# TAX BREAKS

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## COMMENT

# SARS: Now we start picking up the pieces

*The painful process of fixing SARS and regaining taxpayer trust must start with cold hard facts*

**By: INGÉ LAMPRECHT**

Former SARS Commissioner Tom Moyane had a great narrative, confidently presented and backed up by figures. Only, it proved to be window-dressing. He may have gone, but he has left South Africa to pick up the pieces. Picture credit: Moneyweb

THE DATE is 3 April 2017. The venue is Linton House Auditorium at the SARS office in Brooklyn Bridge, Pretoria. At the podium is SARS Commissioner Tom Moyane. "Ladies and gentlemen, it gives me great pleasure to announce that as at midnight [on] 31 March 2017, SARS has collected R1.144 trillion, in line with the revised estimate as announced by the former Minister of Finance in the February 2017 Budget speech," he says.

The audience starts clapping.

"The preliminary results show SARS having exceeded the revised estimate by over R300 000," Moyane continues. "Wow," someone shouts from the audience. More clapping follows.

A bit later, Moyane says he would also like to address the elephant in the room—refunds. "We are also pleased to announce the growth in refunds for the same financial period of 8.6%."

The frustrations of taxpayers about outstanding refunds have not gone unnoticed. "SARS has not changed its approach to refunds. It contin-

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ues to implement its systems and processes that are tried and tested, which have been in place for several years."

Later, he adds: "It is with this in mind that SARS has put in place systems and processes to ensure minimum delays in payments of refunds." A great narrative, confidently presented and backed up by figures.

Only, it proved to be window dressing:

- On 4 September 2017 the Tax Ombud, Judge Bernard Ngoepe, finds that SARS unduly delayed tax refunds.
- In October 2017 the MTBPS (Medium-Term Budget Policy Statement) shows that tax revenue may fall R51 billion short of earlier estimates.
- On 19 March 2018, President Cyril Ramaphosa suspends Moyane amid a deterioration in public confidence and as public finances suffer.
- By October, the MTBPS highlights a backlog of VAT refunds. An underestimation of refunds due has led to an excessively optimistic view of revenue growth. The VAT refund estimate is revised upwards by R9 billion, and roughly R11 billion has to be paid out to clear the backlog in the credit book.

**The king is dead...**

Which brings us to 1 April 2019. Again, the venue is the Linton House Auditorium.

Moyane is absent from the podium. He was fired towards the end of 2018. Yet his legacy is almost tangible. SARS announces that it missed its revised revenue collection target for 2018/19 by R14.6 billion.

There is no clapping.

Ismail Momoniat, head of tax and financial sector policy at National Treasury, says that the legacy of the last few years will take time to reverse.

Poor economic growth, lower compliance levels, and the VAT refund backlog have added insult to injury. If SARS had continued with its previous practice of holding back refunds, it could have reached its target. "In fact, there seems to have been lots of artificial playing around to try and make sure the target was reached," Momoniat says.

A sober narrative, backed up by rather poor figures—but it may just be the start of a difficult turnaround at SARS. To be successful, SARS will have to regain taxpayers' trust—something that will be difficult given the deception of the last few years.

**... hail to the new king**

When new Commissioner Edward Kieswetter joins SARS on 1 May, he will not only have to deal with a dysfunctional operating model, low staff mo-

# SARS should be commended for 2019 collections in view of historical handicaps

*There's a great deal of hard work still to come, but much has been achieved*

**By: ETTIENE RETIEF**

SARS collected R1.28 trillion for the tax year ending 2019, falling R14.6 billion short of its target of R1.3 trillion. However, the tax authority should be commended, given that their operations have been hampered by significant handicaps due to past mismanagement—including a massive VAT refund obligation, deep systemic breakdown, and flagging employee morale. Add to that weak economy growth and the steps implemented to rebuild SARS, it is commendable to have fared so well.

