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

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

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Transfer pricing: the transactional profit split method devised by the OECD

South Africa is a relatively small player on the world economic stage, and there are sound reasons why it is in the national interest to learn from, and to remain in step with, the country's more powerful trading partners and major economic powers.

Consequently, the South African Revenue Service and the National Treasury eagerly draw on the expertise of international think-tanks, in their published reports, as to ways in which the rules of the tax system can be improved and refined so as to increase revenue collection, inter alia from South African-based enterprises that trade across national boundaries.

To this end South Africa has formalised links with the OECD (Organisation for Economic Co-operation and Development) and is now one of five countries with *key partner* status.

Transfer pricing

Internationally, the subject of *transfer pricing*, and the resultant tax leakage, has become a major concern to revenue authorities in recent years.

Transfer pricing in essence refers to the setting of prices for transactions between two or more enterprises that are under common control, or that have significant common shareholders.

Thus, where a subsidiary sells its goods to a parent company, the price paid by the parent to the subsidiary is the transfer price.

If there were no legal constraints as to the level at which such a transfer price is set, it would be an easy matter for the parties to determine prices in a way that ensures that the taxable profit is earned in the fiscal jurisdiction with the lowest tax rates.

Another facet of transfer pricing is the allocation of income and deductions between trading entities that are under common control or are otherwise related, where both or all the entities contribute to the end result of particular goods or services and the resultant profit needs to be allocated, on some agreed basis, between the parties.

If the tax system had no rules in this regard, the parties could simply allocate the expenses and the revenue between themselves in a way that ensured that the major share of the profits was earned by the entity that pays taxes in the fiscal jurisdiction that levies the least amount of tax.

Internationally, rules needed to be devised to ensure that, in such circumstances, the allocation of income and expenses between such enterprises takes place in a commercially rational way, and not simply in the way that exposes the overall profit to the lowest amount of tax.

South Africa is one of five key partners of the OECD

South Africa is not one of the 34 members of the OECD, an organisation that came into being in 1981 and whose Model Tax Convention is the basis of several thousand such treaties across the world, with the objective of avoiding double taxation and countering tax avoidance.

In 2007 the OECD passed a resolution at Ministerial level that led to South Africa's becoming one of the five *key partners* of the OECD, together with Brazil, China, India and Indonesia.

South Africa now participates in formulating a wide range of policy issues, including fiscal policy.

The BEPS project

The expression *base erosion and profit-sharing* (BEPS) connotes tax avoidance strategies engaged in by taxpayers to exploit gaps and mismatches in the tax rules of different countries with the object of artificially shifting profits to low or zero-tax fiscal jurisdictions.

The *BEPS project* of the OECD involves the creation of a single set of consensus-based international tax rules that are designed to protect the tax bases of member and partner states and at the same time to provide taxpayers with increased certainty.

The project has formulated 15 'actions' designed to equip governments with domestic and international instruments to address tax avoidance by ensuring that profits are subjected to tax in the fiscal jurisdiction in which the economic activities generating the profits are performed and where value is created.

The outcomes of the *BEPS project* are designed to be implemented, in due course, via changes in domestic law and practices and changes to international tax treaties and guidelines.

The BEPS project: the transactional profit split method

In the 15 'actions' of the OECD *BEPS project* published to date, *actions 8–10* set out transfer pricing guidance for tax administration regimes internationally to achieve outcomes that are aligned with *value creation* in the difficult and complex area of intangible assets, including hard-to-value intangibles, and that are also aligned to risks, capital and high-risk transactions.

In June 2018 the OECD published a lengthy report entitled *Revised Guidance on the Application of the Transactional Profit Split Method* as part of the *Base Erosion and Profit Shifting Project*.

This report provides further non-prescriptive guidance on the 'profit split' method that has been developed as part of the *BEPS Action Plan* to address base erosion and profit shifting. The report states that:

> 'The profit split method is used to evaluate controlled transactions to determine if the allocation of profits and losses between the related parties were conducted at arm's length based on the relative value of their contributions to the profit or loss.'

