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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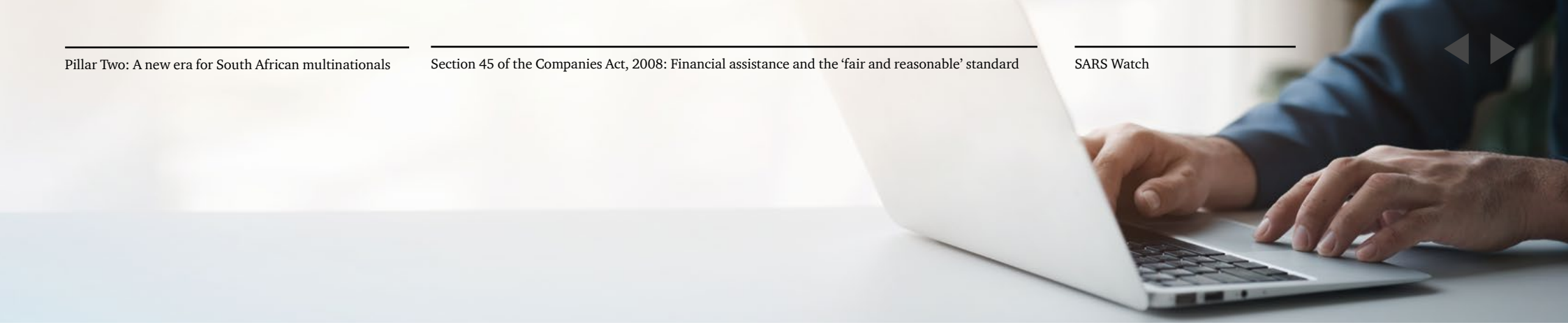

Pillar Two: A new era for South African multinationals

Introduction

The global tax landscape has undergone significant changes with the introduction of the Pillar Two framework of the Organisation for Economic Co-operation and Development (OECD). This framework aims to ensure that multinational enterprises ('MNEs') pay a minimum level of tax on their global profits. South Africa has embraced these changes by implementing the Global Minimum Tax Act No. 46 of 2024 ('GMT Act'), which aligns with the OECD's Pillar Two rules. This article explores the implications of these rules for South African MNEs, focusing on the advantages of safe harbour provisions and the integration of environmental, social, and governance ('ESG') reporting. We also briefly touch on complex data challenges and opportunities that Pillar Two presents.

Pillar II adoption in South Africa

South Africa officially adopted the OECD's Pillar Two framework with the enactment of the GMT Act. This legislation, gazetted on 24 December 2024, applies to years of assessment commencing on or after 1 January 2024. The purpose of adopting the global anti-base erosion ('GloBE') model rules in South Africa is to enable the country to impose a multinational top-up tax on the excess profits of in-scope MNEs. This tax is applied at a balancing rate to ensure an effective tax rate ('ETR') of 15% (elaborated upon later in this document).

The current threshold for MNEs under these rules is a consolidated turnover of at least €750 million in the consolidated annual financial statements for at least two of the four immediately preceding financial years. This translates to roughly ZAR15 billion (at current exchange rates), meaning there may not be many South African-headquartered MNEs to which the rules will apply. However, the rules will also potentially apply to locally resident subsidiaries of MNEs that are within scope, regardless of where they are headquartered.

For purposes of Pillar Two, an 'MNE group' is defined as a group with at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity. The MNE group's consolidated annual financial statements will be used to determine which entities are within the group.

From a South African perspective, the multinational top-up tax will be imposed under:

- **Domestic minimum top-up tax ('DMTT'):** Imposes a joint and several tax liability on the domestic entities of MNEs for any top-up tax arising from low-taxed income of those domestic entities, calculated on an aggregate basis but only with respect to entities located in South Africa.
- **Income inclusion rule ('IIR'):** Taxes the domestic entities of MNEs on their allocable share of top-up tax arising from the low-taxed income of any foreign group company in which they have a direct or indirect ownership interest.

Based on the above, the GMT Act seeks to impose tax at two levels. The DMTT will apply in situations where the effective tax rate payable by an MNE in respect of its South African profits is lower than 15% and makes all South African constituent entities of such an MNE jointly and severally liable for topping up such tax to an effective rate of 15%. If South Africa did not impose a DMTT, any top-up tax in respect of the South African profits would be lost to South Africa, as it would be imposed under the IIR in the jurisdiction in which the MNE is headquartered (and paid by the MNE to its headquarter jurisdiction – refer below).

The IIR will, in essence, apply to MNEs that are headquartered in South Africa and that are within scope. It will require tax to be topped up to an effective rate of 15% in respect of jurisdictions in which the MNE operated and where the effective rate of tax payable in that jurisdiction was lower than 15%. This tax will be payable to the South African Revenue Service (not the jurisdiction in which the tax rate was lower than 15%).