**Well done, Mark Kingon**

That SARS was able to come so close to its expected revenue target can largely be attributed to the excellent work of Mark Kingon, the organisation's outgoing interim Commissioner, and his team. Mark definitely deserves recognition for his leadership in keeping SARS from operational failure, and staring to rebuild trust in the organisation.

Revenue realised under Kingon has grown by 5.8% compared to the previous financial year. Also, much of the work done in the background will continue to bear fruit long after this year's final audits are completed, such as initiatives like relaunching the Large Business Centre (LBC) which, even though it delivered notable value, was terminated under disgraced former SARS Commissioner, Tom Moyane.

Kingon has also implemented processes for combating illicit tax activities and correcting internal issues. These progressive steps may result in windfalls that have yet to be realised. Overall, we can expect that Kingon's efforts will provide a strong platform for the incoming commissioner to work from.

**Good job, President Ramaphosa**

The transparent selection process used to vet potential candidates and nominate the new SARS commissioner should also be applauded. Unlike the previous president, who at times appointed a Commissioner based on personal or political preference, President Ramaphosa opted for an approach that was both open and objective, effectively placing himself at arm's length from the proceedings, as was recommended by the Commission of Inquiry.

A high-level panel, led by Trevor Manuel, was appointed by Finance Minister Tito Mboweni to identify capable applicants and make their selection from a list of candidates that included Mark Kingon himself. Their final choice was Edward Kieswetter, who will take up the role of Commissioner of SARS from 1 May 2019.

**Welcome, Edward Kieswetter**

There's no doubt that Kieswetter is up to the task. Apart from having been part of SARS' history, he has a strong pedigree when it comes to running organisations, including heading up Alexander Forbes. No doubt, the new Commissioner will have his hands full as he builds on the good work started by Kingon.

However, Kieswetter's first and foremost task will be to re-engage SARS staff, whose attitude and competence plays a pivotal role in winning back public trust and rebuilding tax morality. He'll need to provide strong leadership, assure them of their value, and motivate them to value service excellence. Secondly, he'll have to focus on rebuilding SARS systems and capacity.

He has a long road ahead of him, but he's the right man for the job.

*Ettiene Retief is chair of the National Tax and SARS Committee at the South African Institute of Professional Accountants.*

rale, and pressure on tax collection; he will also have to regain taxpayer trust.

Kieswetter knows that it will be an uphill battle but seems to have the right mindset. When asked why he volunteered for such a difficult job in a recent interview, Kieswetter stressed the need to work together to make South Africa's young democracy work, rather than criticising from the side-lines.

He said that his biggest priorities will be to give SARS employees hope and to restore their pride in the organisation, and to rebuild public trust. This will be a tough ask that needs to start with an open and honest conversation.

Targets won't be exceeded. There won't be applause. But the painful process of fixing SARS must start with the cold hard facts.

*Ingé Lamprecht is from Moneyweb.*

SMALL BUSINESS

# Twelve tax tips for SMEs

*Tax can be a minefield, but there are ways to minimise your tax bill while keeping on the straight and narrow*

**By: GRAEME SAGGERS**

IN A 2019 report by Bernard Swanepoel, chair of the Small Business Institute, he notes that "98.5% of South Africa's economy is made up of small businesses (SMEs). SMEs may be creative, hardworking, and have a great product or service to sell, but they do not always have the background to keep their taxes in order'.

While struggling to keep the business afloat, deadlines tend to come and go. There are penalties payable for late submissions and late payments—a cost that most small businesses are usually unable to carry'.

Here are twelve tips for SMEs when it comes to tax compliance.

### 1. Know your deadlines!

SARS immediately institutes penalties if certain tax payments are late, and imposes administrative penalties if tax returns are late. The most important thing for an SME is making declarations and payments on time.

### 2. Supporting documents

Collating all supporting documents for income earned and expenses claimed can be a tedious process—but it needs to be in order. We recommend that you keep your bookkeeping up-to-date throughout the year, to make things easier.

