Synopsis

Tax today

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

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

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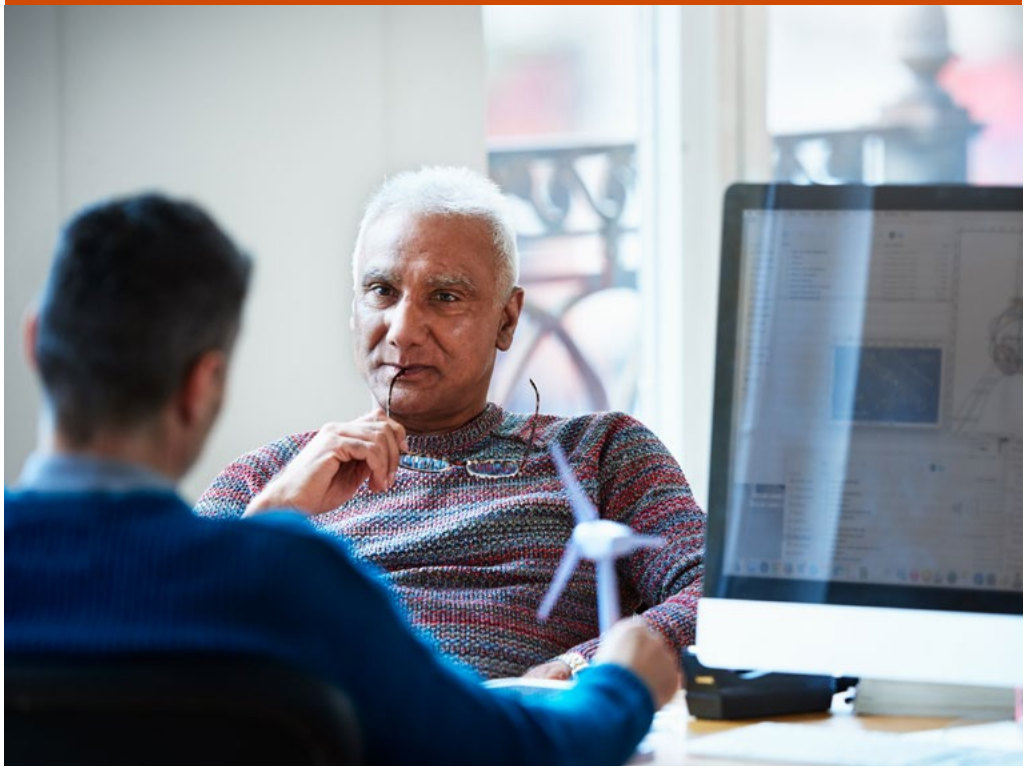
Tax policy plays a pivotal role in fostering a just and sustainable energy transition

This article highlights the importance of incorporating revenue recycling mechanisms into tax policies to achieve a just energy transition and shares practical insights on tax policies that encourage companies to fully engage in a just energy transition.

It also reflects South Africa's current tax policies in light of these principles.



The Paris Agreement – the dawn of international cooperation on climate change

The Paris Agreement ("the Agreement") is a legally binding international treaty on climate change with an overarching goal to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels" and pursue efforts "to limit the temperature increase to 1.5°C above pre-industrial levels". To achieve this, greenhouse gas (GHG) emissions must peak before 2025 at the latest and decline 43% by 2030.

The Agreement currently has 195 signatories (including South Africa) and works on a five-year cycle, requiring increased climate actions by the respective parties during each cycle. Countries have been submitting their national climate action plans, referred to as nationally determined contributions (NDCs), to the secretariat of the United Nations Framework Convention on Climate Change.

Policymakers recognise that to achieve these climate goals, there must be a just and equitable transition of their respective economies, and a number of countries (including South Africa) specifically cite the just transition principles in their NDCs.

South Africa's 2021 NDC[1] states:

"A just transition means leaving no-one behind. It requires procedural equity to lead to equitable outcomes. A just transition is at the core of implementing climate action in South Africa…"

The role of tax policies in fostering a just and sustainable energy transition

Decarbonisation initiatives worldwide will have to be sustainable, with real societal buy-in.

Enablers for a just energy transition

A blend of policies, including taxation, is key to achieving a just green transition. These policies should not only incentivise eco-friendly practices among households, governments and businesses, but should also be designed to shift consumption, investment and more general spending patterns towards more sustainable options.

1 https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf

The fundamental principle behind environmental taxation is to ensure that polluters account for the societal costs of their pollution. By increasing the price of polluting activities, environmental taxes reduce demand for those activities. Accordingly, carbon prices are key economic tools to modify behaviour.

Tax policy tools can help to facilitate the transition by ensuring stakeholder support and modifying behaviours,[2] but the risk is that these policies could impose asymmetrical costs on particular sectors of society / geographical areas (e.g., those heavily reliant on fossil fuel energy), which could make it more difficult to obtain societal buy-in. PwC's research shows that this challenge could be successfully addressed through revenue recycling mechanisms.

Research shows that where green taxes and broader measures are implemented without a revenue recycling mechanism, the fiscal cost of the climate policy will increase and it is likely that many households (especially in adversely affected regions and sectors) will not support this shift towards sustainability.

These mechanisms could include, for example, lump-sum transfers, targeted transfers, and reductions in labour or capital taxes – the appropriate mechanism for a specific jurisdiction will depend on the sophistication of the tax and benefits systems, redistributive preferences, and local political processes and decision-making.

As revenue recycling schemes present a trade-off between redistributive goals and economic efficiency (i.e., including the effects on labour and capital supply and on carbon reduction), a country will have to tailor its scheme to achieve an optimum balance between these objectives. This could, for example, entail a mix of direct transfers and reductions in pre-existing distortionary taxes.

2 Enabling a just transition – why taxation has a vital role to play. Please refer to this document for detailed references to all other research sources used in the preparation of the document and this article.

The table below summarises the trade-offs for the different revenue recycling mechanisms.

