

Synopsis

Tax today

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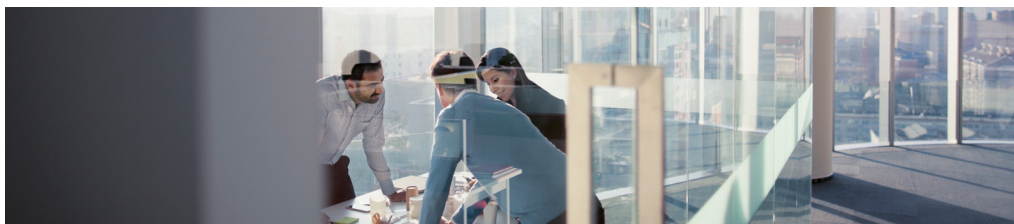


A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

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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Beware: The characterisation of foreign exchange differences as “interest” under section 23M will have far-reaching implications



Background

Section 23M of Income Tax Act No. 58 of 1962 (“the Act”) has been in place for a number of years and historically acts to limit the deduction of interest for taxpayers in respect of certain debts owed to persons that are not subject to tax in South Africa (“SA”).

Most recently, significant amendments were made to section 23M as part of the corporate income tax (“CIT”) base-broadening measures. These measures were introduced by the Taxation Laws Amendment Act, 2021 and came into effect for years of assessment ending on or after 31 March 2023.

The practical implications of these amendments may not be apparent yet may have dire consequences for companies if over-looked. In addition, there are a number of uncertainties and potentially unintended consequences which have arisen as a result of the amendments.

Whilst PwC issued previous publications relating to section 23M in February and September 2022 following on the amendments introduced by the Taxation Laws Amendment Act, 2021, practical difficulties and challenges in the implementation of these amendments became apparent for taxpayers with financial years ending on or after 31 March 2023 having to submit their annual income tax returns to the South African Revenue Service (“SARS”).

In this article we highlight some of the noteworthy practical consequences of the amendments to be considered by taxpayers, specifically focusing on the characterisation of foreign exchange differences as “interest” under section 23M.

Definition of interest under section 23M

“**interest**” means interest as defined in section 24J, and includes:

- amounts incurred or accrued under any “interest rate agreement” as defined in section 24K(1);
- any finance cost element recognised for purposes of IFRS in respect of any lease arrangement that constitutes a finance lease as defined in IFRS16;
- amounts taken into account in determining taxable income in terms of section 24I(3) and (10A); and
- any amount deemed to be interest under section 24JA,

but excludes any amount that is deemed to be a dividend in specie as contemplated in sections 8F and 8FA;”

According to the amended definition of interest in section 23M, it includes foreign exchange gains and losses which are taken into account in determining taxable income in terms of section 24I(3) and section 24I(10A) of the Act.

Section 24I(3) deals with the tax treatment of foreign exchange gains and losses arising in respect of an exchange item. Section 24I(10A) provides for the deferral of foreign exchange gains and losses in certain instances for transactions between companies that form part of the same group of companies or are connected persons in relation to each other.

An exchange item is a unit of foreign currency, a debt in foreign currency, a foreign currency forward exchange contract or a foreign currency option contract.

Notable practical implications of foreign exchange differences being included in the definition of “interest” for purposes of section 23M:

- A trade receivable or trade payable balance that is receivable from or owed to a foreign person that is in a controlling relationship with the taxpayer constitutes an exchange item. For purposes of section 23M, any foreign exchange difference arising on such a trade balance and which is taken into account in the determination of taxable income in terms of section 24I(3) and (10A) would be regarded as “interest” as defined

in this section. This implies that any foreign exchange loss that arises on a trade payable balance should be subject to the interest limitation in terms of section 23M. This position complicates matters for taxpayers, as it results in the application of the interest limitation rules even in instances where the taxpayer has not incurred any “interest” in terms of sections 24J, 24K and 24JA of the Act or any finance cost is recognised in terms of IFRS 16.

- The issue of foreign exchange differences that arise on trade balances becomes even more complex when one considers a scenario where the taxpayer has a trade receivable balance that has given rise to a foreign exchange loss. A question arises as to whether this foreign exchange loss should be subjected to the interest limitation rules. The answer, surprisingly, is yes. This position is confirmed by the term “creditor” being defined in section 23M as *a person to whom a debtor owes a debt* (see further below for details on this new definition). Accordingly, in terms of this definition the foreign person would qualify as a “creditor” as defined in section 23M since:
 - the resident taxpayer is a “debtor” in relation to the foreign person. In this regard the term “debtor” is defined in section 23M as *inter alia* a person that incurs an amount of interest and is a resident; and
 - the trade balance that is receivable from the foreign person is characterised as “debt” in section 23M on the basis that it is an amount in respect of which interest has been

incurred. This balance is therefore regarded as an amount that is owed.

