Synopsis
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A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

Through analysis of and comment on new laws and judicial decisions of interest, Synopsis *helps executives to identify developments and trends in tax law and revenue practice that may affect their business.*

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Double Taxation Agreements: Dutch decision on the 'Most-Favoured Nation' clause

The double taxation agreement between the Netherlands and South Africa ('the SA-Netherlands DTA') expressly provides for a minimum rate of 5 per cent on dividends paid by Dutch resident companies to South African residents (and vice versa). However, the dividends article in this DTA also includes a 'most favoured nation' clause ('the Dutch MFN clause').

For some time, the position taken by many taxpayers is that the Dutch most-favoured nation (MFN) clause, when read with at least two other double taxation agreements (DTAs), can effectively result in an exemption from Dutch or South African dividends tax (provided, of course, that the requirements as to beneficial ownership and shareholding in the company declaring the dividends are met).

When applying the dividends article in the SA-Netherlands DTA to dividends paid by South African companies to Dutch shareholders, it appears (to date, at least) that the South African Revenue Service (SARS) has not agreed with the above position and is of the view that the lowest rate possible in respect of dividends is 5 per cent.

The Dutch courts have, however, held that the exemption applies in respect of dividends paid by Dutch resident companies to their South African shareholders. In October 2015, a Dutch District Court held that dividends paid by a Dutch resident company to its South African shareholder were, as a result of the application of the MFN clause, exempt from Dutch dividends tax. On appeal by the Dutch revenue authorities against the decision of the District Court to the Court of Appeals (Hertogenbosch), the decision of the District Court was, as per a judgment of the Court of Appeals (Hertogenbosch) dated 17 August 2017 and published on 31 August 2017, confirmed by the Court of Appeals (Hertogenbosch).

These decisions of the Dutch courts have important implications for dividends paid by South African residents to their Dutch shareholders.

Operation of the Dutch MFN clause

In terms of paragraphs 1 and 2 of the dividends article (Article 10) of the SA-Netherlands DTA, the maximum rate of tax that may be imposed by the source state (i.e., the country of residence of the company paying the dividend) is 5 per cent where the recipient of the dividend is the beneficial owner of the dividend and holds at least 10 per cent of the capital of the company paying the dividend.

However, paragraph 10 of Article 10 (i.e., the MFN clause), provides for the automatic application of a lower rate of tax on dividends if South Africa and a 'third country' conclude a DTA which provides for a lower rate. If this is the case, the lower rate will apply for the purposes of the SA-Netherlands DTA.

The Dutch MFN clause was introduced into the SA-Netherlands DTA by way of a protocol that was concluded (simultaneously with the SA-Netherlands DTA itself) in 2008 ('the SA-Netherlands protocol'). This fact is important, since one of the other requirements for the MFN clause to apply is that the treaty with the 'third country' must have been concluded after the conclusion of the SA-Netherlands DTA and protocol (i.e., 2008).

South Africa currently has one DTA (with Kuwait) that expressly provides for a zero rate in respect of dividends. However, that DTA ('the SA-Kuwait DTA') was concluded in 2006. It is therefore clear that Kuwait cannot be the 'third country' contemplated in the Dutch MFN clause.

How then is the Dutch MFN clause triggered? The answer lies in the DTA between SA and Sweden ('the SA-Sweden DTA'), which also contains an MFN clause ('the Swedish MFN clause') in its article dealing with dividends.

As is the case with the Dutch MFN clause, in terms of the Swedish MFN clause, if South Africa has a DTA with any other country ('the other country') in terms of which a lower rate of dividends tax applies, the lower rate will apply for the purposes of the SA-Sweden DTA. The critical difference between the Swedish MFN clause and the Dutch MFN clause is that the Swedish MFN clause applies irrespective of when the treaty with the 'other country' was concluded. Consequently, the fact that the Kuwait DTA might have been concluded before the conclusion of the Swedish DTA is irrelevant in determining whether the lower rate applies for purposes of the SA-Sweden DTA.

Although the SA-Sweden DTA was concluded in 1995, the Swedish MFN clause was introduced into that DTA by way of a protocol that was signed in 2010 and that entered into force and became effective in 2012. The protocol ('the Swedish protocol'), which (as a result of the zero rate applicable in terms of the SA-Kuwait DTA) provides for a zero rate of tax on dividends paid by South African companies to Swedish residents, was concluded after the conclusion of the SA-Netherlands DTA.

