SARS South African Revenue Service

DRAFT INTERPRETATION NOTE

DATE:

ACT	**:**	**INCOME TAX ACT NO. 58 OF 1962**
SECTION	**:**	**SECTIONS 1(1), DEFINITION OF “FINANCIAL YEAR” AND “YEAR OF ASSESSMENT”, 5, 66(13C), 89*quat*(1) AND PARAGRAPH 23 OF THE FOURTH SCHEDULE**
SUBJECT	**:**	**YEAR OF ASSESSMENT OF A COMPANY: ACCOUNTS ACCEPTED TO A DATE OTHER THAN THE LAST DAY OF A COMPANY’S FINANCIAL YEAR**

Preamble

In this Note unless the context indicates otherwise –

- **“Companies Act”** means the Companies Act No. 71 of 2008;
- **“Company”** means a company as defined in section 1(1);
- **“Schedule”** means a schedule to the Act;
- **“section”** means a section of the Act;
- **“the Act”** means the Income Tax Act No. 58 of 1962;
- **“the Commissioner”** includes any employee of SARS who has the delegated power to exercise and perform certain duties; and
- any other word or expression bears the meaning ascribed to it in the Act.

1. Purpose

This Note provides guidance on the application of section 66(13C) and the discretionary power vested in the Commissioner to accept financial accounts of a company for a period ending on a day which differs from the last day of the company’s financial year.

Section 3(1) provides that the powers conferred and duties imposed upon the Commissioner by or under the provisions of the Act, may be exercised or performed by the Commissioner or by any officer under the control, direction or supervision of the Commissioner.

The equivalent of a year of assessment for a foreign company is a “foreign tax year” as defined in section 1(1). The closing date of financial accounts of a foreign company does not fall within the scope of this Note.

Interpretation Note No. 19 (Issue 3) dated 9 October 2013 “Year of assessment of natural persons and trusts: Accounts accepted to a date other than the last day of February”, provides guidance on the Commissioner’s discretionary power to grant permission to a natural person or trust to submit financial accounts for a period which differs from the year of assessment ending on the last day of February.

2. Background

Companies are occasionally required to close their financial accounts earlier or later than the last day of their financial year owing to various reasons. Section 66(13C) was introduced into the Act with effect from 3 July 2008 to allow companies to align reporting for tax purposes with the period ending on the day on which their financial accounts are closed.

3. The law

The relevant provisions of the Act are quoted in the **Annexure**.

4. Application of the law

4.1 Definitions of "year of assessment" and "financial year"

The term "year of assessment" is defined in section 1(1). A company's year of assessment is its financial year. Under section 5(1)(*d*), a company shall pay income tax annually on the taxable income received by, accrued to or in favour of it during every *financial year*.

The term "financial year" is also defined in section 1(1). In the case of –

- a newly incorporated company, the financial year is the period commencing on the date of incorporation and ending on the last day of February immediately succeeding that date or on any other date approved by the Commissioner having regard to the circumstances of the case; or
- any period subsequent to the period referred to above, whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year of that company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve.

If, for example, a company's financial year ends on 30 June, the Commissioner may approve that the year of assessment coincides with the financial year. In case a company changes its financial year, the Commissioner may also approve a corresponding change in the year of assessment.

It is possible for a company to have more than one year of assessment during any one calendar year.

Example 1 – More than one year of assessment in a calendar year

Facts:

Company A's financial year ends on 31 March and Company B's financial year ends on 31 December. During 2014 Company A was acquired by Company B. Company A was required to change its accounting date to align with that of its parent company (Company B), and therefore drew up financial accounts for a period of nine months from 1 April 2014 to 31 December 2014. The Commissioner approved the new financial year.

Result:

Company A has two years of assessment falling within the 2014 calendar year. It must lodge returns of income for –

- the 12 months ended 31 March 2014; and
- the nine months ended 31 December 2014.

The return for the 12 months ended 31 March 2014 will be assessed at the rates of tax prescribed in the Rates and Monetary Amounts and Amendment of Revenue Laws Act No. 23 of 2013 (that is, the rates applying to a year of assessment ending during the 12 months ended 31 March 2014).