The guidance provided in the report is to be incorporated into the OECD *Transfer Pricing Guidelines*. The crux of the revised guidance is that

> 'the profit split method should be applied where it is found to be the most appropriate method to the case at hand [and the guidance in the report includes advice] on how to apply the method, as well as numerous examples.'

The report identifies the presence of one or more of the following indicators as being relevant in determining whether the profit split method is the most appropriate method in any particular case:

- each party makes unique and valuable contributions;
- the business operations are highly integrated, such that the contributions of the parties cannot be reliably evaluated in isolation from each other;
- the parties share the assumption of economically significant risks or separately assume closely related risks.

The objective of the transactional profit split method

The objective of the transactional profit split method is explained in the report as follows:

> 'The transactional profit split method seeks to establish arm's length outcomes or test reported outcomes for controlled transactions in order to approximate the results that would have been achieved between independent enterprises engaging in a comparable transaction or transactions. The method first identifies the profits to be split from the controlled transactions – the relevant profits – and then splits them between the associated enterprises on an economically valid basis that approximates the division of profits that would have been agreed at arm's length. As is the case with all transfer pricing methods, the aim is to ensure that profits of the associated enterprises are aligned with the value of their contributions and the compensation which would have been agreed in comparable transactions between independent enterprises for those contributions.'

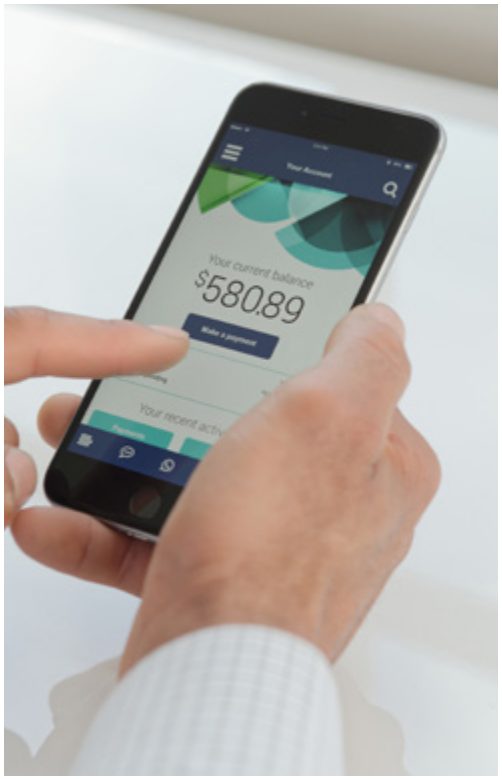
The report goes on to say that:

> 'The main strength of the transactional profit split method is that it can offer a solution for cases where both parties to a transaction make unique and valuable contributions (e.g. contribute unique and valuable intangibles) to the transaction. In such a case independent parties might effectively price the transaction in proportion to their respective contributions, making a two-sided method more appropriate. Furthermore, since those contributions are unique and valuable there will be no reliable comparables information which could be used to price the entirety of the transaction in a more reliable way, through the application of another method. In such cases, the allocation of profits under the transactional profit split method may be based on the contributions made by the associated enterprises, by reference to the relative values of their respective functions, assets and risks. . . . Another strength of the transactional profit split method is that it can offer flexibility by taking into account specific, possibly unique, facts and circumstances of the associated enterprises that may not be present in independent enterprises. Moreover, where there is a high degree of uncertainty for each of the parties in relation to a transaction, for example in transactions involving the shared assumption of economically significant risks by all parties (or the separate assumption of closely related economically significant risks), the flexibility of the transactional profit split method can allow for the determination of arm's length profits for each party that vary with the actual outcomes of the risks associated with the transaction. A further strength of the transactional profit split method is that all relevant parties to the transaction are directly evaluated as part of the pricing of the transaction, that is, the contributions of each party to the transaction are specifically identified and their relative values measured in order to determine an arm's length compensation for each party in relation to the transaction.'

Weaknesses in the transactional profit split method

The report acknowledges that a weakness in the transactional profit split method is difficulty in its application. Inter alia, it may be difficult to measure the relevant revenue and operating costs for all the enterprises associated with and participating in the transactions. Other difficulties that were identified were difficulty in the measurement of profits (and warns of the danger of using hindsight in this regard), and the report provides guidance in this regard.