No-one enjoys the admin of keeping an accurate and up-to-date record of your business's income and expenses, but it is critical to do this, allocating them to the various categories to ensure a smooth tax return.

If your business can afford it, invest in accounting software—otherwise use a basic spreadsheet.

### 3. Keep copies of relevant documents for five years

Legislation requires that taxpayers keep all documentation for a minimum of five years. This can be maintained in both hard copy and electronic formats. Scanned copies can be stored online using cloud services.

If you don't know what to keep, err on the side of caution and keep everything. Your accountant can tell you what is not necessary when they complete your tax return.

### 4. Know what you can deduct for tax purposes

Make sure you are familiar with what deductions are allowed for SMEs, so that you don't pay more tax than you need to. Whether you rent or own the building from which you are operate, the running costs relating thereto are a business expense.

### 5. Registering for VAT

VAT registration brings with it many regulations and statutory requirements. However, if you have a turnover of over R1 million a year, you are required to register for VAT.

The process is very involved and can be lengthy. SMEs should ideally engage the services of an accountant or tax practitioner to assist them in

**Table 4.4 Personal income tax rates and bracket adjustments**

| 2018/19 | | 2019/20 | |
|---|---|---|---|
| **Taxable income (R)** | **Rates of tax** | **Taxable income (R)** | **Rates of tax** |
| R0 - R195 850 | 18% of each R1 | R0 - R195 850 | 18% of each R1 |
| R195 851 - R305 850 | R35 253 + 26% of the amount above R195 850 | R195 851 - R305 850 | R35 253 + 26% of the amount above R195 850 |
| R305 851 - R423 300 | R63 853 + 31% of the amount above R305 850 | R305 851 - R423 300 | R63 853 + 31% of the amount above R305 850 |
| R423 301 - R555 600 | R100 263 + 36% of the amount above R423 300 | R423 301 - R555 600 | R100 263 + 36% of the amount above R423 300 |
| R555 601 - R708 310 | R147 891 + 39% of the amount above R555 600 | R555 601 - R708 310 | R147 891 + 39% of the amount above R555 600 |
| R708 311 - R1 500 000 | R207 448 + 41% of the amount above R708 310 | R708 311 - R1 500 000 | R207 448 + 41% of the amount above R708 310 |
| R1 500 001 and above | R532 041 + 45% of the amount above R1 500 000 | R1 500 001 and above | R532 041 + 45% of the amount above R1 500 000 |
| **Rebates** | | **Rebates** | |
| Primary | R14 067 | Primary | R14 220 |
| Secondary | R7 713 | Secondary | R7 794 |
| Tertiary | R2 574 | Tertiary | R2 601 |
| **Tax threshold** | | **Tax threshold** | |
| Below age 65 | R78 150 | Below age 65 | R79 000 |
| Age 65 and over | R121 000 | Age 65 and over | R122 300 |
| Age 75 and over | R135 300 | Age 75 and over | R136 750 |

*Source: National Treasury*

this process—but unfortunately, this does drive up the costs for the small business owner.

**6. How do small businesses account for VAT?**

In accordance with the Value-added Tax Act, if registered for VAT, small businesses have to issue proper tax invoices, charge their customers VAT at 15%, and pay this over to SARS on a bi-monthly basis. This payment can be reduced by the input VAT that the small business is being charged by their suppliers.

**7. What is turnover tax, and how does an SME register?**

Turnover tax is a simplified system aimed at making it easier for micro businesses to meet their tax obligations. The turnover tax system replaces Income Tax, VAT, Provisional Tax, Capital Gains Tax, and Dividends Tax for micro businesses with a qualifying annual turnover of R1 million or less.

Small businesses or individuals will need to complete a short test to see if they qualify for turnover tax, which is available on the SARS website. If they qualify for turnover tax, they then need to complete a TT01 form.

The application should be sent before the beginning of a year of assessment, which runs from 1 March to 28 February (for sole traders and partnerships).