The GloBE model rules apply a minimum tax on the excess profits of an in-scope MNE group in each jurisdiction where those profits are taxed below the minimum 15% rate. To determine whether top-up tax is due, the ETR must be calculated on a jurisdictional basis. If the ETR is below 15%, the MNE is required to pay a top-up tax to bring the total amount of tax in that low-tax jurisdiction up to 15%.

The ETR calculation is detailed in chapters 3 to 5 of the GloBE model rules, which outline the main features and special rules that apply in certain circumstances. The ETR for a jurisdiction is calculated by dividing the total adjusted tax of local constituent entities (members of an MNE group) by the total adjusted profit of those entities. Detailed rules prescribe what taxes can be included in this calculation, known as 'covered taxes,' and how to calculate the profit in the jurisdiction, referred to as GloBE income or loss.

In-scope MNE groups must calculate their ETRs for each jurisdiction annually by following four steps:

1. Identify constituent entities in the jurisdiction.
2. Determine the GloBE income or loss of each constituent entity.
3. Determine the covered taxes of the constituent entities.
4. Derive the ETR by aggregating the covered taxes and GloBE income and loss of the constituent entities in a jurisdiction. A simplified methodology for calculating the ETR may be available under a safe harbour.

The rules and required calculation can be very complex, and reporting may result in significant additional costs for MNEs within scope. Although South Africa's corporate

income tax rate is 27%, various tax incentives and regimes may lower the effective tax rate to below 15%. Even if the effective tax paid in South Africa is more than 15%, a GloBE information return must be submitted to SARS annually for domestic constituent entities of MNE groups within scope. However, an 18-month period is granted for the filing of the first required returns and payment. As a result, South Africa would only start collecting any tax payable in terms of the rules from 30 June 2026 onwards.

We also highlight that the GMT Act provides for certain 'excluded entities' as detailed below.

Excluded entities

The following entities are excluded from the GloBE model rules:

- Government entities
- International organisations
- Non-profit organisations
- Pension funds
- Investment funds that are ultimate parent entities ('UPEs')
- Real estate investment vehicles that are UPEs

Entities owned by an excluded entity can also qualify as excluded entities if they meet certain criteria relating to ownership, assets, and income. Excluded entities are not subject to the operative provisions of the GloBE model rules but are still members of an MNE group, and their revenue is considered for assessing whether the MNE group meets the revenue threshold of €750 million. Accordingly, the state-owned entities in South Africa may be excluded from the Pillar Two rules (where the entity is owned or controlled by a government and performs functions typically associated with government activities). However, subsidiaries of government entities do not automatically inherit the exclusion. If these subsidiaries are part of an MNE group and meet the revenue threshold, they must comply with Pillar Two rules.

Simplifying Pillar Two compliance through safe harbour provisions

The OECD's Pillar Two framework includes safe harbour provisions that can significantly benefit South African MNEs by simplifying compliance and reducing the administrative burden associated with the GloBE rules. Key safe harbour rules include:

- **Transitional country-by-country reporting ('CbCR') safe harbour:** Allows MNEs to use existing CbCR data to meet GloBE requirements during the initial years of implementation, reducing the need for extensive recalculations and adjustments.
- **Simplified calculations safe harbour:** Enables MNEs to perform simplified calculations for income, revenue, and tax, reducing compliance complexity and allowing MNEs to focus on strategic business activities. (Further administrative guidance is expected for the permanent implementation of these rules.)
- **Transitional penalty relief regime:** Provides penalty relief during the transitional period, provided that MNEs take reasonable measures to comply with the GloBE rules, thereby offering a buffer for South African MNEs to adapt to the new requirements without immediate penalties.

South African MNEs can strategically leverage these safe harbour provisions to their advantage. By utilising the transitional CbCR safe harbours – if they qualify – MNEs can minimise the initial compliance burden and focus on aligning their internal systems with the new requirements.
The simplified calculations safe harbour would further reduce the complexity of tax calculations, allowing MNEs to allocate resources more efficiently.

Additionally, the transitional penalty relief regime provides a safety net during the early stages of implementation, enabling MNEs to refine their compliance processes without the pressure of immediate penalties. This phased approach to compliance can enhance the overall efficiency and effectiveness of tax management within South African MNEs. However, we highlight that while safe harbour rules offer benefits, they also present challenges. One concern to consider is that the simplified calculations may not fully capture the complexities of MNE operations, potentially leading to inaccuracies in tax reporting. Additionally, the transitional nature of some safe harbour provisions means that MNEs may still face significant compliance burdens once these provisions expire.

ESG reporting and Pillar Two compliance

As alluded to earlier, the OECD's Pillar Two framework is a significant development aimed at addressing the challenges of tax base erosion and profit shifting. While its primary focus is on ensuring that MNEs pay a minimum level of tax, it is essential to recognise that Pillar Two intersects with ESG considerations in several ways.

