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SARS Watch

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

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Unpacking the interest limitation amendments for multinationals

In the 2022 Budget delivered on 23 February 2022, the Minister of Finance surprised us by announcing a reduction in the corporate rate of tax and the implementation of base-broadening provisions that were enacted in the Taxation Laws Amendment Act, 2021, but were not expected to be implemented until 2023. While some relief is expected to be enjoyed by virtue of the reduction in the rate of tax from 28% to 27%, some corporate taxpayers are now faced with new challenges.

The new provisions were enacted in the Taxation Laws Amendment Act, 2021, and came into effect for taxpayers whose years of assessment end on or after 31 March 2023. This means that, on a phased basis depending on their financial year-ends, companies will become subject to the amendments from as early as 1 April 2022.

The two principal targets of the base broadening are:

- Limitation of the amount of assessed loss that may be set off against taxable income; and
- Limitation of the deduction of interest payable to creditors where the interest is not subject to tax or is not imputed as part of the net income of a controlled foreign company ("CFC").

In this article, we consider the impact of and difficulties that may arise from the extension and modification of the provisions relating to the limitation of deductions in respect of interest.

The existing limitation

The existing limitation on deductibility in section 23M of the Income Tax Act ("the Act") has the following broad elements:

- The creditor must be in a "controlling relationship" with the taxpayer or have been provided with the necessary funding to advance funds to the taxpayer by a person who is in a controlling relationship.
- A controlling relationship is defined as a relationship where the creditor directly or indirectly holds at least 50% of the shares or controls at least 50% of the voting rights in the debtor.
- Interest derived by the creditor must not be subject to tax in South Africa directly or by imputation through inclusion in the net income of a CFC.
- Interest, for the purposes of the limitation, means interest as defined in section 24J of the Act.

- The limitation on deduction is determined by adding to the interest income of the taxpayer a proportion of “adjusted taxable income” determined in terms of a formula which adjusts 40% by the factor derived by dividing the repo rate plus 400 basis points by 10 (e.g., if the repo rate is 7%, the factor is 11/10 of 40% of adjusted taxable income, or 44%).
- “Adjusted taxable income” is similar to the financial accounting concept of EBITDA and comprises the taxable income derived in the year of assessment, adjusted for interest accrued and incurred and for allowances and recoupments in respect of capital assets, while ignoring any assessed loss from the immediately preceding year of assessment.

These provisions have been in force since 1 January 2015.

The new provisions

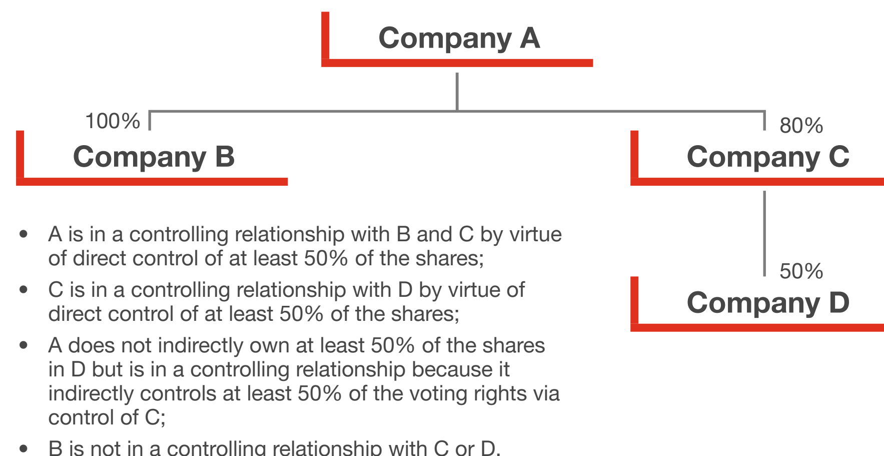
The amended section 23M is broadly based on the recommendations of the OECD in its deliberations regarding base erosion and profit shifting (“BEPS”) related to the extraction of income through cross-border loan arrangements. The debtor typically can deduct the interest while the interest may not be subject to tax in the hands of the lender or may be subject to tax at a lower rate than the debtor is subjected to in the source country, thereby giving rise to a BEPS concern. The BEPS report issued by the OECD recommended that countries should amend their domestic law to counter this and set out what it considered benchmark guidelines to limit deductibility of interest in the source country.

