Synopsis

Tax today

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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.

Editor: Al-Marie Chaffey

SARS Watch:
Linda Mathatho

Simulation and tax avoidance

It has been some time since the panel of justices in the Supreme Court of Appeal ('SCA') has expressed anything other than unanimity in the adjudication of taxation-related appeals. The decision in the matter of Sasol Oil (Proprietary) Limited v CSARS [2018] ZASCA 153 (9 November 2018), however, reflected a sharp division of views.

While it may be reasonable to consider that a split decision is not as 'strong' as an unanimous decision, a majority decision in the SCA is of the same value as precedent as an unanimous judgment in that all subordinate courts are bound by it and only the SCA can overturn it.

The facts

The matter revolves around additional assessments issued by SARS in relation to the 2005 to 2007 years of assessment. However, the basis of the dispute lies further back in time.

From 1991 onwards, the Sasol group commenced purchasing oil directly from foreign suppliers. It established a South African holding company ('SIH') which owned foreign subsidiaries, STI and SISL. Prior to 2001, the Sasol group had for many years purchased crude oil from Middle Eastern suppliers under term contracts. These were negotiated by a company known as STI, which was established in and operated from the Isle of Man. The oil was delivered to the South African group company purchaser at Durban.

In 2001, the structure of procurement was amended. STI purchased oil from the suppliers as before. However, it then sold the oil to SISL on an FOB port-of-loading basis, which in its turn onsold and arranged shipment of the oil for delivery to the South African group purchaser at Durban.

In 2002, SIH underwent a name change and became known as SIC.

In 2004, a new company was formed in the Isle of Man as a subsidiary company of Sasol Oil (Pty) Ltd ('Sasol'). This company was referred to as SOIL. Following its incorporation, SOIL acquired the oil procurement business of STI, while the latter company continued to conduct its other activities. STI assigned to SOIL the oil contracts that it had concluded. SOIL thereafter onsold the oil that it acquired to SISL on an FOB port-of-loading basis. Then SISL, as before, sold and delivered the oil to the South African purchaser in Durban.

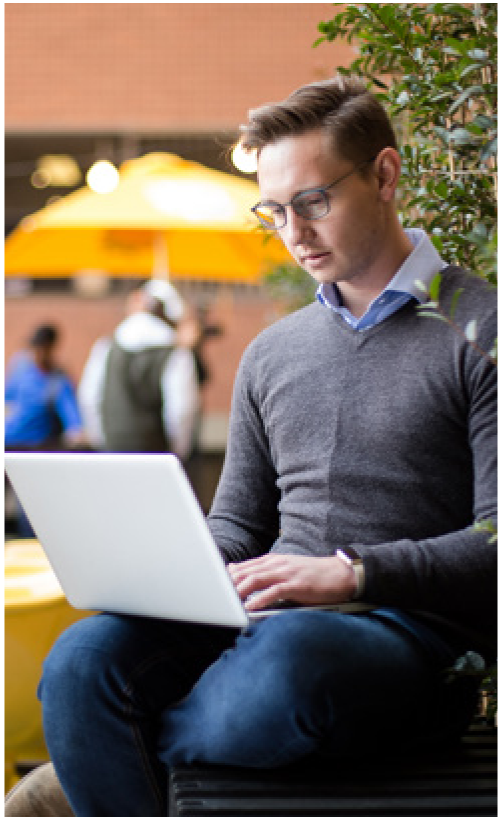
SARS attacked oil sales in the 2005, 2006 and 2007 years of assessment, alleging that the contracts were simulations in that the real intention of the parties was that the sale of oil to Sasol was from SOIL and that SISL was not intended to assume any commercial risk or purpose in the transaction. On this basis, the profit derived by SOIL was imputed to Sasol, and additional assessments were raised. In the alternative SARS asserted that the transactions were tax avoidance transactions for purposes of the general anti-avoidance provisions at that time as set out in section 103(1) of the Income Tax Act.

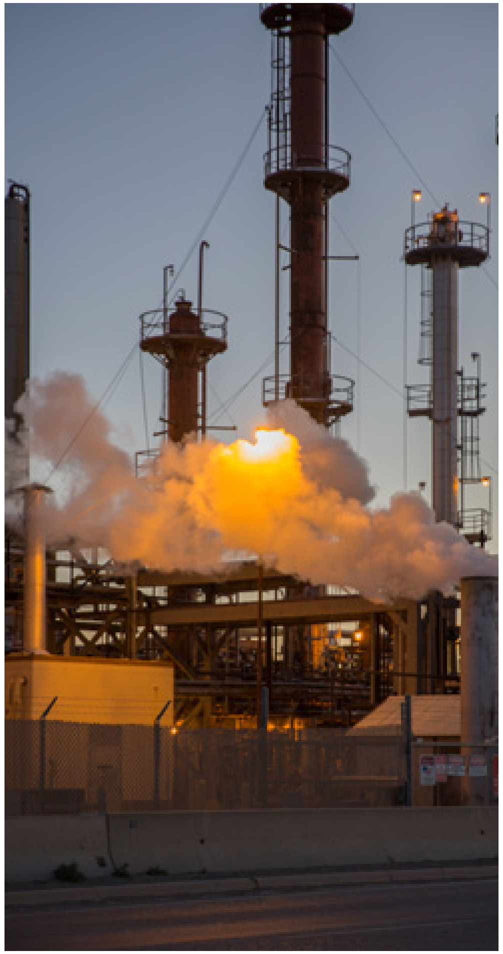
Sasol had objected against the additional assessment and appealed to the Tax Court against the disallowance of the objection. The Tax Court dismissed the appeal, holding that the contracts between SOIL and SISL and between SISL and Sasol were a sham and that the real contract was for SOIL to sell the oil directly to Sasol.

The evidence

Although the facts do not appear to be complicated, the reason for the split decision lies largely in the view taken by the respective justices who delivered written judgments.

The thrust of SARS' argument was that the decision to arrange for the oil procured in the Middle East to be sold to SISL and then onsold to Sasol was motivated by an opinion obtained by Sasol from PwC. This had dealt with the impact of the change in the basis of taxation in South Africa from a source base to a residence base and the consequent risk of imputation of income to a resident in respect of profits derived by controlled foreign companies. The focus of SARS' argument was largely on the reasons why the oil procurement structure was changed in 2001.





The judgment of Lewis JA detailed the evidence of the five witnesses called by Sasol.

The essence of the history was that the procurement was largely the responsibility of an employee of STI (Bredenkamp), resident in the Isle of Man. The group considered that there would be considerable savings in costs if the procurement function were to be moved to London and STI were to be closed down. The relevant directors (Gird and Loubser) sought advice from a law firm in the United Kingdom (Lovells) regarding whether there would be unacceptable UK tax costs as a result of moving the operations to London. The advice was that there might be a minimal tax impact in the UK.