The integration of ESG factors into corporate strategies has become increasingly important for MNEs globally. In South Africa, aligning ESG reporting with Pillar II compliance offers a unique opportunity for MNEs to demonstrate their commitment to sustainable and responsible business practices.

- **Environmental responsibility:** Pillar II encourages transparency and accountability in corporate tax practices, which can indirectly influence environmental responsibility. Companies that are transparent about their tax contributions are often more likely to be transparent about their environmental impact. This transparency can lead to increased scrutiny from stakeholders, including investors and consumers, who are increasingly prioritising environmental sustainability. By aligning tax practices with environmental goals, South African MNEs can highlight efforts to reduce carbon emissions, manage natural resources, and invest in renewable energy, aligning with global sustainability goals and enhancing the company's reputation among stakeholders.
- **Social impact:** The social dimension of ESG is closely linked to the fair distribution of tax revenues. Pillar II aims to encourage MNEs to contribute their fair share of taxes in the jurisdictions where they operate. This can lead to increased public revenues, which governments can then allocate to social programmes, infrastructure, education, and healthcare. By supporting the equitable distribution of wealth and resources, Pillar II can help address social inequalities and promote inclusive growth, which are core components of the social aspect of ESG. Transparent reporting on these aspects can strengthen stakeholder trust and support long-term business sustainability.
- **Governance practices:** Good governance is central to both Pillar II and ESG principles. Pillar II's emphasis on transparency, compliance, and ethical tax practices aligns with the governance aspect of ESG. Companies that adhere to these principles are likely to have robust governance frameworks in place, which can enhance their reputation and build trust with stakeholders. Ethical tax practices and tax transparency are a reflection of a company's broader commitment to integrity and responsible business conduct, which are essential for long-term sustainability.
- **Investor considerations:** Investors are increasingly incorporating ESG criteria into their decision-making processes. Companies that demonstrate a commitment to ESG principles, including responsible tax practices as outlined in Pillar II, are more likely to attract investment. Investors view such companies as posing a lower risk and being more sustainable in the long term. By integrating Pillar II considerations into their ESG strategies, South African MNEs can potentially enhance their attractiveness to investors.
- **Regulatory compliance and risk management:** Adhering to Pillar II requirements can also help companies manage regulatory risks associated with tax compliance. Non-compliance can lead to significant financial penalties and reputational damage. By proactively aligning their tax strategies with Pillar II and ESG principles, South African MNEs can mitigate these risks and ensure they are prepared for evolving regulatory landscapes.

While Pillar II primarily addresses tax fairness and transparency, its implications extend into the realm of ESG.

By considering Pillar II in the context of ESG, companies can enhance their environmental responsibility, social impact, governance practices, and investor relations. This holistic approach not only supports compliance and risk management but also contributes to the broader goal of sustainable business practices.

Financial information

Pillar II, per country, is based on the MNE group's local GAAP accounting rules for the measurement, recognition, and classification of financial information. As a result, differences may occur between local jurisdictional GAAP reporting and that of the MNE group. This may result in the constituent entities within other jurisdictions being required to report financial information that complies with the MNE group's accounting principles, which previously may not have been compiled or reported with sufficient granularity or adjusted for consolidation.

For corporate MNEs, this may seem straightforward. However, it may be a bigger undertaking for private equity and financial services firms, as identifying financial reporting consolidations requires IFRS, GAAP, or other accounting knowledge to supplement tax knowledge. Once the consolidation groups have been identified, entities which are 'constituent entities' for Pillar Two purposes must be identified. Special attention could be devoted to joint ventures (JVs). In addition, there are several nuances related to flow-through entities (that are generally stateless and can be distinguished as tax transparent or reverse hybrid entities), permanent establishments, investment entities, and minority-owned constituent entities, that may cause challenges.

After the constituent entities (and JVs) have been identified, companies should evaluate the financial statement preparation and process, including the recording of consolidation, eliminations, intercompany transactions, and conversion in the presentation currency. It is critical to understand the allocation of these adjustments to the underlying legal entities and the conversion in order to arrive at the appropriate starting point of financials required for Pillar Two.

This can be a challenging task, as consolidated financial statements are designed for external and management reporting, and, in whole or in part, would typically not be prepared at a true legal entity level. It may also be particularly challenging in the case of mergers and acquisitions, as different accounting and consolidation systems, containing information in different formats and levels of detail, are often brought together. As a result, this exercise will require a deep understanding of groups' (and JVs') accounting procedures under the relevant utilised accounting principles (e.g., IFRS or other authorised or acceptable accounting standards).