Significant amendments were effected to the following elements of the existing provisions of section 23M:

- The concept of control is extended.
- The circumstances justifying limitation are extended.
- The requirement of an amount being subject to tax is no longer an absolute requirement but a relative requirement.
- A definition of “debt” is introduced which includes amounts on which any “interest” is determined even though such amounts may not actually be debt in the legal sense.
- The definition of “interest” is broadened significantly.
- The limitation percentage is reduced to 30% of the adjustable taxable income, and the “repo rate adjustment” is deleted.

Control

Under the existing requirements, the provisions of section 23M apply where the creditor is in a controlling relationship with the debtor. The definition of “controlling relationship” requires that the creditor should directly or indirectly hold at least 50% of the shares or control at least 50% of the voting rights in the debtor. This meant that, in order to apply, the funds for the debt would need to have come from a person who controlled the debtor. The application of the definition is shown below:



The new dispensation does not only include persons with a direct or indirect interest in the company in question but now also takes into consideration the interests of persons who are connected persons in relation to the creditor. Furthermore, the concept of participation rights has been added, in addition to equity shares and voting rights.

As illustrated above, the new definition results in the following additional controlling relationships:

- B is in a controlling relationship with C and D because A, a connected person to B, directly holds at least 50% of the shares in C and indirectly controls at least 50% of the voting rights in D.
- C is in a controlling relationship with B because A, a connected person to C, directly holds at least 50% of the shares in B.
- If no other shareholder than C holds the majority voting rights in D, D is in a controlling relationship with B because C, which holds at least 50% of the voting rights in D, is a connected person in relation to B.

Whereas the existing provisions could potentially apply only to loans to B and C by A or loans to D by A or C, the new provisions bring within its net:

- Loans from A to B, C and D (unchanged);
- Loans from B to C and D;
- Loans from C to D (unchanged) and B; and
- Loans from D to A, C (unchanged) and B.

The inclusion of "participation rights", a concept borrowed from the CFC rules, as an indicator of control should not be overlooked. These are rights to participate in the profits or capital of a company. The structure of the share capital of the borrower or lender must be examined to determine whether rights to participate in profits or capital are skewed in favour of a particular shareholder or class of shares.

Triggers

In its existing form, section 23M is triggered when there is a flow of interest from a debtor to a creditor that is in a controlling relationship to the debtor or to a creditor that is not in a controlling relationship where the debt is financed by a person who is in a controlling relationship to the debtor.

Two additional triggers have been included:

- The first applies where the creditor is not in a controlling relationship with the debtor but forms part of the same group of companies as the debtor, applying a test of a holding of more than 50%.
- The second arises where the creditor (Creditor 1) is in a controlling relationship with the debtor and obtained the funding from another person (Creditor 2) if Creditor 2 is in a controlling relationship with Creditor 1 or if Creditor 2 obtained the funding from a person who is in a controlling relationship with Creditor 1 or Creditor 2.

The amendments impose a significant burden on a taxpayer to identify the origin of loan financing so that it may establish whether the debt in question is a debt that may trigger the limitation. Whereas the existing requirements enabled a clear and accurate identification, the amendments call for a detailed examination of the origin of funds and, possibly, the share capital structure of both lender and borrower.

The limitation now clearly extends to loans by a subsidiary to a parent company, which was arguably not the case previously. Similarly, loans between fellow subsidiaries are now potentially at risk.

Subject to tax

A further change comes in the subject-to-tax rule. Under the existing section 23M, any level of taxation is sufficient to regard the entire amount of interest as being subject to tax. So, for example, if under a double tax treaty the withholding tax rate is reduced to 5%, the interest would be regarded as being subject to tax.

Under the amended section this has been changed. Now, where any amount of interest is not included in the income of the recipient, a portion of the interest will be regarded as not being subject to tax to the extent that withholding tax on interest is levied at a rate of less than 15%. So, for example, where the withholding tax rate is reduced to 5%, two-thirds of the interest will be regarded as not being subject to tax.

Debt

The term "debt" is defined by reference to any amount in terms of which interest is determined. The definition then states that such amount must be regarded as owed. The definition of "interest" includes amounts that are determined by reference to a notional principal, and this definition treats such notional principal as a debt.

Interest

Perhaps the most significant extension relates to the definition of "interest". The term "interest" has two distinct connotations. It is used in the charging section to indicate an amount flowing between debtor and creditor that may be subject to limitation. It also appears in the definition of "adjusted taxable income". In the determination of the adjusted taxable income, all interest allowed as a deduction is added to taxable income, and all interest accrued is deducted therefrom.