In April 2014, PwC had provided advice to Sasol that STI should not make sales directly to Sasol but rather to a UK resident group company, which would sell the oil to Sasol and ship it to South Africa. This proposal took cognisance of the potential imputation of income derived by a controlled foreign company on sales of goods to connected persons who are South African residents and suggested how this may be avoided.

Bredenkamp was pivotal to these activities at the time. When the proposal to move the oil purchasing operations to London was put to Bredenkamp, he stated that he was not prepared to move to London. Instead, he proposed that the oil purchasing operation should remain with STI. He proposed in June 2001 that STI's other operations be moved to London, closer to the shipping and trading markets, and that SISL should purchase the crude oil from STI on an FOB basis and arrange shipping and sale to Sasol. He stated that this would also involve a cancellation of the supply contract between Sasol and STI.

The proposal was submitted to the Chief Financial Officer of Sasol, who referred it to the Group Tax Manager. The latter issued an internal opinion on 5 July 2001 to the effect that the proposal was optimal from a tax perspective and commissioned an opinion from PwC confirming his view. The PwC opinion was issued on 16 July 2001.

The PwC opinion of 16 July 2001 cautioned that there should be commercial justification for the disposal of oil to SISL. At the time, this company had access to oil market information and expertise in the shipping of crude oil cargoes in all its multifaceted aspects. SISL was therefore to assume sufficient commercial risk in the product.

SARS' argument

The argument advanced on behalf of SARS is summarised in paragraph [31] in the judgment:

> The Commissioner's contention is that the structure conceived by Gird and Loubser in 2001, which changed after the Lovells advice, was designed to avoid the implications of the new residence based tax, and was not as a result of the factors that Gird and Loubser adverted to (the importance of maintaining term contracts for the supply of crude oil, and the fact that Bredenkamp was determined to remain on the Isle of Man).

In effect, the argument was that SISL was a device placed into the operational structure solely as a conduit and that the real transaction consisted of Sasol purchasing the oil from STI.

The basis of this assertion is found in the following extracts from paragraphs [33] and [34]:

> [33] SOIL received amounts of money (or the rights to it accrued) from the sale of crude oil; these amounts would have fallen within the taxable income of SOIL if it had been a resident and these amounts were attributable to the foreign business establishment. Accordingly, unless such amounts were derived from sales of crude oil to a person connected to SOIL, the connected person being a resident of South Africa, those amounts were not to be taken into account in determining the net income of SOIL for the purposes of s 9D.

> [34] SISL too was not resident in South Africa, but in the UK. Thus if the crude oil was sold by SOIL to SISL, the foreign business exclusion would apply and these amounts would not be taken into account in determining the net income of SOIL for the purpose of s 9D.

Thus SARS' case was as follows (as stated in paragraph [35]):

> The back to back sale of crude oil by SOIL, which procured it from the Middle Eastern suppliers, to SISL, and the sale and the supply then by SISL to Sasol Oil in South Africa were attacked by the Commissioner as being simulated, designed only to achieve the avoidance of residence based tax in the hands of Sasol Oil.

The judgments

There were three written judgments.

The majority judgment

Lewis JA, who delivered the majority judgment, examined the evidence given by Sasol. This showed that there had been no agreement between STI and Sasol since July 2001. However, the evidence established the following:

- The oil procured by STI was sold to SISL and shipped to South Africa for delivery to Sasol.
- Invoices produced reflected the transactions undertaken and credit notes were issued to Sasol quarterly by SISL to correct any differences between the invoiced quantity and the quantity actually delivered.
- SISL issued instructions to STI with regard to shipment of supplies, and bills of lading were endorsed to SISL from STI.

- A director of STI who had replaced Bredenkamp testified that he endorsed the bills of lading which were issued to STI after it had attended to the credit requirements of each supplier.
- There was therefore clear evidence of delivery of oil from the supplier to STI and from STI to SISL.
- SISL's annual financial statements for 2002 reflected its oil trading revenues derived from July 2001 and recorded oil being shipped as trading stock.

SARS argued that the ownership taken while the oil was in transit was 'hollow', as the oil could only be shipped to Sasol in South Africa. Expert evidence was led by Sasol explaining the nature of the risks assumed by SISL as owner of the oil. Although the evidence was questioned and disputed by SARS, no evidence was led by SARS to contradict it.

In 2004, ownership of STI was transferred from SIH to Sasol. SOIL was formed as a subsidiary of Sasol and took over the oil trading business of STI in the Isle of Man. SOIL now invoiced SISL for crude oil purchases and endorsed bills of lading, as had been the previous practice of STI.

The test for simulation was revisited, particularly in light of an earlier judgment (also delivered by Lewis JA) in which it had been suggested that a simulation was identifiable if the purpose was to reduce an exposure to tax. Lewis JA, however, now made it clear that the purpose of reducing a tax exposure is not a test for simulation. The test for identifying whether a simulation has occurred is to examine the arrangements and identify whether they reflect the real intention of the parties. The following passage from *Roshcon (Pty) Ltd v Anchor Auto Bodybuilders CC* 2014 (4) SA 319 (SCA), paragraph 37, was cited with approval:

> The position remains that the court examines the transaction as a whole, including all surrounding circumstances, any unusual features of the transaction and the manner in which the parties intend to implement it, before determining in any particular case whether a transaction is simulated.

SARS' case was based on the fact that the structure followed the advice originally given by PwC. Thus, it was argued, the sole purpose of SISL was to disguise the fact that Sasol purchased the oil from STI. To this the judgment responded (at [67]):

> In any event, the mere fact that parties have followed professional advice (in this case from PwC) in order to minimize the tax payable by them is not wrong nor does it point to deceit. The real question is whether they actually intended a sale by STI (then later SOIL) to SISL and whether SISL intended to acquire ownership of the crude oil from STI (SOIL). Or did they dishonestly purport to do so solely for the purpose of avoiding the tax that would be payable by Sasol Oil?

The learned Justice found that the intention to pass ownership from STI to SISL was real and that the arrangements did just that. Regardless of limitations in its contract with Sasol as to what it could do while it was the owner of the oil, SISL was indeed the owner, as intended.

SARS challenged the delivery of the oil from STI to SISL, arguing that the witnesses were unsure about when and how delivery occurred. Furthermore, it was argued, if ownership was intended to be passed over, the contract between STI (later SOIL) and SISL would have provided for the method and time of delivery. The view of Lewis JA

was that it was unnecessary to specify the mode of delivery in the contracts between STI (later SOIL) and SISL (at [72]):

> Whether there is actual or constructive delivery is a matter of law. There was no need to provide for the mode of delivery in the contracts of sale.