Due to the vast complexity of Pillar Two, the International Accounting Standards Board (IASB) released its final standard with amendments to IAS 12 Income Taxes on 23 May 2023. Such guidance provides temporary relief for companies from having to account for deferred taxes arising from the implementation of Pillar Two, along with requiring disclosures that should help users of their financial statements understand their exposure to Pillar Two (particularly before legislation implementing the rules is in effect). The amendments are effective immediately; however, for local country purposes, a ratification process is generally necessary.

Though the complexity of deferred tax has been excluded, entities would still need to consider the complexity of uncertain tax positions, impairment considerations (given that, even though the standard prescribes pre-tax recoverable amounts to be assessed and disclosed, most companies prepare after-tax cashflows and WACC rates in performing their impairment tests), and going concern assessments.

At this juncture, it is probably appropriate to re-emphasise the point about the safe harbours. That is, in practice, the first port of call for MNEs (after identifying all constituent entities) would be to consider the extent to which the safe harbours apply. Qualifying for a safe harbour would, for each qualifying jurisdiction, obviate much of the complexity alluded to above.

The Pillar II data challenge

As our clients prepare to comply with these new Pillar II rules, they must navigate the complex data challenges and opportunities that Pillar II presents.

From a data strategy perspective, Pillar II significantly increases the burden and complexity of corporate tax analysis. Only about half of the granular data points required for Pillar II calculations are typically available in central systems like ERP. The remaining data is often scattered across various systems. This fragmentation necessitates a comprehensive data strategy to ensure accurate and efficient compliance.

To address these challenges, MNEs must assess their current data architecture, systems, processes, technology capabilities, and resources. This assessment will help envision a future state that not only meets compliance obligations but also supports data and analytics for value creation. Designing an operating model to support this future state involves integrating data platforms, data architecture, technology-enabled processes, calculation engines, a resource model, compliance, and effective governance.

Moreover, the implementation of Pillar II rules varies across jurisdictions (in relation to not only technical application, but also effective dates), adding additional layers of complexity. MNEs must consider how these rules interact with one another and stay agile as guidance evolves and more countries enact legislation. This agility is crucial for building robust data flows, processes, and calculation engines that can adapt to changing requirements.

PwC's connected tax compliance ('CTC') offers several advantages for MNEs in navigating and complying with the OECD's Pillar II requirements. CTC is a comprehensive, technology-driven approach designed to streamline and enhance the tax compliance process for businesses:

Connected teams: PwC acts as an extension of your team, using data and technology to develop tailored solutions that meet your specific needs.

Connected data: The approach involves better data extraction and fewer requests, making compliance easier and freeing up time for other important tasks.

Connected insights: Intuitive data visualisations and predictive AI deliver greater clarity and confidence in tax reporting.

By leveraging PwC's CTC, MNEs can navigate the complexities of Pillar II with greater ease and confidence, ensuring compliance while optimising their tax strategies.

Key takeaways

The adoption of the OECD's Pillar II framework represents a significant shift in the global tax landscape, with important implications for South African MNEs. By leveraging the safe harbour provisions, MNEs can navigate the complexities of the new rules and optimise their tax compliance processes. Furthermore, integrating ESG reporting into Pillar II compliance offers a strategic advantage, enabling MNEs to align their tax strategies with broader sustainability goals.

As South Africa continues to implement these changes, it is crucial for MNEs to stay informed and proactive in their approach to tax compliance and ESG reporting. By doing so, they can not only meet regulatory requirements but also enhance their reputation and competitiveness in the global market.

Our teams can provide guidance on the implementation of Pillar II rules, ensuring that South African MNEs comply with the new global minimum tax requirements, including effective implementation of the safe harbour rules. We also offer services to integrate ESG reporting with Pillar II compliance and align our clients' tax strategies with broader sustainability goals. We can also assist our clients in assessing their current data architecture, systems, processes, and technology capabilities. This assessment helps envision a future state that not only meets compliance obligations but also supports data and analytics for value creation. PwC's experts design operating models that integrate data platforms, technology-enabled processes, calculation engines, and effective governance structures.

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Section 45 of the Companies Act, 2008: Financial assistance and the 'fair and reasonable' standard

Overview

Section 45 of the Companies Act, No. 71 of 2008 ('**Companies Act**') regulates the provision of financial assistance, including loans, guarantees, and securities, by a company to related or intergroup parties, both within South Africa and across borders. This provision is designed to protect companies from undue risk and to ensure that directors act in the best interests of the company, rather than simply serving the interests of a broader corporate group.

Failure to ensure that intercompany loans are 'fair and reasonable' can expose directors to personal liability and reputational risk, particularly if the company later encounters financial difficulties. In addition, if the financial assistance is provided on terms that are not 'fair and reasonable', it may result in the financial assistance transaction being void.

The section 45 requirement of 'fair and reasonable' is closely aligned with the core transfer pricing concept of 'arm's length', which ensures that transactions between related parties are conducted on terms comparable to those that would be agreed upon by independent parties in similar circumstances. Transfer pricing principles used to ensure the arm's length nature of loans can be used to support the directors' decision to provide financial assistance, and this analysis should be done at the time of granting the loan.

