DRAFT GUIDES

Date of issue	Description
01.07.2026	Draft Guide to the Taxation of Crypto Assets

BINDING GENERAL RULINGS (BGRs)

Date of issue	BGR	Tax	Section	Description
30.06.2026	75	VAT	Sections 12(*g*) & 10(22)	Value- added tax treatment of ambulance services

DRAFT BINDING GENERAL RULINGS

Date of issue	Draft BGR	Tax	Section	Description	
30.06.2026	-	IT	1(1) – Definition of "financial year" & "year of assessment" & 66(13)(*b*)	Filing date of a return in the case of a company's change in financial year and year of assessment	[sars.gov.za]

BINDING PRIVATE RULINGS

Date of issue	BPR	Tax	Section	Description
14.08.2026	429	IT	Sections 1(1) – Definition of 'gross income', 11(*a*) & 23H & PARAS 11(1)(*d*), 13(1)(*a*)(iiB), 20(3)(*b*), 38 AND 39 of the Eighth Schedule	Cash grant to an employee incentive trust and the vesting of shares in qualifying employees
14.05.2026	428	IT	1(1) – Definitions of "contributed tax capital" & "gross income", 8(4)(*a*) & 11D	Delayed contribution equity investment structure

VAT RULINGS

Date of issue	VR	Tax	Section	Description	
27.07.2026	23	VAT	7(1)(*a*) & 12(*h*)(i)(*aa*)	VAT Treatment of Educational Services	[sars.gov.za]
27.07.2026	22	VAT	Sections 1(1), 8(2), 18(2), 23(3)(*c*) & 41B notice	Enterprise	[sars.gov.za]