**8. The consequences of non-compliance**

An administrative non-compliance penalty is a penalty a taxpayer must pay for late or non-submission of income tax returns. The amount charged will depend on a taxpayer's taxable income, and can range from R250 up to R16 000 a month for each month that the non-compliance continues. Interest is added to unpaid taxes, along with severe penalties.

**10.Verification**

Proof is in the documentation. The most important thing is to keep a record of all business expenses in logical order—so that if SARS asks for verification, you have them available immediately.

**11.Depreciation**

If you complete your own tax returns, make sure that you are familiar with SARS' allowable wear and tear. Wear and tear on a car, for example, is calculated differently from that of a computer.

**12.Selected for a tax audit?**

The word 'tax audit' strikes fear into most people—even if you have nothing to hide. If you have ever been targeted for a SARS audit, you will know the feeling.

During a tax audit, SARS will interrogate the validity of expenditure closely, and penalise taxpayers for incorrect filings. SARS has some steep targets to meet this fiscal year, and there will be a substantial increase in the number of tax audits conducted by SARS,' says Melanie le Roux, managing director of GreatSoft Financial Services.

**12.Know your rights!**

Whether it is an internal desk audit or an in-depth audit in more high-level risk cases, it's a stressful, time-consuming, and onerous task—not to mention expensive.

Your accountant / tax consultant (or tax attorney if necessary) will need to collate information and follow the strict procedural rules. From the very outset of a tax audit, it is extremely important that you are aware of your rights—and to let SARS know that! You are protected by the Tax Administration Act, the Promotion of Administrative Justice Act, and the Constitution.

*Graeme Saggers is a tax director at Nolands.*

**TAXING ISSUES**
by Steven Jones
Editor

For someone who has a tax client base as small as I do at present, what I lack in quantity I sure make up in variety.

One of my clients has business interests in four countries around the world, including South Africa. He is British and his wife is South African, which means that their daughter holds dual SA / UK citizenship.

She was educated in Australia while my client was setting up the office there, and had worked in that office for a few years after graduation. She subsequently relocated with her parents to the United States to establish another office, applied for and obtained a 'Green Card', met and married her American husband, and has recently given birth to their first child.

Technically she has right of abode in four different countries, and given the peripatetic streak that runs through her family, there is every possibility that she may end up relocating again at some point in the future.

Thanks to the way in which tax residency is determined in the United States, her taxes are about to become a whole lot more complicated!

From my side, I always feel that it's a bit of a cop-out to publish an article that includes advice to seek professional assistance. Part of this is that it may come across as the author touting for business (and I certainly do receive numerous articles for consideration that are little more than advertorial, which is not something that we do here at *Tax Breaks*).

In this case, however, if you (or a close family member) have some sort of American connection, you need to seek professional expertise urgently.

Unfortunately, such expertise is likely to be difficult to find, and expensive when you **do** find it. Accordingly, you need to be very selective in who you appoint. Personal recommendations are always best, but approaching the tax department of one of the large international accounting firms would be a good start.

I'm certainly not up for it. I've dealt with SARS (and its predecessor, the Receiver of Revenue) for almost three decades, and I'm beginning to understand the UK's HM Revenue & Customs after two years, but the US Internal Revenue Service scares the living daylights out of me—mainly because the United States tax code is probably one of the most complex in the world.

All that leaves me with for this month is to extend my congratulations (or should that be commiserations?) to Edward Kieswetter on being appointed as the new SARS Commissioner. He has a monumental task ahead of him as he gets to grips with the aftermath of former Commissioner Tom Moyane's tenure.

Thoughts also go out to Mark Kingon who did an admirable job of holding the fort and was also in the running for the top job. Both Edward and Mark were part of a world-class SARS, and are probably the best two to get it back there again.