Consequently, as was successfully argued by the taxpayer before the Dutch courts and as is the position of many South African companies that pay dividends to Dutch shareholders:

(1) South Africa has concluded a DTA (i.e., the Swedish protocol) with a third country (i.e., Sweden);

(2) that DTA was concluded after the conclusion of the SA-Netherlands DTA (and the protocol that introduced the Dutch MFN clause into the SA-Netherlands DTA); and

(3) the Swedish protocol provides for a rate of tax on dividends lower than the rate provided for in Article 2 of the SA-Netherlands DTA (i.e., it provides for a zero rate).

Accordingly, it is argued, it follows that all of the requirements for the Dutch MFN clause to be triggered are met, and that the zero rate therefore applies for the purposes of the SA-Netherlands DTA.

The approach of the Court of Appeals (Hertogenbosch) in the Netherlands

As stated above, the Court of Appeals (Hertogenbosch) was faced with an appeal from a Dutch District Court. The appeal (brought by the Dutch revenue authorities) was against the decision of the District Court to allow the taxpayer a refund of Dutch dividend withholding tax. The taxpayer, a resident of South Africa and the holder of all of the shares in a Dutch-resident company, sought the refund based on the above interpretation of the MFN clause.

Quite correctly, there was no dispute between the parties that the SA-Netherlands protocol and the Swedish protocol both constitute 'conventions for the avoidance of double taxation' for the purposes of the MFN clause. Notably, the parties also agreed that the provisions of the Vienna Convention of 23 May 1969 ('the Vienna Convention'), particularly Articles 31 and 32 thereof, are relevant in the interpretation of the MFN clause.

Articles 31 and 32 of the Vienna Convention state the following:

'Article 31

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.'

Ordinary, grammatical meaning

The Court held that, under the ordinary, grammatical meaning of the MFN clause, the zero rate of dividends tax indeed applied to participating dividends paid by both Dutch resident companies to South African residents, and South African resident companies to Dutch residents. Having so held, the Court proceeded to enquire as to whether, in light of the provisions of Articles 31 and 32 of the Vienna Convention, the object, purpose and/or context of the MFN clause would require a different conclusion from the conclusion that the zero rate applies.

Object, purpose and/or context

The context of a treaty would include, for example, a joint statement drawn up by the Contracting States in the form of a preamble, explanation, annexes or other agreements that are known to parties relying upon the treaty. In the opinion of the Court, there were no documents submitted by the Dutch revenue authorities that were of such a nature. Moreover, the Court held that no statements had been issued by the individual tax authorities of the Netherlands and South Africa that could be regarded as evidence that there is a 'subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation'. The Court held that, to the extent that there were any such statements, all such statements had been made after the dividend was paid and that there was no evidence that any such statements were known by the taxpayer (or the company declaring the dividend) at the time the dividend was paid.

As regards arguments by the Dutch revenue authorities to the effect that it could never have been intended that a zero rate would apply to dividends paid between South Africa and the Netherlands (and that therefore allowing a zero rate of tax on dividends would frustrate the object and purpose of the MFN), the Court held that this argument could not be supported. In this regard, the Court drew attention to certain Explanatory Notes to the SA-Netherlands protocol, which state the following:

'Article 10, tenth paragraph, contains a so-called most favoured clause. This clause implies that if South Africa, after the signature of the treaty, agrees with another country a lower rate of tax than 5%, an exemption or a lower taxable basis, the more favourable provisions will automatically (without further negotiation) be applicable to the relationship with the Netherlands from the date of entry into force of the treaty with that other country.'

Accordingly, the Court held that both South Africa and the Netherlands were clearly, at the time of negotiating the MFN clause, fully aware that there was a possibility that a rate of tax on participating dividends at source of less than 5 per cent could apply to a resident of the Netherlands or South Africa at any point in time.

The Court also noted that, from the text of the Dutch Standard Convention on Participating Dividends (produced at the hearing) it appears that, in treaty negotiations, the Netherlands generally pursues an exemption from tax at source on participating dividends.

On the basis of the above, the Court concluded that the object, purpose and/or context of the MFN clause did not require a different conclusion from the conclusion that a zero rate applied to the dividend.

