Section 24 Amendment Introduces Additional Uncertainty in Interpretation, Enforcement and Tax Compliance

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Abstract Trading stock sold under a contract requiring full or partial payment for ownership to transfer falls under section 24. Section 24 taxes the full amount upfront and grants the taxpayer a debtors' allowance deduction, resulting in a cash flow basis of taxation. Section 24 was amended to specify that the relief also applies to lay-by agreements. The application of section 24 to lay-by agreements is ambiguous, resulting in multiple interpretations, which posed the research problem. This paper presents three distinct interpretations of lay-by agreements and the application of section 24. A qualitative research methodology and a doctrinal research method were applied. Through a review and analysis of practical, simulated examples, this paper illustrates the three interpretations. The first opinion is that lay-by agreements are scoped into section 24 and relief is applied, which has the effect of taxing deposits received on a cash flow basis at the gross profit percentage. The second interpretation also scopes in lay-by agreements, but applies the full amount taxed as gross income as the relief, resulting in no impact on the taxpayer's taxable income. This interpretation yields the same result as the third interpretation, which is that lay-by agreements do not fall within the scope of section 24 because, until the goods are delivered, deposits do not constitute receipts for the supplier. The paper concludes with recommendations for the National Treasury to clarify the ambiguity through additional legislative amendments in support of the third interpretation based on sound arguments presented, namely court case principles and views of commentators, to provide taxpayers with certainty.

Keywords Lay-by · Section 24 · Debtors' allowance · Deposit · Trading stock

1 Introduction

The context and background to the research problem is presented in this section.

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1.1 Background

In accordance with section 24(1) of the Income Tax Act (No. 58 of 1962), the full amount under sale agreement is subject to immediate taxation when a taxpayer sells trading stock under a suspensive sale condition where the transfer of ownership of movable property or immovable property will occur at a later stage following the receipt of a portion of the full amount or the full amount due (South African Government, 1962).

Section 24(2) then provides relief in the form of a debtors' allowance to the taxpayer in response to the problem it has created. The relief only applies to contracts that are at least one year long and under which at least 25% of the amount owed to the taxpayer is payable only in a subsequent year of assessment. The relief granted must be added back to income in the subsequent assessment year. The objective of section 24 is to tax the taxpayer using the cash flow method rather than the accrual method (National Treasury, 2023a). The allowance will only be deductible if the Commissioner deems it to be reasonable.

South African consumers have long utilised lay-by agreements to acquire household items, school uniforms and office supplies for their dependants (National Treasury, 2023a). Lay-by arrangements are sale arrangements that allow consumers to purchase and pay for goods over a period, typically three to six months, without incurring interest charges. Lay-by arrangements are a form of savings, because they allow a larger population to acquire goods outside of instalment sale credit arrangements, thereby reducing the level of debt. Due to the impact of the Covid-19 pandemic on household incomes and the current economic climate, the majority of consumers now purchase school uniforms and supplies on lay-by.

However, lay-by agreements do not qualify for relief under section 24, because their duration is typically less than 12 months (i.e. lay-by agreements typically last between three and six months) (National Treasury, 2023a). The complete inclusion in gross income without any relief has negative tax consequences. It is anticipated that these effects will increase as more consumers choose lay-by purchases due to financial constraints (National Treasury, 2023a).

To mitigate these adverse tax effects, section 24(2) has been inserted. Consequently, the relief now applies to lay-by transactions of less than 12 months (National Treasury, 2023b). The amendments became effective on 1 January 2023 and will apply to assessment years ending on or after that date.

According to Louw (2022, n.p.), commenting on the budget proposals to extend the relief under section 24(2) to lay-by agreements "section 24(1) is not necessarily applicable to lay-by arrangements. As such, there should be no concern in relation to the debtors allowance". Therefore, there are different views as to whether section 24(1) of the Income Tax Act scopes in lay-by agreements. This led to the research problem of this study.

1.2 Problem and Rationale for the Study

Even though section 24(2) of the Income Tax Act has been amended to specify that section 24 relief is applicable to lay-by agreements, there are differing opinions regarding whether section 24(1) applies to lay-by agreements. The research question was, does section 24(1) apply to lay-by agreements? This was the research focus of this study.