The report makes clear that transfer pricing methods are intended to be a means of establishing arm's length outcomes for the transactions to which they are applied.



The take-away

As part of the *Base Erosion and Profit-sharing Project*, the OECD has released a report entitled *Revised Guidance on the Application of the Transactional Profit Split Method*. The report states that the transactional profit split method is applicable where it is the most appropriate method in this regard. The report clarifies and significantly expands earlier guidance as to when a profit split method may be the most appropriate method (such as uniqueness of respective contributions, or integration of operations or risk-assumption) and the principles for its implementation.

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Taxpayer actions mitigated contingent risks to understatement

In some instances, particularly where the capital sum is not insignificant and the period between the effective date for payment and the date of determination of an appeal is lengthy, the interest that may be payable may assume as much relevance in an appeal as the principal sum.

In the matter of *Kangra Group (Pty) Ltd v CSARS* [2018] ZAWCHC 104 (judgment delivered on 27 August 2018) the High Court for the Western Cape was asked to consider the deductibility of a payment of R90 million that had been made in 2007 and disallowed by SARS.

Background

The taxpayer ('Group') had entered into coal supply agreements with an American customer ('AMCI') in terms of which it undertook in advance to supply a specified quantity of coal at a specified price in the forthcoming calendar year. There were two such agreements. The first related to 2002 and was concluded in December 2001, and the second related to 2003 and was concluded in December 2002. In terms of the supply contract, Group was not permitted to cede or assign its rights or obligations to any other person without the consent of AMCI.

During 2003, Group transferred its coal business to another company ('Kangra Coal') in order to effect a black economic empowerment transaction. This transaction became effective on 1 July 2003. In terms of the transfer, all existing contracts were transferred by Group to Kangra Coal, and Group undertook to use its best endeavours to procure the consent of AMCI to the transfer of the contract to supply coal. In the event, the consent of AMCI was never obtained.

Following the transfer, Kangra Coal supplied coal to AMCI to whom it issued invoices and from whom it received payment. However, towards the end of the contract period a dispute arose in that it was alleged that there had been a short supply, for which AMCI demanded delivery from Group. At the time, the market price of coal was significantly in excess of the contract price, and an instruction was given by the principal shareholder of Group that no further deliveries should be made to AMCI. Kangra Coal made no further deliveries.

AMCI then pursued a claim against Group, with whom it had contracted, for damages arising from the failure to deliver coal. On 5 September 2007, after negotiation, a settlement was reached in terms of which Group agreed to pay an amount of R90 million to AMCI. Payment of the amount was made on 6 September 2007. It is pertinent to note that the control of Kangra Coal had passed to the empowerment partner by the time of the settlement and Group had decided that it should not embroil the empowerment group in the dispute, notwithstanding the earlier transfer of the contract to Kangra Coal.

In its return of income for 2007, Group had claimed the amount of R90 million as a deduction. In 2012, SARS assessed Group on the basis that the amount of R90 million was not deductible. Following unsuccessful objection and appeal to the Tax Court by Group, the matter was referred to the High Court on appeal.

The issues

On the principal issue

Group contended that it had carried on the trade of mining for and selling coal, and that the contracts had arisen out of that trade and that the expenditure in question had been incurred in the production of the income from that trade.

SARS argued that the income to which the expenditure related was the sale of coal by Kangra Coal, which, instead of fulfilling its obligations to AMCI, sold coal on the open market at a significantly higher price. It therefore argued that, even though Group had derived income under the contract, it had not derived income in consequence of the breach of contract. Further, it argued that the intentional act of breach was not a normal concomitant of business and therefore was not sufficiently closely related to the business activities that the expenditure should be regarded as having been incurred in the production of the income.