The majority conclusion, at paragraph [80], was that there was no difference between the substance and the form of the arrangements:

> I consider that Sasol Oil has discharged the onus of proving that the supply agreements between STI (SOIL), SISL and Sasol Oil were genuine transactions, which they implemented from 1 July 2001 through to the years of assessment being 2005, 2006 and 2007. The transactions had a legitimate purpose. There was nothing impermissible about following the PwC advice, and so reducing Sasol Oil's tax liability. The transactions were not false constructs created solely to avoid residence based taxation. There was good commercial reason for introducing SISL into the supply chain, as explained by the witnesses for Sasol Oil, and SISL had, from the beginning of 2001, been envisaged as the oil trader and shipper in the supply chain. The PwC advice was not the trigger for the transactions.

The minority judgment

The judgment of Mothle AJA, in which Makgoka JA concurred, was that there was a simulation.

The crux of the finding is expressed at paragraph [114]:

> There is no doubt that the genesis of the structure of the FBE of the Sasol Group of Companies, adopted and implemented from July 2001, is found in the written opinion by PwC dated 3 April 2001, referred to earlier.

As to the commercial substance of SISL, the judgment suggests that there was no evidence to establish that the use of SISL was commercially justified.

As to the contracts themselves, Mothle AJA stated (paragraph [119]:

> The supply agreements present unusual features of independent trading companies. Firstly, the agreements provide that the crude oil acquired by STI was intended to be sold to SISL and to no other third party. Similarly, the crude oil purchased by SISL from STI, was intended to be sold to Sasol Oil and to no other external party. Secondly, the agreements

> ensured that the purchase price remained constant in that, from STI to Sasol Oil, there was no room to change the price, by either STI or SISL, with a view to making a profit. In essence therefore, SISL traded by purchasing crude oil only from STI and on- selling it only to Sasol Oil without making any profit. Thirdly, the sale of crude oil by STI to SISL does not result in transfer of ownership in the sale transactions involving SISL. SARS contends that this is a sham. I agree. The absence of transfer of ownership, though not necessarily invalidating the transaction, would within the context of the two supply agreements, be one of the relevant factors indicative of a simulated transaction.

[Editor's note: The endorsement of bills of lading was proven in evidence. This is a long-established lawful mode of constructive delivery in relation to ocean cargoes. It is therefore difficult to accept a finding that no delivery was effected, as this finding is contrary to the evidence.]

The judgment focused closely on the commercial justification for SISL's activities. In examining the circumstances as a whole, critical attention was focused on the PwC advice, the contents of transfer pricing documentation and compulsory reports made to the SEC in the United States. In these the activities of SISL were not consistently described in the manner adopted in the annual financial statements. Then, at paragraph [129], it is stated:

> SARS further refers to instances where the description of the role of SISL in the supply chain was sharply contradicted and irreconcilable with the role as described in the supply agreements and the oral evidence presented by Sasol Oil's witnesses in the Tax Court. Sasol Oil made no effort to explain these glaring contradictions and inconsistencies. While these instances, when individually considered, might not say much, their cumulative effect reveals, in the Sasol Group's own words, the true nature and identity of SISL's function as shipping, and never the buying and selling of crude oil.

Finally, the judgment criticised the evidence of the witnesses called by Sasol. Their evidence was said to be unsatisfactory and evasive on the issue of commercial justification. Thus, the minority held (at [136]):

> It is trite that an appeal court is bound by the trial court's findings of credibility, unless they were found to be affected by a material misdirection or to be clearly wrong. The appeal court will only reverse these findings where it is convinced that the findings are wrong. I am unable to find any misdirection by the Tax Court in regard to the finding of credibility and contradictions on the part of Sasol's witnesses …

The minority view was therefore that Sasol had not discharged the onus of establishing that the transactions were not a simulation.

The judgment of Ponnan JA

This judgment was evidently prepared after Ponnan JA had considered the judgments of Lewis JA and Mothle AJA.

The perspective given in this judgment is relevant. Ponnan JA identified that there was no dispute between the parties to the transaction concerning the reality of their dealings. In paragraph [142] he states:

> We are not concerned here with a dispute between the parties to the agreements. It is a third party – the Commissioner – who contends that the parties did not really intend the agreements to have, inter partes, the legal effect which its terms convey to the outside world.

This then leads on to a consideration of whether there is any reason for rejecting Sasol's evidence. The Commissioner introduced no evidence to contradict Sasol's evidence and relied on circumstantial timing of events as recorded in minutes and opinions. The judgment continued:

> As Lewis JA points out, no evidence was led for the Commissioner. She adds 'but that is hardly surprising as it would not have had access to the internal workings of the Sasol Group'. Whilst that may be so, the fact that no evidence was led for the Commissioner is not without its consequence. It means that there was nothing to gainsay the evidence of Sasol Oil's five factual witnesses and one expert witness. It is unclear to me why the Tax Court took the view that the evidence of Sasol Oil's witnesses fell to be rejected. The criticism of their evidence was not only unduly generalized, but also rather severe. The rejection of the evidence of senior employees, two of whom were retired, absent any countervailing evidence, is disquieting. They had no motive to lie in order to save tax for Sasol Oil. No ready answer presents itself as to why these professional persons would perjure themselves. There thus appears to be no reason to question the reliability of their evidence (either individually or collectively), much less their integrity or to brand them untruthful or evasive witnesses.

The judgment went further and made the point that a finding on reliability of the witnesses is not the end of the matter. The evidence still has to be considered as a whole. Ponnan JA evaluated the evidence that had been placed before the Tax Court at paragraph [143]:

> For the written agreements to have been a sham would have required the most extensive and elaborate fraud, stretching over a period of many years. It would have required the involvement of the persons participating directly, as well as the boards of directors of not just Sasol Oil, but also their related companies. The conduct of the parties and the documents generated before, at the time of and subsequent to the conclusion of the agreements belies that. There is not the slightest hint or suggestion in the wide array of documents introduced into evidence, such as letters of credit, bills of lading, invoices and certificates of quantity and quality, that the transactions were a sham or disguise. What is more, the financial statements of the relevant companies were entirely consonant with the supply agreements. The conclusion that such a sham was intended would mean that the production of these documents would have involved an elaborate fraud on the part of the authors of the documents and the members of the boards of directors of the relevant companies, as also their auditors. When one has regard to the history and background, the genesis and

> conclusion of the agreements in accordance with their terms, makes perfect sense.

The approach of the Tax Court to the evidence was criticised (at [144]):

> It goes without saying that the evidence must be looked at holistically. The Tax Court approached the evidence piecemeal. It appears to have focused rather too intently upon selected pieces of evidence to support its conclusion that the transactions were simulated… Here, a proper consideration of the entire evidential mosaic, leads me to the conclusion that the alternative hypothesis sought to be advanced by the Commissioner, namely that the agreements are simulated, is without a proper factual foundation and remains but a speculative and conjectural one.

Thus, Ponnan JA concluded at paragraph [145]:

> In my view, it is clear that the relevant agreements were genuine agreements and truly intended by the parties in accordance with their terms. There was no simulation or, more particularly, dishonest intention by the parties to deceive by concealing the real agreements. There is accordingly no basis for finding that the ostensible agreements were a pretense (sic) or that there was any secret or unexpressed agreement, at odds with the apparent agreements.