Aspect	Lump-sum transfers	Targeted transfers	Reductions in income taxes
Efficiency			
Effects on carbon emissions	Decrease in emissions marginally lower than without revenue recycling.	May reduce environmental benefits due to perverse incentives for households to maintain/ increase carbon consumption.	Decrease in emissions marginally lower than without revenue recycling and lower than with lump-sum transfers.
Labour supply	Overall decrease in hours worked as in a scenario without revenue recycling.	Effects on labour supply not explicitly mentioned, but perverse incentives may affect labour supply indirectly.	Increases incentives for work, boosting labour supply (while without recycling labour supply drops).
Consumption	Increased consumption, more than without revenue recycling but less than with tax cuts.	May lead to increased consumption of carbon-intensive goods due to perverse incentives.	Increased consumption, substantially more than without revenue recycling and with lump-sum transfers.
Inequality			
Horizontal	Does not address horizontal inequality.	Potentially, helpful to reduce horiontal inequality but targeting of households beyond income remains practically difficult.	By definition, income taxes generally imprecisely target households beyond their income.
Vertical	Improves vertical inequality by compensating low-income households for higher prices due to carbon tax.	Can soften the regressive impact of carbon tax by compensating low-income households.	Can be designed to offset or reverse the regressivity of carbon pricing, but broad labour tax reductions may be regressive.

Designing tax policies to encourage a just transition

PwC has gained deep insight into how business leaders across the world are responding to tax policies that are designed to encourage a just transition and found that there are numerous ways of motivating greater business action beyond (substantial / increased) fiscal incentives. Four key attributes for effective tax policies and the markers of success or failure for each have been identified. These are summarized in the table below. Please refer to PwC's article Delivering a just transition for a detailed discussion of these matters.

Key attributes	Successful	Less successful
Offers certainty	Provides a clear method to demonstrate compliance (e.g., taxonomy that clarifies what actions count as sustainable)	Lacks clarity on how authorities will interpret policies Little confidence that the policy will endure
Creating a business case for action	Applies creativity and collaboration to help companies identify the business case Offers financial incentives Expands the range of companies that can benefit	Offers incentives that are too small or weak to override other concerns Does not accommodate on-the-ground realities for business Causes unintended harm to the business
Compliance is achievable and worthwhile	Benefits should justify the compliance burden	The terms to qualify (and claim) for incentives / grants should not be too stringent / difficult
Built on collaboration		Conflicting policies Lack of collaboration between policy makers

South Africa

South Africa is ranked among the top 20 highest global emitters, with emissions per capita comparable to those of developed countries because of a high dependency on fossil fuels.

The Just Transition Framework

The Presidential Climate Committee adopted a Just Transition Framework (the Framework) in May 2022. The Framework sets out the desired outcomes for a just transition and the actions for the government and its social partners to achieve this outcome in the short, medium, and long terms. It also sets out the policy measures and undertakings by different social partners to minimise the social and economic impacts of the climate transition and to improve the livelihoods of vulnerable groups.[3]

'Just transition' – The Framework definition

A just transition:

- aims to achieve a quality life for all South Africans, in the context of increasing the ability to adapt to the adverse impacts of climate, fostering climate resilience, and reaching net-zero greenhouse gas emissions by 2050, in line with best available science;
- contributes to the goals of decent work for all, social inclusion, and the eradication of poverty;
- puts people at the centre of decision-making, especially those most impacted – the poor, women, people with disabilities, and the youth – empowering and equipping them for new opportunities of the future. A just transition builds the resilience of the economy and people through affordable, decentralised, diversely owned renewable energy systems; conservation of natural resources; equitable access to water resources; an environment that is not harmful to one's health and well-being; and sustainable, equitable, inclusive land use for all, especially for the most vulnerable.

The Framework acknowledges that several interlinked strategies will be required to mobilise capital towards a just transition in South Africa and that these strategies will have to include tax considerations. Specific considerations include:

- Reviewing existing mechanisms (taxes and subsidies) to determine whether they are "fit for purpose" or need to be adjusted to support a just transition, e.g., piggybacking on the carbon tax or developing more opportunities for own-source revenues for cities or municipalities; and
- Applying economic instruments to support a just transition, e.g., performance-based grants, progressive subsidies, tax benefits, tax rebates, or incentive schemes.

3 https://www.climatecommission.org.za/just-transition-framework. The President confirmed in the 2025 SONA that a just transition to a low carbon economy remains a priority.

We consider the developments in respect of South Africa's carbon tax (specifically relating to revenue recycling measures) and the "green" tax incentives below.

Carbon tax

Carbon tax was introduced in 2019 to give effect to the "polluter pays" principle and to ensure that all stakeholders' future production, consumption, and investment decisions have regard to the negative adverse costs (externalities) of their emissions.

The three-phased introduction of carbon tax endeavours to allow businesses time to adjust to the new regulations and invest in low-carbon technologies.

Phase one

National Treasury states[4] that to ensure a cost-effective transition, the design of carbon tax in phase one provides for the recycling of revenues through the electricity generation levy credit, the energy efficiency savings tax incentive, and the tax-free allowances of up to 95 per cent of the total GHG emissions of firms. National Treasury opines that these revenue recycling measures have helped to mitigate potential short-term negative impacts on the economy and jobs and have cushioned energy-intensive sectors (e.g., mining, and iron and steel) and households from potential adverse impacts due to the introduction of the carbon tax. Carbon tax also does not impact on the price of electricity in phase one.

Phase two

Although the second phase was initially scheduled for a January 2023 commencement date, this was postponed until January 2026.

In November 2024, Government published a discussion document on the proposed design of phase two, which included the comments below on revenue recycling measures[5].

- A green hydrogen commercialisation strategy[6] was approved in October 2023. This strategy recommends the phasing in of increases to the carbon tax rate or carbon fuel levy, the removal of fossil fuel subsidies, and the reallocation of subsidies to green hydrogen development. To support the green hydrogen value chain, existing renewable energy-based tax incentives should be expanded. As part of the revenue recycling measures under the carbon tax, it is proposed that the 100 per cent depreciation allowance [7] for solar photovoltaic energy be extended to green hydrogen production as well.
- Carbon tax and other environmental taxes are not earmarked for recycling. However, as the carbon tax rate is increased over the medium to long terms there could be revenue-raising potential, and targeted measures will be necessary to support the low-carbon transition, stimulate a green economy, and create jobs.
- Subject to fiscal constraints, appropriate mechanisms may be considered as part of revenue recycling measures. Some broad priorities could include:
  - Support for the expansion of the electricity grid and transmission infrastructure
  - Reskilling workers' programmes
  - Free basic electricity support targeted at renewable-based electricity
  - Enhancing public transport infrastructure
  - Support for off-grid renewables for communities
  - Improving and strengthening municipal infrastructure to promote climate resilience (energy, transport, solid waste collection and separation, wastewater management, etc.)
  - Enhancing the working for water, fire, waste and other environmental sector programmes of the Department of Forestry, Fisheries and Environment (DFFE) to promote climate mitigation and adaptation efforts
  - Capacitating the state to effectively implement the carbon pricing policy, including building skills in emissions and carbon market reporting, monitoring and verification within the South African Revenue Service, the DFFE, National Treasury and the Department of Electricity and Energy to improve the administration of the tax.

