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The Tax Director series

SARS Watch

Synopsis

Tax today

February 2019

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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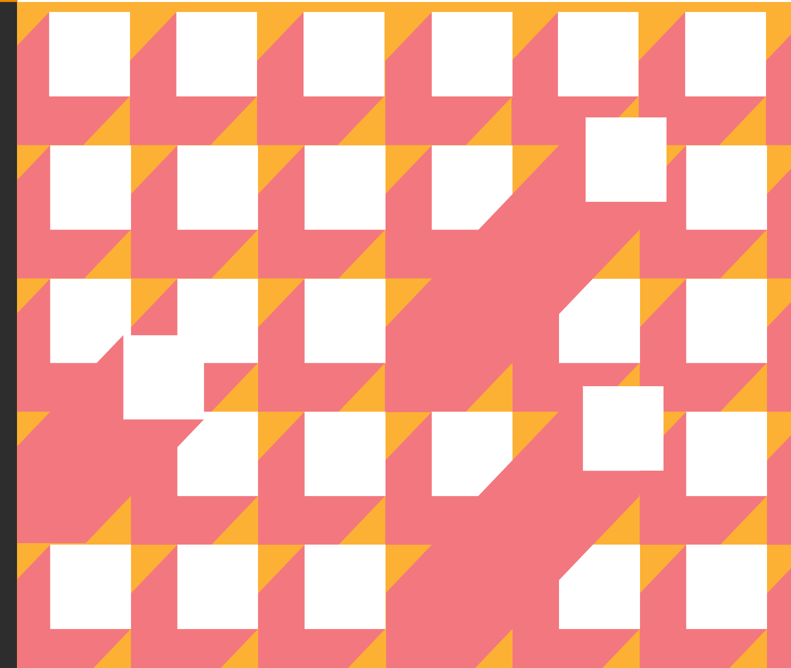


Decision by the Dutch Supreme Court on the 'most-favoured nation' clause in the treaty between South Africa and the Netherlands: Where to from here?

Regular readers of Synopsis will recall the article in the September 2017 edition of Synopsis ('Double taxation agreements: Dutch decision on the "most favoured nation" clause').

In that previous Synopsis article, we set out the position that the 'most favoured nation (or 'MFN') clause in the double taxation agreement between South Africa and the Netherlands ('the SA-Netherlands DTA') applies to effectively exempt from South African dividends tax dividends paid by South African residents to their Dutch shareholders (and *vice versa*).

At the time (September 2017), the Dutch Courts, both at District Court and at Court of Appeals level, had held, unequivocally, that the exemption applies in respect of dividends paid by Dutch resident companies to their South African shareholders.

On 18 January 2019, the Dutch Supreme Court (the court of final appeal in the Netherlands), after considering an appeal by the Dutch authorities against the decision of the Court of Appeals, issued a judgment which was again resoundingly in favour of the taxpayer (represented by PwC in the matter) in relation to the application of the MFN clause.

A brief history

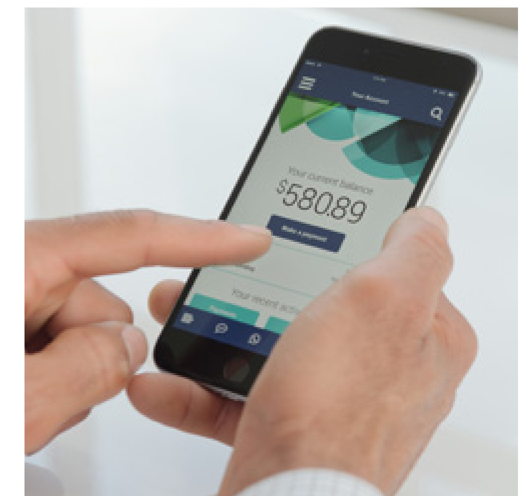
The first of April 2012 was a significant date in South African tax history. On that date, the Secondary Tax on Companies was replaced by the dividends tax. This necessitated the renegotiation of a number of South Africa's double taxation agreements so that they could be congruent with the new dividends tax and allow South Africa to levy dividends tax at a minimum rate of 5%.

During 2012 and in the course of monitoring developments in the renegotiation process, PwC conducted a detailed review of all of the dividends tax articles of all of South Africa's DTAs.

In the course of conducting the review, PwC became aware of the fact that, not only were there at least three DTAs between South Africa and other countries that still provided for zero rates of dividends tax (i.e. South Africa's DTAs with Oman, Cyprus and Kuwait), but that there were also two South African DTAs (with Sweden and the Netherlands) that contained 'most favoured nation' clauses in their articles dealing with dividends tax.

