

WITHDRAWAL OF PRACTICE NOTES 31 OF 1994 AND 37 OF 1995

It is the intention of SARS to withdraw Practice Note (PN) 31 of 1994 “Interest paid on Moneys Borrowed” and Practice Note (PN) 37 of 1995 “Deduction of Fees Paid to Accountants, Bookkeepers and Tax Consultants for the completion of Income Tax Returns”.

There has been increasing abuse of the concession provided for in PN 31 where taxpayers have relied on the PN as a means to structure transactions or undertake transactions in order to obtain a deduction of interest or expenditure incurred, which would not otherwise have been allowed as a deduction under the Income Tax Act 58 of 1962. As tax legislation has developed over the years, resulting in the reclassification of certain income streams to interest, this has further allowed taxpayers the deduction under the PN against the reclassified income. Transactions are structured to maximise the deduction of interest or other expenditure incurred using PN 31 whilst there is no corresponding inclusion in gross income for the recipient. This is achieved where the transactions are concluded with either exempt or non-resident taxpayers.

The introduction of the Tax Administration Act 28 of 2011 (TA Act) brought about the term, “registered tax practitioner”. The effect of this introduction means that only persons that are “registered tax practitioners” as defined, may provide tax advice or assist in completing a tax return for a fee. Therefore, PN 37 in its current form does not incorporate the requirements of the TA Act. The modernisation of the e-filing system has also simplified the process of submitting tax returns and assistance is provided to taxpayers in person or electronically by SARS in this regard.

The intention to withdraw the Practice Notes provide a window for the public to make representation for legislative amendments in their place as part of the Budget 2023 Annexure C process by its deadline of 30 November 2022. The intention is to withdraw the Practice Notes for years of assessment commencing on or after 1 March 2023.

Comment is invited by 15 December 2022 and should be sent to **policycomments@sars.gov.za**.