The background of the cover is a high-angle photograph of a modern building's exterior. The building features a series of parallel, light-colored concrete or stone steps that lead up to a glass-fronted entrance. Two people, a man and a woman, are walking on the steps, engaged in conversation. The man is wearing a blue shirt and dark trousers, and the woman is wearing a blue shirt and light-colored trousers. The overall scene is bright and clean, suggesting a professional and modern environment.

Synopsis

Tax today

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A monthly journal published by PwC South Africa providing informed commentary on current developments in the tax arena, both locally and internationally. Through analysis and comment on new law and judicial decisions of interest, it assists business executives to identify developments and trends in tax law and revenue practice that might impact their business.

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Remuneration structuring – SCA endorses taxpayer scheme

Ever since the Margo Commission recommended that there should be a uniform system for the determination of the value of benefits of employment, and the enactment of the Seventh Schedule to the Income Tax Act, there has been a tension between SARS and employers over the legitimacy of structured remuneration packages. There are few reported cases of instances in which employers have resisted a challenge by SARS. In the recent judgment of Cachalia JA, in the matter of Anglo Platinum Management Services (Pty) Ltd v C:SARS [2015] ZASCA 180 (30 November 2015), the employer's remuneration practices were found to be legitimate.

The matter at issue was succinctly summarised in the opening paragraph of the judgment:

'This appeal involves a salary sacrifice scheme whereby the appellant, Anglo Platinum Management Services (Pty) Ltd (the taxpayer), gave its employees an opportunity to participate in what it believed, and still believes, was a legitimate arrangement. The scheme involved its employees sacrificing or foregoing a portion of their cash remuneration "packages" in return for their use of company-owned motor vehicles.'

Legal principles

The determination of 'gross income', in so far as it relates to remuneration, is found in two paragraphs of the definition of that term in section 1 of the Income Tax Act. These are paragraphs (c) and (i). The inter-relationship of these provisions is explained in paragraph [4] of the judgment:

'For present purposes the effect of these provisions is that where any amount is received or accrued for services rendered by virtue of any employment, it is included in the employee's gross income under para (c) and is

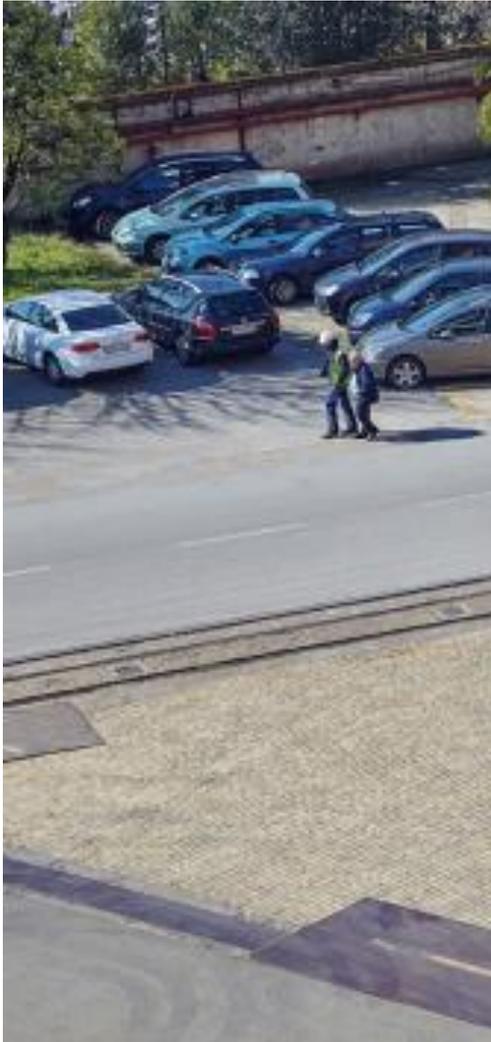
thus fully taxable. However, the proviso in para (c) precludes any benefit, in respect of which the provisions of para (i) apply, from being dealt with as having been received or accrued for services in respect of any employment under para (c). Paragraph (i) of the definition of 'gross income' includes the 'cash equivalent' as determined under the Seventh Schedule, of the value of any benefit or advantage – henceforth referred to simply as a benefit – granted to the employee as part of his employment.'

The facts

Annually, employees of the taxpayer concluded an agreement with the taxpayer on the manner in which their remuneration for the forthcoming year would be structured. They were offered elections in terms of which they could forego the receipt of an amount of cash and, in lieu of such cash, receive a benefit in kind. The elections were recorded in a document signed by the employees. One of the benefits that could be elected was the right of use of a company-owned motor vehicle, in terms of the company car scheme.