Legal framework – key requirements of section 45

Section 45 of the Companies Act requires that, among other things, any financial assistance provided by a company to a related party must be on terms that are 'fair and reasonable' to the company.

Other key legal requirements include ensuring that i) shareholder approval is obtained for the provision of financial assistance, ii) the solvency and liquidity test as contemplated in section 4 of the Companies Act is conducted, and iii) any restrictions in the company's constitutional documents are complied with.

The Companies Amendment Act, No. 16 of 2024 introduced an exception to the section 45 requirements. Section 45(2A)

of the Companies Act provides that a special resolution of the shareholders is not required in circumstances where financial assistance is provided to wholly owned subsidiaries by its holding company. However, this exception does not apply to cross-border intercompany loans, or other financial assistance, provided to wholly owned foreign subsidiaries by their South African holding company. Therefore, a South African company cannot circumvent the section 45 requirements by channelling loans to a foreign affiliate.

In *Trevo Capital Ltd and Others v Steinhoff International Holdings (Pty) Ltd and Others (2833/2021)*, the High Court confirmed that even financial assistance to a foreign related company triggers section 45, interpreting the term 'corporation' in section 45 broadly to include foreign entities. The court voided a complex cross-border undertaking that had not complied with the section 45 requirements, noting that excluding foreign recipients would defeat the provision's purpose (i.e., directors could otherwise avoid the fairness and solvency safeguards by routing deals to offshore entities). This underscores that multinational groups must adhere to section 45 for loans from a South African entity to any affiliate, domestic or foreign.

Importantly, where financial assistance is provided i) by a subsidiary company to its holding company, or ii) between subsidiaries, it will still be subject to the ordinary financial assistance requirements of the Companies Act.

Directors' duties and safeguards

Directors have the authority to approve and authorise the provision of financial assistance by a company, such as loans or guarantees, to related parties. This discretion is governed by their fiduciary duty, which requires directors to act in the best interests of the company itself, and creates an expectation that any exercise of the discretion granted to them will ultimately further the best interests of the company (which is distinct from the interests of the broader group of companies).

At the very least, a director should endeavour to ensure that it is improbable that their decisions would impede or harm the company's well-being. Failure to do so may expose them to penalties imposed by the Companies Act, which could include personal liability for any losses incurred due to their actions or decisions.

Beyond legal consequences, there is also the prospect of reputational damage that may be suffered not only by the director, but by the company itself, if financial assistance is mismanaged. However, determining the outcome at the outset of any commercial decision is rarely a simple matter. This is why, if confronted with accusations of failure in their fiduciary duty, directors would be afforded an opportunity to explain the factors that influenced their decision to authorise financial assistance and to justify why they believed the decision was appropriate.

While section 45 allows for the possibility of such financial assistance, subsection (3) provides for certain safeguards. These safeguards take the form of two conditions: that the directors be satisfied the company will remain solvent and liquid, despite granting financial assistance; and that the terms on which the financial assistance is provided are 'fair and reasonable' to the company.

The solvency and liquidity tests are standard measures in the commercial context and help assess the impact of financial assistance on the company's financial position. In contrast, determining whether the terms are 'fair and reasonable' is more subjective and can be difficult to justify if not carefully considered. Importantly, the Companies Act does not define 'fair' or 'reasonable,' making it essential for directors to exercise diligence and sound judgment in their decision-making process.

The meaning of 'fair and reasonable'

While the solvency and liquidity tests are well-established in commercial practice, determining whether terms are 'fair and reasonable' is more subjective. The Companies Act does not define these terms, leaving their interpretation to the courts and academic commentary. While this approach might create a broad spectrum of acceptable interpretations, it also leaves little practical guidance on how one could go about satisfying the requirement.

Generally, 'fair' means impartial and just, while 'reasonable' means sensible and appropriate in the circumstances. For a transaction to meet the 'fair and reasonable' standard, it must be equitable – taking into account the interests and circumstances of all parties – and justifiable, with a rational explanation for its necessity.

'Fair and reasonable to the company' under section 45 means that the financial assistance should be on terms comparable to an arm's-length transaction or otherwise demonstrably beneficial (or at least not prejudicial) to the company itself. It is a higher standard than merely avoiding insolvency; it requires affirmative fairness in terms of the transaction.

A transaction is equitable when the circumstances of all parties have been considered and are reflected in the terms thereof. In the same breath, a transaction is justifiable when its necessity can be rationally explained. The requirement for 'fair and reasonable' thus imposes a standard akin to what a prudent lender, acting in their own interests, would accept – rather than simply allowing any arrangement that falls within the broader group's structuring decisions.