According to Adam Smith (1994), an economist and pioneer in the early 1700s, a good tax system should encompass four pillars, namely fairness, certainty, convenience and efficiency. Certainty means:

> [t]he tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. (Smith, 1776, as cited by Adam Smith Institute, n.d., n.p.)

Therefore, the law should be certain and should not contain any ambiguity.

1.3 Research Objective

The purpose of this study was to examine the various interpretations of whether lay-by agreements fall under section 24(1) and the implications of each interpretation. The objective of the study raised the following sub-questions in order answer the main research question:

1. What is the scope of section 24 and what are its implications?
2. What are the various interpretations regarding whether lay-by agreements fall under subsection 24(1) of the Income Tax Act?
3. What are the consequences, i.e. the tax effects, of these diverse interpretations?

The study focused solely on the income tax implications of lay-by agreements. Other implications, such as value-added tax (VAT), were not considered in this study.

1.4 Contribution of This Study

This study contributes to the tax field through an analysis of the various interpretations of whether lay-by agreements fall within the scope of section 24(1) and recommends that the National Treasury make legislative changes to provide legislative clarity (certainty). The research methodology and research method utilised in this study are described next.

2 Research Methodology

The interpretive paradigm was appropriate, because this research required the interpretation of legislation, case law and other writings, along with the qualitative research methodology (see Plano Clark & Creswell, 2008), which is useful for comprehending and describing data (Babbie & Mouton, 2009), such as the documentary data used in taxation research. According to McKerchar (2010, p. 15) research may reflect “either positivism or non-positivitism”, its methodological approaches basically comprise either doctrinal research, or non-doctrinal research. Doctrinal research as a methodology is commonly applied in the field of taxation (Frecknall-Hughes, 2016; see Young, 2021). Doctrinal research necessitates research involving secondary sources and commentary to determine “what is known and what is not known” about the research topic, thereby incorporating a literature review (Hutchinson & Duncan, 2012, p.113). This study employed a doctrinal research methodology (McKerchar, 2008), which provides a systematic exposition of the rules governing a particular legal category, in this case the legal rules pertaining to section 24 of the Income Tax Act, as well as the interpretation notes of the South African Revenue Service (SARS), textbooks, articles and the writings of experts in the field. The study ensured validity and reliability by providing a sound argumentative foundation for its conclusions.

This study made use of a number of data sources in conducting the literature review. Using search engines such as Google Scholar and the University of Johannesburg’s (UJ) databases, i.e. UJ Google (UJ database online search engine), online searches were conducted to gather information and documents. The websites of the following institutions were also searched: professional accountancy firms; government, such as SARS and the National Treasury; and international organisations, such as the Australian Tax Office. The search terms used included, but were not limited to, lay-by, section 24, debtors’ allowance, deposit, trading stock. The next section provides the scope and implication of section 24.

3 Section 24: Scope and Implication

3.1 The Law

In terms of section 24 of the Income Tax Act:

24. Credit agreements and debtor’s allowance

(1) *Subject to* the provisions of section *24J*, if any *taxpayer* has *entered into* any *agreement* with any other person in respect of any property the effect of which is that, in the case of *movable property*, the *ownership shall pass* or, in the case of *immovable property, transfer shall be passed* from the taxpayer *to that other person, upon or after* the *receipt by the taxpayer* of the *whole* or a certain *portion* of the *amount* payable to the taxpayer under the agreement, the *whole* of that

amount shall for the purposes of this Act be *deemed* to have *accrued* to the taxpayer *on the day on which the agreement was entered into.*

(2) In the case of such an agreement in terms of which *at least 25 per cent* of the said *amount payable* only *becomes due and payable on or after* the expiry of a period of *not less than 12 months* after the *date* of the said *agreement*, the Commissioner, *taking into consideration* any *allowance* he has made under section *11(j)*, may make such *further allowance* as under the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of *all amount*s which are *deemed to have accrued* under such agreements but which have *not* been *received at the close of the taxpayer's accounting period: Provided* that any *allowance so made shall be included* as *income* in the taxpayer's returns *for the following year of assessment* and shall form part of his income.