In addition to interest incurred under section 24J, the definition now includes:

- *Amounts incurred or accrued in terms of an "interest rate agreement" as defined in section 24K(1) of the Act*

  The amounts referred to in section 24K are based on a notional principal amount. This relates to what is commonly referred to as an interest-rate swap. Such amounts must be taken into account in the determination of adjusted taxable income and in terms of the limitation to the extent that it falls within the limitation trigger.

- *Any finance cost element that is recognised for the purposes of IFRS in respect any lease arrangement that is a finance lease under IFRS 16*

  A lessee under a finance lease is required to account for the lease expense based on the legal form of the transaction and not the accounting substance for tax purposes. When income or expenditure relating to a finance lease is taxed or allowed, SARS excludes the finance cost element and taxes or allows as a deduction the amount of the lease instalments (rental). However, for purposes of section 23M the finance cost elements must be taken into account in determining adjusted taxable income and the deduction limitation.

- *Amounts taxed or allowed as exchange differences in terms of sections 24I(3) and (10A)*

  The amounts contemplated are foreign exchange differences. Section 24I(3) contemplates that differences arising on exchange items shall be included in or deducted from the income of persons to whom section 24I applies. Section 24I(10A) provides for the deferral of recognition of an exchange difference in prescribed circumstances and fixes the timing and quantum of the amount that falls to be taxed.

  In determining adjusted taxable income, amounts incurred will increase the amount of adjusted taxable income, while amounts accrued will be applied to reduce such amount. Exchange losses on debts falling within the limitation triggers will be taken into account in this regard.

- *Amounts treated as interest under section 24JA in terms of Sharia-compliant financing arrangements*

This is consistent with the prescription in section 24JA that amounts treated as interest are regarded as interest that has been incurred or accrued for the purpose of section 24J.

The limitation percentage

When the limitation percentage was introduced, a safe harbour of 40% of adjusted taxable income was considered appropriate, but National Treasury did not necessarily regard this as a permanent decision. The amendment to 30% has been guided by international research, and it is difficult to argue with a benchmark that appears to be the subject of broad consensus. However, the bulk of OECD countries have experienced significantly less currency volatility and inflation than South Africa, and it is appropriate to ask whether due consideration was given to factors that differentiate our economy from the economies of developed countries. That said, 30% lies at the top end of the range recommended by the OECD, and the interest deduction limitation rule is narrower than that recommended by the OECD, which was to apply it to all interest, regardless of whom it is paid to and regardless of whether it is subject to tax or not.

Removal of the repo rate link is a different issue. Initially, it was identified that the cost of borrowing locally is linked to the

repo rate and that fluctuations in the repo rate would impact the amount of interest incurred or accrued, which would, in turn, influence the overall profitability of an enterprise. The repo rate factor therefore adjusted the benchmark by taking account of the impact on profitability of fluctuations in the cost of borrowing.

How does this affect me?

Implementing the new provisions requires a change in information gathering. Two distinct exercises must be carried out where section 23M is potentially in play:

Determine the interest that is potentially limited.

The limitation applies in respect of interest incurred on qualifying debt (i.e., debt owed to a creditor in a controlling relationship where the interest is taxed at less than 15%, which triggers the limitation). The circumstances in which a debt falls within the scope of the limitation have been significantly broadened, and the identification of qualifying debt will demand more rigour in identifying whether a tainted relationship exists between debtor and creditor. Additionally, the source and nature of the funding provided to the creditor may have to be identified.

Once the debts that are potentially subject to limitation have been identified, the amount of "interest" at risk of limitation must be determined. In this regard, it is only interest amounts directly related to tainted debt that must be considered for limitation. Amounts classified as interest that arise as a result of hedging transactions related to the debt will not fall within the scope of section 23M unless they arise in a tainted relationship that itself triggers the section.

Linking interest to a debt will require that all amounts recognised as interest in terms of section 23M in respect of that debt are aggregated. The resultant amount may be greater or less than the amount of the interest as determined under section 24J where the debt is also an exchange item. Importantly, when it comes to exchange items, section 23M does not distinguish between those used for financing purposes and those used for trade purposes. Accordingly, foreign currency-denominated trade debts, even though not interest-bearing in the ordinary sense, would also need to be taken into account in applying the limitation rules.

Determine all amounts that are regarded as interest for the purposes of section 23M.

These amounts must be identified and quantified for both income and expense items. The amounts so determined as an expense will be added to taxable income to determine adjusted taxable income, while income amounts will be deducted.

The secondary information-gathering exercise is the identification of all interest amounts that will be applied as an adjustment in the determination of adjusted taxable income. The definition of "adjusted taxable income" prescribes that all interest allowed as a deduction be added to the taxable income and all interest that accrues be deducted from taxable income.