Budget 2025 (the March 2025 version) proposed several significant updates to the carbon tax framework. The proposals to extend the carbon budget allowance and retain other key allowances will hopefully be retained in the next iteration of the Budget (expected in May 2025).

4 Page 16.
5 Page 60.
6 Green hydrogen is defined in the document (on page 61) as a hydrogen generated from the separation of water into hydrogen and oxygen (electrolysis) using renewable electricity that can be used as a fuel for chemical, steel, glass and cement production, aviation and shipping, and grid energy storage.
7 Section 12B of the Income Tax Act 58 of 1962, as amended (the ITA).

The takeaway

Although South Africa's tax policy is to not earmark environmental taxes for recycling, Government proposes to continue to recycle (a portion of) revenues from certain tax allowances and to consider additional revenue recycling measures in future, potentially including targeted transfers (e.g., free basic electricity, support for community off-grid renewables, and worker reskilling programmes) and tax incentives for green hydrogen production.

As revenue recycling measures are crucial to obtain societal buy-in for the shift towards a low-carbon economy in South Africa, Government will have to carefully consider the trade-offs between its redistributive goals and economic efficiency when designing these future measures.

Green tax incentives

The main tax incentives to support businesses' transition to low-carbon energy solutions are:

- The energy efficiency tax incentive[8] (available up to 31 December 2030), which allows a tax deduction for energy efficiency saving measures;
- The renewable energy tax incentive[9], which provides for an accelerated tax deduction for the acquisition of equipment that can generate renewable electricity; and
- The electric and hydrogen-powered vehicles incentive (available from 1 March 2026 to 1 March 2036), which introduces an investment allowance for manufacturers of electric and hydrogen-powered vehicles.

Although these tax incentives are welcomed, they may be undermined by several challenges and, furthermore, may not be extensive enough to motivate the business action required for a just and sustainable energy transition in South Africa.

To obtain the required impetus for South African businesses to buy into a just energy transition, Government should consider incorporating and strengthening the (other) key attributes for effective tax policies, set out above, as far as possible. Currently, South Africa's tax policies could be improved by providing clear guidance on proposed future policies (including taxonomy), making it easier to comply with regulations and claim incentives and allowances, and ensuring that policy makers work closely with one another to develop and implement these policies.[10]

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8 Section 12L of the ITA.
9 Section 12B of the ITA
10 Acknowledging that National Treasury a) indicated in their discussion paper (page 10) that they would work with the other departments to finalise the Framework for the Approval of Domestic Standards for carbon offsets and b) also worked with the Department of Trade, Industry and Competition on developing policies for the transition of the automotive market and productive capacity from internal combustion engine vehicles to electric vehicles.

Supreme Court of Appeal rules on tax deductibility of relocation and legal costs, setting precedent for the mining sector

Introduction

In a significant ruling that could have far-reaching implications for the mining sector, the Supreme Court of Appeal recently delivered a partial victory to Sishen Iron Ore Company (Pty) Ltd (**"Sishen"**) in respect of a tax dispute with the Commissioner for the South African Revenue Service (**"CSARS"**).

The case[1] centred around the tax deductibility of substantial expenditures (as explained below) incurred during the 2012 to 2014 tax years of assessment. The court's decision addressed expenditure relating to (i) the costs incurred in relocating a residential area known as the Dingleton township and costs relating to the relocation of certain infrastructure referred to as the Sishen Western Expansion Project (**"SWEP"**) infrastructure (collectively referred to as the **"relocation expenditure"**), (ii) legal expenditure incurred in connection with the relocation of Dingleton (the **"legal expenditure"**), (iii) and the costs of relocating a 66kV power line (the **"66kV line expenditure"**). The judgment sets a precedent for future tax deduction claims in the mining sector and highlights the complexities in respect of tax deductions related to mining operations and the interpretation of various provisions of the Income Tax Act, Act 58 of 1962 (the "**Act**").

Context and background

Sishen conducts opencast mining in the Northern Cape province[2]. As mining affects the environment[3] and inherently involves dangerous activities, the provisions of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") (and other applicable legislation) should be strictly adhered to by Sishen. In terms of the relevant legislation, blasting operations within a 500m radius (the "**safety buffer**") of any public infrastructure[4] are prohibited.

As Sishen's mining operations progressed westward, Sishen needed to relocate the SWEP infrastructure. The infrastructure belonged to third parties but was within Sishen's covered mining area[5]. To the west of the south-western boundary of the mining area, approximately 600m away, was Dingleton. Dingleton was situated on land not owned by Sishen and not within Sishen's mining area. Consequently, Sishen could not mine the described area because of the physical obstacles presented by the SWEP infrastructure and the safety buffer to be maintained between its mining operations and Dingleton.

The ongoing mining operations progressed increasingly westwards, closer towards Dingleton and the SWEP infrastructure. A point will be reached where it is no longer possible to mine even though the boundary of the Sishen's mining area[6] would not have been reached, and the exploitation of Sishen's ore reserves will be halted.