On the imposition of interest

SARS had imposed interest under the provisions of the Income Tax Act that applied at the time. Under those provisions the Commissioner was obliged to remit interest if he was satisfied that the deduction had been claimed on reasonable grounds. Group had sought legal advice from two sources, one of which was a Senior Counsel recognised as practising in tax law. Both of these had issued opinions that Group was entitled to claim deduction of the damages paid. Group therefore asserted that it had acted reasonably in the circumstances and that the interest should be remitted.

The Commissioner had not remitted the interest and Group had also contested this decision.

The judgment

Deduction of the expenditure

Gamble J, who delivered the judgment (in which Salie-Hlophe J and Thulare AJ concurred), considered the leading decisions in which it was established that regard must be had to the purpose of the expenditure and what it actually effects. He remarked at paragraph [27]:

> In the result it was incumbent on Group to establish before the Tax Court that the conclusion of the settlement agreement with AMCI was linked *'distinctly and directly'* with the actual earning of income by the Group before it could qualify as a deduction. To put it differently, it may be asked whether Group proved that such income as was produced by repudiating the supply agreements with AMCI, was received by the Group (or accrued to it) as a consequence of such repudiation. To answer that question it is necessary to have regard to the interplay between the relevant contractual obligations at play in 2003 – 4.

Interpreting the contractual arrangements between Group and AMCI, Gamble J had regard to the sale terms and conditions ('STCs') and found that Clause 9 of the agreement gave AMCI the right to hold Group liable for any damages suffered by AMCI as a result of a failure to deliver by Group. He concluded, at paragraph [32]:

> Accordingly, it will be seen that clause 9 of the STC's preserves AMCI's common law right to hold the Group liable for any damages suffered by it as a consequence of the latter's failure to perform in terms of the purchase order. Further, one finds that clause 11 of the STC's precludes an assignment by the Group of its obligations under either the first or second agreement to any other party without the prior written consent of AMCI. All of these rights and obligations are subject to the sole memorial clause contained in clause 1 of the STC's, which precludes reliance on, for instance, an oral variation of the STC's.

Although it was apparent that AMCI had not assented to the cession of the supply contract, Group conceded that all deliveries by Kangra Coal to the customer had been made by Kangra Coal for its benefit and that payment had rightfully been paid into Kangra Coal's account. With this concession the Court agreed, in that Kangra Coal had undertaken to perform Group's obligations to AMCI on transfer of the business.

The purpose of the settlement payment is summarised at paragraph [47], where Gamble J stated:

> In that context, therefore, it seems to me that it can be said that the settlement agreement was the price that was paid for the opportunity to earn additional income from selling coal at US$40 rather than US$25/ton: a return of more than 60% over what would have been received had the coal been sold to AMCI. The question that follows is, once again, two-fold. Can the payment of contractual damages such as that incurred by the Group in settling the arbitration claim be termed expenditure in terms of s11(a) of the Act? And, if so, did such expenditure result in the taxpayer earning income?

There was no apparent dispute that the payment was 'expenditure actually incurred'. The dispute was whether it was incurred in the production of the income. Here no precedent was identified that was precisely in point and Gamble J then considered decisions where the deductibility of damages for negligence was the issue. In such cases, it had been determined that:

> For expenditure and losses paid by way of damages or compensation resulting from negligence during the course of earning income to be deductible there must be a very close connection between the trade or business carried on and the cause of the liability for damages or, as it has been put by the courts, the negligence must have constituted an 'inevitable concomitant' of the trade. (cited from Silke on South African Income Tax Chapter 7.27)

Applying this reasoning, Gamble J took account of the actions of Group and Kangra Coal in this instance, and noted, at paragraph [53]:

> It may well be that an incident of trading in coal is the breaching of a contract of sale. For example, there may be a breakdown in the railway system resulting in the load not reaching the port on time and the supplier may have to face a damages claim from the buyer arising out of non-delivery. But that is a wholly different situation to one where the supplier wantonly breaches its obligations in order to secure a more lucrative contract elsewhere.

The inevitable conclusion is then reached in paragraph [55]:

> In the result I must conclude that payment of the sum of R90m by the taxpayer in settlement of the claim in arbitration does not constitute expenditure as contemplated under s11(a).