Exchange items include not only foreign currency-denominated debts but also amounts of foreign currency, forward exchange contracts, and foreign currency option contracts. Exchange differences arising in respect of these items are recognised as taxable or deductible. Any amounts that are taxable or deductible in respect of these items fall within the *genus* of "interest" and form part of the required adjustments.

Finance lease assets

Depreciation of assets that are "acquired" in terms of a finance lease is not allowed as a deduction. The amendment of section 23M treats finance leases as financing transactions. In the case of the pure application of a financing transaction, the asset is regarded as having been acquired by the lessee, who depreciates the asset over the period of use and treats the liability to pay rental as a financing transaction in which payments made are applied to reduce the financing cost and the original asset value at the commencement of the lease.

It is submitted that it would be appropriate to include as an element of adjusted taxable income the notional allowances to which the lessee would have been entitled in respect of assets subject to finance leases. To treat the finance lease as a loan and ignore the treatment that would apply to the underlying asset in such circumstances is manifestly unfair.

The takeaway

For companies who have obtained financial assistance from non-resident persons within the same group of companies, the risk of interest deduction limitation looms larger than before. There are also a number of uncertainties and potentially unintended consequences that may arise in the rules.

Tax managers should be proactive in examining all cross-border financing arrangements to establish whether they may fall within the scope of section 23M and take appropriate account of the potential limitation in the deduction of interest when estimating income for the purpose of payment of provisional tax.

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Bona fide inadvertent error – Tax Court suggests a narrow interpretation

The Tax Administration Act, No. 28 of 2011 ("TAA") imposes penalties on taxpayers in respect of understatements arising from, inter alia, omissions or errors in returns, except where the understatement arose as a result of "bona fide inadvertent error". In the decade since this law was implemented there has been little judicial precedent to assist in interpreting this term in order for taxpayers and corporate tax managers to identify how best to approach the risk of misstatements in tax returns. A judgment of the Tax Court in the Eastern Cape in which the interpretation of this term was the sole issue has recently become publicly available.

The facts in Case No. 24622 are relatively simple.

The taxpayer was advised by its accountant to change its accounting policy so that it was no longer necessary to account for deferred tax in respect of property, plant, and equipment in the preparation of the annual financial statements. In practice, this required that values for depreciation of these assets in the income statement would be the same as values permitted as a deduction in terms of the Income Tax Act, No. 58 of 1962 ("Income Tax Act"). In the year of assessment in which the change in policy was implemented, the balance of the deferred tax liability from the previous year of assessment was eliminated by charging against income the amount by which the aggregate of deductible allowances at the end of the previous year of assessment exceeded the accumulated depreciation.

The accountant was engaged to prepare the income tax return on the taxpayer's behalf. In preparing the return, it appears that the accountant made no adjustment to take account of the "catch-up" depreciation that had been charged against income in the annual financial statements but prepared the income tax return on the basis that depreciation charged was the same as the amount of allowances permitted as deductions in terms of the Income Tax Act. As a result, the taxable income was understated by the amount of the balancing entry, that had been made to align the accumulated depreciation with the accumulated tax allowances.

The taxpayer submitted the income tax return as prepared by the accountant. By virtue of the omission to adjust for the amount of catch-up depreciation, its assessed loss was overstated by that amount, with the result that, if no adjustment was made to correct the error, future income would be understated by the same amount.

SARS carried out an audit of the taxpayer's returns for a number of years, including the year in which the policy change had been implemented. It identified that the assessed loss was overstated due to the omission. An additional assessment was issued which reduced the amount of the assessed loss and imposed an understatement penalty. The penalty was imposed by applying section 222 of the Tax Administration Act, which includes a table that identifies the extent of the penalty as a percentage of the potential prejudice to

SARS by reference to the behaviour of the taxpayer and the circumstances giving rise to discovery of the default. The judgment records (paragraph [7]):

> "In applying the Table [SARS] categorised the appellant's behavior (*sic*) as falling under item (ii), '**Reasonable care not taken in completing return**'. It considered the appellant's [taxpayer's] case to be a standard one, and imposed an understatement penalty percentage of 25% …"

The taxpayer did not challenge the substantive adjustment of the assessed loss but objected to the imposition of the penalty. Its objection against the penalty was disallowed and the matter proceeded to trial in the Tax Court.

The issue

Although two issues were raised by the taxpayer, only one will be dealt with in this article.

The taxpayer asserted that it should be excused from paying the penalty on the basis that the understatement was as a result of the *bona fide* inadvertent error of the kind contemplated in section 222(1) of the TAA.