Importantly, two things then became apparent to PwC. The first was that the zero rates in the Oman, Cyprus and Kuwait DTAs triggered the operation of the MFN clause in the Swedish DTA to effectively exempt from South African dividends tax dividends paid by South African residents to their Swedish shareholders. The second was that, once the MFN clause in the DTA between Sweden and South Africa had been triggered, the MFN clause in the SA-Netherlands DTA was also triggered, thereby resulting in the same exemption for dividends paid from South Africa to the Netherlands (and *vice versa*).

In March 2013, a Dutch resident company (we'll call it 'the BV') made a dividend available to its South African resident shareholder. The BV levied and paid Dutch dividends tax at the rate of 5% in respect of the dividend. Then, later in 2013 and acting on the advice of PwC, the South African resident company requested from the Dutch revenue authorities a refund of the dividends tax withheld by the BV. This request was denied by the Dutch revenue authorities, and the matter went to court in the Netherlands, culminating in the decision of the Dutch Supreme Court on 18 January.



The decision of the Dutch Supreme Court

The judgment of the Dutch Supreme Court was, as were the judgments of the lower Dutch courts, brief and unequivocal.

As would be expected, the Supreme Court reviewed the judgments of the lower courts. In addition, it also considered a detailed written submission from the Advocate-General of the Netherlands, which supported the stance of the Dutch revenue authorities, as well as a response thereto by the taxpayer.

As per the judgment of the Supreme Court (which confirms the decisions of the lower courts) the MFN clause in the SA-Netherlands DTA provides for the automatic application of a lower rate of tax on dividends than is expressly provided for in the SA-Netherlands DTA if South Africa and a 'third country' subsequently (i.e. after the conclusion of the SA-Netherlands DTA) conclude any DTA that provides for a lower rate. If this were the case, the lower rate would apply for the purposes of the SA-Netherlands DTA. On the basis that South Africa had concluded a DTA with a third country (i.e. Sweden) after the conclusion of the SA-Netherlands DTA (in the form of a protocol to the SA-Sweden DTA), and on the basis that South Africa had agreed, in terms of that subsequent DTA, to an exemption from dividends tax (in the form of the MFN in the SA-Sweden DTA), the Court held that the MFN clause in the SA-Netherlands DTA was triggered, and dividends paid by a Dutch resident to its South African shareholder qualified for the exemption.

The central argument advanced by the Attorney-General to the Dutch Supreme Court was that the protocol to the SA-Sweden DTA did not constitute a 'subsequent agreement', on the basis that it merely resulted in a continuation of certain exemptions that already existed in the SA-Sweden DTA before the SA-Netherlands DTA was concluded. This argument was, correctly in our view, roundly rejected by the Supreme Court, on the basis that the exemption was an entirely new exemption.

What about dividends paid by South African residents to their Dutch shareholders?

Even after the decisions of the Dutch lower courts, the South African Revenue Service (SARS) held the view that the MFN clause in the SA-Netherlands DTA did not apply. There has, to date, been no indication from SARS as to whether this view has changed in light of the decision of the Dutch Supreme Court.

The question then arises: to what extent is SARS required to take account of the decision of the Dutch Supreme Court?

Decisions of the Dutch Courts (and even decisions of the Dutch Supreme Court, the highest court in the Netherlands) are – technically – not binding on South African courts, let alone SARS. However, this does not mean that the Dutch court decisions should be entirely disregarded. In fact, there are compelling reasons why these decisions not only cannot be disregarded, but should be treated as largely being determinative of the issue.

As mentioned in our previous Synopsis article, both the Dutch revenue authorities and the taxpayer had agreed, in arguments before the Dutch courts, that the provisions of the Vienna Convention on the Law of Treaties of 23 May 1969 ('the Vienna Convention'), particularly Articles 31 and 32 thereof, were relevant in the interpretation of the MFN clause. Although South Africa is not a signatory to the Vienna Convention, it has been accepted internationally that the Vienna Convention, to a great extent, codifies existing principles of customary international law. This is important when one considers that section 232 of the Constitution provides that 'customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament'. Accordingly, there is little doubt that the principles of the Vienna Convention relating to interpretation will be applied by the South African courts in interpreting the Dutch MFN clause.