In terms of the MPRDA, an application for a mining right must include a mining work programme (**"MWP"**)[7]. The MWP forms part of the mining right and must contain, among other things, details of the mineral deposit concerned with regard to the type of mineral to be mined and its locality, extent, depth, geological structure, mineral content and mineral distribution; details of the applicable timeframes and scheduling of the various implementation phases of the proposed mining operation; a financing plan with details of costs; and an undertaking signed by the holder of the mining right to adhere to the proposals as contained in the MWP. Non-compliance with the MWP or a breach of

1. Sishen Iron Ore Company (Pty) Ltd v CSARS (550/2023) [2025] ZASCA 16
2. In terms of a mining right as contemplated in the MPRDA
3. A constitutionally protected right
4. Public infrastructure includes but is not limited to railway lines, power lines, and any place where people congregate
5. Area covered by Sishen's mining right
6. As per the mining right
7. Regulation 10(1)(f) of the regulations promulgated under the MPRDA

any material term of the mining right could lead to the suspension or cancellation of Sishen's mining right. Additionally, if Sishen, in the opinion of the Minerals and Mining Development Board, did not mine the iron ore optimally in accordance with the terms of the MWP[8], then the Board could recommend that the Minister should direct Sishen, as holder of the mining right, to take corrective measures and, if not corrected, cancel its mining right.

Sishen's MWP included the following provisions:

1. It specifically provided for the relocation of Dingleton and the SWEP infrastructure.
2. It obliged Sishen to undertake mining activities on a strip of land over which a portion of Transnet's Dingleton-Hotazel railway line was located as well as other areas where the SWEP third-party infrastructure was located. Regarding the Dingleton-Hotazel railway line and power line, it stipulated ore extracts from the 500-meter blast perimeter (protecting the Dingleton-Hotazel railway line and adjacent power line) along the north-western margin of the pit by 2012. The waste within this perimeter would have to be stripped at an earlier date, which implied that the railway and power lines would probably have to be relocated sometime around 2008.
3. The infrastructure, which included the SWEP infrastructure, was to be relocated further to the west. It stipulated that contractors would most likely do the bulk of the work relating to the relocation.
4. It also covered the mining of the safety buffer zone. For the ore to be accessed by 2020, the Dingleton township would have to be relocated to provide sufficient ore of the required quality, which ore was sterilised by the 500-meter safety buffer around the township. The waste within this perimeter area would have to be stripped at an earlier date, which necessarily implied that the people of Dingleton would have to be resettled even earlier; it was suggested probably around 2010. A number of contractors were expected to be involved in the project, especially with the construction of alternative housing for the residents of Dingleton.

Relocation expenditure

Consistent with the requirements of the MWP, Sishen embarked on moving Dingleton to maintain a safety buffer and relocating the SWEP infrastructure[9]. To this end, Sishen entered into agreements with the relevant authorities owning the SWEP infrastructure and the residents of Dingleton at the time.

The residents of Dingleton were relocated to properties in Kathu or elsewhere, constructed for and on behalf of Sishen. Sishen would not own the relocated Dingleton infrastructure and no cash settlements to the community in lieu of the relocation were allowed.

The SWEP infrastructure relocation involved the relocation of third party-owned SWEP infrastructure from land included in Sishen's mining right. Sishen did not acquire ownership of the relocated infrastructure. The expenditure incurred was for the costs of demolition, removal and subsequent reconstruction of the SWEP infrastructure. The amenities of the third parties remained essentially the same after the SWEP relocation. Only the physical location of the infrastructure changed; the third parties gave up their existing rights and these were replaced by similar rights and infrastructure but in a different location.

Legal expenditure

Sishen incurred legal expenditure comprising the fees of legal practitioners who advised the Dingleton residents in relation to their relocation.

66kV line expenditure

Sishen's mining operations make extensive use of electricity to power various items of equipment. Sishen uses the 66kV line as part of its plant in conducting its mining operations. As the voltage is stepped down from the 66kV line and distributed to cables, a transformer and substation are required. The 66kV line was moved as the need arose to operate mine equipment in new locations, in accordance with Sishen's MWP. The 66kV line expenditure claim entailed the costs of dismantling the old line and masts and relocating to new positions what parts thereof could be used, where it was re-established, with old parts being replaced with new parts where required.

8. Section 51(1) of the MPRDA
9. The SWEP infrastructure entailed: relocating 26 kilometres of the Transnet Hotazel-Postmasburg rail line (owned by Transnet); the realignment of 6km of the Sishen Lylyveld rail siding (owned by Transnet and situated on land owned by Eskom); a diversion of the TR405 provincial road (owned by the Northern Cape Province); the relocation of the Sishen Traction substation (owned by Transnet/Eskom and situated on property owned by Transnet, but to be allocated to Assmang Property); the relocation of a portion of the 132kV Traction supply line (owned by Eskom); the construction of a new Emil Traction substation (to be owned by Transnet on land owned by Transnet); the redevelopment of the ballast loading siding (owned by Transnet); the rerouting of a 22kV rural power supply line (owned by Transnet); the construction of a new 132kV distribution line for the new Emil Traction substation (owned by Eskom); the relocation of 23km of the Vaal Gamagara pipeline (owned by Sedibeng Water); and the relocation of 12km of the Eskom 275kV Ferrum-Garona overhead (owned by Eskom).

Tax court

This matter was first heard in the tax court, where the following arguments were presented by Sishen and CSARS.

Expenditure incurred	Sishen	CSARS
Relocation expenditure	Claimed the said costs in terms of section 15(1) and section 36(7C), read with section 36(11)(e). In the alternative, Sishen argued that the expenditure was revenue in nature, being part of the operating costs incurred in opencast mining – as such, a section 11(a) deduction.	Argued that the said expenditure was in terms of Sishen's mining right and as such contended that it was capital in nature.
Legal expenses	The said expenditure was claimed as being revenue in nature in terms of section 11(c).	SARS argued that the expenditure was not incurred in the production of income, as the cost was not sufficiently closely connected to the business operations of Sishen in performing its mining operations.
66kV line expenditure	Sishen claimed the cost incurred as mining capital expenditure in line with section 36(11)(a). They put forth two alternative arguments: (i) the expenditure is revenue in nature and as such deductible under section 11(a), or (ii) the expenditure qualifies as a depreciable allowance asset under section 11(e).	SARS contended that the expenditure was capital in nature but excluded from section 36(11)(e) as it constituted infrastructure. SARS further argued that, based on the fact that it was capital in nature, it was not deductible under section 11(a). Regarding a section 11(e) deduction, CSARS contended that the expenditure did not involve wear and tear but involved the cost of relocation in order to continue mining operations in a portion previously sterilised because of the location of the 66kv line.