SARS contended that the error did not meet the standard of *bona fide* inadvertent error.

The judgment

The approach of Van Zyl DJP in the judgment recognised that the application of dictionary definitions to the several words was problematic. While the concept of *bona fide* and the existence of error are relatively straightforward, the concept of inadvertence is considerably more nuanced.

The judgment sought to follow the principle that words in a statute must be interpreted having regard to the words used and their purpose in context. Appropriate context is found in the part of the TAA in which section 222 appears and the nature of behaviour specified in the table in section 222. The judgment therefore sought to place an outer limit on the extent to which an act may be viewed as inadvertent by distinguishing it from other types of behaviour contemplated in section 222 (at paragraph [31]):

> "The penalty is higher or lower depending on the level of blameworthiness attributed to the taxpayer's conduct. The scale of blameworthiness attached to the conduct of the taxpayer in the Table includes the punishable behaviours of "reasonable care not taken in completing return", as well as "gross negligence". The meaning to be attributed to the word "inadvertence" can accordingly not include negligence as a standard of conduct that is excusable."

The purpose of the use of the term *bona fide* inadvertent error in section 222 of the TAA Act is described at paragraph [33]:

> "The purpose of the exclusion of an error of the kind envisaged in section 222 of the Act from the imposition of an understatement penalty, is generally accepted to be to encourage voluntary compliance with tax laws by not taking punitive measures against taxpayers who made an understatement as a result of an honest mistake."

The kernel of the interpretation is that the term "inadvertent" must be interpreted by comparison to the behaviours listed in section 222. If the behaviour does not fall within the scope of any of the listed behaviours, it must be regarded as "inadvertent". Van Zyl ADP justifies the approach in paragraph [34] in these terms:

> "This approach to the question is in my view consistent with the dictionary definitions of the word "inadvertence", in that the meanings ascribed thereto are generally concerned with the nature of the attitude or disposition with which the person concerned acts or fails to act. This is in turn consistent with what underlies the forms of legal blameworthiness set out in the Table."

The inquiry then turns to identifying the requirement of "reasonable care". Inadvertence can only be recognised as having arisen where reasonable care has been taken. This is explained conceptually in paragraph [36]:

> "It can be accepted on the evidence that the incorrect statement in the respondent's tax return was an honest mistake. The question is whether the mistake was also inadvertent. The focus is accordingly on the standard of care taken by the taxpayer and the measures adopted by it to avoid errors in the submission of its tax return. Consistent with its meaning in other fields of law, reasonable care would require the taxpayer to take the degree of care that would be expected of a reasonable and prudent taxpayer in the position of the taxpayer concerned to fulfil his or her tax obligations."

In paragraph [37] there appears to have been a clear shift of focus:

> "In the present matter the appellant employed a firm of accountants to complete its tax return. The appropriate benchmark in determining whether a person having special skill or competence has breached the standard of reasonable care, is that level of care that would be expected of an ordinary and competent practitioner practicing (*sic*) in the field."

The judgment continued by suggesting that the accountant's failure was a clear indication of negligence, and then turned to considering the taxpayer's behaviour (at paragraph [40]):

> "The general rule of our law is that an employer is not liable for the negligence or the wrongdoing of an independent contractor employed by him or her... The question is whether the appellant exercised the standard of care and diligence expected of a reasonable taxpayer in the completion and submission of its tax return. The answer as to what steps can be expected of a taxpayer will be determined by what was reasonable in all the circumstances of the particular case."

A distinction was drawn between the use of professional advisors to assist in the interpretation of the law when the position is unclear and the taxpayer has little knowledge, and the completion of a tax return. This is explained at paragraph [42]:

> "A reasonable taxpayer in circumstances where there is need for expert advice will obtain such advice with a view of ensuring that his tax return is correct. However, where the function that is assigned to the accountant, is the completion and filing of the taxpayer's tax return, the taxpayer's duty to render an accurate return would require him or her to take such steps as may be reasonable in the circumstances to avoid, as in the present instance, any obvious errors in the return."

At paragraph [42] the judgment cited a *dictum* from an English decision (*Hanson v HMRC*, for which no citation was provided) to the effect that:

> "... A taxpayer cannot simply leave everything to his agent. A taxpayer must certainly satisfy himself that the agent has not made any obvious error. That might involve the taxpayer seeking to understand the basis upon which an entry on his return has been made by the agent. However, in matters that would not be straightforward to a reasonable taxpayer and where advice from an agent has been sought which is ostensibly within the agent's area of competence, the taxpayer is entitled to rely upon that advice. At the heart of this issue is the extent to which a taxpayer is required to satisfy himself that the advice he has received from a professional adviser is correct. The answer to that will depend on the particular circumstances of the case."