The taxpayer had established the scheme on the basis that the employee elected to receive the benefit of the use of a motor vehicle in exchange for foregoing the right to be paid a certain amount in cash which was not to exceed the determined cost of acquiring and operating the vehicle. A motor vehicle was purchased by the employer and capitalised in its financial records. For purposes of administering traffic fines and licensing, the vehicle was registered in the name of the employee.

In order to determine the amount that the employee would forego, a notional calculation was made on the assumption that the vehicle had been purchased and financed by a loan at the market rate of interest. The notional financing transaction was recorded in a memorandum account, which was debited with the cost of the vehicle and notional interest, and credited with the salary foregone. In the event that the balance in the memorandum account should reduce to zero, the employee would have the right to acquire the vehicle for no consideration.



In addition, a further notional amount was determined in respect of the operating costs of the vehicle, which was also foregone by the employee. This amount was credited in the memorandum account, while the actual cost incurred by the employer in respect of fuel, maintenance, insurance and licensing were debited.

Quarterly, a financial adjustment was made to the extent that the operating costs debited to the memorandum account were greater or less than the notional credits for operating costs. If the notional credit was less than the actual cost, the amount was recovered from the employee. Where the notional credit exceeded the actual cost, the amount was repayable to the employee and subjected to PAYE. The employee had the right to elect to defer the payment until the end of the financial year, at which time any remaining credit balance had to be paid and taxed.

By this means, the salary foregone in respect of the operating cost of the vehicle was “trued up” to an amount equal to the actual cost incurred by the employer.

The Tax Court decision

The Tax Court decision is reported on the SARS website (Case No. 12984, 5 September 2014). Evidence for the taxpayer had been given by the person who had devised and administered the motor vehicle scheme. It is evident that the witness had been exposed to lengthy and rigorous cross-examination by counsel for SARS. Mavundla J found as follows in paragraph [18] of his judgment:

‘I must hasten to point out that X left a poor impression in my mind. I find that he does not measure to acquit the onus resting on the appellant on the balance of probabilities, that the respondent was wrong in its assessment and that the appeal must succeed.’

In essence, Mavundla J found that the evidence for the taxpayer could not be relied upon. He referred to the notional (memorandum) account as ‘fictitious’ and ruled that:

‘The amounts restructured or allocated as company car accrued to the employees and [are] taxable in terms of the provisions of paragraph (c) of “gross income” as defined in section 1 read with paragraph 1 of the Fourth Schedule to the Act—definition of ‘remuneration’, subparagraph (a).’

The taxpayer’s arguments for remission of interest and penalties imposed by SARS

were rejected, and the taxpayer was ordered to pay the Commissioner’s costs of opposing the appeal.

The SCA’s approach

Cachalia JA described the approach taken by the Tax Court in paragraph [7] of the judgment:

‘The Tax Court, in which Mavundla J presided, seems to have misunderstood the taxpayer’s case to be that because it had devised a legitimate salary sacrifice scheme, which did not attract liability for income tax under para (c) of the definition of ‘gross income’, no tax liability on its part arose at all. It thus proceeded to adjudicate the dispute without considering whether the relevant paragraphs of the Seventh Schedule, para (i) of the definition of ‘gross income’, proviso (i) to para (c) and para (b) of the definition of ‘remuneration’ in the Fourth Schedule, applied. And, having overlooked these provisions, it seems to have approached the taxpayer’s evidence on the unarticulated premise that the scheme was a sham, disguised to conceal its true nature. It consequently dismissed the taxpayer’s appeal against the assessment and ordered the taxpayer to pay the costs of the appeal, implicitly finding that its grounds of appeal had been unreasonable.’



In considering who had the obligation to pay the insurance premiums, Cachalia JA found that the taxpayer's witness had stood firm on his assertion that the taxpayer was obliged to pay the insurance premiums and found that this was supported in the documentary evidence and in the conduct of the parties to the agreements.