Tax avoidance

The issue of tax avoidance assumed relevance once it was found that the transactions were not a simulation.

The law relating to tax avoidance generally has been amended since the events in this matter took place, and the issue is thus academic, to an extent. The interesting issue here was that SARS assessed Sasol to tax, asserting that Sasol had entered into the transactions with SISL in 2001 for the purpose of avoiding a liability to tax.

Lewis JA was quick to point out that, in 2001, STI and SISL were controlled foreign companies in relation to SIH (later SIC), and

that any income derived by those companies could not have been imputed to Sasol but would have been imputed to SIH. Therefore, the transactions were not entered into for the purpose of avoiding tax by Sasol, as Sasol would not have been liable to any tax in respect of income derived by STI or SISL.

Thus, on the issue of tax avoidance, the majority decision is reflected in paragraph [93]:

> The Commissioner's assessments for the 2005 to 2007 years were based on the incorrect assumption that Sasol Oil had participation rights in STI. It quite simply did not. In 2001 the participation rights in STI were held by SIH. It was only from 2004 and onwards that the participation rights in SOIL were held by Sasol Oil. It is accordingly not necessary to consider the other requirements of s 103(1) in any detail. The application of s 103(1) by the Commissioner in the additional assessments was therefore unfounded.

The takeaway

Complex commercial transactions may be viewed with suspicion by SARS. In this instance, SARS attempted to equate a tax planning motive to a deception. There was ample evidence that the contracts were concluded and implemented precisely as intended. The financial results were faithfully recorded and reported, and the parties considered themselves bound by them.

The difficulty that the Commissioner faced was that there was no evidence to suggest that the parties had an intention that was any different than the contracts indicated. Unless the surrounding circumstances are overwhelmingly in his favour, it is submitted that the Commissioner's task in pursuing the argument that the substance differs from the form will always be a daunting one.

A secondary issue in the judgments is the approach to be taken in relation to the evidence of witnesses. While the majority found that the witnesses' evidence was plausible and acceptable, the cautionary remarks of Ponnan JA, that the evidence of a witness is only part of the mosaic and that the evidence must be considered in its entirety, underscore the importance of leading all available corroborative documentary evidence.

Osman Mollagee
Partner – Corporate International Tax
+27 (0) 11 797 4153
osman.mollagee@pwc.com

Msindiseni Masetle
Senior Manager – Corporate International Tax
+27 (0) 11 797 5745
msindiseni.masetle@pwc.com

The primacy of precedent

It is not common that a party argues in the Supreme Court of Appeal ('SCA') that a decision of that court or its predecessor (the Appellate Division of the Supreme Court of South Africa) was wrongly decided. Recently, such an argument was advanced. The SCA reiterated on the principles that should be applied in such circumstances.

The judgment in *Milnerton Estates Ltd v CSARS* [2018] ZASCA 155 (20 November 2018) concerned the determination of the year of assessment in which the proceeds of sale of township erven should be taxed.

Background

Milnerton Estates Ltd ('ME') developed a township and sold erven in that township under 25 agreements concluded in 2013. In 16 of these, the sale was subject to a suspensive condition that the purchaser should secure finance to settle the purchase consideration within a stipulated time. In all 16 cases, the condition was fulfilled. In the other nine cases cash was deposited with the conveyancers or a guarantee of payment was provided. In short, the purchase price was fully secured before the end of the 2013 year of assessment.

ME was required to obtain a municipal certificate in respect of each stand, permitting the passage of vehicular traffic on completed roads within the development. All of these had been issued by the end of the 2013 year of assessment.

Once the purchase price was paid and the certificate obtained, or within 60 days after date of signature of the purchase agreement, whichever was the later, ME was required to give possession of the erven to the purchasers and was required to register transfer within 30 days after granting possession. Eighteen purchasers had been given possession by the end of 2013. However, no erven had yet been transferred by the end of the year.

ME did not include any proceeds of the sales in its return of income for 2013, as it argued that the right to payment was conditional on registration of transfer. Therefore, it considered that the proceeds of the sales had not yet accrued to it.

SARS disagreed with the stance taken by ME. It argued that section 24(1) of the Income Tax Act applied to the transaction and, in terms of that section, the proceeds were deemed to have accrued to ME in 2013.

Judgment on section 24(1)

The arguments were set out in paragraphs 8 and 9 of the judgment:

> [8] The Commissioner contended that the requirements of the section were met in that:
>
> (a) the taxpayer (Milnerton Estates);
>
> (b) had entered into agreements with other persons (the purchasers of erven);
>
> (c) in respect of immovable property (the erven);
>
> (d) the effect of which agreements was that transfer would be passed from Milnerton Estates to the purchasers;
>
> (e) upon or after the receipt by Milnerton Estates of the whole of the amount payable to it under the agreements.
>
> On that basis the Commissioner contended that the whole amount was deemed to have accrued to Milnerton Estates on the date on which the agreements were entered into.
>
> [9] Save in respect of item (e) Milnerton Estates did not challenge this analysis… It argued that the section is not concerned with cash sale agreements of this type, but only with agreements for the sale of immovable property on credit. It drew a distinction between cash sales and sales of immovable property, where the purchase price was to be paid in instalments over time, with transfer only being given once the full purchase price had been paid.

In considering the arguments of ME, Wallis JA took notice that the heading to section 24 had originally been 'Hire purchase or other agreements providing for passing of ownership of property concerned'. However, he noted that the heading had been amended in 1986 to 'Credit agreements and debtors allowances'. While the heading gave some force to the argument raised, it was mitigated by the fact that the amendment to the section had occurred after the judgment in *SIR v Silverglen Investments (Pty) Ltd* 1969 (1)(SA 365 (A) ('*Silverglen*').

Wallis JA did not specifically reject the submission that, in the case of the

transfer of land, registration of transfer typically precedes receipt of the purchase consideration and therefore the transactions fell outside the scope of section 24(1). In paragraph 16 of the judgment, he held:

> Whatever appeal this argument might otherwise have had, it is incompatible with the decision of this Court in *Silverglen* Investments.

After setting out the facts in *Silverglen*, in which the Commissioner had contended that the sales should only be recognised in the year in which payment was actually received, and summarising the reasons why the arguments had failed in that case, Wallis JA concluded at paragraph 19 of the judgment:

> In law the guarantees provided by the purchasers of erven from Milnerton Estates constituted payment of the purchase price, such payment being concurrent with transfer of ownership by registration in the Deeds Registry. The agreements accordingly provided for Milnerton Estates to pass ownership to the purchasers upon or after receipt of the whole of the purchase price in terms of s 24(1). The purchase price was therefore deemed to be received in its entirety in the 2013 tax year, not the 2014 year, when payment was in fact made. That is what was decided in *Silverglen Investments* and it applies equally to the present case.