# Hail to the Chief, he's the Chief and he needs paying...

*Are you a citizen of the United States of America? If so, you have US tax obligations ... even if you've never set foot in the country*

**By: STEVEN JONES**

PART OF my preparations for relocating to the UK just over two years ago was to ensure that my South African tax affairs are in order. Apart from the obvious legal requirements of the Income Tax Act and other tax legislation, not only is this an obligation in terms of my status as a Professional Accountant (SA) in terms of my membership of the South African Institute of Professional Accountants—tax clearance is also required if one is to apply for the repatriation of one's financial assets to one's new country of residence. This is known as a 'financial emigration', and is a formal process involving the South African Reserve Bank, which includes an application by one's bank in terms of the Exchange Control regulations.

This is different to tax residency, which is how many countries around the world determine who is liable for tax to that particular country. Residence-based taxation systems normally seek to subject a resident's worldwide income, profits, capital gains, etc. to tax in the country in which the person is considered to be tax resident. The principle applied is that if someone lives in a particular country for an extended period of time, they are considered to be enjoying the benefits of doing so—and it is thus regarded as appropriate that such person contributes to that country's coffers in the form of taxation.

While no-one particularly enjoys paying tax, the principle of tax residency can (for the most part) be considered to be a fair and reasonable one.

## Uncle Sam *has* to be different

The box on Page 6 is an example of how tax residency is determined in South Africa and the UK. Note that there is no reference to nationality or citizenship in this example—the reason is that one's nationality or citizenship is usually irrelevant when it comes to tax.

While one does need to meet a particular country's criteria when it comes to the right to be resident in the ordinary sense in such country (which can be by means of citizenship or any other criteria that such country may determine), tax residency assumes that such criteria have been met and thus determines residency based on the premise that one is legally permitted to be resident in a country in the ordinary sense.

For example, a British citizen would not automatically have a right to become a resident of South Africa in the ordinary sense, but once such right has been granted (e.g. by the issuance of the appropriate visa or permanent residence permit by the Department of Home Affairs), such person will become a tax resident of South Africa once they have met the relevant residency provisions contained in the Income Tax Act.

It's different with citizens of the United States of America.

A cursory glance at the provisions of the Double Tax Agreement (DTA) between the United States and South Africa indicates similar provisions to what one finds in most DTAs between two contracting states that have residence-based taxation systems, i.e. it determines which income stream is taxed in which state, provides relief in cases where one state has taxed income that a resident of the other state may have a tax liability to such other state, indicates how income derived from the state in which the taxpayer is not ordinarily resident, and contains provisions for settling disputes, amongst others.

The United States does base their taxation system largely on residency, following the same principle that someone living in a particular country (in this case, the US) is considered to be enjoying the benefits of doing so and should therefore contribute to the US's tax coffers. However, where the US differs from (say) South Africa or the UK is that for those who have the right to be domiciled in the US, the obligation for complying with US tax require-

The 'land of the free'? Not when it comes to taxes. Picture credit: Samuel Branch (www.unsplash.com)

## How tax residency is normally determined

EACH COUNTRY has its own rules to determine tax residency. South Africa, for instance, applies two tests to determine whether one is a 'resident' for tax purposes. The first is the 'ordinarily resident' test, which covers situations where (for example) someone is seconded overseas on (say) a three-year contract, but still maintains their residence in South Africa and intends to return to such residence once they've completed their secondment.

The second is the 'physical presence' and is applicable when the requirements of the 'ordinarily resident' test are not met. If a person is not physically present in South Africa for a period or periods exceeding

i) 91 days in aggregate during the tax year under consideration;

ii) 91 days in aggregate during each of the five tax years preceding the tax year under consideration; and

iii) 915 days in aggregate during the above five preceding tax years,

they will be automatically considered not to be tax resident in South Africa once these time periods have been exceeded.

The United Kingdom's method of determining residency is even simpler—once you have lived in the country for longer than 12 months, you are automatically considered to be a tax resident in the UK and become liable to be taxed under the UK's tax laws. This can lead to a situation whereby the different residency periods can mean that a person relocating from South Africa can be considered to be simultaneously a tax resident of both South Africa and the United Kingdom. Both Her Majesty's Revenue & Customs and the South African Revenue Service can thus lay claim to taxation rights on the same income.