The return for the nine months ended 31 December 2014 will be assessed at the tax rates prescribed in the Rates and Monetary Amounts and Amendment of Revenue Laws Act No. 42 of 2014 (that is, the rates applying to a year of assessment ending during the 12 months ended 31 March 2015).

In approving a company's financial year, the Commissioner may take into account the requirements of the Companies Act. Amongst other things, section 27 of the Companies Act provides that –

- a company's financial year may not exceed 15 months (this applies to its first financial year and any subsequent financial year which is longer than 12 months as a result of a change in financial year);
- a company may not file a notice to change its financial year more than once during a financial year; and
- in the case of a change in financial year the newly established financial year-end must be later than the date on which the notice is filed.

The Companies Act does not lay down a minimum period for a financial year. Accordingly a company incorporated on 1 February 2015 which adopts a financial year-end of the last day of February would have a first financial year of one month.

Generally, the approval of a company's first financial year does not present any difficulty and the Commissioner may approve the financial year adopted by the company for purposes of section 27 of the Companies Act but is not obligated to do so. In the unlikely event of a company not specifying a financial year, its financial year will be the last day of February.

The discretionary power of the Commissioner under the definition of "financial year" is not subject to the Companies Act. The Commissioner is, therefore, not bound to accept a notice of change in financial year filed under the Companies Act. If the Commissioner does not agree to the change in financial year end for a specific year of assessment, a company may draw up separate sets of financial statements for that period, one for Income Tax purposes and one for Companies Act purposes. Non-approval can happen, for example, if an application carries negative consequences for the *fiscus*, such as a decrease in tax rates or enhanced capital allowances. The Commissioner will approve such an application only in exceptional circumstances or may approve it subject to the change taking effect in the following calendar year.

Example 2 – Rejection of change in financial year

Facts:

In his Budget Speech on 21 February 20x2 the Minister announced that the corporate tax rate would decrease from 28% to 27% for companies with years of assessment ending between 1 April 20x2 and 31 March 20x3.

On 22 February 20x2 Company C applied to the Commissioner to change its financial year from 28 February 20x2 to 30 April 20x2 citing various commercial reasons, none of which involved exceptional circumstances.

Result:

Since there were no exceptional circumstances justifying the application and in view of the negative consequences for the *fiscus*, SARS notified the company that its request could not be accepted. The company was given the option of changing its financial year-end to 30 April 20x3 (that is, its first amended financial year would run from 1 March 20x2 to 30 April 20x3, a period of 14 months).

4.2 Financial accounts drawn up for a period that differs from the financial year

If a company does not close its financial accounts on the last day of its financial year, the Commissioner may accept that the financial accounts in respect of its income be drawn to a fixed day approved by the Commissioner. A request must be submitted to the Commissioner within a reasonable period before the last day of the company's financial year. The fixed day should fall within 10 days before or after the last day of the financial year. The Commissioner may approve the following as a fixed day:

- A fixed day, being a specific day of the week.
- A fixed date, being a specific date in a calendar month.

The day that a company may choose to close off its financial accounts other than on the last day of the company's financial year and within the 10 day requirement, is illustrated below:

Financial year end	10 days before	10 days after
31 January	21 – 30 January	1 – 10 February
28 or 29 February	18 – 27 February or 19 – 28 February	1 – 10 March
31 March	21 – 30 March	1 – 10 April
30 April	20 – 29 April	1 – 10 May
31 May	21 – 30 May	1 – 10 June
30 June	20 – 29 June	1 – 10 July
31 July	21 – 30 July	1 – 10 August
31 August	21 – 30 August	1 – 10 September

Financial year end	10 days before	10 days after
30 September	20 – 29 September	1 – 10 October
31 October	21 – 30 October	1 – 10 November
30 November	20 – 29 November	1 – 10 December
31 December	21 – 30 December	1 – 10 January

The term “income” is defined in section 1(1) but the same definition cannot be used for purposes of section 66(13C) since section 66(13B) provides that income includes any aggregate capital gain or aggregate capital loss for purposes of section 66(13C). For the purpose of section 66(13C), “income” is interpreted as “profit” or “taxable income”. This interpretation is necessary to ensure that any deductions and allowances included in the financial accounts of a company are allocated to the correct year of assessment.[1]

Section 66(13C)(*b*) provides that when financial accounts are drawn to a date after the last day of the company’s financial year, no further regard shall be had in the subsequent year of assessment to the income disclosed by those financial accounts.