The challenge to the validity of the Silverglen decision

A final argument advanced by ME was that the SCA may depart from an earlier judgment it has given if that judgment was wrong in law. It argued that the decision in *Silverglen* had been wrong in law and that the SCA was not bound to follow it. This was a 'last ditch' attempt that had not been included in the heads of argument.

The context makes it clear that the SCA will only depart from an earlier decision if it is convinced that it was wrong in law. Counsel for ME advanced arguments that the interpretation applied by the SCA in *Silverglen* would lead to unintended outcomes that would be prejudicial to developers. The first was that all sales of immovable property were brought into the scope of section 24(1). The second was that there could be prejudice if a transaction taxed in one year were subsequently cancelled, resulting in a tax loss that could not be offset against any other income.

At paragraph 21, the question of policy considerations was dealt with in the following manner:

> I am not convinced that these points, even if valid, are sufficient justification for departing from a considered judgment of this court. If there are such anomalies and they are as serious as was suggested the remedy lies in the hands of the legislature.

In any event the validity of the arguments as a matter of law had not been fully argued by the parties and the court expressed doubt whether they were valid.

The result was a determination in favour of SARS, in paragraph 22:

> For present purposes both points raised in criticism of the decision in *Silverglen* Investments are not sufficiently weighty to justify our departing from the decision of our predecessors.

The takeaway

Property developers need to take careful note of the possible application of section 24 of the Income Tax Act, as it may affect the timing of the recognition of income for income tax purposes.

Secondly, this matter reinforces the primary rules of precedent that a decision by the SCA will be applied to any subsequent disputes based upon the same or substantially similar circumstances. Furthermore, the SCA will not depart from an earlier decision unless it is satisfied that the earlier decision was wrong in law.

Litigants should be astute to consider carefully whether the factual circumstances giving rise to an earlier SCA decision may be distinguishable from those on which they are litigating. If there is no substantial difference between the circumstances of the litigation and those underpinning the earlier decision, it is unlikely that a court will depart from the principles of the earlier decision.

Tapie Marlie
Director/Partner
+27 (0) 21 529 2242
tapie.marlie@pwc.com

William Eastwood
Director/Partner
+27 (0) 21 529 2394
william.j.eastwood@pwc.com

'Trafficking' in assessed losses – risky business

Section 103(2) of the Income Tax Act, unlike the general anti-avoidance rules, has remained intact over many years. This subsection provides measures for SARS to counter abusive avoidance of tax through the acquisition of companies with assessed losses.

The Supreme Court of Appeal recently delivered judgment in a dispute in which the Commissioner had invoked section 103(2) and disallowed the set-off of assessed losses against income derived by a company in the matter of *CSARS v Digicall Solutions (Pty) Ltd* [2018] ZASCA 137 (28 September 2018).

Section 103(2) of the Income Tax Act is couched in broad language. To the extent relevant to the dispute, it provides:

> Whenever the Commissioner is satisfied that … **any** change in … the shareholding in any company … as a direct or indirect result of which … income has been received by or has accrued to that company or trust during **any** year of assessment …, has at **any** time been entered into or effected by any person solely or mainly for the purpose of utilizing **any** assessed loss, **any** balance of assessed loss, **any** capital loss or any assessed capital loss, as the case may be, … in order to avoid liability on the part of that company or trust or any other person for the payment of **any** tax, duty or levy on income, or to reduce the amount thereof … the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed. *(Emphasis added – as added in the judgment)*

Strong evidence is required to resist the application of this provision.

The facts

The taxpayer company ('Digicall') was incorporated in 2000 and was known as B Clear and Simple Telecommunications South Africa (Pty) Ltd. It was a wholly owned subsidiary of an Australian company, B Digital Ltd. It established a call centre facility in Cape Town selling cellular telephone contracts.

The venture was a failure and racked up substantial losses of R47 million in its first year of operation, and Digicall terminated its service provider agreements and disposed of its subscriber base to Vodacom and MTN.

B Digital Ltd wished to divest itself of Digicall, and one of Digicall's directors (Lloyd) approached an investment company, intending for it to purchase Digicall and use it to provide services to Cell C, with the intention of making a profit.

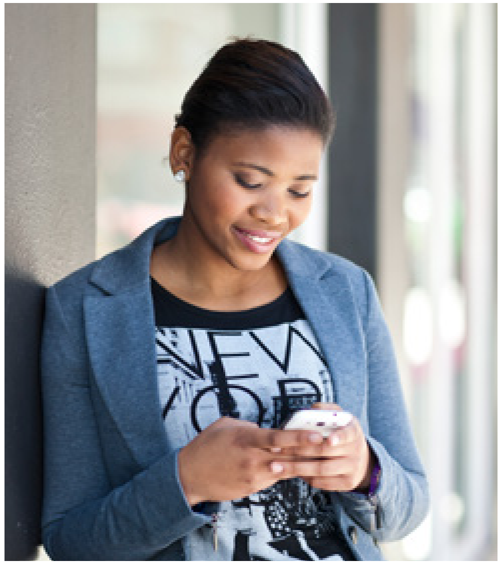
The other director of Digicall (Benatar) was a fund manager at the investment company. He suggested that the easiest way to acquire the business was to purchase the shares in Digicall and utilise the underlying assets. However, a due diligence investigation revealed that there was unresolved litigation between Digicall and MTN, and the investment company was not willing to acquire the shares at that stage. B Digital Ltd wished also to retain the shares until the litigation was finalised.

Pending finalisation of the litigation a shelf company was established by the investment company, Lloyd, and two other investors. This company became known as Sell Direct Marketing (Pty) Ltd ('SDM'). SDM entered into an agreement with Digicall and B Digital Ltd in March 2002 in terms of which it acquired the assets of Digicall and an option to purchase the shares in Digicall within a period of 18 months from the date of the agreement at their par value.

SDM attempted to set up a call centre using the acquired assets. Digicall was still bound to the terms of its lease agreement for the call centre premises, and SDM leased premises from Digicall for this purpose. It was evident early on that the venture would not be profitable and the business was terminated at the end of June 2002.

SDM exercised the option to acquire the shares in Digicall in September 2002. Benatar then cast about for a new purchaser and caught the interest of a prospective purchaser, Allers, who was apparently seeking a call centre for a proposed business process outsourcing venture that his company, Glasfit, was negotiating with PG Glass. Allers was aware that Digicall had a significant assessed loss and that it had ceased trading during the 2002 year of assessment. Numerous offers for the shares were made to SDM, most of which were based upon an evaluation of the probability of the assessed loss being available to offset anticipated profits. Informally, the assessed loss was stated to be approximately R90 million.

In May 2003, SDM transferred the business back to Digicall for a consideration of R1 million. The company traded briefly and again ceased trading at the end of June 2003. In 2003, the assessed loss increased by an additional R21 million.