As a further reassurance, Gamble J considered that, even if he were to be wrong in his finding, Group had not established that the expenditure had been incurred in order to produce income. He reasoned as follows at paragraph [58]:

> It is evident, furthermore, that any income associated with the alleged expenditure actually accrued to the benefit of Kangra Coal. That was the entity which reflected a substantial increase in turnover for the fiscal years in question and that entity has already rendered its tax returns and claimed all related expenditure for those years. [The] decision to claim the deduction, not on behalf of Kangra Coal but the Group, seems rather to have been influenced by a number of other developments.

The various considerations that had influenced the decision by Group to pay the compensation led the Court to conclude that the decision had been a strategic one. Gamble J then stated at paragraph [62]:

> In the result I agree with the conclusion arrived at by the Trial Court that the taxpayer did not discharge the onus of establishing that it was entitled to claim the general deduction contended for and the appeal against that finding must fail.

The levy of interest

The passage of time between the date of assessment and the effective date of the year of assessment led to an interest charge of some magnitude, having regard to the amount of tax principal involved. Gamble J did not attempt to establish an amount, but concluded that it was 'not an insignificant figure'.

Here, Gamble J placed reliance on decisions of the Supreme Court of Appeal in *CSARS v Foskor* [2010] 3 All SA 594 SCA and *Eveready (Pty) Ltd v CSARS* [2012] ZASCA 36 (29 March 2012). These matters had considered whether acting on legal advice, which subsequently found by the court to have been wrong, was reasonable behaviour.

In both of these matters, the Supreme Court of Appeal had not seen fit to penalise a taxpayer with interest where the taxpayer had demonstrated that it had acted in conformity with legal advice. He found, at paragraph [69]:

> In my view, therefore, the authorities clearly establish that reliance on incorrect professional advice is not a bar to claiming a remittance of interest. What matters only is whether such advice was sought by the taxpayer. It follows that the failure on the part of the taxpayer in this case to produce the opinion from Senior Counsel before the Tax Court in order that that court could assess the cogency of the advice rendered to the client, was not fatal to its case. What is important is the fact that the taxpayer took such professional advice – something which was not disputed by SARS – and therefore behaved reasonably in the circumstances.

As a result, Gamble J found that the appeal against the refusal of the Tax Court to grant a remission of interest should succeed.

The partial success of Group in the appeal had a further spin-off, in that it was ordered that Group should be liable to pay only 50% of SARS's costs in the appeal.

The takeaway

The importance of the facts in any dispute cannot be understated. In this instance, the facts played an important part in the outcome. A critical issue was the factor that motivated the breach, which was a deliberate decision to resile from a contract unlawfully.

The provisions relating to the remission of interest that applied in this matter have been repealed and replaced.

Even though this matter was decided on what are now obsolete provisions of the Income Tax Act, the importance of legal advice is still a critical issue in risk management under the Tax Administration Act ('TAA'). Penalties may be imposed in terms of the TAA in respect of understatement of taxable income or overstatement of an assessed loss. The level of penalty is prescribed in section 222 and in a matrix found in section 223.

It is implicit in the structure of the matrix that, where a taxpayer has taken reasonable care in the compilation of the return, no penalty will apply unless the understatement is a 'substantial understatement' (where the shortfall exceeds the greater of 5% of the tax payable or refundable or R1 million).

In the case of a 'substantial understatement' the taxpayer may avoid the penalty if a further indication of reasonable care is provided. Section 223 of the TAA contains provisions that compel SARS to remit an 'understatement penalty' in full where a taxpayer can produce evidence that it had obtained an opinion from a tax practitioner that, on the full disclosure of the facts, its filing position was justified. Notification of the existence of the opinion and of the relevant facts must be given to SARS no later than the date by which the relevant return of income is required to be filed.

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The Tax Ombud reports on systemic issues related to delay in the processing of refunds by SARS

Taxpayers have complained that undue delay in the processing and payment of tax refunds by SARS was widespread and in need of investigation. In response, the Tax Ombud, at the request of the Minister of Finance, undertook an in-depth investigation into the delays and issued a report on 23 August 2018, identifying the delay in processing and paying refunds as a 'systemic issue'.