(2A) In the case of a *lay-by agreement* as contemplated in section 62 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), the *Commissioner may make an allowance* in respect of *all amounts* which are *deemed to have accrued* under such agreement but which have *not* been *received by the end of the taxpayer's year of assessment.*

(2B) Any *allowance* made *under* subsection *(2A)* shall be *included in the income* of that taxpayer in the immediately *following year of assessment*. (emphasis added)

3.2 Explanation of the Law

3.2.1 Scope

Certain credit agreements provide that ownership of the goods sold will pass to the purchaser only when a certain part or the entire price has been paid. Section 24 is applicable to agreements in respect of property that are both movable and immovable, where ownership passes to another person after receipt of the whole amount or a portion of the amount as per the agreement, in which case the taxpayer is deemed to have received the full amount of the agreement on the date on which the agreement was entered into.

According to SARS (2018, p. 2), section 24 only applies to the disposal by a taxpayer of trading stock under an instalment credit agreement. The scope also includes non-application, i.e. when the section will not apply. According to SARS (2018), the section 24 debtors' allowance does not apply to sales on extended credit terms, sales subject to resolutive condition or finance leases. Further, according to SARS (2018), section 24 applies to lay-by agreements of not less than 12 months. Therefore, the view of SARS is that section 24 scopes in lay-by agreements if the agreement is not less than 12 months, i.e. in relation to lay-by agreements that are 12 months or more.

3.2.2 Implication

Section 24 deems the whole of the amount excluding finance costs to have accrued to the taxpayer on the day the agreement was entered into. It also provides relief for taxpayers, taking into account the doubtful debt allowance under section 11(j), in respect of a further debtors' allowance. The relief only applies to contracts that are at least one year long and under which at least 25% of the amount owed to the taxpayer is payable only in a subsequent year of assessment, but this requirement does not apply in relation to lay-by agreements. Finance charges and VAT must be excluded from turnover (sales) and cost of sales in determining the gross profit percentage, which is calculated as follows (SARS, 2018, p. 7):

$$[(\text{sales–cost of sales})/\text{sales}] \times 100$$
$$= \text{gross profit percentage; or } (\text{gross profit}/\text{sales}) \times 100 = \text{gross profit percentage}$$

Thus, the section 24 allowance = gross profit % × outstanding debtors (after adjusting for bad debts (section 11(i)) and the provision for doubtful debts (section 11(j)). The section 24 allowance granted in any year can also be used to create an assessed loss or to increase an assessed loss (SARS, 2018).

In relation to lay-by agreements and section 24 of the Income Tax Act, three distinct interpretations are possible.

1. The scope of section 24(1) includes lay-by agreements and the gross profit percentage must be applied as the relief under section 24(2).
2. Lay-by agreements fall within the scope of section 24(1) and the full amount included in gross income must be applied as the relief under section 24(2).
3. Lay-by agreements are not within the scope of section 24(1).

These interpretations are discussed and analysed next.

4 Interpretations

The three possible interpretations in relation to lay-by agreements and section are analysed in this section. The first interpretation is that held by the National Treasury, i.e. lay-by agreements fall within the scope of section 24(1) and gross profit is applied as relief.

4.1 The Scope of Section 24(1) Includes Lay-by Agreements, and the Gross Profit Percentage Must Be Applied as the Relief Under Section 24(2)

According to SARS (2018, p. 3):

> *Section 24 also applies to lay-by agreements of not less than 12 months*. Under a lay-by the buyer pays the purchase price over a period while the seller retains possession of the goods until the purchase price is paid in full. Ownership passes to the buyer on the date on which the purchase price is paid in full and the goods are delivered to the buyer. (emphasis added)

Therefore, the view of SARS is that section 24 scopes in lay-by agreements, but only if the agreement is not less than 12 months, i.e. the agreement is 12 months or more.

According to SARS (2021, n.p.), "Interpretation Notes are intended to provide guidelines to stakeholders (both internal and external) on the interpretation and application of the provisions of the legislation administered by the Commissioner". Section 1 of the Tax Administration Act (No. 28 of 2011) defines 'official publication' as specifically including an interpretation note (Republic of South Africa, 2011). A 'practice generally prevailing' is "a practice set out in an official publication regarding the application or interpretation of a tax Act" (section 1 of the Tax Administration Act read in conjunction with section 5(1) of the Act). When SARS issues a tax assessment in accordance with prevailing practice for example an interpretation note, it cannot assess the taxpayer differently in the future. Moreover, if no assessment is issued by SARS and taxpayers calculated their tax liability according to the generally accepted practice, SARS cannot assess the taxpayer differently (Mazansky & Fyfe, 2019). Taxpayers may use an interpretation note as guidance, but they may also disagree with its contents and are in no way bound by them (Mazansky & Fyfe, 2019). However, SARS is bound by the content until it withdraws the interpretation note. The Constitutional Court confirmed in *Marshall NO v Commissioner for the* South African Revenue Service (2018) CCT 208/17, ZACC 11 that courts should generally disregard interpretation notes or guides (Le Roux & Mia, 2020). Nonetheless, it implicitly acknowledged that in any question of statutory interpretation involving a close call, a court may consider an interpretation set forth in an interpretation note if there is evidence that SARS and taxpayers have followed the interpretation for a number of years.