Situations such as these are normally resolved with reference to a Double Tax Treaty / Agreement (DTA) concluded between countries where such a situation is likely to arise. A DTA will provide a mechanism for determining tax residency, as well as containing provisions covering which income streams are liable to tax in which country.

ments is not extinguished when such person ceases to be a resident of the US in the ordinary sense.

There is also a significant difference in how the United States determines 'tax residency' compared to (say) South Africa or the United Kingdom. This is evident in Article 4, paragraph 1(a)(i) of the US / SA DTA, which reads as follows: "For the purposes of this Convention the term 'resident of a Contracting State' means: a) in the case of the United States, i) any person who, under the laws of the United States, is liable to tax therein by reason of his (sic) domicile, residence, citizenship [author's emphasis], place of incorporation, or any other criterion of a similar nature, …". One can thus see that anyone who is a US citizen would be considered a US tax resident—even if such person has never set foot on US soil in their entire lives!

However, this presumption of US tax residency extends beyond US citizenship to non-US citizens who may have acquired the right to be ordinarily resident in the US. Andrew Grossman, a retired US Foreign Service Officer now resident in Switzerland who has written numerous articles on private international tax law, wrote in his 2008 article entitled *FATCA: Citizenship-Based Taxation, Foreign Asset Reporting Requirements and American Citizens Abroad* that "US nationality is only one of the criteria by which an individual may become subject to US taxation. Deemed residence ('Green card' status), physical presence, and certain cases of former nationality at least since 2008 give rise to indefinite tax obligations in the absence of particular administrative demarches having been effected: and this is true whether the individual has any right to enter or work in the United States, and can be true even if he or she has been deported".

This practice of including citizenship as a determinant of tax residency is specific only to the United States and to Eritrea—no other country in the world imposes such an onerous definition.

**Reporting requirements by US tax residents**

What this essentially means is that not only US citizens who are currently not (or, in fact, may never have been) resident in the US, but also those who may have at some point held a US work permit ('Green Card') would be subject to US tax legislation and would need to make regular filings to the United States Internal Revenue Service (IRS).

According to the website of London-based chartered accountants Warrener Stewart, US tax residents worldwide have the following reporting requirements to the IRS (adapted by the author in accordance with the United States / South Africa DTA):

- Foreign Earned Income Exclusion: US taxpayers living outside of the US are entitled to exclude up to $102 100 (2017 rate) of earned income from tax in the US. This is subject to meeting certain criteria and is only available on general earnings, such as employment income or profits from self-employment. Note that this does not include dividends—even if they are received from a company in relation to services performed.
- Foreign Tax Credit: Income from South Africa may have been subject to South African taxation, whether deducted at source or paid over to SARS by means of a provisional tax payment or upon final assessment. In this situation, it is possible to claim a deduction from your US tax liability for the amount of tax already paid on the income in South Africa. This also applies for other countries, depending on the double taxation treaty in place.
- Pensions: The US / SA tax treaty allows for individuals to make a claim for pension income to be taxed solely in one jurisdiction, either the

**KEY UPCOMING TAX SUBMISSION DATES**

**EMP501 reconciliations**
31 May 2019 Electronic submissions via e-filing (provisional taxpayers)

**Provisional tax returns**
31 Aug 2019 First period, 2010 tax year

US or South Africa, depending on the individual situation. This avoids being taxed twice on your retirement income.

In addition, it is a legal requirement for all US tax residents to file a 'Report of Foreign Bank and Financial Accounts' (FBAR) by 15 April each year. This must be filed online to the IRS. FBAR covers all foreign accounts held by US tax residents (including bank accounts, insurances, pensions, trusts—whether the US tax resident is the main beneficiary or a signatory for the account) where the total balance held in the accounts is in excess of $10 000 in aggregate at any given time during the US tax year. The penalty for failing to correctly file a FBAR report is $10 000 per account.