Several themes run through the circumstances that have caused delays in processing and paying refunds. These will not be examined in detail, but they include:

- Administrative delays in linking information provided by taxpayers to the cases that have caused the original withholding of the refund (e.g. additional information, bank account and address verification);
- Preventing refunds because a new return has been filed, an audit is being conducted on a different year of assessment or historic returns are listed as outstanding;
- Repeated requests for further information every 21 days to prevent the running of interest;
- Issue of assessments and processing of journals without justification to absorb overpayments and eliminate a refund;
- Delay in auctioning refunds due following a successful appeal; and
- Precipitate action in raising assessments notwithstanding that information is still to be provided or in setting off a refund against a debt for which a suspension of payment has been granted.

The need for SARS to ensure that there are adequate protections against fraud by means of identity theft or 'capture' of corporate identity is recognised, and one must respect SARS's processes in this regard. However, the justification for delay evaporates once the information required to verify the taxpayer's particulars has been submitted.

Does publication of a systemic issue affect access to the Tax Ombud?

The powers of the Tax Ombud are prescribed in the Tax Administration Act ('TAA').

Principally, the Tax Ombud has a mandate to review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.

Importantly, section 18(4) of the TAA provides that the Tax Ombud may review a complaint by a taxpayer only if the taxpayer has exhausted the available complaints resolution mechanisms in SARS, unless there are compelling reasons for not doing so.

Guidance on the existence of compelling reasons is set out in section 18(5) of the TAA, which lists factors the Tax Ombud may take into account in determining the existence of compelling circumstances. These are:

- Whether the complaint raises systemic issues;
- Exhausting the complaints mechanism will cause undue hardship to the requester; or
- Exhausting the complaints mechanism will be unlikely to produce a result within a time period that the Tax Ombud considers reasonable.

The publication of a report that identifies a systemic issue raises the inevitable question whether a taxpayer, faced with an unreasonable delay by SARS in paying a refund, may ignore the SARS complaint resolution mechanisms and take a complaint directly to the Office of the Tax Ombud.

The current relevant law gives the Tax Ombud discretion to dispense with compliance with the procedural requirement of exhausting the complaints resolution mechanisms. There must, however, be compelling circumstances to justify a departure from the standard requirements.

It would appear to be that any continuation of practices specifically identified as systemic should be regarded as a compelling circumstance. The systemic issue arose from these practices in the first place and any failure to remedy the problem must, in itself, constitute a systemic issue.

That said, the Tax Ombud has discretion, and it would be improper to suggest that his right to exercise discretion in relation to any complaint should be constrained in any way. One of the factors the Office of the Tax Ombud must consider is whether the request raises a systemic issue.

The takeaway

Taxpayers are currently experiencing multiple systemic issues at SARS and the report provides a summary of the twenty most prevalent systemic issues identified.

The report further provides potential grounds for taxpayers to dispense with the complaint resolution mechanisms and motivate a direct complaint to the Tax Ombud where they become aware that a refund is delayed by the exercise of any of the practices specified in the Tax Ombud's report.

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SARS Watch:

Legislation

24-Aug	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 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 28,17c/kg and 42,26c/kg to 64,06c/kg and 96,09c/kg respectively, in terms of the existing variable tariff formula – Minute 08/2018	Notice R.896 published in Government Gazette No. 41863 with an implementation date of 24 August 2018.
16-Aug	Submission of accounts returns	SARS's external excise duty policy for licensees and registrants who are required to submit accounts or returns on a monthly, quarterly or bi-annual basis via e-Filing with an effective date of 16 August 2018.
10-Aug	Amendment in Part 2 of Schedule No. 4 by the insertion of various rebate items applicable to tariff heading 72.08 and tariff subheading 7225.40 respectively in order to create a rebate facility on certain hot-rolled steel plates and hot-rolled steel coils – ITAC Report 583	Notice R.822 published in Government Gazette No. 41828 with an implementation date of 10 August 2018.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item range 460.15/7208.36/01.06 to 460.15/7208.37/01.06; 460.15/7208.5/13.05 to 460.15/7208.5/17.05; and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty – ITAC Report 583	Notice R.821 published in Government Gazette No. 41828 with an implementation date of 11 August 2019 up to and including 10 August 2020.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item range 460.15/7208.36/01.06 to 460.15/7208.37/01.06; 460.15/7208.5/13.05 to 460.15/7208.5/17.05; and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty – ITAC Report 583	Notice R.820 published in Government Gazette No. 41828 with an implementation date of 11 August 2018 up to and including 10 August 2019.