The tax court found, in summary, that the relocation expenditure was not deductible. This was based on the argument that the Dingleton relocation and the SWEP project were not matters incidental or sufficiently connected to mining operations. In that the expenditure was not in respect of Sishen's own infrastructure, it could not be said to be of the nature envisaged in section 36(11)(e). The court further held that the cost was incurred in respect of section 11(a) in that it was not money used in employing a process to extract income-earning ore from the soil, and as such there was not a sufficient link to the act of producing income. Regarding the legal expenditure, the tax court found that the costs were not incurred in the course of, or by reason of the ordinary course of, the operations undertaken by the taxpayer. In respect of the 66kV line, they agreed with Sishen and allowed the expenditure.

Supreme Court of Appeal

Sishen took the matter on appeal to the Supreme Court of Appeal of South Africa and the court had to resolve the following main questions at hand:

1. Whether:
   a. the relocation expenditure constituted deductible expenditure incurred in terms of a mining right, but other than in respect of infrastructure, within the meaning of section 36(11)(e);
   b. the 66kV line expenditure was in respect of mine equipment as contemplated in section 36(11)(a), or whether it qualified for the depreciation allowance under s 11(e).
2. In the alternative to para (1), whether the relocation and the 66kV line expenditure constituted expenditure actually incurred in the production of income, but not of a capital nature, for the purposes of s 11(a).
3. Whether the legal expenditure was of a revenue nature incurred in the production of Sishen's income derived from mining operations and was, therefore, deductible under section 11(a), alternatively s 11(c).

The court upheld Sishen's appeal in part and dismissed SARS' cross-appeal in part, ruling as follows:

Interaction of special deductions provisions and the general deductions formula

Judge PA Koen stated that the Act:

> "(a) specially permits Sishen, because it derives its income from mining operations, to deduct certain expenditure, of a capital nature, from its income – in accordance with what is generally referred to as the special deductions provisions; and
>
> (b) generally permits Sishen, like any other taxpayer, to deduct expenditure incurred in the production of its income, if not of a capital nature – in accordance with what is generally referred to as the general deductions formula."

He further stated that:

> "Section 23B(3) requires a taxpayer to first claim a deduction in terms of the special deductions provisions, if applicable, and only if no special deductions provision applies, to consider whether the general deductions formula finds application."

The judgment therefore followed the approach of applying the special deductions provisions (namely section 15(a), read with section 36(7C) and section 36(11)) first and the general deductions provisions (section 11(a)) thereafter.

Relocation expenditure

It was held that the relocation expenditure was deductible under section 15, read with section 36(11)(e) – expenditure incurred in terms of a mining right pursuant to the MPRDA other than in respect of infrastructure or environmental rehabilitation. Judge PA Koen agreed with CSARS that the expenditure must be directly connected to the mining right. In this regard it is clear, according to Judge Koen, that the costs were incurred by Sishen to mine the areas occupied by the SWEP infrastructure and the buffer zone (which necessitated the relocation of Dingleton). This was in line with Sishen's expected and reasonable legal obligations in terms of its mining right, as their MWP required Sishen to do it.

CSARS argued, however, that Sishen could not have mined the safety buffer zone, although it is covered by its mining right; also, it could not have mined the area occupied by the SWEP infrastructure; and it did not have a mining right over the Dingleton area. It was further argued that these costs were incurred voluntarily, i.e., Sishen elected to incur these costs, and that the costs were not incurred in terms of its mining right. Furthermore, CSARS contended that the expenditure was not incurred in terms of Sishen's mining right but in terms of other legislation, e.g., the Safety Act and the regulations. In effect, the expenditure was incurred on Sishen's own volition to expand its mining operations. The court dismissed the "artificial" reasoning that Sishen was entitled and indeed required to optimally mine the said areas in terms of its MWP under the MPRDA. As such, the costs were incurred in respect of its mining right.

The final question regarding the deductibility under section 15, read with section 36(11)(a), was whether the costs incurred represent infrastructure and are subsequently not deductible. The court clarified that the term "infrastructure", as used in section 36(11)(e), refers to the taxpayer's own infrastructure and not third-party infrastructure. As such, based on the fact that Sishen do not and will not own any of the infrastructure moved, the relocation expenses will be deductible in terms of section 15, read with section 36(11)(e).

As the relocation expenses are deductible in terms of a specific provision (being 15(a), read with section 36(11)(e)), the court held that there was no reason to consider the deductibility of the said costs under section 11(a).

The 66kV line expenditure

The judge concurred with the tax court that the 66kV expenditure was deductible.

Legal expenditure

The court upheld SARS' disallowance of the legal expenditure, comprising fees paid by Sishen to its legal practitioners to assist the Dingleton residents with advice in respect of their relocation. It was noted that section 11(c) allows for the deduction of legal fees incurred during the year of assessment arising in the ordinary course of operations, or by reason of the ordinary operations, undertaken by the taxpayer in carrying on its trade.

An important fact is that the residents of Dingleton obtained the legal advice, which was merely paid by Sishen. In this regard the expenditure was not incurred by Sishen for its own benefit but rather for the benefit of the Dingleton residents.

The expenditure was not incurred in terms of a mining right, so section 36(11)(e) will not be applicable. The legal costs were not incurred to earn or produce income, but were simply another expense with an insufficiently close link or nexus to the production of income in Sishen's trade.

The takeaway

This ruling correctly determined that both the relocation expenditure and the 66kV line expenditure are deductible, whereas the legal costs incurred are not. It underscores the principles distinguishing capital expenditures from revenue expenditures, particularly within the context of mining operations. Specifically, it emphasizes that expenditure must be incurred in the production of the taxpayer's income.

Notably, this case also provides essential clarity on the interpretation of (i) a mining right and (ii) infrastructure as outlined in section 36(11)(e), which should be carefully considered by mining companies.

Mining companies should, therefore, meticulously evaluate their expenditure to ensure compliance with these principles, thereby securing their rightful deductions.