According to the National Treasury (2023a, p. 18):

> At issue is that the current provisions of section 24 of the Act do not extend to cover the abovementioned South African scenario of a lay-by agreement. Accordingly, a seller under a layby arrangement is subject to the provisions of section 24(1) of the Act and is required to recognise an upfront inclusion of the sale price in full. However, due to the fact that lay-by arrangements generally last for periods much shorter than 12 months (typically between three to six months), the seller will not benefit from the debtors' allowance contained in section 24(2) of the Act. The upfront inclusion of lay-by proceeds without any allowable deduction creates an adverse tax result, which is expected to increase as more consumers are choosing to enter into lay-by arrangements due to financial constraints.

Table 1 Tax effect on taxable income

Tax position at year end in respect of lay-by agreements	R
Deemed accrual of sales proceeds, per section 24(1) of the Income Tax Act	1 000000
Section 24 allowance (R900 000 × 20%)	(180000)
Purchases, section 11(a) deduction (R1 000000 × 80%)	(800000)
Effect on taxable income of Company E is an increase of	20,000

Therefore, according to the National Treasury, section 24(1) encompasses all lay-by agreements, regardless of their duration. The view of the National Treasury is much broader than that of SARS in Interpretation Note 48.

The main difference following the amendment according to the National Treasury is that a taxpayer will qualify for the relief even though at least 25% of the amount payable under the agreement is not due and payable at least 12 months after the date of the agreement. According to Stiglingh et al. (2023), taxpayers can therefore qualify for the temporary income tax relief. This ensures that they are taxed on the cash flow basis.

Following the interpretation by the National Treasury outlined above, in order to display the tax effect on taxable income of a taxpayer, the authors of this paper provide the following simulated example:

Facts: Assume a taxpayer enters into lay-by sale agreements for R1 000000 before the end of the year and receives a 10% lay-by deposit. Further, assume that the taxpayer's gross profit is 20%. Table 1 demonstrates the tax impact on the taxpayer's taxable income.

The net effect on the taxpayer's taxable income is R20 000, i.e. the taxpayer is being taxed on the cash flow basis at the gross profit percentage (R100 000 × 20% = R20 000).

A further interpretation is that lay-by agreements fall within the scope of section 24(1) and the full amount included in gross income must be applied as the relief under section 24(2). Therefore, the implication for the taxpayer is R0. This interpretation is discussed and analysed next.

4.2 Lay-by Agreements Fall Within the Scope of Section 24(1), and the Full Amount Included in Gross Income Must Be Applied as the Relief Under Section 24(2)

Under this interpretation, the amount received under the lay-by agreement is included in gross income and the full inclusion is then applied as the relief allowance. Haupt (2023, p. 173) explains the tax implications under the SARS interpretation by providing the following example:

Example—Lay-by sales

Company E has a 30 November year end. Most of its sales of consumer goods are made in December of each year. For its year of assessment ended 30 November 2022 it had received R2 million in respect of payments under lay-by agreements, for goods to be delivered to customers when the final payment under each agreement is made by each relevant customer in December 2022. As at 30 November 2023, Company E has received R3 million in respect of payment under lay-by agreements, for goods to be delivered to customers when the final payment under each agreement is made by the relevant customer in December 2023.

Company E makes a profit of 20% of the selling price of all of its goods. Calculate the effect of the above on Company E's taxable income (ignore VAT).