**Severing ties with the United States**

In theory, the provisions of the DTA between the United States and South Africa are not much different to those found in (say) the UK / SA DTA. As already mentioned, most of the clauses in the US / SA agreement are fairly standard to most DTAs between countries where residence-based taxation systems are in place.

However, according to Grossman, "The US Congress has as a matter of practice overridden tax treaty provisions and doubtless will continue to do so", and cites firstly the example of the US tax liability that arises from the Alternative Minimum Tax and the Net Investment Income 3.8% surtax (to fund 'Obamacare') levied on unearned income of individuals with adjusted gross income exceeding $200 000 ($250 000 in the case of married couples filing jointly), as determined in *Haver v. Commissioner, 444 F.3d 656 (DC Circuit Court, 2006) (AMT)*.

Grossman goes on to state that "FATCA [the Foreign Account Tax Compliance Act] is no less a tax treaty override". FATCA provides for a mechanism of information-sharing on accounts held by US tax residents by financial institutions worldwide. Many countries, including South Africa, have signed on to the International General Agreement (IGA) to provide such information.

According to the SARS website, "Financial Institutions in South Africa meeting the prescribed due diligence requirements to find reportable accounts and report the prescribed information (referred to in the FATCA IGA as Foreign Financial Institutions or FFIs), include South African banks and custodians, brokers, asset managers, private equity funds, certain investment vehicles, long-term insurers, and other participants in the financial system" are required to provide information to the IRS relating to accounts held by a 'US Person' (which includes a US citizen or 'resident individual', e.g. a 'Green Card' holder).

Many such institutions, having determined that complying with such reporting requirements are considered too onerous, have simply taken the decision not to provide financial services to persons who are US citizens or US tax residents. One notable example is when opening a Vanguard UK investment account (Vanguard UK being the largest UK provider of exchange-traded funds), the applicant must declare that "By clicking the "Proceed" button below, you are confirming that ... You are a UK resident. **You are not a US tax resident or US citizen** [author's emphasis]".

An option to be considered, albeit a drastic one, is to renounce one's US citizenship. However, this comes with significant exit and tax charges, and would also depend on whether one has citizenship of another country in order to do this (since international human rights conventions determine that a person cannot be left 'stateless').

**Appropriate professional advice is critical**

The requirement to comply with reporting requirements in more than one country is complicated enough to warrant seeking appropriate professional advice. However, the United States' extended definition of what it means to be a 'tax resident', the particular reporting requirements of the IRS, the ongoing obligations even once a taxpayer has ceased to be ordinarily resident in the US, and the onerous provisions relating to the renunciation of US citizenship (not to mention the potential implications thereof), means that not seeking professional assistance could be financially suicidal for those with US connections—no matter how tenuous these may be.

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*He is also a member of the South African Institute of Professional Accountants and a SARS-registered tax practitioner.*

**Moment of truth**

*The only thing that hurts more than paying an income tax is not having to pay an income tax.*

Thomas "Tommy" Dewar (1864—1930)

*Co-founder of John Dewar & Sons Scotch Whisky distillers*

# Filing Season 2019:
# Corporate income tax changes from January 2019

SARS HAS updated the systems and processes for filing of Income Tax returns for Companies to allow for legal changes and continuous improvement enhancements. These changes came into effect from 25 January 2019.

Corporate income tax (CIT) is imposed on businesses incorporated in terms of the Companies Act and which derive income from within the Republic or through a branch or permanent establishment within the Republic. Such companies are required to submit a return of income twelve months after the end of the financial year in the prescribed form. In addition to annual returns, companies are required to submit provisional tax returns. These returns are to be submitted every six months and must contain estimated figures of total income earned for that period and taxes paid over in respect of the income estimates for that period.