The judgment of Cachalia JA, in paragraph [10], set out the approach that should be adopted when testing the evidence of witnesses:

'It is a question of fact in each case whether a salary sacrifice agreement was achieved. In this regard a court is not concerned with the subjective belief of the parties to the agreement – no matter how genuine this belief may be – but with whether the facts, objectively viewed, establish that this result was attained. It must thus consider the oral and documentary evidence to assess the probabilities. The taxpayer bears the burden of proving that the Commissioner's decision to disallow its objection to the assessments was wrong. And where, as in this case, the taxpayer's is the only oral evidence, it must be considered carefully in the light of the available documentary evidence before a court is able to conclude whether or not the taxpayer has discharged the onus.' (Footnotes omitted)

One of SARS' arguments in the Tax Court had been that the employer was extending a credit facility to the employees. SARS did not persist with this argument before the SCA. Its argument was succinctly

summarised in paragraph [16] of the judgment:

'It is the manner in which the scheme was implemented: in particular the entitlement of the employees to claim an amount of credit in the notional account ... and their contractual obligation to pay insurance premiums on the motor vehicles that lie at the heart of this dispute. The Commissioner contends that the entitlement to this credit and the obligation to pay the premiums are inconsistent with a genuine salary sacrifice scheme as, in substance, the employees retain their power over their salary packages.'

SARS' counsel contended that the notional account was not fictitious but that it was in fact a memorandum of the amount owing by employees to the taxpayer for the purchase and operation of the employee's vehicles. He urged further that the facts that the cost of insurance was debited in the memorandum account and that the employee had the right to recover amounts quarterly, where the actual operating costs were less than the sacrificed credit, were inconsistent with a 'genuine' salary sacrifice.

After a thorough examination of the evidence, Cachalia JA found the amounts paid in or paid out quarterly represented 'insignificant and unanticipated amounts' which did not detract from the efficacy of the scheme. This was tested in paragraph [30] of the judgment:

'One may test this by asking what the Commissioner's response would have been if the scheme was able to achieve a perfect symmetry between the cost of the benefit and the amount the employee gave up, which is what the scheme in substance sought to achieve? The answer is evident; he would have accepted that this was a genuine salary sacrifice. I see no reason why on the facts of this case we should come to a different conclusion.'

The premise on which SARS had based its case – that the employee, through the right to recover any excess credit in the memorandum account, had a vested right to receive the so-called 'sacrifice amount' – was found to be false. As was explained in paragraph [31]:

'So, properly understood, the credit to which an employee became entitled when he elected

to participate in the scheme was not unconditional. It was a contingent right, exercisable at a later date and on the occurrence of an uncertain future event: a quarterly credit balance in the notional account. If the event did not materialise there was no right to be exercised and until it was exercised there could not have been an accrual of this income as contemplated in para (c) of the definition of "gross income".'

Similarly, in considering who had the obligation to pay the insurance premiums, Cachalia JA found that the taxpayer's witness had stood firm on his assertion that the taxpayer was obliged to pay the insurance premiums and found that this was supported in the documentary evidence and in the conduct of the parties to the agreements. This evidence could not be refuted by SARS, which was 'a stranger to these agreements'.



The conclusion at which the SCA arrived was that the scheme was, in fact, genuine, as Cachalia JA stated at paragraph [35]:

To conclude: the parties sought to fund a taxable benefit from a salary sacrifice. They were entitled to do so in accordance with the relevant provisions of the Act. And they achieved this through the scheme they agreed on and implemented. The following features of the scheme indicate that it was properly designed and implemented: The taxpayer purchased the motor vehicles, owned and claimed depreciation on them. The recovery of their total cost, including their running expenses was obtained from the salary sacrifice, not from the employees. In return for the amount they had foregone the employees received a taxable benefit; i.e., the use of the vehicles.'

The appeal was therefore allowed, with costs, and the decision in the Tax Court was set aside.

Comment

Salary sacrifice is permissible

This decision puts beyond doubt that our law recognises that it is possible by contract to structure employee remuneration packages on a 'salary sacrifice' basis. Such arrangements should be reflected in relevant documentary evidence and given effect in the conduct of the parties. It clearly distinguishes the circumstances in which the application of paragraphs (c) and (i) of the definition of 'gross income' are applicable.

It is interesting to note also that, when forced to defend its stance in the SCA, SARS did not persist in some of its well-worn arguments for asserting that a salary sacrifice is not genuine. Some of these had been urged, and apparently found favour, in the Tax Court. They included the following assertions:

- That a 'sacrifice' is not a genuine diminution in the remuneration package; and
- The fact that pension contributions were not adjusted by reference to the cash element of the remuneration indicated that there was no sacrifice of salary.