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SARS Watch:

SARS Watch 26 March 2025 – 25 April 2025

Legislation		
24 April 2025	Memorandum on Objects of Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2025	The memo provides background on proposed new legislation, reasons for proposed changes to existing legislation and further explanations or examples where necessary.
24 April 2025	Rates and Monetary Amounts and Amendment of Revenue Laws Bill (No. 14 of 2025)	The Bill was introduced in the National Assembly by the Minister of Finance on 24 April 2025.
24 April 2025	Notice 6157 – Notice of Introduction in National Assembly of draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2025, publication of explanatory summary of Bill, and withdrawal of notice	Published in Government Gazette No. 52567 with an implementation date of 24 April 2025.
7 April 2025	New transfer duty rates effective 1 April 2025	New transfer duty rates, as announced in the Budget Speech by the Minister of Finance, applicable to properties acquired on or after 1 April 2025, applicable to all persons, including natural and non-natural persons (including companies, close corporations (CCs) and trusts).
28 March 2025	Employment Tax Incentive (ETI) changes with effect from 1 April 2025	The proposed amendments to the ETI Act in the 2025 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill will become effective on 1 April 2025, provided Parliament passes the necessary legislation.
14 March 2025	Notice 5995 – Regulations with regard to value-added tax on domestic reverse charge relating to valuable metal issued in terms of section 74(2) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)	Published in Government Gazette No. 52295 with a commencement date of 1 April 2025.
14 March 2025	Notice 5994 – Regulations with regard to value-added tax for casino table games of chance issued in terms of section 74(2) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)	Published in Government Gazette No. 52294, with a commencement date of 1 January 2025.
14 March 2025	Notice 5993 – Regulations prescribing electronic services for purposes of the definition of "electronic services" in section 1(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)	Published in Government Gazette No. 52293, with a commencement date of 1 April 2025.
14 March 2025	Notice 5992 – Regulations under section 19(c) of the Carbon Tax Act 15 of 2019	Published in Government Gazette No. 52292, with a commencement date of 1 January 2024.
Interpretation		
10 April 2025	Interpretation Note 20 (Issue 9) – Additional deduction for learnership agreements	This Note provides clarity on the interpretation and application of section 12H, which provides for the deduction of annual and completion allowances for registered learnership agreements meeting the requirements.
28 March 2025	Interpretation Note 138 – Determining the calorific value of coal for purposes of the royalty	This Note clarifies whether air-dried or as-received should be used to determine the condition specified for coal in Schedule 2 for calculating the royalty payable on the transfer of coal extracted from within the Republic.
26 March 2025	Interpretation Note 137 – Recoupment of amounts deducted or set off when an asset commences to be held as trading stock	This Note provides guidance on the interpretation and application of section 8(4)(*k*)(iv), which is relevant when a depreciable asset (not previously classified as trading stock) has had an amount allowed to be deducted or set off under a provision listed in section 8(4)(*a*) and subsequently commences to be held as trading stock.

Binding rulings

25 April 2025	Binding General Ruling 4 (Issue 4) – Apportionment methodology to be applied by a municipality	This BGR prescribes the apportionment method that a municipality must use to determine the ratio contemplated in section 17(1) to calculate the amount of VAT that may be deducted as input tax on mixed expenses.
31 March 2025	Binding Private Ruling 414 – Application of the proviso to section 8EA(3)	This ruling determines how the *proviso* to section 8EA(3) will apply in certain circumstances where equity shares in an operating company that were acquired by a person through the application of preference share funding are no longer held, whether directly or indirectly, by that person.
31 March 2025	Binding Class Ruling 092 – Application of the proviso to section 8EA(3)	This ruling determines how the *proviso* to section 8EA(3) will apply in certain circumstances where equity shares in an operating company that were acquired by a person through the application of preference share funding are no longer held, whether directly or indirectly, by that person.
28 March 2025	VAT ruling 009 – Application of the zero rate to services supplied directly in respect of investments located outside the Republic of South Africa and not listed on a South African Stock Exchange	The applicant supplies administration and management services to customers (the clients) based in the Republic directly in respect of investments located outside of the Republic. SARS is of the view that the applicant may apply the zero rate, under section 1(2)(*g*)(i) of the VAT Act, to services supplied to clients if the investments are not listed on a South African Exchange.

Customs and excise

25 April 2025	Notice R.6155 – Amendment to Schedule No. 1 to implement the revised tariff rate quota in terms of the Economic Partnership Agreement (SACUM-UK EPA)	Published in Government Gazette No. 52564, with retrospective effect from 1 September 2024 up to and including 31 December 2024.
25 April 2025	Notice R.6154 – Amendment to Schedule No. 1 to implement the revised tariff rate quota in terms of the Economic Partnership Agreement (SACUM-UK EPA)	Published in Government Gazette No. 52564, with retrospective effect from 1 January 2025.
25 April 2025	Notice R.6153 – Amendment to Schedule No. 1 to implement the revised tariff rate quota in terms of the Economic Partnership Agreement (SADC-EU EPA)	Published in Government Gazette No. 52564, with retrospective effect from 1 September 2024 up to and including 31 December 2024.
25 April 2025	Notice R.6152 – Amendment to Schedule No. 1 to implement the revised tariff rate quota in terms of the Economic Partnership Agreement (SADC-EU EPA)	Published in Government Gazette No. 52564, with retrospective effect from 1 January 2025.
4 April 2025	Notice R.6090 – Amendment to Part 1 of Schedule No. 1, by the deletion and insertion of various tariff subheadings under tariff heading 44.11 as well the insertion of Additional Note 1 to Chapter 44, to provide for ad hoc technical amendments	Published in Government Gazette No. 52448, with an implementation date of 4 April 2025.
4 April 2025	Notice R.6089 – Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to reduce the rate of customs duty on wheat and wheaten flour from 42.20c/kg and 63.29c/kg, respectively, to 18.35c/kg and 27.52c/kg, in terms of the existing variable tariff formula (ITAC Minute M09/2024)	Published in Government Gazette No. 52448, with an implementation date of 4 April 2025.
4 April 2025	Notice R.6088 – Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from 234.89c/kg to 286.25c/kg in terms of the existing variable tariff formula (ITAC Minute 13/2024)	Published in Government Gazette No. 52448, with an implementation date of 4 April 2025.