A director or board's objective and subjective perceptions surrounding their decisions to provide financial assistance play a crucial role. It is possible to determine and justify the terms of a transaction objectively by questioning whether they would make sense to a reasonable person in the same commercial reality as the company.

Justification

In order to determine whether the terms of a transaction can indeed be justified, the factors and circumstances that influence those terms must be identified and considered. Various considerations need to be borne in mind, such as market rates, the financial capacity of the borrower, and the risks and benefits to the parties.

Directors must be able to demonstrate that they have applied their minds to the decision about the provision of financial assistance, considering all relevant factors, and that their decision is both equitable and justifiable. The Supreme Court of Appeal in *Constantia Insurance Company Limited v The Master of the High Court, Johannesburg and Others (512/2021)* emphasised that the board's consideration and satisfaction are substantive requirements in authorising the provision of financial assistance under section 45.

The consistency of court decisions (voiding deals that skipped the proper process) suggests that the interpretation is uniform – any material financial assistance must comply with the requirements imposed by section 45, or it will not stand. However, to determine what is actually 'fair and reasonable' may only be determined on a case-by-case basis by applying consideration to the aforementioned factors from both a subjective and an objective perspective.

Therefore, evidence of well-deliberated analysis, substantiated through market research, would be useful to ensure that the terms of a financial assistance arrangement are justifiable. This is where those with experience in the exercise of transfer pricing principles can offer value.

Transfer pricing

Generically, transfer pricing refers to the pricing or remuneration arrangements in respect of the dealings between related parties. In the corporate income tax environment, a transfer pricing analysis is typically an exercise in which related parties endeavour to ensure that the pricing of a transaction is at arm's length. This 'arm's length' principle dictates that the terms and conditions of the transaction (between the related parties) should not differ significantly from those that would have been agreed upon by independent parties in similar circumstances. Although transfer pricing methods are normally used to justify transactions as being at arm's length for tax purposes, the methodologies are effective and compelling in evidencing that a loan is fair and reasonable, and thus in evidencing that the directors have met their fiduciary duty.

There is an established and well-respected methodology – internationally and in South Africa (based on the OECD transfer pricing guidelines) – to determine if a loan is granted on arm's length terms. There is also a well-defined documentation framework that would ensure adequate reporting and supporting evidence.

Ultimately, in our view, the arm's length principle is a robust safe harbour for meeting the 'fair and reasonable' standard

set by the Companies Act. Concepts such as arm's length, market value, fair market value, and fair and market-related, all aim to ensure that neither side of a transaction is unduly enriched or impoverished by virtue of relation. Directors can commission transfer pricing studies that offer evidence of appropriate research and the consideration of their specific facts and circumstances, and that allow them to make informed decisions regarding the financial assistance offered to related parties.

Legal support

It should be noted that the obligations imposed by section 45 (and the potential risks arising from non-compliance) remain legal in nature. It is, therefore, important to not neglect the need for legal documentation that can further support the directors' decision.

Compliance with section 45 is a legal obligation, and proper documentation is essential. Board resolutions authorising financial assistance should clearly set out the key findings and rationale for the decision, including reference to any transfer pricing analysis conducted. Legal documentation should also ensure that the transaction is consistent with the company's Memorandum of Incorporation and any other applicable legal requirements.

In conclusion, when considering the provision of financial assistance to a related party, it is advisable for any board of directors to first consult with both legal and transfer pricing experts, as they would be able to provide valuable support in complying with section 45 of the Companies Act.

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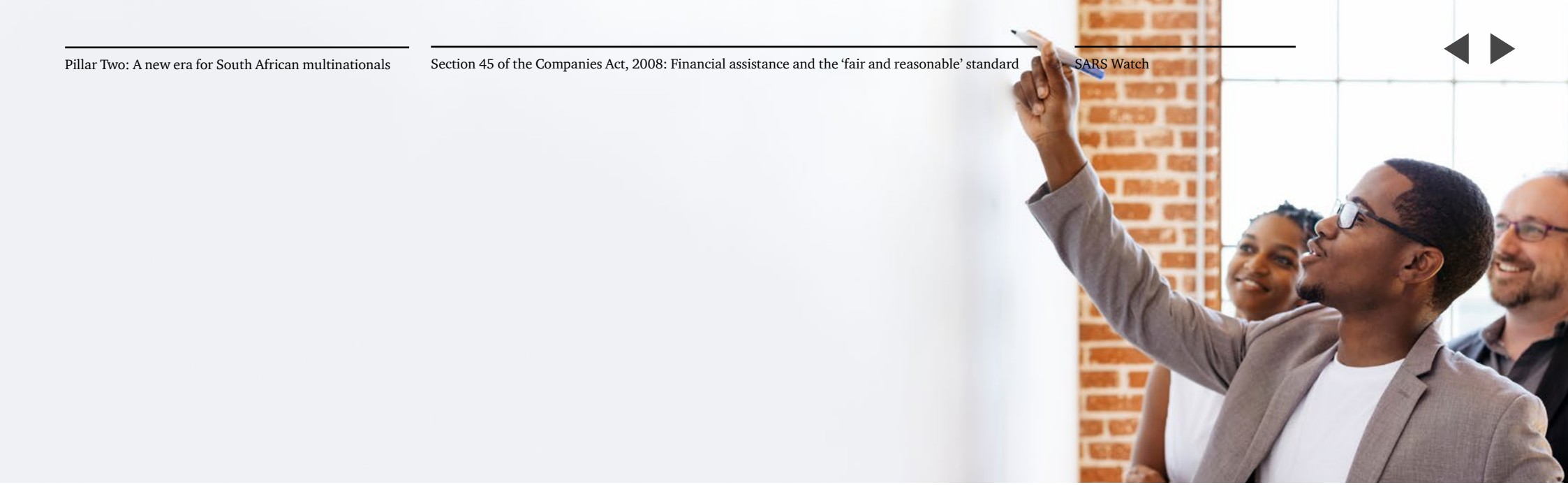