10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, and 260.03/7225.40/01.06 to exclude rebate item range 460.15/7208.36/01.06 to 460.15/7208.37/01.06; 460.15/7208.5/13.05 to 460.15/7208.5/17.05; and 460.15/7225.40/15.06 to 460.15/7225.40/18.06 in order to exclude certain hot-rolled steel plates and hot-rolled steel coils from being subject to safeguard duty – ITAC Report 583	Notice R.819 published in Government Gazette No. 41828 with an implementation date of 10 August up to and including 10 August 2018.
10-Aug	Amendment in Part 2 of Schedule No. 4 by the insertion of various rebate items applicable to tariff heading 72.08, tariff subheadings 7225.40 and 7225.99 respectively in order to create a rebate facility on certain hot-rolled steel plates – ITAC Report 582	Notice R.818 published in Government Gazette No. 41828 with an implementation date of 10 August 2018.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item range 460.15/7208.5/08.05 to 460.15/7208.5/12.05; 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 582	Notice R.817 published in Government Gazette No. 41828 with an implementation date of 11 August 2019 up to and including 10 August 2020.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item range 460.15/7208.5/08.05 to 460.15/7208.5/12.05; 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 582	Notice R.816 published in Government Gazette No. 41828 with an implementation date of 11 August 2018 up to and including 10 August 2019.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/72.08/01.04, 260.03/7225.40/01.06 and 260.03/7225.99/01.06 to exclude rebate item range 460.15/7208.5/08.05 to 460.15/7208.5/12.05; 460.15/7225.40/10.06 to 460.15/7225.40/14.06 and rebate item 460.15/7225.99/02.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 582	Notice R.815 published in Government Gazette No. 41828 with an implementation date of 10 August up to and including 10 August 2018.

10-Aug	Amendment in Part 2 of Schedule No. 4 by the insertion of rebate item 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to create a rebate facility on certain hot-rolled coils classifiable in tariff subheading 72.08 – ITAC Report 580	Notice R.814 published in Government Gazette No. 41828 with an implementation date of 10 August 2018.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty – ITAC Report 580	Notice R.813 published in Government Gazette No. 41828 with an implementation date of 11 August 2019 up to and including 10 August 2020.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty – ITAC Report 580	Notice R.812 published in Government Gazette No. 41828 with an implementation date of 11 August 2018 up to and including 10 August 2019.
10-Aug	Amendment in Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/72.08/01.04 to exclude rebate items 460.15/7208.25/01.06 and 460.15/7208.26/01.06 in order to exclude certain hot-rolled coils from being subject to safeguard duty – ITAC Report 580	Notice R.811 published in Government Gazette No. 41828 with an implementation date of 10 August up to and including 10 August 2018.
03-Aug	Amendment of 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 233.81c/kg to 419.52c/kg due to the increase in the Dollar-Based Reference Price on sugar from US$566/ton to US$680/ton – ITAC Report No. 588	Notice R.798 published in Government Gazette No. 41818 with an implementation date of 3 August 2018.
03-Aug	Amendment in Part 1 of Schedule No. 1 by the substitution of tariff subheading 3901.40 to reduce the rate of customs duty on ethylene-alpha-olefin copolymers having a specific gravity of less than 0.94 from 10% to free – ITAC Report No. 584	Notice R.794 published in Government Gazette No. 41812 with an implementation date of 3 August 2018.
03-Aug	Amendment in Part 2 of Schedule No. 4 by the insertion of rebate items 460.15/7216.32/01.06 and 460.15/7216.33/01.06 in order to create a rebate facility for the importation of certain structural steel in the form of H and I sections classifiable in tariff subheadings 7216.32 and 7216.33 – ITAC Report No. 577	Notice R.793 published in Government Gazette No. 41812 with an implementation date of 3 August 2018.
03-Aug	Imposition of provisional payment in the form of safeguard duty on imports of other screws, fully threaded with hexagon heads, made of steel – ITAC Report No. 589	Notice R.792 published in Government Gazette No.41812 with an implementation date of 3 August 2018 up to and including 18 February 2019.