The issues before the Tax Court were wider than the issue dealt with in the SCA judgment

An examination of the judgment in the Tax Court reveals that original assessment related to the taxpayer's motor vehicle scheme, which gave employees the option of a company car benefit or a travel allowance. It is clear from the Tax Court judgment that the assessment raised by SARS related to PAYE allegedly not paid in respect of both the car benefit and travel allowances.

Although the travel allowance element of the assessment was not referred to expressly in the judgment of the SCA, the fact that the SCA allowed the appeal and set aside the PAYE assessment in its entirety leads one to conclude that the travel allowance issue must have been conceded by SARS.



Is tax advice given by an accountant covered by legal professional privilege?

Does SARS have the power, in investigating a taxpayer's affairs or in the context of a disputed tax assessment, to demand that it be allowed to scrutinise documents generated by his professional advisers that record tax advice that was sought and given?

This depends on whether those documents are *privileged* in the legal sense of the word, for neither SARS, nor a court, nor any other person, has the right (unless a court order determines otherwise) to be given sight of another person's documents that are covered by legal professional privilege.

Legal professional privilege is thus the basis on which a person can lawfully refuse to disclose, to any other party or to a court, legal advice that had been sought and given to him in confidence by a lawyer, and such privilege provides a person with the assurance that he can make full and frank disclosure to his lawyer of information or documents that could be damaging if they were to come to the knowledge of outsiders.

It is difficult to imagine that any legal system could function without some rule of this kind. As Binns-Ward J said in *South African Airways v BDFM Publishers (Pty) Ltd* [2015] ZAGPJHC 293 at [47] –

'The right of a person to a guarantee of confidentiality over communications with that person's legal advisor is an indispensable

attribute of the right to counsel and the adversary litigation system.'

The law recognises several categories of privilege, of which the most significant in this context are *legal professional privilege*, which is sub-divided into *litigation privilege* (which, as the name suggests, is confined to advice given and documents generated in the course, or in anticipation, of litigation), and *legal advice privilege*, which applies to legal advice in general.

Legal advice privilege

As Binns-Ward J noted in *A Company v Commissioner for the South African Revenue Services* [2014] ZAWCHC 33 (footnotes omitted), there is –

'a general rule of our common law which states that communications between a legal advisor and his or her client are protected from disclosure, provided that certain requirements are met. The requirements are:

- i. *the legal advisor must have been acting in a professional capacity at the time;*
- ii. *the advisor must have been consulted in confidence;*

- iii. *the communication must have been made for the purpose of obtaining legal advice;*
- iv. *the advice must not facilitate the commission of a crime or fraud; and*
- v. *the privilege must be claimed.'*

Advice on matters of tax falls within the scope of *legal advice*, because tax liability is imposed by law. Issues such as whether an amount is subject to income tax or capital gains tax, what expenditure is tax deductible, and whether a tax minimisation scheme is permissible depend on the legal interpretation of the relevant taxing statute.

What is covered by the expression 'legal advice'

The courts have given a wide interpretation to the expression *legal advice* in the context of legal advice privilege. In *Balabel v Air India* [1988] Ch 317, the House of Lords held that –

'Legal advice is not confined to telling the client the law: it must include advice as to what should prudently and sensibly be done in the relevant legal context.'



Disputes between taxing authorities such as SARS and taxpayers often test the cutting edge of the law relating to legal professional privilege.

Thus, for example, advising a client on how to structure his affairs in the most tax-effective way is *legal advice* that will be covered by legal advice privilege if the other requirements for privilege, noted above, are present.

Legal professional privilege in the context of disputes between SARS and taxpayers

Disputes between taxing authorities such as SARS and taxpayers often test the cutting edge of the law relating to legal professional privilege.

For example, SARS would dearly love to be able to compel a taxpayer to disclose the documents recording the planning of a tax avoidance scheme by the taxpayer's advisers or the planning behind the tax structure of a proposed business deal.

Such documents might, for example, contain admissions of an incriminating sole or main purpose of tax avoidance that would otherwise be difficult or impossible for SARS to prove, and could be the basis for SARS to invoke the statutory general anti-avoidance rule or to strike down the arrangement as a sham or disguised transaction.

SARS's desperation to penetrate the veil of secrecy behind which legal advice on tax issues is sought and given appears from the decision of the Cape Town High Court in *A Company v CSARS* [2014] ZAWCHC 33, 2014 (4) SA 549 (WCC), in which SARS sought to compel the taxpayer to produce for scrutiny a 'fee note' (that is to say, an invoice for professional fees) that had been rendered by the taxpayer's attorneys.