The central purpose of a DTA is to allocate taxing rights between the contracting states who are parties to the DTA. This purpose can be achieved only if the provisions of the DTA are applied consistently by the revenue authorities in the contracting states. Article 31(1) of the Vienna Convention requires that a DTA should be interpreted 'in good faith' and 'in the light of its object and purpose'. One necessary implication of this is that contracting states should endeavour to apply a 'common interpretation' (i.e. an interpretation that is most likely to be accepted in both contracting states). Another necessary implication is that the revenue authorities and courts, in applying a DTA, must take into account the merits of relevant decisions made by comparable institutions in the other contracting state.

Consequently, it is clear that section 232 of the Constitution, read with the Vienna Convention, requires that both SARS and our courts will need to consider the decisions of the Dutch courts in applying the Dutch MFN. Moreover, it is difficult to see how they could interpret it differently than the Dutch courts – to do so would interfere with the allocation of taxing rights between South Africa and the Netherlands and would not be 'in good faith' (since it would frustrate the very purpose of the SA-Netherlands DTA).

The matter, however, does not end there.

In terms of section 233 of the Constitution, our courts are, when interpreting legislation (which would include a DTA), obliged to 'prefer any reasonable interpretation' of the legislation which is consistent with international law over any alternative interpretation that is inconsistent with international law.

What does this mean in the context of the application of the MFN clause in South Africa? The Dutch courts (one of which is the Dutch Supreme Court, the final court of appeal in the Netherlands) have issued three unequivocal, reasoned judgments on the application of the MFN clause to dividends paid by Dutch residents to South African residents. It is difficult, if not impossible, to see how these judgments, which constitute 'international law', would not be regarded as being 'reasonable interpretations' of the MFN clause in the SA-Netherlands DTA. Being 'reasonable interpretations', they *must* (in terms of section 233) be 'preferred' (i.e. applied, and not merely considered) by our courts over any other (even compelling) interpretation that is inconsistent with those reasonable interpretations.

It seems that the decision of the Dutch Supreme Court might be determinative of the issue after all.

Many taxpayers now await an indication from SARS as to how it intends applying the Dutch MFN clause. We sincerely hope that common sense will prevail, and that there will be certainty shortly.

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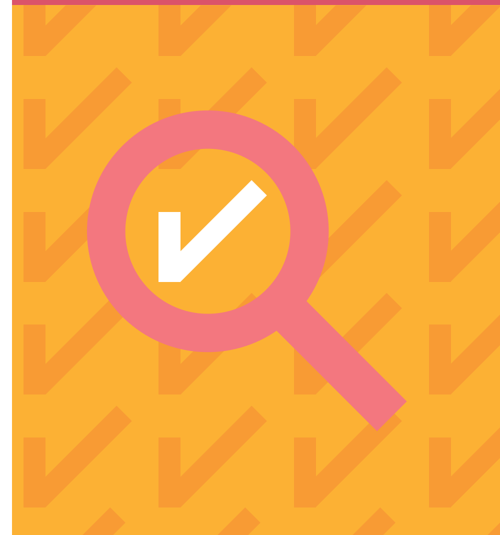
The SCA pronounces on the powers of the Tax Court in regard to the imposition of penalties

In the November/December 2017 issue of Synopsis, we reported on a decision of the Gauteng Tax Court in which a taxpayer which had disputed the penalties imposed by SARS had suffered a nasty surprise when the Court increased the level of penalty. This matter was taken on appeal to the Supreme Court of Appeal.



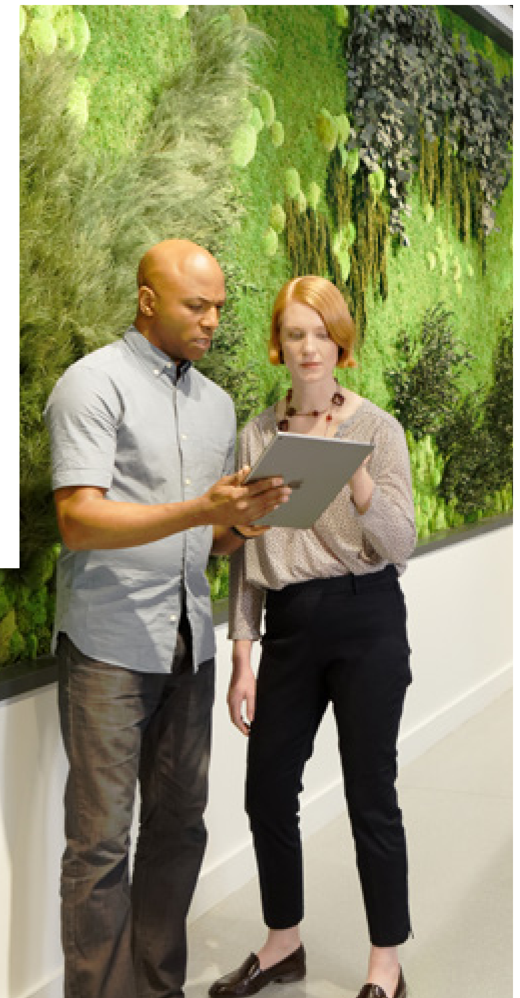
The appeal in the matter of *Purlish Holdings (Pty) Ltd v The Commissioner for the South African Revenue Service* [2019] ZASCA 04 (26 February 2019) was noted against both the finding of the Tax Court that the penalties were justifiably imposed and the finding that the penalties should be increased to a level greater than originally imposed by SARS on assessment.