27-Jul	Amendment to the Rules under sections 38 and 120, by the insertion of Rule 38.14A after Rule 38.14 – Southern African Customs Union Unique Consignment Reference (SACU UCR)	Notice R.776 published in Government Gazette No.41798 with an implementation date of 27 July 2018.
27-Jul	Amendment to Part 2 of Schedule No. 4, by the substitution of rebate item 460.03/0207.14.9/01.07 to increase the annual quota for bone-in cuts for the species Gallus Domesticus, frozen, classifiable in tariff item 0207.14.9 imported from or originating in the United States of America – Minute 06/2018	Notice R.775 published in Government Gazette No. 41798 with retrospective effect from 1 April 2018.
Interpretation Notes (IN)		
24-Aug	IN 45 (Issue 3) – Deduction of security expenditure	This Note provides guidance on the deductibility of security expenditure incurred by a taxpayer for income tax purposes and also examines the fringe benefits tax implications for employees when their employers fund such expenditure.
03-Aug	IN 4 (Issue 5) – Resident: Definition in relation to a natural person – physical presence test	This Note explains the requirements of the physical presence test, with which a natural person, who is not at any time ordinarily resident in the Republic of South Africa during the relevant year of assessment, must comply before that person will be a 'resident' as defined in section 1(1).
Rulings		
10-Aug	BCR 065 – Post-retirement medical aid benefits	This ruling determines the tax consequence of the intra-fund allocation of an amount from an employer surplus account to a member's fund credit.
08-Aug	BPR 308 – Assumption of contingent liabilities and the cession of a right of recovery	This ruling determines the tax consequences resulting from the sale of a mine in exchange for the assumption of liabilities by the purchaser, and the tax implications arising from the cession of a right of recovery.
27-Jul	BGR 39 (Issue 2) – VAT treatment of municipalities affected by changes to municipal boundaries	This ruling explains the VAT treatment of the transfer of any assets, liabilities, rights and obligations pursuant to the merger, creation and disestablishment of municipalities as a result of any municipal boundary change as contemplated under section 8(28), and withdraws the first issue of BGR 39 dated 27 January 2017 with effect from 1 April 2018.
Guides and Forms		
13-Aug	Guide for Tax Rates Duties Levies (Issue 13)	This guide provides a current and historical view of the rates for various taxes, duties and levies collected by SARS.
06-Aug	How to submit your ITR12 return using the SARS mobile eFiling Application	The purpose of this guide is to assist taxpayers in the submission of their individual income tax return by making use of the SARS Mobile eFiling Application.
03-Aug	Understanding the Customs and Excise Transitional Provisions	This guide has been prepared to assist persons and organisations in understanding the customs and excise transitional provisions brought about by the new customs and excise legislation consisting of the Customs Control Act, 2014, Customs Duty Act, 2014 and the Excise Duty Act, 1964, that will replace the Customs and Excise Act, 1964.

Organisation for Economic Cooperation and Development (OECD)

26-Jul	OECD invites taxpayer input on the sixth batch of Dispute Resolution peer reviews (BEPS Action 14)	The completed questionnaire was due on Friday, 24 August 2018.

Other Publications

21-Aug	Taxation Laws and Tax Administration Laws Amendment Bills: public hearings	The Standing Committee of Finance held public hearings on the Taxation Laws Amendment Bill (TLAB) and Tax Administration Laws Amendment Bill (TALAB). The stakeholder presentations have been published on the Parliamentary Monitoring Group website.
10-Aug	Report by the Independent Panel on the review of the current list of zero-rated VAT items	Comments must be submitted to VATsubmissions@treasury.gov.za by Friday, 31 August 2018.