SARS was of the view (see para [12] of the judgment) that the content of the invoices might confirm that the taxpayer or other companies in its group had knowledge of the flow of funds involved in certain structured finance arrangements. It may be inferred that SARS wished to have written evidence of such knowledge to provide a basis for contending that the taxpayer had been engaged in an unlawful tax scheme.

The taxpayer in this case claimed that these fee notes were privileged in that they revealed the nature of the legal advice that had been sought and given. The court had to decide whether the fee notes were documents that fell within the scope of legal advice privilege.





It is of course a common knee-jerk reaction for a taxpayer, where SARS demands to have sight of documents relating to his tax-planning arrangements, to contend that they are immune from scrutiny because they are covered by legal advice privilege.

In his judgment, Binns-Ward J accepted (at para [41]) that –

‘... the character of the advice sought by the client may be inferred, in the sense of conveying not only that advice was sought, but also the substance of the client’s evident concern in an identifiable legal context.’

and he went on to rule that certain stipulated portions of the fee notes were privileged and *did not have to be disclosed to SARS.*

The Catch-22 where a taxpayer pleads legal advice privilege

It is of course a common knee-jerk reaction for a taxpayer, where SARS demands to have sight of documents relating to his tax-planning arrangements, to contend that they are immune from scrutiny because they are covered by legal advice privilege.

How can a court determine whether the documents are indeed covered by privilege except by doing the very thing that the taxpayer claims is not permissible, namely looking at the documents?

The Tax Administration Laws Amendment Act of 2015 has addressed this problem by inserting a lengthy new section 42A into the Tax Administration Act 28 of 2011.

The new section 42A lays down in detail the process to be followed where a taxpayer or other person claims legal professional privilege in respect of documents that SARS wishes to scrutinise. Inter alia, the process involves the following steps:

- the taxpayer must identify, specifically and in detail, each item of the material (normally a document) requested by SARS which he claims is covered by legal professional privilege;

- the taxpayer must specify the circumstances in which he obtained the material (for example, that the document contains legal advice requested by him from his attorney); and
- the taxpayer must identify the author of the material and the capacity in which the author produced the material (for example, in his capacity as the taxpayer’s attorney).

If SARS disputes that the material is covered by privilege, then –

- SARS must arrange for a practitioner from a panel established in terms of section 111 of the Tax Administration Act (who does not act either for SARS or for the person claiming privilege) to take receipt of the material;
- the person asserting privilege must seal the material and hand it over to that practitioner;

- the practitioner must, within 21 days, make a determination, stating his grounds, as to whether privilege applies; and
- if the party claiming privilege or SARS is not satisfied with that determination, then application may be made to the High Court within 30 days for a court order that resolves the dispute.

This new section 42A is a well-considered and well-drafted provision which provides a time-effective and straightforward process for an independent person to determine whether privilege applies and, if that determination is not accepted by SARS or the taxpayer, for the issue to be decided by the High Court.



Does privilege attach to tax advice given by an accountant?

The elephant in the room in South Africa remains the question of whether legal professional privilege applies to legal advice, including tax advice, given by an accountant.

In the United Kingdom, this issue arose four-square in the *Prudential* case, reported as *R (on the application of Prudential plc and another) v Special Commissioner of Income Tax* [2013] UKSC 1.

In this case, Prudential had taken legal advice from accountants at Pricewater-

houseCoopers in regard to a tax avoidance scheme. The fiscal authorities in the UK demanded disclosure of documentation relating to the scheme and Prudential refused to make disclosure on the ground that the advice was protected by legal professional privilege.

In a 25 000-word judgment which resulted in a split decision in which the seven judges were divided 5:2 on the issue, the majority judgment of the Supreme Court of the United Kingdom held that legal professional privilege does

not apply to legal advice given by an accountant, *inter alia* because this issue is so complex that it should properly be decided by parliament.

In South Africa, there has not been a reported judgment in which SARS has demanded of a taxpayer's accountants that they disclose documents containing tax advice given by them and in which the court has had to rule on whether legal advice given by an accountant is covered by legal professional privilege.

It is completely uncertain which way a South African court would rule on this issue.

Until it is judicially resolved, accountants would do well to assume that tax advice given by them is not covered by legal professional privilege, and that – at least in matters where the risk of disputation with SARS is high – they should channel their tax advice to clients through their attorneys or counsel, or (though this has a less secure legal basis) the advice is given by their in-house lawyer.