The history of the matter shows that the appellant had paid an amount of provisional tax and had subsequently filed returns reflecting that it had not derived taxable income and applied for a refund of the tax paid. In view of the significant size of the refund requested, SARS had conducted an audit into the affairs of the appellant, which revealed that it had indeed conducted a trade and that it ought, in the circumstances, to have filed returns of income. The appellant should have registered for VAT, but had failed to do so, and had therefore not rendered VAT returns and paid VAT.

In the circumstances, SARS issued assessments for corporate income tax and VAT on which it levied understatement penalties of 100% on the additional taxes payable as a result of the understatement. An objection was noted, and SARS reduced the penalty in respect of the understatement of income tax to 25% and in respect of the understatement of VAT to 50%.

The appellant was unhappy with this outcome and filed an appeal against the decision in the Tax Court. In the Tax Court the imposition of a penalty was confirmed. However, the Court considered that it was entitled to review the level of penalty and re-imposed the original penalties in both instances of 100% of the tax attributable to the understatement.

The appellant therefore noted an appeal to the SCA against both the imposition of the penalties and the decision of the Tax Court to increase the penalties.



Was SARS justified in imposing a penalty?

The first and principal issue was whether SARS was permitted to impose a penalty. In her judgment (in which her fellow Justices of Appeal concurred), Molemela JA dealt with the requirements for the imposition of a penalty under section 222 of the Tax Administration Act. In paragraphs [12] and [13] of the judgment, Molemela JA identified the relevant authority empowering SARS to impose penalties for understatement:

> [12] The first issue in this appeal relates to whether or not SARS has proven that it is entitled to impose understatement penalties in terms of s 222 of the TAA. Section 221 of the TAA defines the term 'understatement' as:
>
> 'any prejudice to SARS or the *fiscus* in respect of a tax period as a result of–
>
> a. a default in rendering a return;
> b. an omission from a return;
> c. an incorrect statement in a return; or
> d. if no return is required, the failure to pay the correct amount of tax.'
>
> [13] Section 222(1) reads as follows:
>
> 'In the event of an "understatement" by a taxpayer, the taxpayer must pay, in addition to the "tax" payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the "understatement" results from a bona fide inadvertent error.'

Molemela JA considered the circumstances in which returns had either not been submitted or had been submitted reflecting nil values. This led to an inescapable conclusion, as expressed in paragraph [18] of the judgment:

> Considering that SARS had clearly stated in its statement of grounds of assessment and opposing appeal filed in terms of Rule 31 (Rule 31 Statement) that the 'nil returns' and the non-rendition of the correct CIT returns were the reasons why understatement penalties were imposed, one would have expected the appellant to have adduced some evidence in refutation, especially in relation to the alleged submission of 'nil returns'. It is thus inescapable that the appellant indeed filed 'nil returns'.

This then led on to the secondary issue, as explained in paragraph [19] of the judgment:

> The submission of incorrect information in returns falls squarely within the provisions of item (c) of the definition of 'understatement'. I also agree with SARS' submission that a failure to declare income constitutes conduct listed in item (b) of the definition of 'understatement'. Indeed, even on the acceptance of the appellant's version that it did not submit tax returns to SARS, item (a) of the definition would still have been triggered. *What now remains is to evaluate whether the aforesaid conduct, being conduct envisaged in items (a), (b) and (c) of the 'understatement' definition stipulated in s 221 of the TAA, caused any prejudice to SARS*. (Emphasis added)

Importantly, the burden of proof in relation to the imposition of penalties falls on SARS, in terms of section 129(3) of the Tax Administration Act. The judgment notes at paragraph [20]:

> Given the aforesaid burden of proof, I am inclined to find merit in the appellant's contention that SARS must not only show that the taxpayer committed the conduct set out in items *(a)* to *(d)* of the definition of 'understatement' in s 221 of the TAA, but also that such conduct caused it (SARS) or the *fiscus* to suffer prejudice.