Tax position at 30 November 2022 in respect of lay- by agreements:*	
Deemed accrual of sales proceeds, per section 24(1) of the Income Tax Act	R2 000000
Section 24C allowance (R2 000000 x 80%)	(1600000)
Effect on taxable income of Company E is an increase of	R400 000

*The amendment only applies for years of assessment ending on or after 1 January 2023

Tax position at 30 November 2023 in respect of lay-by agreements:

Deemed accrual of sales proceeds, per section 24(1) of the Income Tax Act	R3 000000
Section 24(2A) allowance (R3 000000 x 100%)	(3 000000)
Effect on taxable income of Company E is an increase of	nil

The amount actually received by Company X under the lay-by agreements is not relevant, because these are not beneficial receipts for income tax purposes, due to the provisions of section 62 of the Consumer Protection Act, which creates 'some form of statutory trust' in respect of those receipts

It is interesting to note that Haupt applies section 24C, future expenditure allowance, prior to the addition of section 24(2A), which deals specifically with lay-by agreements. In addition, how is the 100% deduction under section 24-(2A) justified? Since SARS Interpretation Note 48 bases the allowance on the gross profit percentage.

This interpretation has the same impact on taxable income as the interpretation presented in Sect. 4.3 discussed below, which evaluates the interpretation that lay-by agreements are not scoped into section 24(1).

4.3 Lay-by Agreements Are Not Within the Scope of Section 24(1)

Section 24(2A) refers to a lay-by agreement as contemplated in section 62 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (CPA). Section 62 of the reads as follows (Republic of South Africa, 2008):

Lay-bys

62. (1) If a supplier agrees to sell particular goods to a consumer, to accept payment for those goods in periodic instalments, and to hold those goods until the consumer has paid the full price for the goods—
(a) *each amount paid by the consumer to the supplier remains the property of the consumer*, and is subject to section 65, until the goods have been delivered to the consumer; and
(b) the particular *goods remain at the risk of the supplier until the goods have been delivered* to the consumer. (emphasis added)

According to Haupt (2023, p. 172), "[i]t is clear that even though the supplier has received cash, such cash does not belong to the supplier. Effectively, in law, it is holding the cash in trust and the cash is, therefore, not a receipt in the income tax sense".

Haupt (2023) goes on to explain that this legal principle was reconfirmed in ITC 24510, 2019, *SATC*. The case dealt with whether revenue from the sale of gift cards constitutes gross income. Even though the case involved the sale of gift cards, which are governed by section 63 of the CPA, the underlying principle is identical to that of section 62. It was determined that the payment received for the sale of gift cards was not gross income, because the seller did not receive the payment for its own benefit until the gift cards were redeemed. Binns-Ward (ITC 24510, 2019, *SATC*, pp. 16–17), in response to SARS's argument, stated as follows:

> [38] *The effect of the legislation is the creation of some form of statutory trust*, even if it might not conform in all respects with the trust forms recognised in our common law. *The taxpayer is placed* by virtue of the statute's prescripts *under a fiduciary duty to the bearer of the card to ensure that the funds are kept available until the prepayment is redeemed . . .*
>
> [43] The pertinent provisions of *the CPA create a legal construct* that results in *the taxpayer initially taking the gift cards receipts not for itself, but for the card bearers. The effect* of the resultant cognisable legal context as a factor bearing on the determination whether the receipts are taken for the taxpayer or for someone else, is, in principle, *no different from that of the fideicommissum* in Holley, *the usufruct* in Geldenhuys, *the cession of shares* in Smant, *or the memorandum and articles of association* in Cape Consumers. (emphasis added)

According to Haupt (2023, p. 166), "[k]eeping this in mind, until the goods are delivered, the amounts paid under the lay-by agreement do not constitute (beneficial) receipts of the supplier, even if the funds are intermingled with the supplier's other cash takings". Haupt's view is also supported by Louw (2022).

There are two issues that must be valuated when considering lay-by sales, namely the deposit received and the accrual of the outstanding debtors' amount.

4.3.1 Deposit Received

In Geldenhuys v CIR (1974) *(3) SA 256 (C); 14 SATC 419* it was held that the words "received by . . . the taxpayer" in the definition of gross income means 'received by the taxpayer on his own behalf for his own benefit'. Lay-by sales deposits are not gross income, because taxpayers do not receive them for their own benefit.

4.3.2 Accrual of the Outstanding Debtors' Amount

In Mooi v SIR, 1972 *(1) SA 674, 34 SATC 1* it was held that 'accrued to' means unconditionally entitled to the amount. As the goods are still in the seller's possession, the taxpayer is not unconditionally entitled to the outstanding lay-by amount. Therefore, the amount of outstanding debtors does not accrue to the taxpayer. Hence, if this interpretation is applied, lay-by agreements do not fall within the scope of section 24(1).