Similarly, a company that closes its financial accounts on a day within 10 days before the last day of its year of assessment must account for any income falling after that fixed day in the financial accounts in the subsequent year of assessment. Such treatment is implied through the Commissioner’s acceptance of the accounts for the relevant period.

Example 3 – Accounts accepted to a date other than the last day of a financial year

Facts:

Company D has a financial year-end of 31 December. As a result of many of its staff being on leave during the last week of December and the first few days of January, Company D applied to the Commissioner before 31 December 2014 to request approval for it to close its accounts on 5 January 2015.

Result:

If Company D’s application to draw up financial accounts for the extended period is approved by the Commissioner, the financial accounts for the period 1 January 2014 to 5 January 2015 will be accepted and the total amount of income disclosed by the financial accounts will be regarded as income for the 2014 year of assessment.

1 For similar reasons, in *CIR v Simpson* 1949 (4) SA 678 (A), 16 SATC 268 at 282 Watermeyer CJ adopted the ordinary meaning of the word “income” of “profits or gains” in relation to the equivalent of section 7(2).

Capital gains and losses

Section 66(13B) provides that the word “income” in section 66(13C) includes any aggregate capital gain or aggregate capital loss. The aggregate capital gain or aggregate capital loss is determined by adding together all the capital gains and subtracting all the capital losses on all individual assets during a specific year of assessment.[2]

A company’s capital gain or capital loss is determined for a year of assessment. A capital gain will arise during a year of assessment in which an asset is disposed of if the proceeds on its disposal exceed its base cost. A capital loss will arise if the base cost of the asset exceeds the proceeds on its disposal. A capital gain or capital loss can arise during the current year of assessment on an asset disposed of in a previous year of assessment if further proceeds are received or accrued or further expenditure is incurred during the current year of assessment on that asset.[3]

As discussed above, section 66(13C)(*b*) provides that no further regard shall be had in the subsequent year of assessment to the income disclosed by financial accounts drawn to a date after the last day of the company’s financial year. Section 66(13C)(*b*) will thus also apply to an aggregate capital gain or aggregate capital loss.

Example 4 – Treatment of capital gains

Facts:

Company E has a financial year ending 30 September 2014 and is granted permission under section 66(13C) to render financial accounts for the period ending 24 September 2014. During the period 1 October 2013 to 30 September 2014 the company realised capital gains on the following assets:

- 21 August 2014 – land
- 26 September 2014 – shares

Result:

The capital gain on disposal of the land must be accounted for in the year ended 30 September 2014 (2014 year of assessment).

The capital gain on disposal of the shares must be accounted for in the year ended 30 September 2015 (2015 year of assessment).

The discretionary powers of the Commissioner under section 66(13C) are not subject to objection and appeal.[4]

4.3 Conditions for Commissioner’s approval

The following will be considered before the Commissioner approves an application:

- An application to render financial accounts to a date other than the last day of a company’s financial year-end may have negative tax implications for the

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[2] Paragraphs 6 and 7 of the Eighth Schedule set out the general rules for determining an aggregate capital gain or aggregate capital loss for a year of assessment.

[3] Paragraphs 3 and 4 of the Eighth Schedule set out the general rules for determining a capital gain or capital loss for a year of assessment.

[4] See section 3(4)(*b*) which does not include section 66(13C).

fiscus. The earlier closure of financial accounts may lead to the manipulation of income and expenditure of the company. For example, it may result in the deferral of income derived as a result of the conclusion of a large contract or transaction. Approval will only be granted if the Commissioner is satisfied that the purpose of the application is not for obtaining a tax benefit.

- Each application will be considered on its own merits by taking the specific circumstances of the company into account.
- The application must be in writing and reasons indicating the special circumstances to be taken into account must be furnished. Supporting information and documentation must accompany the application in order for the Commissioner to make an informed decision.
- The application should be submitted to a SARS Branch Office within a reasonable period before the last day of the company's financial year. Failure to submit an application within a reasonable period may result in approval not being granted before the end of the financial year. Such a delay will result in the company being assessed for that year on the basis that no application was submitted.
- A company may not change its financial year more than once during a financial year.
- A company that enjoyed past approval to change the day on which its financial accounts are closed, may submit a further application to change the fixed day approved by the Commissioner to another day on which it wishes to close its financial accounts in the future. The Commissioner, however, favours the consistent reporting of results and any such application will be approved only if sound reasons exist for the requested change.
- A company that wants to change the fixed day approved by the Commissioner back to its original financial year-end must also submit an application to SARS requesting the change.