The appellant's arguments were:

- SARS did not allege that it had suffered prejudice in its pleadings in the Tax Court;
- The appellant had paid significant provisional tax in excess of the assessed amounts which could have been set off against the liabilities, resulting in no prejudice to the *fiscus*.

Molemela JA rejected the first ground, as it was found that SARS had alleged that it had suffered prejudice by virtue of the defaults on the part of the appellant. On the second ground, her judgment identified at paragraph [23] that the evidence of SARS's witness that the funds could not be appropriated to governmental activities unless a liability was assessed had gone unchallenged. The evidence also indicated that significant time and resources were allocated to the audit of the affairs of the appellant. The conclusion was reached that:

> Given the circumstances of this matter, I agree that the use of additional SARS resources for purposes of auditing the appellant's tax affairs indeed prejudiced SARS. As correctly conceded by counsel for the appellant in argument before this court, prejudice is not only determinable in financial terms.

The final hurdle related to the exclusion contained in section 222(1) of understatements resulting from inadvertent error. Here, Molemela JA was clear, at paragraph [24]:

> I am unable to find that the understatements were as a result of a bona fide inadvertent error, as the appellant did not adduce any evidence to that effect. There is nothing, in the evidence, that suggests an error of that nature. It follows that the Tax Court correctly found that SARS had discharged its onus of proving the appellant's 'understatement' of its CIT and VAT within the contemplation of s 221 of the TAA.

SARS had accordingly been justified in imposing a penalty.

Does the Tax Court have the power to increase the penalty?

The issue turned on the application of section 129(4) of the Tax Administration Act, which states:

> 'in the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the Tax Court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty so imposed'.

Molemela JA pointed out that the power of the Tax Court was not unlimited. She found, at paragraph [25]:

> The next question is whether the Tax Court was entitled to increase the understatement penalties levied by SARS. Section 129(3) of the TAA empowers the Tax Court to increase an understatement penalty. But, that only arises if the issue has been properly raised for adjudication before that court. This is determined by Rule 34, which provides:
>
> > 'The issues in an appeal to the tax court will be those contained in the statement of the grounds of assessment and opposing the appeal read with the statement of the grounds of appeal and, if any, the reply to the grounds of appeal.'
>
> It was fairly conceded by counsel for SARS, that SARS had never raised the issue of the increase of the reduced penalties for adjudication before the Tax Court. In its Rule 31 statement, SARS only sought to justify the reduced penalties. It follows that it was incompetent for the Tax Court to have increased the reduced penalties. To that extent the appeal against the decision of the Tax Court must succeed. (Footnote removed)

Thus the appellant remained liable to payment of a penalty but only to the extent that had been determined by SARS on objection.

The takeaway

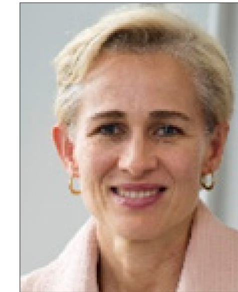
This decision provides clear direction on the process to be followed in regard to the imposition of an understatement penalty.

The burden of establishing that a penalty is justified falls upon SARS. SARS needs to prove the following:

- The existence of an understatement, which requires that SARS demonstrates that there has been prejudice to the *fiscus* and that the cause of the understatement is an act or omission by the taxpayer specified in section 221 of the Tax Administration Act. In regard to prejudice, the judgment makes it clear that prejudice is not limited to financial prejudice but may extend to the investment of time and resources.
- That the failure by the taxpayer was not due to *bona fide* inadvertent error.
- The *quantum* of the penalty is commensurate with the culpability of the taxpayer as specified by reference to the criteria set forth in section 223 of the Tax Administration Act.

The judgment does not remove the power of the Tax Court to increase a penalty. However, it sets out the basis upon which it may do so. Here it was found that the penalty may only be increased if SARS, in the statements that it is required to file under the rules for the conduct of an appeal, petitions for an increase.

Where SARS seeks only to defend its decision, even if the evidence may appear to the Tax Court to justify a higher penalty than the penalty that was imposed by SARS, such evidence may not be relied upon by the Tax Court in order to impose a penalty greater than the penalty that is the subject of the appeal.



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The Tax Director series (new): Article 2

Change is happening – as responsible taxpayers, organisations need to level up to be fit for the future.