There is a clear indication that the use of a professional advisor does not necessarily exonerate a taxpayer from being found negligent, but it is also evident that the circumstances of the failure are relevant. The finding is summarised at paragraph [45]:

> "The failure to render a correct tax return was not the result of the appellant having taken a tax position on expert advice. It was simply the result of a failure to correctly complete the appellant's tax return as opposed to intentionally taking a tax position that later proved to be incorrect. Put differently, the *cuasa* (*sic*) of the error was not the appellant's reliance on the advice of its accountants to bring its accounting policy in line with the wear and tear rates of the respondent. In fact, there was nothing wrong with that advice. Rather, it was the failure to implement the advice, and to reflect the change in policy in the tax return, that resulted in an incorrect statement in the return."

The decision was therefore that SARS was justified in raising the penalty, because the taxpayer had not taken reasonable care in the completion of the tax return and, therefore, the omission was not inadvertent.

Comment

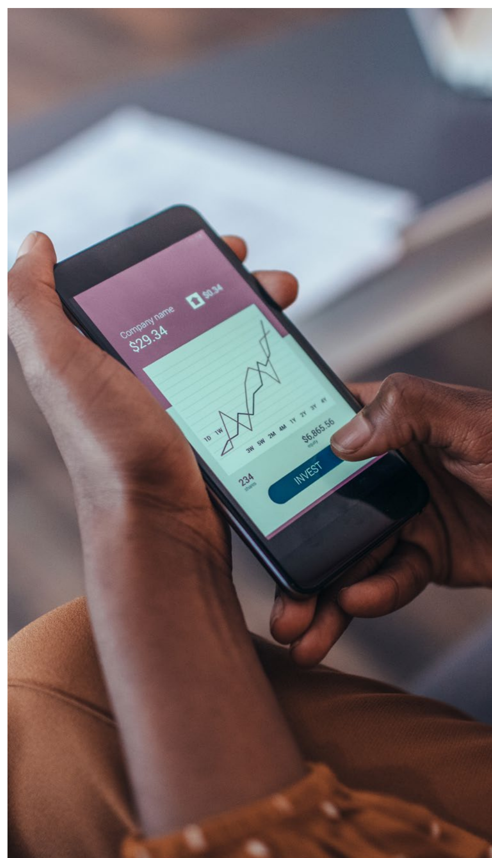
The taxpayer accepted a proposal advanced by the accountant to implement a change in its accounting policy, which was implemented with the accountant's assistance. It then engaged the accountant to prepare its income tax return.
The evidence recorded in the judgment shows that:

- The accountant recommended the change in the accounting policy;
- The change was implemented and correctly accounted for in the income statement in the annual financial statements;
- The current-year tax information in the annual financial statements did not take account of the adjustment associated with the change in policy; and
- The adjustment was similarly overlooked when the accountant prepared the income tax return and submitted this to the taxpayer for filing.

If the entire factual circumstance is analysed, it is evident that the taxpayer accepted the accountant's advice and placed considerable reliance on the accountant to ensure appropriate implementation of the change in accounting policy and the reporting thereof in its financial statements and income tax return.

While it is accepted that the taxpayer is responsible for information contained in its income tax return, it is not sufficient to establish negligence by suggesting that the taxpayer owes a duty of care to SARS to audit the work of the tax advisor.

Professional advisors are engaged because the principal lacks the technical knowledge and expertise to perform the assigned task. To clothe the taxpayer with the necessary expertise in such circumstances places too narrow an interpretation on the concept of "inadvertence". It should be sufficient that the taxpayer placed reliance on a registered practitioner to perform the task diligently, so that the taxpayer may rely on the product of that performance, particularly where the taxpayer is confronted with a novel situation.



The takeaway

The decision in this matter will no doubt embolden SARS to seek to apply understatement penalties in an aggressive manner. Taxpayers should give careful consideration to ensuring that, even where professional advisors are engaged to prepare tax returns for filing with SARS, they have in place procedures that may be expected to identify any obvious errors in the tax return.

Tax laws are often complex and subject to frequent amendment. It is reasonable to engage the services of professionals who have the capacity and expertise to maintain currency with changes in law and interpretation, to prepare the tax returns.