In September 2003, Glasfit and PG Glass concluded a memorandum of understanding to operate the joint business venture from a consolidated call centre. Allers then negotiated to acquire Digicall from SDM, with the intention that Digicall should be the operating company for the joint venture. Agreement was reached between Glasfit and SDM for the sale of the shares in Digicall in September 2003.

The new venture operated by Digicall operated from two call centres – one in Bryanston, Johannesburg, and the other in Cape Town. In the years of assessment from 2004 to 2008, the venture reported taxable income of R99 million. R86 million was set off against the assessed loss brought forward from 2003, and R13 million had been subject to tax. Of this amount, R0.6 million was attributable to the Cape Town operations and the remainder to the Bryanston call centre.

SARS raised additional assessments for the years of assessment 2005 to 2008 in which it disallowed the set-off of the assessed loss from 2003. In its reasons for assessment, SARS asserted that the income that had been set off against the assessed losses arose as a direct or indirect result of the sale by B Digital Ltd to SDM.

Digicall had filed an objection to the additional assessments, which SARS had disallowed. In the Tax Court, to which Digicall had then appealed, it was held that the income had arisen as a result of the sale by SDM to Glasfit, which was an intervening event, and the additional assessments were set aside. SARS then appealed to the High Court in the Western Cape, which dismissed the appeal.

SARS therefore took the matter on appeal to the SCA.

The judgment

The judgment commenced with an examination of who bore the burden of proof. Swain JA observed that there is a presumption in section 103(4) of the Income Tax Act that, where the Commissioner demonstrates that a change in shareholding has occurred which results in the avoidance of tax through the utilisation of an assessed loss, it will be presumed that the purpose of the change in shareholding was to utilise the assessed loss. This presumption may be rebutted by evidence, and the burden of proving that the purpose was not to avoid tax rests on the taxpayer.

Swain JA emphasized that the wording in section 103(2) is extremely broad, which indicates an intention to cast the net wide.

A painstaking review of the evidence followed, and every action taken by Lloyd, Benatar, SDM, Allers and Digicall was minutely examined. The examination led to a conclusion that SDM acquired the shares in Digicall with the intention of keeping the assessed loss alive, in the expectation that the shares could be disposed of at a profit.

The explanation for the proposed sale to Global Capital initially was to enable a rival call centre to be established for Cell C, a proposal that never materialised. In evaluating this explanation, Swain JA found (paragraph [23]):

> It is therefore clear that the taxpayer was not profitable from the outset and reflected a staggering assessed loss for the year of assessment ending 30 June 2001, of R47 884 445, which they all realised had a built-in tax advantage, with a concomitant commercial benefit. In December 2001 it terminated its service provider contracts and disposed of its subscriber bases to MTN and Vodacom, which were its main source of business. Messrs Benatar and Lloyd being directors of the taxpayer must have had intimate knowledge of the reasons for its abject failure. Nevertheless, the professed reason for selling the shares in the taxpayer to Global Capital was to provide services to a rival cellular provider namely Cell C, with the object of making a profit. No details were furnished of any business strategy to transform the taxpayer from an abject failure into a profitable entity, by selling services for Cell C in competition with its former suppliers.

After dismissing the explanations for the acquisition by SDM as highly improbable, Swain JA concluded (at paragraph [26]):

> Such ill-informed conduct is only explicable on the basis that the purpose in acquiring the taxpayer was not to make a profit, but to ensure that it was trading, albeit at a loss, as at 30 June 2002. SDM was aware of the large assessed loss of R47 884 445 which could only be preserved and carried forward to the following tax year, if the taxpayer traded.

It had been conceded in evidence by Benatar that SDM had nothing to gain from acquiring the shares in Digicall, as the business was non-existent. However, if the assessed loss was revived, it had a value. Swain JA evaluated this evidence in paragraph [27]:

> These concessions together with the fact that a decision had been taken to sell the shares in the taxpayer even before they had been purchased by SDM, again reveals that their true purpose in acquiring the shares even at this early stage, must have been to utilise the assessed tax loss.

An important issue relating to the disposal of the shares by SDM to Glasfit was identified at paragraph [31]:

The objective fact is the taxpayer was a dormant company with a very large tax loss and this was known by the board of Glasfit from the outset, when it discussed the proposed purchase of the shares from SDM.

Even though negotiations between Glasfit and SDM broke down in March 2003, the latter still took steps to ensure that the assessed loss in Digicall was kept alive through ensuring that it carried on a trade for some part of the year to June 2003. In correspondence, Glasfit had been assured that Digicall would be a 'going concern'. This placed questions on the motive for trading after the breakdown of negotiations. Negative inference could be drawn from this action (paragraph [37]):

> Mr Benatar agreed that the significance of these statements lay in the application of s 20 of the Act, with the object of ensuring the assessed loss was carried over to the next tax year. That this was their objective, was confirmed in a further email from Mr Evans on 28 February 2003, in which he stated that the acquisition of the shares allowed SDM the opportunity to utilise approximately R16 million in assessed loss. Consequently, on the eve of negotiations apparently breaking down, steps were being taken by SDM to ensure the preservation of the assessed loss in the taxpayer. Mr Allers, however, maintained it was his interest in the call centre of the taxpayer in Cape Town that had not gone away after negotiations ceased in March 2003.

The reintroduction of the business back into Digicall, the resumption of operations and the fact that Glasfit had no business operations to inject into the company in March 2003 were criticised. The conclusion was reached (paragraph [40]) that the actions were carefully orchestrated:

> The relevant role players were all posturing with the objective of the utilisation of the assessed loss by the taxpayer.

The final element, namely the reason for the purchase of the shares by Glasfit, was analysed at paragraph [42]:

> Mr Allers and Mr Kluever maintained that because the memorandum of understanding required a new company to be structured, this was the reason for their decision in September 2003 that discussions with SDM should be revived. The more probable reason was the commitment of PG Glass had been secured and the taxpayer with its large assessed loss was needed to house the venture. The reason for this conclusion is found in the evidence of Mr Kluever that the venture between Glasfit and PG Glass was an extremely ambitious undertaking, with great strategic and execution risk to Glasfit, which held the promise of significant profit if it could be completed successfully. It was a challenging and difficult project to complete and the participation of PG Glass was essential to its success. The large assessed loss would inevitably be a valuable safety net for the venture in the crucial early stages of its development, by the immunisation of any profits from tax when its success would be particularly vulnerable.

Swain JA then analysed assertions by the witnesses concerning their interest in acquiring the shares in Digicall, and found, at paragraph [50]:

> In both the first and second acquisition of the shares in the taxpayer, the sole or at the very least the main purpose of SDM and Glasfit respectively in purchasing the shares, was to utilise the assessed loss by setting it off against income to be received by the taxpayer in the ensuing tax years, in order to avoid liability for the payment of tax on such income.