Reduce the cost of delivery – manage costs for sustainable success

A Fit for Growth*[1] approach is a proven methodology for helping companies build differentiating capabilities, manage their cost in a more strategic way, and realign the organisation towards growth. The focus is on reducing costs and growing stronger at the same time. The key is to assess the organisation's strategy and determine the few differentiating capabilities it needs to thrive. This is institutionalised through a more strategic approach to cost management by shifting investment to 'good' costs and away from 'bad', redirecting spending to the areas that lay the groundwork for sustainable, long-term growth.

The tax function is under constant pressure to deliver more with less. Internal cost pressures and the demand for greater business insights against the backdrop of meeting increasing tax compliance demands in shorter time frames is resulting in the need for the tax function to also chart a course of continuous improvement and determine the differentiating capabilities it needs to be fit for the future.

1 Fit for Growth is a registered service mark of PwC Strategy& LLC in the United States.

With the focus global tax authorities are placing on organisations to manage tax risk in a world where various stakeholders are asking for measurable areas of cost savings, it is essential to ensure a balance between operating and tax models and deliver efficiencies, while ensuring the overall control environment is effective.

An organisation looking to build a transformation business case in tax should consider its overall tax strategy and behaviours and its alignment with the organisation's overall corporate strategy.[2] In addition, it should identify key measures of its future performance, understand the choices it faces to transform from where it is now to where it needs to be, and effectively communicate an overall roadmap that takes a holistic approach in defining the transformation.

The questions are whether strategies to reduce overall tax operational cost are being implemented in the most effective way and what the measurable areas of cost savings are that some companies have successfully implemented.

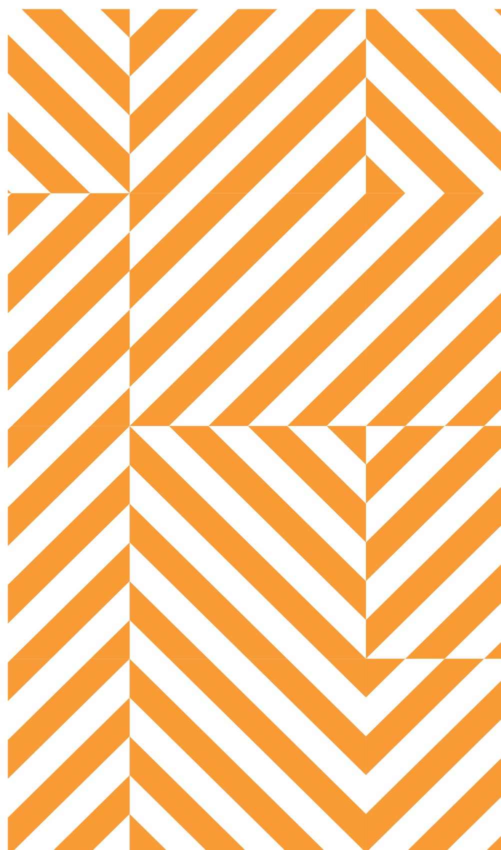
2 Refer to Article 1 in the Tax Director series in the January 2019 edition of Synopsis 'Align tax with the business strategy'.

Understanding key success factors for tax

Historically, the ability to manage taxes while identifying tax savings opportunities has been a goal of many organisations. However, politicians, citizens and the media are increasingly linking tax and corporate responsibility to the extent that it has become essential for governing bodies to understand their business's tax decisions and how these decisions impact the company's financial results and stakeholders. Most organisations confirm their commitment to full compliance with the tax law, but beyond that, the following should be considered:

- What is the right balance in managing tax costs and risks?
- If the objective is to reduce taxes, how much risk is the organisation prepared to take in doing so?
- What degree of confidence will it seek from external advisers?
- Will it always litigate disputes?
- What is its tolerance for negative publicity?
- How will it behave with respect to choices in the law, or where there are grey areas or other ambiguities?
- Are there specific tax concerns driven by jurisdiction or industry?

These considerations will flow into the setting of responsible KPIs and identifying the key factors that will be measured in determining success. Tax risk management, efficiencies, effectiveness and sustainability have become more important than reducing or optimising the tax burden. Without a high-level view of what is important – key success factors – it is difficult for tax functions to establish the right objectives to achieve and to convey value within the organisation.