It should be noted that decisions of the Tax Court are not binding. They have persuasive authority only. Another court cannot be compelled to apply the reasoning in a Tax Court judgment but may be persuaded in argument to do so. Taxpayers seeking to rely on *bona fide* inadvertent error as a defence to the imposition of a penalty should consider the nature and extent of the evidence that may have to be adduced to prove the inadvertence.

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SARS Watch

SARS Watch 1 February 2022 – 28 February 2022

Legislation		
23 February 2022	2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill	The Bill has been released for public comments by National Treasury.
23 February 2022	Draft income tax notice on meals and incidental costs for purposes of section 8(1)(c)(ii) (overnight allowance)	Official Public Notice daily amounts in respect of meals and incidental costs is still to be published in the Government Gazette.
23 February 2022	Draft income tax notice on determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(a)(ii) (daily allowance)	Official Public Notice daily amounts in respect of meals and incidental costs is still to be published in the Government Gazette.
Customs and excise		
24 February 2022	Invoice Requirements – External Policy	The amendments include the time periods in which clients may request Customs to furnish reasons for an action and in which Customs must respond to such a request to align with Rules 77H.02(4) and 77H.02(5).
23 February 2022	Taxation proposals as tabled by the Minister of Finance in his Budget Review 2022 at 14:42	Taxation proposals tabled on 23 February 2022 at 14:42 with effect from 14:42 on 23 February 2022.
18 February 2022	Registration Licensing and Designation – External Policy	The following facility codes have been added to the Facility Code list – SC-CF-19-A02: • Transit shed facility in: - Cape Town International Airport: V3 – Morgan Cargo (Pty) Ltd • Container depot facility in: - Durban – V2 – Mega Container Park (Pty) Ltd.; and - Johannesburg – V1 MSC Logistics (Pty)
18 February 2022	Amendment to rules under sections 8, 38A, 46A, 47B, 64D, 101 and 120 – Rules published in Government Notice R.1874 of 8 December 1995 (DA229)	Notice R. 1768 published in Government Notice no. 45931 with an implementation date of 18 February 2022.
18 February 2022	Amendment to rules under sections 19A and 120. Substitution in item 202.00 of the Schedule to the Rules of the DA 260 tobacco products accounts (DAR228)	Notice R. 1767 published in Government Notice no. 45931, with an implementation date of 18 January 2022.
18 February 2022	Draft amendments are proposed in Parts 1, 2B and 3E of Schedule No. 1 and Schedule Nos. 3, 5 and 6 to the Customs and Excise Act.	Comments are due to SARS by Friday, 4 March 2022.
17 February 2022	Draft amendments are proposed to Part 2 of Schedule No. 5 to the Customs and Excise Act.	Comments are due to SARS by Thursday, 10 March 2022.
16 February 2022	Submission of Accounts/Returns: External Policy	Annexure SE-ACC-04-A01 has been updated.
11 February 2022	Insertion of provisional payment of Brazilian exporters, ITAC Report 678	Notice R.1748 published in Government Notice no. 45900 with retrospective effect from 17 December 2021 up to and including 14 June 2022.
11 February 2022	Draft amendment to rules under section 120 – Kosi Bay	Comments are due to SARS by Friday, 4 March 2022.
8 February 2022	Draft amendment is proposed in Part 1D of Schedule No. 6 to the Customs and Excise Act	Comments are due to SARS by Wednesday, 9 March 2022.
1 February 2022	State Warehouse - External Policy	SWIMS functionality has been added for management of goods deposited in the State Warehouse and extracting inventory reports.