4.3.3 Example

The interpretation in this section is applied to the following simulated example, in order to display the tax effect on taxable income of a taxpayer:

Facts: Assume a taxpayer enters into lay-by sale agreements for R1 000000 before the end of the year and receives a 10% lay-by deposit. Further, assume that the taxpayer's gross profit is 20%. Table 2 demonstrates the tax impact on the taxpayer's taxable income.

The next section evaluates the tax implication of lay-by transactions by an international tax jurisdiction.

5 International Comparison

The Australian Tax Office issued a ruling (TR 95/7) titled "Income tax: lay-by sales" In accordance with the decision (Australian Tax Office, 1995: page 4):

> When are amounts received under a lay-by sale earned?
>
> 6. With one exception, *amounts received* (e.g., initial deposit and instalments) by the seller from the buyer while goods are held by the seller *under a lay-by sale are not earned by the seller, and therefore are not derived for the purposes of subsection 25(1) of the ITAA [Australian Income Tax Act]*, until the buyer pays the final instalment of the purchase price, and the goods are delivered to the buyer.

Table 2 Tax effect on taxable income

Tax position at year end in respect of lay-by agreements	R
Deemed accrual of sales proceeds, per section 24(1) of the Income Tax Act	0
Section 24 allowance	0
Purchases, section 11(a) deduction	0
Effect on taxable income of Company E	0

> 7. *The exception is any initial deposit which*, by the terms or conditions of the lay-by sale, *is a non-refundable deposit that a buyer is required to pay to a seller.* A non-refundable deposit is earned and is derived by the seller when it is due to be paid by the buyer. (emphasis added).

Consequently, it is evident that the Australian Tax Office does not tax amounts received or owed as a result of a lay-by sale under the Australian Income Tax Act. The only exception to this rule is for deposits that are non-refundable.

The following section provides a summary of the tax impact of the various interpretations.

6 Analysis

Table 3 provides an analysis of the tax impact of the application of the various tax implications on lay-by sales and section 24 of the Income Tax Act.

Based on the preceding analysis, it is clear that, depending on the interpretation chosen, the effect on taxable income is either nil or the income received is taxed at the gross profit percentage, i.e. taxed on a cash flow basis. Therefore, the interpretation has a substantial effect on taxpayers' taxable income.

Regarding the first interpretation, i.e. lay-by agreements fall within the scope of section 24(1) and relief is applied under sections 24(2A) and (2B), the interpretation provided by SARS in Interpretation Note 48 does not align with the National Treasury's interpretation and the amended law, and SARS has not retracted its interpretation. The deemed inclusion of the entire amount under section 24 for sales of trading stock can be interpreted as an anti-avoidance measure, but the same concerns do not apply to lay-by sales. When section 24 applies to the sale of trading stock on credit, the trading stock has already been received by the purchaser; the sale has a subjective clause. This is not comparable to lay-by agreements, as the buyer has not yet received the trading stock in lay-by agreements. Therefore, the same rules and policy concerns cannot apply.

The authors of the paper respectfully disagree with the second interpretation, i.e. deemed inclusion of the full amount in terms of the agreement in gross income

Table 3 Summary of the tax impact: Application of the various tax interpretations

Interpretation	Net effect on taxable income
1. The scope of section 24(1) includes lay-by agreements and the gross profit percentage must be applied as the relief under section 24(2).	Taxed on a cash flow basis, i.e. the amount received is taxed at the gross profit percentage
2. Lay-by agreements fall within the scope of section 24(1) and the full amount included in gross income must be applied as the relief under section 24(2).	R0
3. Lay-by agreements are not within the scope of section 24(1).	R0

and full relief applied equal to the deemed amount included, as section 24-(2B) requires that the relief be added back to the taxpayer's income in the following year of assessment, indicating that this is a temporary relief designed to tax the taxpayer on a cash flow basis, which is the effect of the section.