SARS Watch:

SARS Watch 26 July 2025 – 25 August 2025

Legislation

16 August 2025	Draft Taxation Laws Amendment Bill, 2025 Draft Explanatory Memorandum on the Draft Taxation Laws Amendment Bill, 2025 Draft Tax Administration Laws Amendment Bill, 2025 Draft Memo on Objects of Tax Administration Laws Amendment Bill of 2025 Draft Export Regulations, 2025 Draft Explanatory Memorandum on the Draft Export Regulations, 2025 Draft Domestic Reverse Charge Regulations, 2025	The 2025 Draft Tax Bills and Draft Regulations have been published. Comments are due to SARS and National Treasury by Friday, 12 September 2025.
1 August 2025	Table 3 – Rates at which interest-free or low-interest loans are subject to income tax	The prescribed rate decreased to 8.00% (from 8.25%) from 1 September 2025.
31 July 2025	Notice 6461 – Notice by the Minister specifying documents released by the Inclusive Framework that apply for the purposes of the Global Minimum Tax Act, 2024	Published in Government Gazette No. 53096, with an implementation date of 31 July 2025.

Interpretation

22 August 2025	Interpretation Note 139 – Taxation of amounts received by or accrued to missionaries	This Note provides clarity on the tax treatment of amounts received by or accrued to missionaries who are performing religious or related activities.

Customs and excise

22 August 2025	Draft amendments to rules under sections 17 and 120 – State warehouse rent	Comments are were to SARS by Friday, 5 September 2025.
22 August 2025	Notice R.6525 – Amendments to rules under sections 64E and 120 – Accredited client status (DAR263)	Published in Government Gazette No. 53208 with effect from 1 September 2025.
21 August 2025	Updated Prohibited and Restricted Imports and Exports list	Tariff 0106.33.10 needs to be detained for State Vet.
6 August 2025	Draft amendments to rules under sections 77H and 120 – Internal appeals	Comments were due to SARS by Wednesday, 20 August 2025.
4 August 2025	Updated Prohibited and Restricted Imports and Exports list	Tariff heading 9018.12 does not require a letter of authority. The following tariff headings were added: • 2710.19.07 • 2710.19.09 • 2710.19.15 • 2710.19.26 • 2710.19.30 • 2710.19.35 • 2710.19.37 • 2710.19.39 • 2710.19.45 • 2710.19.47 • 2710.19.49 • 2710.19.52 • 2710.19.55 • 2710.19.57 • 2710.19.60 • 2710.19.70 • 2710.19.80 • 2710.19.90
1 August 2025	Notice R.6475 – 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 282.85c/kg to 364.68c/kg in terms of the existing variable tariff formula (ITAC Minute 04/2025)	Published in Government Gazette No. 53102, with an implementation date of 1 August 2025.

Case law
In accordance with the date of judgment

5 August 2025	CSARS v Glencore International AG (A138/2023; 34490/2021) [2025] ZAGPPHC	Whether Glencore's customs entries and corrections for imported goods complied with the Customs and Excise Act, and whether SARS was justified in imposing duties, penalties, and forfeiture for alleged procedural violations.
28 July 2025	The Lion Match Company (Pty) Ltd v CSARS (1047/23 and 1067/23) [2025] ZASCA 112	Whether the Tax Court has the power to adjust a tax assessment upward at the request of SARS in the absence of the taxpayer or its legal representatives, and the procedural and jurisdictional boundaries of the Tax Court under the Tax Administration Act. The case also examines the principles and requirements for granting a postponement of tax proceedings, particularly in the context of attorney withdrawal and alleged conflict of interest.
21 July 2025	Montana v Commissioner for the South African Revenue Service (2023-047735) [2025] ZAGPPHC 749	The case concerns a taxpayer's application for condonation for the late filing of his answering affidavit in sequestration proceedings initiated by SARS due to unpaid taxes, as well as an application to strike out certain objectionable allegations from his replying affidavit.