It was therefore concluded that the taxpayer had failed to prove that the purpose for which SDM acquired the shares was not to utilise the assessed losses.

Turning then to the argument that the disposal by SDM to Glasfit was a new transaction and that this second transaction was the cause for income having accrued to Digicall, Swain JA noted that the court a *quo* had borrowed an approach relating to causation from the law of delict, and that it was not necessarily appropriate to apply concepts from different fields of law in a tax dispute.

The judgment then proceeded to identify whether the income that had accrued to Digicall arose *directly or indirectly* from the change in shareholding where B Digital Ltd sold the shares to SDM. This was a question of fact to be resolved on consideration of the evidence.

At paragraph [58], Swain JA examined the possible findings of fact:

> In my view, the second change in shareholding would preclude a finding that the income in question resulted directly from the first change in shareholding. It would not, however, preclude a finding that the income resulted indirectly from the first change in shareholding. The conclusion that SDM purchased the shares in the taxpayer with the sole, or at the very least, the main purpose, of utilising the assessed loss to avoid liability on the part of the taxpayer for the payment of tax in the following tax years, must have had as its objective, the enablement of Glasfit to utilise the assessed loss for the same prohibited purpose. On the unique facts of this case, it would be artificial to ignore this objective when determining whether this income received by the taxpayer, resulted indirectly from the first change in shareholding.

After considering the amounts of income derived by Digicall following the sale of the shares to Glasfit, which were sheltered from tax by the assessed loss and the fact that so little of it was attributable to the Cape Town operations which had generated the assessed losses, Swain JA found (paragraph [61]):

> The first change in shareholding therefore resulted indirectly in income being received by or accruing to the taxpayer during the 2005 to 2008 years of assessment. The Commissioner was accordingly correct in concluding that the provisions of s 103(2) of the Act were satisfied and in disallowing the taxpayer’s claim to set-off the assessed loss against such income, during these years of assessment. The appeal therefore succeeds.

The takeaway

The purchase of a company with an assessed loss is fraught with risk. Invariably the existing business is unprofitable, and the possibility of recovery is not always clear. The temptation to transfer an existing profitable business into the new acquisition is great.

The activities relating to the ‘assessed loss company’ in this matter were unusual. Considerable effort was put into ensuring that there was trade in each year of assessment, even if for a very short part of the year, so that the assessed loss would not be declared forfeit because the company did not derive income from trade. There appeared to be no real commercial purpose to ‘flogging a dead horse’, as it were, and this exposed the true purpose, which was to retain the assessed loss as the only marketable constituent of value.

The decision is important in the sense that an interpretation is given of the words ‘direct or indirect result’ in the context of a broadly worded statutory provision. The broad wording indicates that the mischief at which the provision is aimed is trafficking in assessed losses, and even if the person acquiring the shares does not utilise the assessed losses but preserves them so that some other person may acquire the shares and utilise the losses, it justifies a conclusion that the utilisation is nevertheless an indirect result of the acquisition of the shares.

Stevie Coetzee
Associate Director - Corporate Tax
+27 (0) 21 529 2142
stevie.coetzee@pwc.com

Frank Mosupa
Partner/Director - Corporate International
+27 (0) 11 797 5294
frank.mosupa@pwc.com

SARS Watch

SARS Watch 26 October 2018 – 30 November 2018

Legislation

30 Nov	Notice, in terms of section 12R(3), of approval of Coega Special Economic Zone	Notice 694 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Notice, in terms of section 12R(3), of approval of Dube Tradeport Special Economic Zone	Notice 695 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Notice, in terms of section 12R(3), of approval of East London Special Economic Zone	Notice 696 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Notice, in terms of section 12R(3), of approval of Maluti-A-Phofung Special Economic Zone	Notice 697 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Notice, in terms of section 12R(3), of approval of Richards Bay Special Economic Zone	Notice 698 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Notice, in terms of section 12R(3), of approval of Saldanha Bay Special Economic Zone	Notice 699 published in Government Gazette No. 41758 with an implementation date of 1 August 2018.
30 Nov	Designation by the Minister of Finance, in terms of section 6(a), of the Employment Tax Incentive Act, 2013	Notice 700 published in Government Gazette No.41759 with an implementation date of 1 August 2018.
30 Nov	Amendment in Part 2 of Schedule No. 4 by the insert of rebate items 460.15/7208.51/02.06 and 460.15/7208.51/02.06 in order to create a rebate facility on primary flat rolled steel classifiable in tariff subheading 7208.51 – ITAC Report 586	Notice R.1325 published in Government No. 42064 with an implementation date of 30 November 2018.
30 Nov	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04, to exclude rebate items 460.15/7208.51/02.06 and 460.15/7208.51/03.06 from being subject to safeguard duty applicable to primary flat rolled steel classifiable in tariff subheading 7208.51 – ITAC Report 586	Notice R.1323 published in Government Gazette No.42064 with an effective date of 30 November 2018 up to and including 10 August 2019.
30-Nov	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04, to exclude rebate items 460.15/7208.51/02.06 and 460.15/7208.51/03.06 from being subject to safeguard duty applicable to primary flat rolled steel classifiable in tariff subheading 7208.51 – ITAC Report 586	Notice R.1324 published in Government Gazette No. 42064 with effect from 11 August 2019 up to and including 10 August 2020.
27 Nov	Rates at which interest-free or low-interest loans are subject to income tax	From 1 December 2018 the repo rate will be 7.75%.
20 Nov	Carbon Tax Bill	The Carbon Tax Bill was introduced in Parliament on Tuesday, 20 November 2018.
16 Nov	Amendment to Part 1 of Schedule No. 3 by the insertion of rebate items 306.15/2815.12/01.06 and 306.15/2815.12/02.06 in order to create a rebate provision for sodium hydroxide used in the extraction process of copper and nickel classifiable in tariff subheadings 2603.00 and 2604.00 – ITAC Report 592	Notice R.1234 published in Government Gazette No. 42036 with an implementation date of 16 November 2018.