Enhanced processes, controls and oversight could ultimately result in more certainty with respect to tax positions, reduced audit or investigation risk, leading to decreased risk of penalties

A critical aspect of the tax function's ability to operate effectively is its ability to streamline and strategically manage the end-to-end core processes underlying all tax activities with a keen focus on managing risk. Tax functions need to manage risk by integrating greater process and controls to meet new and more stringent reporting requirements and increased regulatory demands and audit activity. It is important for tax functions to define and document processes within all functional areas, including tax compliance, reporting, transfer pricing, controversy, and tax planning.

Documentation of processes facilitates consistency of execution and a smoother internal and external financial/tax audit process. Some companies wait until audits and disputes are underway before developing documentation. That approach generally consumes significant resources and time. Often the requested information is not readily available. In some cases, local country income tax filings are completed in an ad hoc fashion, using 'best available' information that may not be fully reconciled to source information or other reports. Instead, companies should take a holistic view of how audits and controversies could impact the tax function and its ability to contain additional costs.

Pre-emptive measures are necessary to help companies avoid surprises which can impact the bottom line such as:

- Enhancing processes or implementing technology tools that can track audits so tax function management can have full visibility of the number, status, and depth of inquiries globally.
- Re-evaluating global audit and controversy roles, responsibilities, and information flows within the company to manage tax positions more consistently, efficiently share data and document audit responses, and assess potential impacts on earnings.
- A one-stop global portal can connect individuals across core functions and business teams while employing proper security and access measures. The adoption of these tools by companies is increasingly growing and plays a significant role in reducing additional or unexpected cash outflows.

Elimination of hours to perform certain compliance requirements and increased capacity by staff to perform more analytics and partner with business in providing a comprehensive review

Tax must achieve its objectives and deliver its strategy in an efficient and effective manner. Its KPIs should assess whether its people, processes, and systems are working well together, effectively consuming the appropriate amount of resources.

Tax functions face significant challenges in gathering high-quality and timely data, hindering their ability to contribute more strategically to enterprise-wide decisions. These challenges require robust, technology-enabled solutions to collect, verify, and report tax information.

For the tax function to improve efficiency and effectiveness, thereby reducing cost, the information it receives must be as

tax-ready as possible, without the need for significant data manipulation and interpretation. Integrating finance and tax data from multiple systems, applications, and spreadsheets into a common information and reporting platform can:

- significantly reduce the time and effort spent on manual data gathering, business and legal entity reconciliation, and tax reporting;
- change the focus from spreadsheet-driven manipulation to system- or database-driven analysis and forecasting;
- enable the tax function to devote more time to prospective analysis and planning in order to provide quicker responses to questions from executives and auditors; and
- facilitate the effective use of alternative resource models.

New resource models such as shared services, outsourcing or co-sourcing and lowering staff cost to perform preparatory tasks

Tax needs to revisit the way it operates. Finance and other enterprise functions are embracing the shift toward shared services, centres of excellence (CoEs), and managed services. These operating models, as well as co-sourcing or outsourcing of compliance, have the potential to streamline operations and reduce overall cost.

A related consideration is whether higher-paid employees are properly matched with higher-valued activities. Are higher-risk activities aligned to higher compensation cost? Is the tax function working effectively with other enterprise functions in other areas – sharing information, demonstrating value, and leveraging technology and resources?

The tax function has the ability to influence and impact positive change across the organisation. For example, how often and in what format is tax reaching out to the business – educating, supporting, presenting its initiatives, and collaborating with leadership across functions? Collaboration with the enterprise while leveraging an effective operating model could lead to overall organisational efficiencies. In addition, organisations that are performing efficiently are more likely to be agile and ready to handle change.

Pause and reconsider what success means for your tax function. The potential benefits will not only reduce above- and below-the-line costs, but will improve company-wide risk management and tax governance, resource management, recruitment processes and many other areas. Through continuous transformation, the tax function will be viewed not only as a critical and efficient compliance function, but also as an even more valuable strategic organisational asset.[3]

3 For more information view our Tax Function of the Future series at: https://www.pwc.com/gx/en/services/tax/publications/tax-function-of-the-future.html