To meet the strategic objective of increasing tax compliance and improving revenue collection, all new legal changes as well as non-legal changes to enhance risk identification will be implemented in January 2019. Some of the changes include:

- Enhancement of the current ITR14 form to allow for most recent legislative changes
- Pre-population of certain special allowances previously claimed
- Replacement of the ITA34 with the new Notice of Assessment (ITA34C)
- Enhancements to letters due to the renaming of the ITA34 to ITA34C and the legislative changes.

Furthermore, SARS has issued new filing requirements for CIT returns for the 2018 year of assessment. Returns must be submitted by every company or other juristic person, which is a resident, that:-

- derived gross income of more than R1 000
- held assets with a cost of more than R1 000 or had liabilities of more than R1 000 at any time during the 2018 year of assessment
- derived any capital gain or capital loss of more than R1 000 from the disposal of an asset to which the Eighth Schedule of the Income Tax Act applies, or
- had taxable income, an assessed loss or an assessed capital loss

Please note that it is compulsory for registered companies to submit their income tax returns. If a company is dormant, it is still required to submit any outstanding returns prior to 2018, to prevent a penalty being imposed. The criteria for the exception in 2018 are set out in Notice 600 of 15 June 2018.

# Travel allowance woes

*I receive a travel allowance, which my employer taxes—why do I have a tax shortfall each year?*

**QUESTION**

*I receive a travel allowance from my employer, and as far as I understand this amount is taxed each month. Why, then, do I have a tax shortfall each year when I complete my tax return and submit it to SARS? How can I solve this problem?*

**Answer provided by STEVEN JONES**

Many years ago a travel allowance was used as a tax planning tool, largely because initially there was no requirement to deduct any PAYE from the payments each month, but also because there was a fixed amount of annual travel that was automatically deemed to be business-related. This meant that even those taxpayer who caught the bus to work but used their cars extensively for their private travel benefited from the allowance, which was clearly not National Treasury's intention. Gradually, the rules were tightened up on travel allowances. Firstly, a portion became subject to PAYE each month—this started at 20% of the allowance, and was gradually ratcheted up to the current 80% of the allowance that was liable to be taxed at source each month. Secondly, the deemed business mileage provision was scrapped, with SARS making it compulsory for any claim against a travel allowance to be supported by a logbook for business travel. Thirdly, SARS placed the onus on employers to determine whether the person's job actually justified the granting of a travel allowance, which meant that desk-bound employees were no longer eligible to receive travel allowances (but could still be reimbursed on a per-kilometre basis for occasional business travel).

To answer your question as to why you end up paying in at the end of the tax year, the reason is that since only 80% of the travel allowance is subject to PAYE, if you do not submit a claim for business travel, the remaining 20% (which is untaxed each month) is effectively unspent. Such unspent portion of your allowance is taxable, and the amount that you pay in each year is thus the tax on the 20% of the allowance that had not been taxed during the year. How, then, do you alleviate this? The following should be considered:

- If you are not claiming because your job does not justify you receiving a travel allowance in the first place (i.e. you work at a single site and are not required to do business travel), your employer should do away with the travel allowance and incorporate this portion into basic salary. The total amount will then be taxed correctly each month (via payroll), and assuming that you have no other income or deductions outside of your employment, you should break square with SARS at year-end.
- If you do in fact do business travel, you need to complete the section for your claim each year. Depending on the amount of business travel, the majority of taxpayers receive a refund from SARS at year-end, provided that their claim is properly substantiated by a purchase / financing agreement (to support the cost price of the vehicle), and a properly-completed logbook itemising each business trip. Many people find the idea of completing a logbook daunting, but I've found that provided that I record my opening and closing mileage each year, and then recording only the business trips (date, opening and closing mileage, and reason for the trip, e.g. client visited), SARS has accepted this. It's not necessary to record each private trip, as the difference between total and business mileage will automatically be your private travel for the year.

***Do you have a tax question? Pop us an e-mail to info@bellanmedia.co.za. We will select one answer for publication in Tax Breaks each month. Unfortunately, we will not be able to respond to questions individually.***

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