16 Nov	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04, 260.03/7225.30/01.06, 260.03/7225.99/01.06 and 260.03/7226.99/01.06 to exclude various rebate items classifiable under rebate item 460.15 from being subject to safeguard duty applicable to certain flat steel used in the automotive industry – ITAC Report 590	Notice R.1232 published in Government Gazette No.42036 with effect from 11 August 2019 up to and including 10 August 2020.
16 Nov	Amendment in Part 2 of Schedule No. 4 by the insertion of various rebate items classifiable under rebate item 460.15 in order to create a rebate facility on certain flat steel used in the automotive industry – ITAC Report 590	Notice R.1233 published in Government Gazette No. 42036 with an implementation date of 16 November 2018.
16 Nov	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04, 260.03/7225.30/01.06, 260.03/7225.99/01.06 and 260.03/7226.99/01.06 to exclude various rebate items classifiable under rebate item 460.15 from being subject to safeguard duty applicable to certain flat steel used in the automotive industry – ITAC Report 590	Notice R.1231 published in Government Gazette No. 42036 with an implementation date of 16 November 2018 and up to and including 10 August 2019.
Case law		
In accordance with date of judgment		
20 Nov	Milnerton Estates Ltd v CSARS (1159/2017) [2018] ZASCA 155	This matter is on appeal from the Tax Court and the Court had to consider whether the purchase price accrued to the seller or whether the purchase price was deemed to have accrued in terms of s24I of the Income Tax Act. Furthermore, the Court had to consider whether the Tax Court was bound by a precedent set in a previous case.
9 Nov	Sasol Oil Proprietary Limited v Commissioner for the South African Revenue Service (923/2017) [2018] ZASCA 153 (9 November 2018)	Contracts for the sale of crude oil by one entity within the Sasol Group to another, and the back-to-back sale of the same oil to yet another entity in the group, were not simulated in order to avoid a liability to pay tax; nor were they entered into solely for the purpose of avoiding the payment of tax for the purpose of s 103(1) of the Income Tax Act.
28 Sep	Commissioner for the South African Revenue Service v Digicall Solutions (Pty) Ltd	Judgment in a dispute in which the Commissioner had invoked section 103(2) of the Income Tax Act and disallowed the set-off of assessed losses against income.
Rulings		
13 Nov	BGR 20 – Interpretation of the term 'substantially the whole' (Issue 3)	This BGR provides clarity on the interpretation of the expression 'substantially the whole' as referred to in sections of the Income Tax Act and section 9(1)(c) of the Transfer Duty Act.
9 Nov	BPR 313 – Foreign share buyback	This ruling determines the income tax effect of a share buyback by a non-resident company from a resident trust.
6 Nov	BPR 312 – Tax implications of the variation of employment contracts	This ruling determines the tax consequences of payments made pursuant to the cancellation of a profit share agreement entered into between an employer and certain of its employees.
Guides and forms		
26 Nov	ABC of Capital Gains Tax for Companies (Issue 8)	This guide provides a basic introduction to capital gains tax for companies.
26 Nov	Bonds – external policy	This policy covers: i) The standards used to determine the amount of surety and the criteria used to review the amount of surety; ii) The registration, cancellation, increase or decrease, and governance of bonds and addendums which are the acceptable forms of surety; and iii) Sureties where it is a condition of approval, registration, licensing or designation.
23 Nov	Ad valorem excise duty – External policy	The policy applies to manufacturers and owners of goods liable to ad valorem excise duty manufactured for them partly or wholly from materials owned by such owners.
23 Nov	DA 75 Manual	This manual is to assist licensees of special ad valorem manufacturing warehouses in the ad valorem industry to complete the quarterly ad valorem excise duty account (DA 75) and its schedules.
23 Nov	Clearance of movements	The policy applies to licensees and registrants who are required to make clearance declarations other than the excise duty and levy return.

8 Nov	Guide on Valuation of Assets for Capital Gains Tax Purposes (Issue 4)	This guide provides general guidance on valuations for assets for purposes of the Eighth Schedule of the Income Tax Act. It does not go into the precise technical and legal detail that is often associated with tax, and should not, therefore, be used as a legal reference.
6 Nov	Brochure on the Special Economic Zone Tax Incentive	The brochure provides a general overview of what the requirements for taxpayers are in order to receive the tax incentives provided for in special economic zones.
5 Nov	Tax guide for share owners (Issue 6)	The guide examines the tax consequences of holding shares as trading stock compared to holding them as capital assets as well as how to distinguish between profits of a capital and revenue nature using common law principles and statutory rules.
29 Oct	ABC of capital gains tax for individuals (Issue 10)	This is a summarised guide that provides a simple introduction to capital gains tax for individuals.
International agreements		
9 Nov	Turks and Caicos Tax Information Exchange Agreements	Notice 1219 published in Government Notice No. 42021 with a date of entry into force of 21 September 2018.
Interpretation Notes		
28 Nov	IN 105 – Deductions in respect of buildings used by hotelkeepers	This Note provides guidance on the interpretation and application of section 13bis, which deals with deductions in respect of buildings used in the trade of hotelkeeping.
28 Nov	IN 87 (Issue 2) – Headquarter companies	This Note provides guidance and clarity on the interpretation and application of section 9I of the Income Tax Act, which deals with headquarter companies.
13 Nov	IN64 – Income tax exemption: Bodies corporate, share block companies and associations of persons managing the collective interests common to all members	This Note provides guidance on the application and interpretation of section 10(1)(e) of the Income Tax Act, which exempts from income tax the levy income of a body corporate, a share block company and an association of persons.
13 Nov	IN10 (Issue 3) – Skills development levy exemption: Public benefit organisations	This Note provides guidance on the interpretation and application of section 4(c) of the Skills Development Levy Act, which exempts any public benefit organisation (PBO) contemplated in section 10(1)(cN) of the Income Tax Act from the payment of SDL.
Organisation for Economic Cooperation and Development (OECD)		
30 Nov	OECD – Secretary General's tax report: G20 leaders	This report contains two parts. Part I reports on the activities and achievements in the OECD's international tax agenda. Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
22 Nov	OECD: Automatic Exchange of Information Implementation Report 2018	The contents of this report reflect the situation as of 22 November 2018. The latest developments regarding automatic exchange of information (AEOI) implementation can be found online on relevant official government websites and/or on the AEOI portal.
31 Oct	OECD: Revenue Statistics in Africa 2018	Publication compiles comparable tax revenue and non-tax revenue statistics for 21 countries in Africa, including South Africa.
Other publications		
26 Nov	Tax Alert: Addendum: Fixed non-compliance penalties imposed on Corporate Income Tax returns	The South African Revenue Service has announced its intention to impose a fixed amount penalty in terms of sections 210 and 211 of the Tax Administration Act in respect of corporate income tax returns.
13 Nov	Legislative developments: Revision of anti-avoidance rules on share buy-backs and dividend stripping	Section 22B of the Income Tax Act and paragraph 43A of the Eighth Schedule to the Income Tax Act contain what is commonly referred to as the 'anti-dividend stripping' rules. During the 2017 legislative cycle, certain amendments were made that were aimed at strengthening the rules.
9 Nov	Legislative developments: Revisions to the debt relief rules	This year, the Taxation Laws Amendment Bill, 2018, again proposes substantial amendments to the debt relief rules.
6 Nov	Legislative developments: The doubtful debt allowance regime	The Taxation Laws Amendment Bill, 2018 ('the TLAB'), which was introduced in Parliament on 25 October 2018, proposes certain changes to section 11(j) of the Income Tax Act (which also provides for a doubtful debt allowance for non-bank lenders that do not fall within the ambit of the application of section 11(jA) of the Income Tax Act).