It is not clear whether the above outcome was intended by the legislators. But its impact is far-reaching, as it means that taxpayers with trade receivable balances could end up suffering from adverse section 23M implications.

- Foreign exchange gains that arise on both trade receivables and trade payables are required to be taken into account as interest received for purposes of computing “adjusted taxable income” and in the determination of the interest amount that is allowed to be deducted.
- However, any foreign exchange gains and losses that were deferred during a year of assessment in terms of section 24I(10A) are excluded in the determination of “adjusted taxable income”. This is because these foreign exchange gains and losses would not have been included in or deducted from taxable income, respectively, in the income tax computation, i.e. the taxation of the foreign exchange gains or the deduction of the foreign exchange losses would be deferred to a subsequent year of assessment and would not be taken into account in the determination of taxable income in the year of deferment.
- Furthermore, foreign exchange gains and losses deferred in a prior year of assessment must be taken into account in determining the taxable income of a person in a subsequent year when section 24I(10A) no longer

applies or when the debt is realised. These foreign exchange gains and losses taken into account in the determination of taxable income in the subsequent year of assessment will also constitute “interest” for the purposes of section 23M in that subsequent year. As a result, such foreign exchange gains and losses should be included in the computation of “adjusted taxable income” and in the determination of the amount of interest that may be deductible in that subsequent year.

Whilst taxpayers still grapple with the changes highlighted above, further amendments to section 23M have become effective for years of assessment commencing on or after 1 January 2024. This follows the promulgation of Taxation Laws Amendment Act 17 of 2023.



Overview of amendments effective for years of assessment commencing on or after 1 January 2024:

- The starting point of “adjusted taxable income” has been amended to start with taxable income before applying section 23M and before setting off any balance of assessed loss. The meaning of “adjusted taxable income” has also been amended to remove the addition of “assessed loss or balance of assessed loss” in the computation of “adjusted taxable income”.
- A definition has been inserted of the term “creditor” which clarifies that a creditor is a person to whom a debtor owes a debt.
- A clarification has been added explaining that exchange gains as contemplated in section 24(3) and section 24(10A) should be classified as interest received or accrued for the purposes of section 23M.
- The exemption applicable in certain specific circumstances where a creditor funded debt with funding obtained from a lending institution that is not in a controlling relationship with the debtor has been extended to funding obtained by the creditor from South African (“SA”) banks.

The takeaway

The amendments have certainly cast a wider net over “debt” that may be subject to the provisions of section 23M.

Notably, the significant expansion of the definition of “interest” for purposes of section 23M specifically to include foreign exchange differences has given rise to practical implications that could be easily overlooked by taxpayers. It is therefore critical for taxpayers to carefully examine the components of “interest” for the purposes of section 23M to identify amounts that could potentially be subject to the limitation provisions, noting that this could even include amounts that are receivable by the taxpayer.



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VAT: New and improved standard turnover-based apportionment method



SARS published Issue 3 of Binding General Ruling No. 16 (“BGR 16”) at the end of 2023.

This version updates the standard turnover-based method of apportionment to make it fair and reasonable by limiting the inclusion of income streams that distorted the method before.

We explore the amendments to this new version of the BGR 16 and what it means for you in more detail in this article.

Introduction

SARS’ Issue 3 of binding general ruling (“BGR”) 16, published on 27 November 2023, sets out the updated standard turnover-based method (“STBM”) of apportionment. This method is applicable to vendors that are not in possession of an approved alternative method of apportionment.

Background

Every vendor is entitled to deduct the VAT that it incurs on the acquisition of goods or services as input tax, provided that the acquisition is made for purposes of use, consumption or supply in the course of making taxable supplies. The deduction of input tax is further regulated by section 16(3)¹ read with section 16(2), which provides for certain documentary and other requirements to be met before the deduction is made.

The issue of apportionment arises in instances where a vendor acquires goods or services which are partly used for taxable purposes and partly for other purposes. Such expenses are commonly referred to as “mixed expenses”² and the VAT paid in respect of these expenses must be apportioned.

Section 17(1) provides that a vendor may only deduct the VAT incurred on mixed expenses to the extent that they are used, consumed or supplied for taxable purposes. To achieve this, section 17(1) requires the vendor to make any such deduction of VAT on mixed expenses by applying an apportionment method approved by the Commissioner for SARS in a private or general binding ruling.