SARS Watch 21 November 2015 to 20 January 2016

Legislation

23 Nov	Notice of SARS's official language policy in terms of section 4(2)(h) of the Official Languages Act, 2012	The notice was published in Government Gazette No. 39439 with commencement date of 23 November 2015.
25 Nov	Notice of Agreement for the Avoidance of Double Taxation and prevention of fiscal evasion between Hong Kong and South Africa	The notice was published in Government Gazette No. 39444 with date of entry into force on 20 October 2015.
27 Nov	Amendments to the Taxation Laws Amendment Bill 29, 2015	The Amendments were approved by the Standing Committee of Finance and passed by the National Assembly on 26 November 2015.
3 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 by substituting tariff subheadings to increase the rate of duty on certain large bore steel pipes from free and 10% to 15%	The notice was published in Government Gazette No. 39434 with commencement date of 4 December 2015.
10 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to delete certain rebate and refund items that have become redundant	The notice was published in Government Gazette No. 39502 with commencement date of 1 January 2016.
10 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to include Namibia in the SADC Protocol on Trade	The notice was published in Government Gazette No. 39502 with commencement date of 1 January 2016.
10 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to substitute rebate item 497.00 in Part 5 of Schedule No. 4 to restructure the notes in line with the structure for notes in other Schedules	The notice was published in Government Gazette No. 39502 with commencement date of 1 January 2016.
10 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to create separate eight-digit tariff subheadings classifiable in Chapters 9, 29, 32, 34, 38, 39, 72, 87 and 98	The notice was published in Government Gazette No. 39502 with commencement date of 1 January 2016.
10 Dec	Notice of the Protocol to the Agreement for the Avoidance of Double Taxation and prevention of fiscal evasion between Botswana and South Africa	The notice was published in Government Gazette No. 39485 with date of entry into force on 19 August 2015.
10 Dec	Notice of Tariff Amendment of the Customs and Excise Act, 1964 to delete and insert certain anti-dumping items	The notice was published in Government Gazette No. 38240 with commencement date of 1 January 2016.



Legislation (cont)

12 Dec	Notice of the Protocol to the Agreement for the Avoidance of Double Taxation and prevention of fiscal evasion between Norway and South Africa	The notice was published in Government Gazette No. 39486 with date of entry into force on 20 November 2015.
18 Dec	Notice of Tariff Amendment of the Customs and Excise Act, 1964 to	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to reduce the rates of customs duty on sugar from 304.00c/kg to 245.4c/kg	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to insert rebate item 460.03/0207.14.9/01.07 for the temporary rebate provision of the full anti-dumping duty on frozen meat of species Gallus gallus domesticus, cut into pieces with bone classifiable in tariff subheading 0207.14.9	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to insert certain anti-dumping items for the imposition of anti-dumping duties on Portland cement originating in or imported from Pakistan	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to insert a rebate item to create rebate provisions for knitted pile fabrics and polyester fabrics for use in the manufacture of goods classifiable in tariff subheading 6304.91.90	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to provide for brass, bronze and manganese waste scrap	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment Correction to the Customs and Excise Act, 1964 to withdraw certain tariff subheadings in Chapters 61 and 62 where they appear in Government Notice No. R.1220 of Government Gazette No. 39502 published on 11 December 2015	The notice was published in Government Gazette No. 39527 with commencement date of 18 December 2015.
18 Dec	Notice of Tariff Amendment to the Customs and Excise Act, 1964 to increase the rate of duty on steel wire rod, steel reinforcing bar and structural steel from free to 10%	The notice was published in Government Gazette No. 39539 with commencement date of 18 December 2015.
22 Dec	Notice of fixing the amount of the threshold for the amount of tax in dispute for purposes of an appeal to the Tax Board to R1 million, in terms of section 109(1)(a) of the Tax Administration Act, 2011	The notice was published in Government Gazette No. 39490 for any appeal noted on or after 1 January 2016.



