BUSINESS LAW & TAX

Sars requires new medical scheme data

For most SA taxpayers, the changes that took effect in October will impact those who pay PAYE

CREDIT WHERE IT'S DUE

/123RF — DZMITRYSKAZAU

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From October 5, the SA Revenue Service (Sars) started making changes to the data that is required from medical aid schemes.

For most SA taxpayers, the changes impact employees who pay PAYE, and the medical aids they are members of will be required to update their reporting methods.

Remember, if you contribute to a registered medical aid scheme in SA, you're eligible for tax relief in the form of tax credits, which are deducted from your annual personal tax liability. Credits are nonrefundable and fall into two categories: Medical schemes tax credit (MTC) and additional medical expenses tax credit (AMTC). For employees who belong to a registered medical aid according to the Medical Schemes Act, the medical credits reduce an employee's monthly PAYE amount, which is now implemented on most payrolls. This increases an employee's net take-home pay.

The key medical aid data changes include:

- Provision of data on disabled principal members and their dependents;
- Data of persons making payments on behalf of principal members; and
- Separate nonallowable from the allowable expenses, now reported as claims not paid or covered by medical schemes on the IT3(f) certificate.

THE AIM IS TO REDUCE THE BURDEN ON MEDICAL SCHEME ADMINISTRATORS AND ENSURE MORE ACCURATE REPORTING

These changes are designed to streamline processes and address the prevalent issue of incomplete information. By providing more comprehensive data, the aim is to reduce the burden on medical scheme administrators and ensure more accurate reporting.

This will also greatly reduce the audit process. In practice, preparing a tax return in which someone pays for a dependent's contributions is often a veritable nightmare.

For instance, sometimes multiple persons could share the cost of the medical scheme fees of a family member who is a dependant in relation to them. In this situation, each contributor would be entitled to a share of the medical scheme fees tax credit — they do not themselves have to be a member of a medical scheme but can contribute to the medical scheme of which the dependant is a member.

The following additional practical issues also need to be considered:

- If a taxpayer pays for an immediate family member's medical aid from his or her own income; and
- The rules in terms of age — that of the taxpayer or the dependent who, in terms of the rules of a medical scheme, is a member of such medical scheme — keeping in mind a "member" means a person who has been enrolled or admitted as a member of a medical scheme. Therefore, the medical scheme data will reflect the details of the immediate family member instead.

Any taxpayer wishing to claim disability expenses under section 6B of the act for a dependant will have to ensure they have a completed the ITR-DD form and any disability expenditure appears on the prescribed list of qualifying physical impairment or disability expenditure.

WHERE TO WITH NHI?

With these new measures in place, it begs the question whether further changes to medical credits can be expected under the National Health Insurance (NHI) proposals.

Many commentators and experts have rightly held that the legislative framework is largely unimplementable, which is why the public is advised that little will change over the medium term.

The NHI proposals are premised on the government being able to raise an additional R300bn in tax revenue, which, even if phased, is impossible. The money is needed as the proposals seek expressly to deny income earners the right to cover their own healthcare, regardless of the ability of the state to ensure adequate access to it.

Reasons for wanting to implement NHI were stated as follows:

- "Medical tax credits only benefit those that are in a position to pay either through medical scheme coverage or out-of-pocket but do not benefit the poor."
- "The money that goes into tax credits will be consolidated to benefit all as the role of medical schemes and out-of-pocket payment reduces under NHI."

However, given the complexities and ramifications of the NHI scheme, it raises the question of whether this is the optimal approach to fund the NHI programme from an already burdened individual tax base.

TAXING MATTERS

Hurdles when transferring immovable property

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Adverse tax consequences arise when a person disposes of immovable property for proceeds exceeding the base cost.

However, section 42 of the Income Tax Act No 58 of 1962 provides relief where the consideration for such disposal is the issue of equity shares by a resident company, and certain other requirements are met.

Pursuant to section 42 of the act, no adverse tax consequences will arise as a result of the disposal because the immovable property is deemed to be disposed of at its base cost. Section 42 of the act provides for the rollover of the tax history of the asset onto the acquiring company and that company's shares for future tax purposes.

One of the requirements to qualify as a section 42 asset-for-share transaction is that the person (ie the transferor) must hold a "qualifying interest" in the acquiring company (ie the transferee) at the close of the day on which the asset is disposed of. Where the disposal takes place to an unlisted company, a "qualifying interest" means at least 10% of the equity shares that confers at least 10% of the voting rights in that company. In other words, on the date of the disposal, the transferor must hold at least 10% of the equity shares of the transferee.

It is, therefore, important to determine the date of disposal of the asset. In terms of section 41 of the act, "disposal" is defined with reference to the definition of "disposal" in paragraph 1 of the eighth schedule to the act. It follows that the time of such disposal (ie the date of the disposal) will also be regulated by the eighth schedule and, in particular, by paragraph 13.

When dealing with immovable property, the sale agreement will generally be subject to certain suspensive conditions. In terms of paragraph 13 of the eighth schedule, the time of disposal in these instances will be when the suspensive conditions in such an agreement are satisfied. Practically this date will be well in advance of the transfer date in the Deeds Office.

With reference to the "qualifying interest" requirement of section 42, the transferor must acquire at least 10% of the equity shares of the transferee company on the date that the suspensive conditions are satisfied, notwithstanding that the transfer of ownership will only take place much later. Stated differently, the transferee company must pay consideration (through the issue of shares) before it takes ownership of the asset.

IT IS CRUCIAL TO ENSURE COMPLIANCE WITH TAX LEGISLATION ON AN ANNUAL BASIS

This does not have a significant impact on 100%-held transferee companies; however, when third parties are involved, such practicalities should be considered when negotiating a transaction.

WHERE TO FROM HERE?

Although there are potential arguments relating to when a person can be said to "hold" equity shares (in broad terms, such arguments consider whether a person can "hold" shares without being the shareholder in terms of the Companies Act), such arguments are complex and involved.

As noncompliance with the requirements will result in the inapplicability of the section 42 rollover (giving rise to adverse tax consequences), the prudent approach is to ensure the transferee company issues the required shares to the transferor on the date on which the suspensive conditions are fulfilled.

Commercially, it would still be important to provide the necessary safeguards to the transferee company as provided consideration for an asset it is still to receive.

Although section 42 asset-for-share transactions have become commonplace, the above illustrates the importance of consulting with your tax adviser before entering into any significant transaction. The general provisions almost always have nuances that may not have been relevant to previous transactions but may result in adverse tax if implemented incorrectly.

TAKEAWAY FOR TAXPAYERS

Although the withdrawal of Practice Note 31 coincides with the introduction of section 11G of the act, it is important for taxpayers to reconsider any deductions claimed with respect to interest expenditure.

It is crucial to ensure compliance with tax legislation on an annual basis and to not merely repeat prior year treatment. This is particularly true where previous positions (or a Practice Note in this instance) are changed and replaced with new provisions (ie section 11G).

We recommend that advice and assistance be sought from reputable tax advisers if you are uncertain of the new requirements for a deduction of interest incurred.

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