'In good faith'

Two arguments were raised by the Dutch revenue authorities to the effect that the interpretation sought by the taxpayer would amount to giving an interpretation of the MFN clause that is not in good faith, and therefore contrary to the principles enshrined in the Vienna Convention.

Firstly, it was argued by the Dutch revenue authorities that the outcome of the negotiations between the Netherlands and South Africa in 2008 (and thereby the good faith between South Africa and the Netherlands) would be undermined by an interpretation of the MFN clause that gave the MFN clause the scope sought by the taxpayer. The Court acknowledged that Article 31 of the Vienna Convention requires that a treaty be interpreted in good faith. In the Court's view, however, this merely meant that a clause in a treaty that confers a right to tax on one of the Contracting States cannot be eliminated or avoided by, for example, a reclassification or a unilateral change in the national law of the other Contracting State. In the present case, the Court was of the view that its judgment would not result in an interpretation of the MFN clause that is in violation of good faith.

Secondly, it was asserted by the Dutch revenue authorities that it would not be in good faith between the Contracting States to allow, through the MFN clause, indirect access to treaty benefits agreed to by South Africa with third parties and available to South Africa well before the conclusion of the SA-Netherlands DTA. The Court dismissed this argument, stating that it could not be supported based on all of the conclusions already reached by it in its judgment.

The takeaway

In both of the decisions in the Netherlands (in the District Court and in the Court of Appeals (Hertogenbosch)) the Dutch courts found resoundingly in favour of the taxpayer. It is possible that the Dutch authorities could appeal the decision of the Court of Appeals (Hertogenbosch) to the Dutch Supreme Court, which Court could take a different view.

The impact of the decision of the Court of Appeals (Hertogenbosch) on SARS's approach to the interpretation and application of the Dutch MFN clause will presumably become apparent in the near future.

As regards the impact of decisions of the Dutch courts on the approach of our courts in South Africa, South African courts are not bound by decisions of Dutch courts, nor is South Africa bound by the Vienna Convention in the interpretation of its treaties with other countries. However, we are of the view that the decisions of the Dutch courts would be of persuasive authority and that, applying accepted principles of interpretation, it would be extremely difficult for our courts to depart from the interpretations given by the Dutch courts and to ignore the interpretation and application given to the Vienna Convention by the Dutch Courts.

Can the Promotion of Administrative Justice Act (PAJA) overrule the Tax Administration Act?

The Tax Administration Act (TAA) confers considerable powers on SARS to enforce the collection of taxes. It is frequently questioned whether, and to what extent, the intervention of a Court might be sought in order to limit the exercise of these powers. In a recent decision, the Pretoria High Court undertook such an intervention.

One of the primary concerns of taxpayers is the operation of the 'pay now, argue later' principle. The operation of the principle compels taxpayers to make payment of amounts assessed pending objection or appeal, notwithstanding that the assessment may be disputed. Where a taxpayer does not make payment, SARS is given additional powers to recover the taxes due. One such power is a right to set off the amount of such taxes against amounts that are owed by SARS to the taxpayer by way of refund.

The facts

In the matter of *A Way to Explore v C:SARS* [2017] ZAGPPHC 541, the company A Way to Explore ('the Applicant') had submitted VAT returns claiming a refund of input tax, which arose primarily by reason of the fact that its main business was the provision of services to non-resident persons while such persons were physically outside the Republic. As a result, the supply of such services was a zero-rated supply, whereas VAT was incurred in respect of goods and services procured by the Applicant for the purpose of providing such services.

SARS had requested information to enable it to verify the returns submitted. The Applicant, through its managing director, submitted information which it understood to represent the information requested in respect of input tax and output tax. The information was incomplete in the sense that the information relating to output tax that was supplied contained details only of standard-rated supplies. No information was provided in respect of zero-rated supplies.

SARS made repeated additional requests for the information to be provided, but these were ignored by the company, which considered that it had already made full disclosure of the information requested. The Applicant's accountant made a telephonic inquiry to SARS concerning the notices and was informed that the matter was in the hands of the auditors and that the Applicant should await notification from the auditors.

Two months after this discussion, SARS issued additional assessments in which the supplies that had been classified as zero-rated in the VAT return were assessed to VAT at the standard rate. The stated reason for such assessment was that '*the burden of proof was not discharged for zero rating the services*'.