<i>Legislation (cont)</i>		
11 Jan	Notice of promulgation of Taxation Administration Laws Amendment Act No. 23 of 2015	The notice was published in Government Gazette No. 39586 with commencement date of 8 January 2016.
11 Jan	Notice of promulgation of Taxation Laws Amendment Act No. 25 of 2015	The notice was published in Government Gazette No. 39588 with commencement date of 8 January 2016.
11 Jan	Regulations for the determination of fund member category factor in terms of paragraph 12D(5)(a) of the Seventh Schedule of the Income Tax Act	The regulation was published in Government Gazette No. 39582 with commencement date of 1 January 2016.
11 Jan	Customs Agreement on Mutual Administrative Assistance with Sudan	The date of entry into force is 1 December 2015.
11 Jan	Notice of Returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act	The notice was published in Government Gazette No. 39575 with commencement date of 6 January 2016.
12 Jan	Customs Agreement on Mutual Administrative Assistance with Zimbabwe	The date of entry into force is 1 October 2015.
13 Jan	Regulations on the information to be contained in contribution certificates in terms of paragraph 12D(5)(b) of the Seventh Schedule of the Income Tax Act	The regulation was published in Government Gazette No. 39538 with commencement date of 1 March 2016.
13 Jan	Notice on the determination of a date in terms of paragraph 9(2) of the Fourth Schedule to the Income Tax Act, upon which the new employees' tax deduction tables as prescribed in terms of paragraph 9(1) of the Fourth Schedule came into operation	The notice was published in Government Gazette No. 39571 with commencement date of 1 March 2015.
<i>Interpretation</i>		
27 Nov	Interpretation Note 20 (Issue 6)	This IN was updated to provide clarity on the interpretation and application of section 12H, which provides deductions for registered learnership agreements.



Interpretation (cont)

8 Dec	Interpretation Note 86	This IN was published to deal with section 12I of the Income Tax Act to provide guidance on the interpretation and application of the additional investment and training allowances for industrial policy projects.
14 Dec	Interpretation Note 73 (Issue 2)	This IN was updated to make reference to the updated relevant interpretation notes as well as the change in legislation relating to assessed losses since the first issue of this IN.
14 Dec	Interpretation Note 74 (Issue 2)	This IN was updated for semantic corrections.

Binding rulings

10 Dec	Binding Private Ruling 211: Transfer of exchange items using corporate rules	This BPR determines the consequences under section 24I for the transferor and transferee of intra-group loan assets that are denominated in foreign currency in terms of an asset-for-share transaction under section 42.
11 Dec	Binding Private Ruling 212: Tax consequences for the issuer and security company of listed credit-linked notes	This BPR determines the tax consequences for the Issuer of listed credit-linked notes that are enhanced by the conclusion of a credit default swap with the Applicant, as well as the tax consequences that will arise for the Issuer and the Security Company in the event of default.
17 Dec	Binding Private Ruling 213: Repayment of intercompany loans from proceeds of a new share issue	This BPR determines the tax consequences of the repayment of intercompany loans out of the proceeds of a new share issue.
22 Dec	Binding Private Ruling 214: Third-party-backed shares	This BPR determines whether cumulative redeemable preference shares constitute 'third-party-backed shares'.
22 Dec	Binding Private Ruling 215: Source and nature of satellite capacity fees	This BPR determines the source of satellite capacity fees and whether those fees, when they are paid, are subject to the withholding tax on service fees.
5 Jan	Binding Private Ruling 216: Tax consequences of the issuing of additional tier 1 capital instruments by a registered bank	This BPR determines the income tax consequences for the issuer of specified instruments, the proceeds of which qualify as 'additional tier 1 capital' as defined in the Banks Act No. 94 of 1990.



Binding rulings (cont)

7 Jan	Binding General Ruling 30: Allocation of direct and indirect expenses within and between an insurer's funds	This BGR determines the allocation of direct and indirect operating expenses within and between the funds that are required to be established by insurers under section 29A and the subsequent deductibility of such operating expenses, and the deductibility of expenses against transfers under section 29A(7).
20 Jan	Binding General Ruling 20 (issue 2): Interpretation of the term 'substantially the whole'	This BGR was updated to include changes in legislation and added a small business funding entity as an additional exempt entity.

Case law

21 Nov	Target Shelf 284 CC (in business rescue) v CSARS & Others	The High Court ordered in favour of the Commissioner, seeking to liquidate the taxpayer as opposed to continue with the business rescue proceedings due to outstanding tax debt, as the judge concluded that the vote to liquidate the taxpayer was appropriate.
30 Nov	Anglo Platinum Management Services (Pty) Ltd v CSARS	The Supreme Court of Appeal ordered in favour of the taxpayer as the employees truly divested themselves to receive a portion of their salary, in return for the right to use a motor vehicle (fringe benefit).
17 Dec	IT 13285	The Tax Court ordered in favour of the Commissioner, in an appeal against an assessment to STC. The taxpayer could not discharge the onus that amounts paid from his CC to himself do not constitute dividends, but loans. The court found the 'loans' to be deemed dividend distributions, which are not exempt from STC.
5 Jan	Die Groene Oase v CSARS	The High Court substantially ordered in favour of the taxpayer who is the importer, in a customs and excise tariff classification dispute.