The authors of this paper support the third interpretation, i.e. that lay-by agreements do not fall within the scope of section 24(1) on the following basis of arguments presented:

1. The CPA expressly states that the consumer retains ownership of the amount received.
2. *ITC 24510* upheld and confirmed the legal principle contained in the CPA.
3. Authors in the field of taxation support this interpretation (Haupt, 2023; Louw, 2022).
4. The lay-by deposit is not received in accordance with the court case principle in *Geldenhuys v CIR*, and the amount outstanding is not accrued in accordance with the court case principle in *Mooi v SIR*.
5. This interpretation further holds support applied by an international tax jurisdiction i.e. the Australian Tax Office.

7 Conclusion

Section 24 applies when trading stock (i.e. movable or immovable property) is sold pursuant to an agreement, where ownership is transferred or transfer passes after the payment of a portion or the entire amount. The implication is that the entire amount must be included in gross income and the taxpayer is entitled to relief under the section, which has the effect of taxing cash flow-based receipts at the gross profit percentage, if at least 25% of the total amount is due and payable at least 12 months after conclusion of the agreement; however, this requirement does not apply to lay-by agreements.

This study utilised a qualitative, doctrinal research methodology and a conventional literature review as its research method. A limitation of doctrinal research is the availability and selection of appropriate and trustworthy sources (Dahiya, 2021). Similarly logical deduction is difficult. Even if the reviews are conducted by subject matter experts, they may be influenced by preconceived notions or conclusions (Demeyin, 2016). In this regard, the authors of the paper relied on trusted sources and conducted the literature review, analysed it by presenting tax interpretations, and drew conclusions based on the soundness of the arguments presented.

There have been legislative changes made to section 24 to expressly permit the section 24 relief to also apply to lay-by agreements, in these instances the requirement. Nonetheless, different interpretations have emerged. Does section 24(1) apply to lay-by agreements? This was the research question of this study.

The first interpretation is that lay-by sales fall within the scope of section 24 in accordance with SARS Interpretation Note 48, if the agreement is 12 months or more, and that the relief is therefore also available to the taxpayer. A SARS interpretation note is an official publication of SARS and as such a practice prevailing. Therefore, SARS is held by the contents of its interpretation notes, but taxpayers may use the interpretation notes as guidance, yet may also disagree and are not bound by it. This principle was supported in Marshall NO and Others v Commissioner for SARS (2018). The National Treasury takes an even wider interpretation than SARS and scopes into section 24 all lay-by agreement without regard to the period of the agreement. Accordingly, the amendment provides the taxpayer with the relief under section 24, despite the fact that the statutory requirement that at least 25% of the total amount be due and payable 12 months or more after termination of the agreement is not met, as this requirement is scoped out by the legislative amendment. If this interpretation is applied, the taxpayer will be taxed on a cash flow basis using a percentage of gross profit. The authors of this paper argue that with lay-by sales, the concerns associated with the sale of trading stock on credit where ownership is transferred after payment of a portion or the entire amount, i.e. suspensive sales, do not arise. In a lay-by sale, the seller retains ownership of the goods.

Under the second interpretation, lay-by agreements are also read into the scope of section 24(1) and the full amount is deemed to be included in gross income; however, the relief granted to the taxpayer is equal to the deemed amount included in gross income. How is the 100% deduction allowed by section 24(2A) justified under this interpretation as the allowance is based on the gross profit percentage in SARS Interpretation Note 48? Consequently, there is no tax consequence for the taxpayer.

The third interpretation holds that lay-by agreements do not fall within the scope of section 24(1) because the CPA expressly states that the amount received remains the consumer's property. This interpretation was also upheld and confirmed in *ITC 24510*. This interpretation also has the support of tax specialists in the industry. The lay-by deposit and amount outstanding are not received or accrued according to the principles established in *Geldenhuys v CIR* and *Mooi v SIR*, respectively. Further, this interpretation also holds the support of an international tax jurisdiction i.e. the Australian Tax Office. Therefore, based on these arguments, lay-by sales do not fall within the scope of section 24(1), and it is unnecessary to further explore the relief considerations.

Given the divergent interpretations and effects on taxable income ranging from being taxed on a cash flow basis at the gross profit percentage to R0, legislative clarification is required. The authors of this paper support the third interpretation, namely that lay-by agreements do not fall within the ambit of section 24(1), on the grounds argued and presented. It is therefore necessary to amend the law to eliminate this ambiguity and provide certainty for taxpayers.

This study also recommends additional research to conduct an international analysis in relation to the research issue. Future research should also examine the accounting treatment of lay-by agreements from an interdisciplinary perspective.

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