The Applicant did not request reasons for the assessment upon receipt of the notification. Its explanation was that the assessment had apparently been issued in error, as all of the previous VAT returns had been assessed on the basis that similar supplies were subject to tax at the zero rate.

There followed attempts to note an objection to the assessment. The first attempt was by way of a letter filed by the Applicant's accountant, which was ruled invalid because it was not made in the prescribed form. A second attempt was made after expiration of the time for filing a notice of objection. The reasons for the delay were considered insufficient to warrant condonation of the late filing of the objection, leading to the objection being declared invalid. However, the Applicant was given time to file an additional notice of objection to remedy the defect.

The Applicant then filed an additional notice of objection and a request for condonation of late filing of the objection. In this instance, it provided proof of the zero-rated supplies by attaching the relevant invoices to its notice of objection.

At a date not specified in the judgment, but subsequent to the filing of the additional notice of objection, SARS enforced recovery of the amounts that had been assessed by way of the additional assessments by setting them off against refunds that were payable to the Applicant.

The Applicant therefore sought relief under the Promotion of Administrative Justice Act (PAJA) on the basis that it had been subjected to unreasonable administrative action.

The arguments

The Applicant alleged that SARS had not observed the procedural requirements relating to the audit that it had conducted before issuing the assessments. It therefore sought to have the additional assessments that were raised following the audit set aside.

The thrust of the argument was that, at the conclusion of an audit, and in conformity with section 42 of the TAA, SARS must notify the Applicant of its findings and provide the Applicant a period of 21 days within which to respond to the findings. This, it alleged, had not happened. Therefore, it urged, the assessments should be declared invalid.

SARS argued that it had repeatedly sought the required information from the Applicant and had, before issuing the assessments, issued a final notice to the Applicant of its failure to respond to requests for information. Only thereafter was the audit concluded and assessments raised.

The decision

Two aspects of the decision are notable.

The first is that the Applicant had filed an objection to the assessments, which had not yet been adjudicated. It is a requirement that applications for a review of administrative decisions may be entertained only once all internal remedies have been exhausted (PAJA section 7(2)(*a*)). The Court was not in a position to grant a request to set aside assessments in these circumstances.

The second was that the decision to effect a set-off of a liability to tax against a refund due to the Applicant had been taken without notification to the Applicant. In this regard, Khumalo J stated at paragraph 40:

'... I find it iniquitous and excessive that whilst the process of objection is still pending, the Respondent proceeded to effect a set-off payment, especially under the circumstances where the Applicant was not alerted or afforded an opportunity to make submissions to the Respondent's intention to implement a corrective payment after the assessment. It would therefore be just and curb any prejudice on the Applicant if the effect of the decision to set-off is suspended pending the outcome of the process of objection and for the Applicant to be afforded an opportunity to comment or make submissions on the set-off.'

The set-off was suspended and the Applicant was given time to make submissions to SARS concerning the decision to effect set-off.

The takeaway

There is no evidence in the judgment that Khumalo J considered the application of section 191 of the TAA. This section provides:

'If a taxpayer has an outstanding tax debt, an amount that is refundable under section 190, including interest thereon under section 188 (3) (*a*), must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, to the extent of the amount outstanding...'.

Section 164 of the TAA entitles a taxpayer to request suspension of payment pending objection of appeal and requires that the taxpayer request such suspension in writing. In the event that a request for suspension is granted, section 191(2) provides that the right of set-off may not be exercised.

The decision to suspend the set-off is difficult to justify, where the Applicant appears not to have requested a suspension in the manner provided in the TAA. If suspension of payment is an internal remedy, should the Court not have dismissed the issue on the ground that the Applicant had not resorted to a request for suspension of payment and consequently had not exhausted all internal remedies?

In passing, a recent post on an internet site (Moneyweb, 18 September 2017), noted that SARS has been approached by tax practitioners concerning its precipitate action in attaching funds in taxpayers' bank accounts to enforce payment of taxes after applications for suspension of payment had been lodged with SARS but had not yet been finally adjudicated. A SARS representative reportedly stated that all such cases will be investigated.

It is recommended that persons who dispute assessments and have substantial prospects of success should ensure that they seek suspension of payment and prosecute objections without undue delay. This represents the most reliable basis for ensuring that precipitate action by SARS to collect payment can be contested.