Case law		
In accordance with date of judgment		
11 February 2022	Cash Paymaster Services (Pty) Ltd and Others v Freedom Under Law NPC and Others (CCT 48/17)	Variation of order, provisional liquidators; section 359(1)(a) of Companies Act 61 of 1973. Company remains bound to comply with previous order in spite of the fact that final liquidators have not yet been appointed.
14 January 2022	IT 45585	Employment tax incentive; tax administration: whether the respondent is correct in contending, as in its dismissal of the appellant's objection, that on a proper interpretation of sections 9(4) and 10(3) of Act 26 of 2013 and the deeming provisions contained therein, the appellant is not entitled to recover the understated amount.
14 December 2021	IT 45672	Income tax, tax administration: whether the taxpayer was entitled to the allowances claimed for 'machinery or plant' in respect of the construction of its landfill cells, claim for future expenditure in respect of amounts included in its deduction calculations and whether SARS was entitled to levy an understatement penalty.
17 March 2021	De Beer Consolidated Mines Proprietary Limited v CSARS (60161/2017)	Whether certain activities constituted own primary production activities in mining.
11 December 2019	IT 24622	Whether there has been any prejudice to the fiscus as a result of an incorrect statement in the taxpayer's tax return.
Interpretation notes		
22 February 2022	Draft Interpretation Note – Understatement Penalty: Meaning of "Maximum Tax Rate applicable to the Taxpayer" under Section 222(5) of the Tax Administration Act	Comments are due to SARS by Friday, 13 June 2022.
22 February 2022	Draft Interpretation Note: Public Benefit Activity. Bid to Host or Hosting any International Event	Comments are due to SARS by Friday, 13 May 2022.
22 February 2022	Draft Interpretation Note: Public Benefit Organisations: Provision of Residential Care for Retired Persons	Comments are due to SARS by Friday, 13 May 2022.
18 February 2022	Draft Interpretation Note on the effect on the date of issue of a share arising from a change in the redemption features	Comments are due to SARS by Thursday, 31 March 2022.
18 February 2022	Draft Interpretation Note on sale and leaseback arrangements and related simulated transactions	Comments are due to SARS by Thursday, 31 March 2022.
11 February 2022	Draft Interpretation Note on the determination of the taxable income of certain persons from international transactions: intra-group loans	Comments are due to SARS by Friday, 29 April 2022.
Rulings		
22 February 2022	Draft Binding General Ruling – Disqualification as a Qualifying Company under Section 12R(4)(b)	Comments are due to SARS by Friday, 27 May 2022.
Guides and forms		
25 February 2022	How to complete the Income Tax Return ITR14 for companies	The guide has been updated to include clarity on the financial year-end and financial statements required.
22 February 2022	Frequently Asked Questions: Insolvent Estates of Individuals	The FAQs have been drafted to assist executors, trustees and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects relating to the insolvent estate of an individual.
21 February 2022	How to submit your individual tax return via eFiling	The guide was updated to indicate that SARS may raise an additional or reduced estimated assessment where the taxpayer fails to submit relevant material after more than one request for such relevant material.
21 February 2022	How to submit your individual income tax return via the SARS MobiApp	The purpose of the guide is to describe how to use the SARS MobiApp to submit your income tax return (ITR12).
18 February 2022	Guide for Completion and Submission of Employees' Tax Certificates	The guide has been updated to clarify the provisions of paragraphs 13(2) and 14(5) of the Fourth Schedule to the Income Tax Act. Details regarding the submission of a deceased employee's tax certificate to an executor or a representative taxpayer of the deceased employee, within 14 days after the date of death, have been added.
17 February 2022	Guide for Tax Rates/Duties/Levies (Issue 15)	This guide provides current and historical views of the rates of various taxes, duties and levies collected by SARS.
16 February 2022	BRS: PAYE Employer Reconciliation v21 0 0	The Business Requirements Specification ("BRS") has been updated with new source codes, updated validations rules, and amended descriptions for certain source codes.

Other Publications		
28 February 2022	OECD: Third batch of transfer pricing country profiles	This batch reflects the current transfer pricing legislation and practices of 28 jurisdictions.
24 February 2022	OECD: Working Papers on International Investment	The paper describes a classification to structure quantitative and qualitative information on investment tax incentives across three dimensions: design features, eligibility conditions and the legal basis thereof.
23 February 2022	Tax alert: Budget 2022	This alert discusses the main tax proposals from the 2022 Budget.
22 February 2022	OECD: Tax challenges arising from digitalisation: Public comments received on the draft rules for nexus and revenue sourcing under Pillar One Amount A	The OECD invited public comments on the Draft Rules for Nexus and Revenue Sourcing under Pillar One, Amount A and has published the public comments received.
18 February 2022	OECD – Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (Indonesia, February 2022)	This report outlines key developments in international tax reform in recent months, in particular the developments regarding the two-pillar agreement, as well as progress made in tax transparency, the implementation of the BEPS minimum standards and the taxation of MNEs.
18 February 2022	OECD – Tax challenges of digitalisation: Draft rules for tax base determinations under Amount A of Pillar One	Comments are due to the OECD by Friday, 4 March 2022.
18 February 2022	Tax Alert: Draft IN cross-border loans	This alert discusses the Draft Interpretation Note on the application of the arm's length principle in the context of the pricing of intra-group loans released for public comment by SARS on 11 February 2022.
10 February 2022	Tax Alert: A step towards certainty in the uncertain world of transfer pricing	This alert discusses the Proposed Model for Establishing an Advance Pricing Agreement Programme ("APA") in South Africa and Release of Draft Legislation ("the Model Paper") released for public comment by SARS in December 2021.

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