4 April 2025	Notice R.6087 – Amendment to Part 1 of Schedule No. 3, by the insertion of rebate item 306.01/2815.11/03.06, to provide for a rebate facility on solid sodium hydroxide (caustic soda), classifiable under tariff subheading 2815.11, for conversion into sodium hydroxide in aqueous solution, classifiable under tariff subheading 2815.12 – ITAC Report 731	Published in Government Gazette No. 52448, with an implementation date of 4 April 2025.
3 April 2025	How to do the AEO Customs Sufficient Knowledge Competency Assessment	Traders eligible to apply for authorised economic operator (AEO) status must be registered or licensed for a customs activity. Part of the process is to complete the assessment. SARS provides more details on booking, assessment preparation, and how to complete the assessment.
1 April 2025	Notice R.6080 – Amendment to Part 2B of Schedule No. 1, by the substitution of tariff items 124.37.05/8517.13.10, 123.37.07/8517.14.10, 124.37.11/8517.62.20 and 124.37.15/8517.69.10, to provide for a flat rate of 9% on smartphones with a price greater than R2 500 to give effect to the Budget proposals announced by the Minister of Finance on 12 March 2025	Published in Government Gazette No. 52436, with an implementation date of 1 April 2025.
1 April 2025	Notice R.6079 – Amendment in Part 1 of Schedule No. 1, by the substitution of tariff subheadings 8517.13.10, 8517.14.10, 8517.62.20 and 8517.69.10, to provide for a flat rate of 9% on smartphones with a price greater than R2 500 to give effect to the Budget proposals announced by the Minister of Finance on 12 March 2025	Published in Government Gazette No. 52436, with an implementation date of 1 April 2025.
1 April 2025	Notice R.6078 – Amendment in Part 5A of Schedule No. 1, by substitution of Note 8 for an increase of 3c/li in the carbon fuel levy from 11c/li to 14c/li for petrol and from 14c/li to 17c/li for diesel, respectively, to give effect to the Budget proposals announced by the Minister of Finance on 12 March 2025	Published in Government Gazette No. 52436, with an implementation date of 2 April 2025.
31 March 2025	Updated Prohibited and Restricted Imports and Exports list	Tariff heading 7204.21 needs an ITAC export permit.

Case law

In accordance with the date of judgment

4 April 2025	JT International Manufacturing South Africa (Pty) Ltd v The Commissioner for the South African Revenue Service (1330/2023) [2025] ZASCA 37	The issue in this appeal is whether section 75(10)(a) of the Customs and Excise Act, 91 of 1964 (the Customs Act) authorises SARS *ex post facto* to exempt the taxpayer from compliance with the conditions prescribed by rule 19A.09(c).
31 March 2025	Commissioner for the South African Revenue Service and Another v Richards Bay Coal Terminal (Pty) Ltd (CCT 104/23) [2025] ZACC 3	This application arose in a challenge against a tariff determination in terms of the Customs Act. In an interlocutory application under rule 30A of the Uniform Rules of Court, the respondent, Richards Bay Coal Terminal (Pty) Limited, sought to have the applicants, SARS and the Chairperson of the Excise Appeal Committee, comply with a rule 30A notice to furnish a record in terms of rule 53 or, alternatively, documents constituting the record pursuant to rule 35(11).
31 March 2025	United Manganese of Kalahari (Pty) Limited v Commissioner of the South African Revenue Service and four other cases (CCT 94/23; CCT 98/23; CCT 66/23; CCT 72/24; CCT 320/23) [2025] ZACC 2	These five cases were heard together as they raised overlapping questions about the interpretation and application of section 105 of the Tax Administration Act, 2011 (the TAA). The question in each case is whether the taxpayer was entitled to pursue relief in the High Court, having regard to section 105 of the TAA.

11 February 2025	Fund v Commissioner for the South African Revenue Service (VAT 22558) [2025] ZATC 4	This case considers whether the Insurer, in providing indemnity insurance in terms of the policy, was rendering 'services' to the Fund, in respect of which the Fund is entitled to deduct, as 'input tax', the VAT component of the premiums paid to the Insurer; whether SARS' *ultra vires* argument has any merit; and, lastly, whether SARS' 'invoices' argument has any merit.
3 February 2025	Flower v Commissioner for the South African Revenue Service (IT 25209) [2025] ZATC 3	Flower claims an order in terms s129(2) of the TAA for the alteration of an additional assessment dated 13 December 2018; alternatively, the setting aside of SARS' rule 31 statement and ordering SARS to deliver a rule 31 statement that complies with rule 31(3) and ancillary relief, including costs of the appeal.
27 December 2024	Taxpayer Olive v Commissioner for the South African Revenue Service (2023/22) [2024] ZATC 20	This is an interlocutory application for default judgment as provided for in Rule 56. The basis for the application is that SARS delayed in notifying the applicant that its case was suitable for Alternative Dispute Resolution, as required in rule 13(1) of the Rules. There is also the issue of appropriate relief in the event the applicant succeeds.
29 November 2024	Taxpayer Arrow v Commissioner for the South African Revenue Service (IT 45776) [2024] ZATC JHB	This is an appeal by the taxpayer against SARS' decision to raise an additional assessment against him in respect of the 2011 tax year. SARS included a settlement amount from the SHS Trust in the taxpayer's gross income. Arrow argues that this amount should be exempt under sections 8C and 10(1)(nD) of the Income Tax Act. Additionally, the case addresses whether the transactions were genuine or designed to avoid tax under the General Anti-Avoidance Rules (GAAR) and whether SARS' delay in issuing the assessment was unreasonable.