SARS Watch 26 August 2017 to 25 September 2017

Legislation

20 Sep	Draft rule amendments in relation to trade agreements; and for the Generalized System of Preferences Norway - The Registered Exporter System	Comments are due to SARS by Wednesday, 4 October 2017.
15 Sep	Draft amendment in Part 1 of Schedule No. 1 to 2018 Economic Partnership Agreement phase-downs as well as various technical amendments with effect from 1 January 2018	Comments are due to SARS by Friday, 13 October 2017.
14 Sep	Schedule 1 Part 1 – Formula for sugar	Notice R.1000 published in Government Gazette No.41118 with an implementation date of 15 September 2017.
15 Sep	2017 TLAB & TALAB Draft Response Documents published	Presentation and Draft Response Documents presented to the Standing Committee on Finance (SCOF) by National Treasury on 14 September 2017 after the public workshops held on 4 and 5 September 2017.
11 Sep	Health Promotion Levy (Rates and Monetary Amounts and Amendment of Revenue Laws Bill): discussion	On Tuesday, 5 September 2017 National Treasury, together with the Beverage Association of South Africa, the Congress of South African Trade Unions, South African Sugar Association and the Healthy Living Alliance, gave an update on ongoing engagements between government and the National Economic Development and Labour Council on the Health Promotion Levy.
8 Sep	Amendment of Schedule No. 1 (NO. 1/1/1583)	Notice R984 published in Government Gazette No. 41101 with an implementation date of 8 September 2017.
6 Sep	Draft list of jurisdictions contemplated in Article 2(2)(ii)(b) of the regulations specifying the Country-by-Country Reporting Standard for Multinational Enterprises	Comments are due on Friday, 6 October 2017.
1 Sep	DTA with Cameroon	Published in Government Gazette No. 41082; date of entry into force is 13 July 2017.
1 Sep	Amendment of Schedule No. 3 (No. 3/1/724)	Notice R952 published in Government Gazette No. 41083 with an implementation date of 1 September 2017.

Legislation (cont.)

1 Sep	Amendment of Schedule No. 1 (No. 1/1/1582)	Notice R951 published in Government Gazette No. 41083 with an implementation date of 1 September 2017.
1 Sep	Amendment of Schedule No. 1 (No. 1/1/1580)	Notice R950 published in Government Gazette No. 41083 with an implementation date of 1 September 2017.
1 Sep	Amendment of Schedule No. 1 (No. 1/1/1578),	Notice R949 published in Government Gazette No. 41083 with a retrospective effect from 1 April 2016.
1 Sep	Amendment of Schedule No. 1 (No. 1/1/1581),	Notice R948 published in Government Gazette No. 41083 with an implementation date of 1 September 2017.
1 Sep	Tax Administration Laws Amendment Draft Bill & Taxation Laws Amendment Draft Bill: public hearings	Presentations to the SCOF by taxpayers and their representatives in respect of comments made on the draft Bills at the public hearings held in Parliament on 29 Aug 2017.

Rulings

12 Sep 17	BGR43 – Deduction of input in respect of second hand gold	This BGR sets out the circumstances under which the supply of gold is regarded as falling within the exclusions envisaged in paragraph (ii) of the definition of 'second-hand goods' in section 1(1).
12 Sep 17	BPR 278 – Application of section 24JB to equity-linked notes	This ruling determines the income tax consequences in respect of the issue of equity-linked notes by a covered person.
6 Sep 17	BCR 058 – Consequences for beneficiaries on the unwinding of an employee share incentive scheme	This ruling determines the income tax consequences for beneficiaries on the unwinding of an employee share incentive scheme.
6 Sep 17	BPR 277 – Consequences for an employee share trust on the unwinding of an employee share incentive scheme	This ruling determines the tax consequences for an employee share trust resulting from the vesting of 'restricted equity instruments' held by its beneficiaries, and whether the trust is liable to withhold PAYE in respect of the vesting of the section 8C gain in the beneficiaries.