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SARS Watch

SARS Watch 26 January 2019 – 25 February 2019

Legislation		
21 Feb 2019	Amendment to Part 3 of Schedule No. 2, by the insertion of safeguard item 260.03/7318.15.39/01.08 to implement safeguard duty of 48.01% on other screws fully threaded with hexagon heads – ITAC Report 596	Notice R237 published in Government Gazette No. 42241 with effect from 3 August 2019 up to and including 2 August 2020.
21 Feb 2019	Amendment to Part 3 of Schedule No. 2, by the insertion of safeguard item 260.03/7318.15.39/01.08 to implement safeguard duty of 45.61% on other screws fully threaded with hexagon heads – ITAC Report 596	Notice R238 published in Government Gazette No. 42241 with a date of implementation of 3 August 2020 up to and including 2 August 2021.
21 Feb 2019	Listing reportable and excluded arrangements in terms of sections 35(2) and 36(4)	Comments must be submitted to SARS by Friday, 8 March 2019.
21 Feb 2019	2019 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill	Published for information purposes only.
15 Feb 2019	Amendment to Part 3 of Schedule No. 2, by the insertion of safeguard item 260.03/7318.15.39/01.08, to implement safeguard duty of 50.54% on other screws fully threaded with hexagon heads – ITAC Report 596	Notice R177 published in Government Gazette No. 42232 with an implementation date with retrospective effect from 3 August 2018 up to and including 2 August 2019.
15 Feb 2019	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 369.57c/kg to 401.79c/kg in terms of the existing variable tariff formula – Minute M13/2018	Notice R176 published in Government Gazette No. 42232 with an implementation date of 15 February 2019.
8 Feb 2019	Customs & Excise Rules, 1995 (Amended)	The Customs Rules have been updated, and now include rule amendments up to and including 8 February 2019.
8 Feb 2019	Amendment to the Rules in terms of the customs and Excise Act, 1964, to enhance the administration and enforcement in respect of stills, agricultural distillers and manufacture of excise goods for own use	Notice R.121 published in Government Gazette No. 42218 with an implementation date of 8 February 2019.
8 Feb 2019	Amendments to the Rules under section 75 – Keeping of a register by rebate users of excisable goods	Notice R. 122 published in Government Gazette No. 42218 with an implementation date of 8 February 2019.
6 Feb 2019	Draft rule under section 110 tobacco products counter	Comments must be submitted to SARS by Wednesday, 6 March 2019.
6 Feb 2019	Publication of explanatory summary of the Customs and Excise Amendment Bill	Notice 60 published in Government Gazette No. 42216 with an implementation date of 5 February 2019.
6 Feb 2019	Reporting of Conveyances and Goods	Customs Reporting of Conveyances and Goods Policy effective 25 January 2019.
Case law		
In accordance with date of judgment		
20 Dec 2018	TCIT 14189	Whether a lease premium is of a capital or revenue nature.
5 Dec 2018	VAT 15558	Whether the Appellant was liable for VAT in terms of section 8(15) on certain promotional products for advertising and promotional services.
Rulings		
14 Feb 2019	BPR 318 – Corporatisation of a collective investment scheme in property by way of an asset-for-share transaction followed by an amalgamation transaction	This ruling determines the tax consequences arising out of the conversion of a collective investment scheme in property to a corporate REIT in accordance with the procedure set out in Notice 42 of 2014 issued by the Registrar of Collective Investment Schemes under the Collective Investment Schemes Control Act 45 of 2001.

11 Feb 2019	BPR 317 – Disposal of business by way of asset-for-share transaction	This ruling determines the income tax and value-added tax (VAT) consequences of the disposal of a business by way of an 'asset-for-share transaction' as envisaged in paragraph (a) of that definition in section 42(1).
11 Feb 2019	BPR 316 – Amalgamation of companies in terms of business rescue plan	This ruling determines the income tax and value-added tax effect of an amalgamation transaction for consideration involving the assumption of liabilities only.
30 Jan 2019	Draft BGR – Transitional rules for the taxation of interest payable by SARS under section 7E.	Comments must be submitted to SARS by Friday, 15 March 2019.
Guides and forms		
20 Feb 2019	Guide for tax rates/duties/levies (Issue 14)	This guide provides a current and historical view of the rates of various taxes, duties and levies collected by SARS.
30 Jan 2019	Tax guide for small businesses (2017/18)	This guide is a general guide dealing with the taxation of small businesses.
Interpretation notes		
8 Feb 2019	IN 43 – Circumstances in which certain amounts received or accrued from the disposal of shares are deemed to be of a capital nature	This Note provides clarity on the interpretation and application of section 9C, which deems the amount derived from the disposal of specified shares held for a continuous period of at least three years to be of a capital nature.
National Treasury		
20 Feb 2019	National Budget 2019	On Wednesday, 20 February 2019 The Minister of Finance tabled the 2019 Budget in Parliament.
Other publications		
13 Feb 2019	OECD invites public input on the possible solutions to the tax challenges of digitalisation	Comments must be provided by Friday, 1 March 2019.

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