Guides and forms

19 August 2025	Comprehensive Guide to the ITR12 Income Tax Return for Individuals – External Guide	The guide has been updated for the following changes to the ITR12 for individuals: • Antedated salary/pension – From the 2025 year of assessment onward, if source code 3623/3673 (for 'antedated salary/pension' paid for past years of assessment) is completed in the income section of the IRP5 certificate, the directive number will be mandatory. • Exempt local dividends – Source code 4306 will only display next to the 'Exempt Local Dividends' field from the 2025 year of assessment onwards. • Exempt foreign dividends – Source code 4307 will only display next to the 'Exempt Foreign Dividends' field from the 2025 year of assessment onwards. • Capital gains tax – if a taxpayer is in a partnership and there was a disposal of partnership assets during the year of assessment, the taxpayer is only required to declare his/her own portion of the proceeds and base cost on the ITR12 return tax return. • Return type for foreign nationals – On 26 July 2025, a system change was implemented to issue a 'resident' ITR12 by default to all taxpayers classified as foreign nationals. If a foreign national requires a 'non-resident' ITR12 return to be issued, the Non-resident Tax Return Type icon on the SARS Online Query System (SOQS) function must be used to request SARS to issue the correct return type for completion.

19 August 2025	• Everything you need to know about Filing Season 2025 • Do I need to submit a return? • Get these self-help services via your mobile device • Auto-assessment • Why Was I Not Auto Assessed? • How to update your personal details • How to update your banking details • Updating Security Contact Details • Bring your own device • Save a Trip and Skip the Queue • How to register on SARS eFiling • Notice of registration • How to navigate the ITR12 wizard • Late-filing penalties • How to pay SARS debt on eFiling • How to link your company to your personal SARS eFiling profile • How to Claim Tax Credits for Disability-related Medical Expenses • Travel Allowance • Personal Income Tax Fraud	Handy, short and easy-to-read leaflets for the 2025 filing season.

Other publications

25 August 2025	SARS: Biometric facial recognition for VAT and PAYE registration	SARS has implemented enhanced biometric facial authentication for: • VAT and PAYE product registrations on eFiling that may require secure identity verification • Updating security contact details for taxpayers who cannot receive a one-time pin (OTP).
25 August 2025	Tax Alert: Draft legislation released – Invitation to comment	The draft tax legislation and regulations were published on 16 August 2025 and stakeholders are invited to provide their comments to National Treasury and the South African Revenue Service on these proposals by 12 September 2025. We summarise some of the main proposals in this publication.
10 August 2025	Global Tax Talk: Adding tax to the business reinvention toolkit	Various tax levers can impact the bottom line as business models shift, such as incentives for sustainability and innovation; timing is key to capture benefits and avoid unexpected costs later. This episode discusses this matter in more detail.

31 July 2025	OECD: Ring-Fencing Mining Income	This practice note aims to clarify what ring-fencing means in the context of mining taxation, the advantages of adopting ring-fencing rules, and how to mitigate potential challenges through robust tax policy design and effective tax administration practices. It describes and evaluates the different options for designing ring-fencing rules based on the experience of resource-rich countries and highlights key implementation issues that have emerged.
31 July 2025	OECD: Zimbabwe joins as 151st signatory to the Multilateral Convention to tackle tax evasion and avoidance, and Madagascar deposits its instrument of ratification	Commissioner General of Zimbabwe's Revenue Authority Ms Regina Chinamasa signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The total number of participating jurisdictions is now 151.
30 July 2025	OECD: GloBE Information Return (Pillar Two) Status Message XML Schema	The GloBE Information Return XML Schema is an IT format designed to support the automatic exchange of GloBE information return (GIR) data, as part of the implementation of the global minimum tax. The OECD has developed a common XML Schema to enable competent authorities to report such errors in a structured manner.
30 July 2025	OECD: Crypto-Asset Reporting Framework XML Schema (July 2025)	This document contains a technical update to the user guide for the XML schema that supports the automatic exchange of information pursuant to the Crypto-Asset Reporting Framework (CARF), as part of international tax transparency efforts.
31 July 2025	SARS media release: SARS releases the preliminary trade statistics for June 2025	South Africa recorded a preliminary trade balance surplus of R22.0 billion in June 2025. This surplus was attributable to exports of R170.7 billion and imports of R148.6 billion, inclusive of trade with Botswana, Eswatini, Lesotho and Namibia.
28 July 2025	SARS: Personal income tax – Non-residents	SARS has made enhancements to the 2025 ITR12 tax return to ensure that non-residents with South African source-based income complete the correct required fields in the return. More information on these enhancements is available on the SARS website.

Thank you