Case law

15 Sep	BCE Food Service Equipment (Pty) Limited v Commissioner for the South African Revenue Service (27898/2015) [2017] ZAGPJHC 243	This is a Customs and Excise case where the review proceedings are launched out of time on a decision by the Commissioner.
11 Sep	SARS v HR and Associates	This case originated in 2003, when the applicant (SARS) commenced an investigation of the VAT and PAYE affairs of the respondent, and of HR Computek (Pty) Ltd. Pursuant to the investigation, and during November 2003 to May 2004, SARS seized money from the bank accounts of the respondent, from HRC, as well as from Annexus CC during the same period.
11 Sep	CSARS v Pro-Wizz group	The applicant was seeking an order converting a liquidation order into business rescue proceedings.
6 Sep	A way to Explore v CSARS	The applicant seeks in terms of section 6 of the Promotion of Administrative Justice Act, to set aside a VAT assessment raised by SARS, directing SARS to pay a refund due to it together with interest payable, or alternatively set aside the Notice of Invalidity that SARS issued to the applicant.

Guides and forms

14 Sep	Guide for Codes Applicable to Employees' Tax Certificates 2018	The purpose of this guide is to explain the relevant source codes which must be used by the employer when issuing an Employees' Income Tax certificate to an employee.
12 Sep	Draft Guide to the Employment Tax Incentive (Issue 2)	Comments must be submitted by Tuesday, 31 October 2017.
8 Sep	Notice – Average Exchange rates Table A& B Dec 2003- Aug 2017	The exchange rates have been updated up to and including 31 August 2017.
8 Sep	How to activate, submit and declare IT3 via eFiling	This guide describes the process of activating, submitting and declaring the third party data IT3 (b, c, e and s) via eFiling.
8 Sep	Guide for Validation Rules Applicable to Reconciliation Declarations 2018	The purpose of this guide is to assist employers in understanding the validation rules for completion of Employees' Income Tax certificates for 2018.
8 Sep	Guide for Completion and Submission of Employees Tax Certificates 2018	This guide prescribes the rules for issuing and submitting Employees' Income Tax certificates.

Organisation for Economic Cooperation and Development (OECD)

22 Sep	OECD invites public input on the tax challenges of digitalisation	Comments should be sent by no later than Friday, 13 October 2017 to TFDE@oecd.org in Word format.
20 Sep	OECD releases IT-tools to support exchange of tax information policies	The OECD has released updated new IT-tools and guidance to support the technical implementation of the exchange of tax information under the Common Reporting Standard, on Country-by-Country Reporting and in relation to tax rulings.
18 Sep	OECD paper on legal tax liability, legal remittance responsibility and tax incidence	This paper examines the role of businesses in the tax system.
6 Sep	OECD releases further guidance on Country-by-Country(CbC) reporting (BEPS Action 13)	Existing guidance on the implementation of CbC Reporting has been updated with the following issues: 1) the definition of revenues 2) the treatment of multinational enterprises (MNE) groups with a short accounting period 3) the treatment of the amount of income tax accrued and income tax paid.

Other publications

22 Sep	Tax Alert – New DTA with Cameroon	Generally, the treaty closely follows the OECD's Model Tax Convention.
14 Sep	Tax Alert –– SARS expects the secondary mechanism for filing Country-by-Country Reports (CbCRs) to be exercised by December 2017	In terms of the CbCR Regulations published by SARS in December 2016, an SA-resident company that is a member, but not the Ultimate Parent Entity, of a Multinational Enterprise Group, may be required to file a CbCR with the SARS. This so-called 'secondary mechanism' will arise if the Parent's tax jurisdiction does not have a Qualifying Competent Authority Agreement in place by the time the CbC Report must be filed.
6 Sep	Legal Alert – Competition Commission Dawn Raids	Dawn raids are increasingly being used by the Competition Commission as a tool to gather evidence of anti-competitive conduct by businesses in South Africa. In this Alert, we highlight some important things to know about dawn raids in South Africa.
4 Sep	Tax Alert – Dividends Tax and Double Taxation Agreements: Dutch Most Favoured Nation Clause	The position taken by many taxpayers is that the Dutch MFN clause may result in an exemption from Dutch or South African dividends tax. The Dutch Courts recently confirmed that a zero rate applies in respect of participating dividends.
29 Aug	Tax Alert – Anti-avoidance rules for trusts: Refinement of section 7C	On 19 July 2017, National Treasury released the Draft Taxation Laws Amendment Bill 2017 for public comment. The Draft Bill proposes two sets of amendments relating to section 7C: one set addresses certain avoidance schemes that have been identified by government, and the other provides for an exclusion from the application of section 7C in the case of certain employee share schemes.