4.4 Provisional tax

Any company that falls within the definition of "provisional taxpayer" in paragraph 1 of the Fourth Schedule is required to be registered as such. Under paragraph 23 of the Fourth Schedule, a company must make its first provisional tax payment within six months as from the commencement of its year of assessment and the second provisional tax payment not later than the last day of its year of assessment. An optional additional payment (third payment) can be made within seven months of the end of the company's year of assessment for companies with a financial year ending on the last day of February or in any other case, within six months of the end of the year of assessment. This third payment will reduce the liability for any interest which may become payable for the relevant year of assessment.[5]

The dates by which provisional tax payments must be made remain unchanged even if a company is granted approval to submit financial accounts for a period which differs from its financial year-end.

A company that has been granted approval under section 66(13C) by the Commissioner to submit financial accounts to a date other than the last day of its

[5] Paragraph 23A of the Fourth Schedule.

financial year must submit its provisional tax return and make payment not later than the last day of the year of assessment. The estimate should take into account the fact that accounts may be closed on a day other than the last day of the financial year.

4.5 Trading stock

Trading stock held and not disposed of at the beginning and end of a year of assessment must be accounted for as specified under section 22. Section 22(6)(*b*) provides that any reference in section 22 to the beginning or end of a year of assessment includes a reference to the period covered by the financial accounts and accepted by the Commissioner under section 66(13C).

It follows that when financial accounts are accepted by the Commissioner to a date other than the last day of the year of assessment, section 22(6)(*b*) requires that trading stock must be accounted for at the beginning and end of the period covered by those financial accounts.

4.6 Effective dates of legislation

Generally, effective dates of income tax legislation take two forms, namely –

- an effective date that is linked to the timing of a transaction (for example, the timing of a receipt or accrual, incurral of expenditure or disposal of an asset); or
- an effective date that applies to a year of assessment.

Companies applying section 66(13C) need to be aware of changes in legislation that occur outside a year of assessment but during the period that the financial accounts are drawn up. The wording of the relevant effective date provision will determine how legislative changes will affect a particular transaction. As a result it is not possible to lay down definite rules for dealing with such changes.

Effective dates applicable to a transaction date are unaffected by the fact that the results for the period that the financial accounts are drawn up are taken back to an earlier year of assessment or carried forward to a future year of assessment.

Example 5 – Change in legislation applicable to a transaction date

Facts:

Company F has a financial year ending on 30 June. It is granted permission under section 66(13C) to render financial accounts up until 5 July 2014.

On 3 July 2014 Company F incurred an expense in relation to its trade. The section governing the deductibility of the expense was withdrawn with effect from 30 June 2014 and applied to any expenditure incurred on or after that date.

Result:

The expenditure will not be deductible because the transaction took place after the effective date of the amendment (30 June 2014) which applies to all transactions on or after that date.

An effective date that applies to a year of assessment can, however, apply to a transaction conducted before or after the year of assessment if it falls within the

period that the financial accounts are drawn up and the results for that period are carried forward or back to the year of assessment in question.

Example 6 – Change in legislation applicable to a year of assessment

Facts:

Company G has a financial year ending on 31 December. It is granted permission under section 66(13C) to render financial accounts up until 8 January 2015.

On 5 January 2015 Company G received income in relation to its trade. The section governing the exemption of that income from normal tax was inserted with effect from 1 January 2015 and applicable to years of assessment commencing on or after that date.

Result:

Under section 66(13C) the income received must be accounted for in the year of assessment ending 31 December 2014.

The income will not be exempt from normal tax because the amendment applies to years of assessment commencing on or after 1 January 2015.

5. Tax period for value-added tax (VAT)

A company registered as a vendor for VAT purposes is allocated a specific tax period for which the output tax and input tax is declared and the difference between them is calculated and either paid to or refunded by SARS for that specific tax period. The closure by a company of its financial accounts on a day other than the last day of its financial year will not have any impact on its VAT liability for any tax period.