Guides and forms

22 April 2025	How to complete the Income Tax Return ITR14 for Companies	The Corporate Income Tax Guide has been updated to include additional clarity on beneficial ownership. SARS has introduced requirements for submitting the Beneficial Interest and Beneficial Ownership registers as part of the Income Tax Return for Companies (ITR14) submission process, effective from the 2022 year of assessment.
7 April 2025	Guide for Transfer Duty via eFiling – External Guide	This guide is designed to assist taxpayers in the activation of their transfer duty account on eFiling, the completion of the TDC01 Declaration, and registration for the allocation of a conveyancer registration number on eFiling.
3 April 2025	SARS Payment Rules – External Guide	The SARS Payments Guide has been updated to reflect the name change of Grindrod Bank, which has been changed to African Business Bank.
2 April 2025	Frequently asked questions – Domestic Reverse Charge Regulations (Issue 4)	The frequently asked questions (FAQs) in this document have been compiled on the basis of questions that vendors and the public at large have or are likely to have about the implications of the DRC Regulations and the various amendments relating to these Regulations.
2 April 2025	Frequently asked questions – Supplies of Electronic Services (Issue 3)	The FAQs in this document have been compiled on the basis of questions that vendors and the public at large are likely to have about the implications of the relevant regulations and amendments.
27 March 2025	Quick Reference Guide on Anti-Dumping, Countervailing, and Safeguard Duties	This guide serves as a quick reference for anti-dumping, countervailing, and safeguard duties.
27 March 2025	Bonds – External Policy	The Bonds policy has been updated to provide clarity on consignor bonds, explain the rule for the correction of surety bonds, include Rule 12.08, and remove financial institution and bank names.

Other publications

25 April 2025	SARS media release: Practical implication of Finance Minister's decision to reverse VAT	Commissioner for the South African Revenue Service (SARS) Mr Edward Kieswetter has noted Finance Minister Mr Enoch Godongwana's decision to reverse the planned 0.5% VAT rate increase, which was initially set to take effect on 1 May 2025. The media release provides measures that will apply to all VAT vendors with effect from 1 May 2025.

25 April 2025	Tax Alert: Reversal of VAT rate increase	The Minister of Finance issued a media statement on 24 April 2025 indicating the intention to maintain the VAT rate at 15%. In addition, the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, confirming this intention, was tabled. This Alert provides more details.
24 April 2025	National Treasury: Media statement on the reversal of the VAT rate increase	The Minister of Finance reversed the VAT increase announced in the 2025 Budget. The VAT rate will remain at 15% as from 1 May 2025. The media statement from National Treasury provides more details on the reversal.
24 April 2025	SARS media release: Employer filing season 2025	The deadline to file the Employer's Annual Declaration is 31 May 2025. The media release provides more information.
23 April 2025	OECD: Côte d'Ivoire joins as 150th signatory to multilateral convention to tackle tax evasion and avoidance	The Ambassador Extraordinary and Plenipotentiary of the Republic of Côte d'Ivoire to France and Monaco signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Convention), marking a key milestone as the total number of participating jurisdictions reaches 150.
22 April 2025	PwC's US tariff industry analysis: What reciprocal and current tariffs may mean for US companies	On 2 April, President Trump signed an executive order implementing "reciprocal tariffs". The order establishes a base tariff of 10% on most imported goods from all countries except Canada and Mexico, effective 5 April. However, on 9 April, the President announced a 90-day pause on the implementation of the adjusted country-specific tariffs (i.e., those ranging up to 50%) to allow time for potential individual country trade negotiations. Additionally, on 11 April, a Presidential Memorandum was issued to clarify exceptions to the 2 April executive order for certain goods, including smartphones. This Tax Insights from Customs and International Trade provides more details regarding the matter.
11 April 2025	SARS: Tax directives – 2025 legislative changes and enhancements	The tax directive system, forms, guides and standard operating procedures have been updated to incorporate the 2025 legislative changes.
17 April 2025	National Treasury: Answering Affidavit of the Minister of Finance	Answering affidavit of the Minister of Finance in the matter between the Democratic Alliance v Minister of Finance and others.
11 April 2025	SARS: Relief from South African Tax for Pension and Annuity Income	From 11 April 2025, the IRP3(a) – Application for a Tax Directive: Gratuities and Two-Pot Savings Withdrawals Benefit must be used by funds when paying a savings withdrawal benefit, and on application SARS will consider relief from South African tax on the savings withdrawal benefit income.
11 April 2025	OECD: Inclusive Framework concludes successful meeting in South Africa	Nearly 450 delegates from 135 countries and jurisdictions as well as observers from 11 international organisations met in Cape Town on 7–10 April at the 17th Plenary meeting of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), hosted by the government of South Africa.
8 April 2025	National Treasury: Strategic Plan 2025–2030 and Annual Performance Plan 2025–2026	These documents outline National Treasury's Strategic Plan and Annual Performance Plan for 2025–2030 and 2025/26, respectively.
8 April 2025	SARS: Third Party Data Submission Platform – SARSQA Connect Direct Public Certificate has changed	The SARSQA Connect Direct Public Certificate has changed.
3 April 2025	Trump unveils plan for imposing reciprocal tariffs on trade partners	President Trump signed an executive order on 2 April implementing "reciprocal tariffs" which aim to adjust US import duties to mirror the tariffs that other countries impose on American goods. This Tax Insights from Customs and International Trade provides more details regarding the matter.

3 April 2025	Tax Alert: SARS withdrawal of all customs and excise concessions	The South African Revenue Service (SARS) issued a Notification on 20 March 2025 of its intention to withdraw all forms of concessions currently in use by traders which are ultra vires. The notice specifically includes concessions, deviations, agreements or special allowances that have been granted in the past to traders in relation to certain requirements of the Customs and Excise Act of 1964 (the Act). Stakeholders have an opportunity to make submissions to SARS (by 23 April 2025) indicating why the concession(s) should not be withdrawn and/or to suggest legislative amendments where the current concession is not provided for in the legislation. This Alert provides more details.
3 April 2025	SARS media release: SARS signs collaboration agreements with DHA, BMA & GPW	SARS, together with the Department of Home Affairs (DHA), the Border Management Authority (BMA), and Government Printing Works (GPW), has signed a cooperative agreement on modernisation and digitisation to foster more integrated collaboration. The media release provides more details.
31 March 2025	SARS: Multilateral Instrument (MLI) synthesised texts	MLI synthesised texts have been published for: • Croatia • Seychelles • Tunisa
31 March 2025	SARS media release: Trade Statistics for February 2025	South Africa recorded a preliminary trade balance surplus of R20.9 billion in February 2025. This surplus was attributable to exports of R164.0 billion and imports of R143.1 billion, inclusive of trade with Botswana, Eswatini, Lesotho and Namibia. The media release provides more details.
28 March 2025	SARS: Employer Annual Declarations (EMP501)	The employer annual declarations period is 1 April 2025 – 31 May 2025.