SARS publications

27 Nov	Draft binding general ruling on the meaning of 'extract' in section 6A(1)(b) of the Mineral Petroleum Resources Development Act No. 28 of 2008	This Draft BGR was published for comment that had to be submitted no later than 8 January 2016.
30 Nov	Draft Public Notice on Implementing the Common Reporting Standard in South Africa in terms of Regulations under the Tax Administration Act, 2011	This Draft Notice was published for comment that had to be submitted no later than 4 January 2016.
9 Dec	Comprehensive Guide to Capital Gains Tax (Issue 5)	This guide is updated to take account of the comments received from the draft version and to incorporate the legislative changes introduced by the Taxation Laws Amendment Act 43 of 2014 and the Tax Administration Laws Amendment Act 44 of 2014.
10 Dec	Explanatory Memorandum to Tariff Amendments	An Explanatory Memorandum has been added to assist with understanding the technical amendments made in Schedules Nos. 1, 2, 3, 4 and 5 to be implemented with effect from 1 January 2016 as published in Government Gazette 39502.
11 Dec	Draft Rule Amendment on the functional sealed counters for tobacco manufacturing equipment	This Draft Rule Amendment was published for comment that must be submitted no later than 31 January 2016.
11 Dec	Final Response Document on Taxation Laws Amendments Bill, 2015 and Tax Administration Laws Amendment Bill, 2015	This Response Document is based on report-back hearings to the Standing Committee on Finance in Parliament.
15 Dec	Draft Notice in terms of section 29 of the Tax Administration Act, 2011 setting out additional record-keeping requirements for transfer pricing transactions	This Draft Notice was published for comment that must be submitted no later than 5 February 2016.
17 Dec	Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015	The final document was published relating to the final TALAB 2015.
21 Dec	Draft Rules made under the Customs Control Act, 2014 (Second Round)	These Draft Rules were published for comment that must be submitted no later than 1 April 2016.



SARS publications (cont)

7 Jan	Draft Interpretation Note No. 9 (Issue 6) on small business corporations	This Draft IN was published for comment that must be submitted no later than 8 April 2016.
20 Jan	Draft Tax Guide for Microbusiness 2015/16	This Draft Guide was published for comment that must be submitted no later than 26 February 2016.

PwC publications

26 Nov	PwC Tax Alert on the tax treaty between SA and Kenya	The Tax Alert deals with the tax treaty between South Africa and Kenya, which was published in the Government Gazette on 19 November 2015.
10 Dec	PwC Tax Alert on the tax treaty between SA and Hong Kong	The Tax Alert deals with the tax treaty (and protocol) between Hong Kong and South Africa that has been ratified by both countries with the date of entry into force of 20 October 2015.
15 Jan	PwC Tax Alert on the Tax Administration Laws Amendment Act as promulgated	The Tax Alert deals with highlights in the Tax Administration Laws Amendment Act, 2015 which was promulgated on 8 January 2016
15 Jan	PwC Tax Alert on the short-term insurance taxation moving towards Solvency Assessment and Management	The Tax Alert deals with a number of changes to the short-term insurance industry which have necessitated the refinement of the provisions that govern the income tax treatment of short-term insurers.
15 Jan	PwC Tax Alert on the retirement fund reform	The Tax Alert deals with the much anticipated and long-awaited retirement reform, as promulgated in the Taxation Laws Amendment Act, 2015 with an effective date of 1 March 2016.
15 Jan	PwC Tax Alert on the amendments to the taxation of long-term insurance	The Tax Alert deals with the significant changes in the Taxation Laws Amendment Act, 2015 contributing to the life tax reform in anticipation of the introduction of SAM and the implementation of IFRS 4 Phase II, as well as a general modernisation of the current four funds tax regime.
19 Jan	PwC Tax Alert on the Taxation Laws Amendment Act as promulgated	The Tax Alert deals with some notable amendments to general interest in the Taxation Laws Amendment Act, 2015. These include share incentive trusts; energy efficiency savings; countermeasures in relation to corporate migrations; foreign tax credits on services income; reinstatement of CFC anti-diversionary rules; withholding tax on service fees; withholding tax on interest; and VAT time-of-supply rules for connected persons.



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