For more information on the different tax periods, see Interpretation Note No. 52 (Issue 3) dated 10 March 2014 "Approval to end a tax period on a day other than the last day of a month".

6. Conclusion

A company intending to close its financial accounts either within 10 days before or after the end of a year of assessment must submit an application to a SARS branch office for permission to draw up financial accounts to another closing date.

Section 66(13C) relates only to a situation in which a company obtains approval from the Commissioner to close its accounts on a date other than the last day of its financial year. This approval does not result in a change of the company's financial year end.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

Annexure – The law

Section 1(1)

1. Interpretation.—(1) In this Act, unless the context otherwise indicates—

"company" includes—

(a) any association, corporation or company (other than a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or

(b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or

(c) any co-operative; or

(d) any association (not being an association referred to in paragraph (a) or (f)) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public; or

(*e*) any—

(i) . . . . . .

(ii) portfolio comprised in any investment scheme carried on outside the Republic that is comparable to a portfolio of a collective investment scheme in participation bonds or a portfolio of a collective investment scheme in securities in pursuance of any arrangement in terms of which members of the public (as defined in section 1 of the Collective Investment Schemes Control Act) are invited or permitted to contribute to and hold participatory interests in that portfolio through shares, units or any other form of participatory interest; or

(iii) portfolio of a collective investment scheme in property that qualifies as a REIT as defined in paragraph 13.1 (x) of the JSE Limited Listing Requirements; or

(*f*) a close corporation,

but does not include a foreign partnership;

"financial year", in relation to any company, means—

(*a*) the period, whether of 12 months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Commissioner having regard to the circumstances of the case may approve; or

(*b*) any period subsequent to the period referred to in paragraph (a), whether of 12 months or not, commencing immediately after the last day of the immediately preceding financial year of such company and ending upon the first anniversary of such last day or upon such other date as the Commissioner having regard to the circumstances of the case may approve;

"year of assessment" means any year or other period in respect of which any tax or duty leviable under this Act is chargeable, and any reference in this Act to any year of assessment ending the last or the twenty-eighth or the twenty-ninth day of February shall, unless the context otherwise indicates, in the case of a company or a portfolio of a collective investment scheme in securities be construed as a reference to any financial year of that company or portfolio ending during the calendar year in question.

Section 5(1)

5. Levy of normal tax and rates thereof.—(1) Subject to the provisions of the Fourth Schedule there shall be paid annually for the benefit of the National Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of—

(*a*) . . . . . .

(*b*) . . . . . .

(*c*) [Not applicable];

(*d*) any company during every financial year of such company.

Section 22(6)(*b*)

22. Amounts to be taken into account in respect of values of trading stocks. —

(6) Any reference in this section to the beginning or end of a year of assessment includes—

(*a*) [Not applicable];

(*b*) where accounts are accepted under section 66 (13A) or (13C) to a date agreed to by the Commissioner, a reference to the beginning or end, as the case may be, of the period covered by the accounts.

Section 66(13B) and (13C)

(13B) For the purposes of subsections (13A) and (13C), the word **"income"** must be construed as including any aggregate capital gain or aggregate capital loss.

(13C) Where—

(*a*) a company does not close its accounts on the last day of its financial year, the Commissioner may accept accounts in respect of the taxpayer's income drawn to a fixed day approved by the Commissioner, which day shall fall within 10 days before or after the last day of the financial year;

(b) such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of a subsequent year of assessment.

Definition of "effective date" in section 89*quat*(1)

"effective date", in relation to any year of assessment of a provisional taxpayer, means—

(*a*) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by the Commissioner under the provisions of section 66 (13A) to render accounts for a period ending on a date other than the last day of February, the date falling seven months after the last day of such year; or

(*b*) in any other case, the date falling six months after the last day of such year as applicable for the purposes of the provisions of paragraph 21 or 23 of the Fourth Schedule;

Paragraph 23 of the Fourth Schedule

23. Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely—

(a) within the period ending 6 months after the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year;

(b) within the period ending on the last day of that year, an amount equal to the total estimated liability of such company (as so determined) for normal tax in respect of that year less the amount paid in terms of item (a),

(c) . . . . . .

less, in either case, the total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during the relevant period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat*.