In line with this requirement, SARS published BGR 16, which sets out a default method of apportionment to be used by vendors in determining the extent of input tax that may be deducted on mixed expenses as contemplated in section 17(1).

Vendors can use this standard approved method if it is fair and reasonable to the vendor’s business activities. If not, the vendor must request approval of an alternative method.

Discussion

When it was first published, and previously updated, the STBM only allowed for a limited number of exclusions and adjustments to the formula in order to determine the apportionment ratio for deducting input tax on mixed expenses.

¹ All sections referred to in this article refer to sections of the Value-Added Tax Act No. 89 of 1991 (“VAT Act”) unless otherwise specified.

² It may also be referred to as expenses incurred for “mixed purposes”.

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As a result of this, combined with many instances of vendors being unaware of the need to apply a separate method, the previous versions of the STBM did not yield a fair and reasonable result in many cases.

Section 17(1) contains certain provisos, one of which sets out that SARS can only approve an alternative apportionment method for a vendor with effect from the beginning of the financial year within which such vendor applied to SARS and requested approval for the alternative method.

Not applying within this deadline results in vendors having to apply the STBM to its mixed expenses even though it is not fair and reasonable, taking into account its business activities.

This principle was tested in the Supreme Court of Appeal (“SCA”) case of **Mukuru Africa (Pty) Ltd vs CSARS**³ (“Mukuru case”). This case dealt with the retrospective effect of an approved alternative method of apportionment and whether the STBM as set out in BGR 16 was a default method applicable in the absence of an approved alternative method of apportionment.

The SCA held in the Mukuru case that an alternative apportionment method cannot be approved by SARS with retrospective effect but only with effect from the year of assessment in which the taxpayer applied for the alternative method.

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It further held that the only method that can be used by a vendor in the absence of another approved method is the STBM as set out in BGR 16.

The older versions of the STBM did not provide for an appropriate input tax recovery ratio, as it required the inclusion of income streams that were distortive in nature.

The application of the law in the above manner therefore has a detrimental impact on a vendor’s entitlement to deduct input tax where an application for approval of an alternative method is made late, or not at all.

Considering the above events and outcome, SARS has now published a revised version of BGR 16 which allows for various exclusions, adjustments and notes to the method. We discuss these in more detail below.

BGR 16 Issue 3

After publishing it in draft and following a period for the public to comment, SARS published the updated BGR 16 (Issue 3) on 27 November 2023. Issue 3 of the ruling is more comprehensive in its approach to the limitation of income in the formula and is effectively aimed at achieving an apportionment ratio which is fair and reasonable. We discuss the main exclusions and limitations below.

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Exclusions and adjustments

In terms of the new BGR 16, the following amounts of income can be excluded from or limited in the formula:

Foreign exchange differences

The above amounts can be excluded from exempt income in the formula, except to the extent that it involves any hedging activities.

SARS considers hedging activities as a form of trading in financial assets which includes the use of certain resources to effect such transactions. SARS is therefore of the view that these activities must be reflected in the method and, accordingly, foreign exchange differences must be included in the denominator of the STBM where hedging is involved.

Accounting entries

SARS acknowledges that due to International Financial Reporting Standards (“IFRS”), vendors are required to make certain accounting adjustments. As these accounting adjustments do not give rise to actual income, provision is made for these accounting adjustments to be excluded from the STBM.

The sale of capital assets

SARS accepts that receipts from the sale of capital assets can be excluded. This is on the basis that vendors are generally not in the business of selling capital assets on an ongoing basis and the inclusion will be distortive due to their extraordinary nature and value.

It is important to ensure that the exclusion relates to a capital asset as envisaged in the BGR 16.

Extraordinary income

Extraordinary income is generally non-recurring income received due to exceptional circumstances. SARS accepts “this income would have a significant impact on the quantum of income received by a vendor without affecting the normal expenses incurred year on year. The inclusion of such income in the apportionment formula would therefore severely distort the apportionment ratio as there would be a material fluctuation from one year to another whilst the mixed expenses, and the use thereof in the vendor’s business, would have remained unchanged”.

On this basis, this income is excluded. It is again very important to ensure that any amount excluded on such a basis qualifies as extraordinary income as envisaged in the BGR 16.

Specifically denied input tax

Income in relation to items for which no deduction of input tax is permissible should not be included in the apportionment ratio calculation.

Change in use adjustment

These adjustments are excluded, as it only adjusts the input tax deducted based on actual versus intended use of goods or services.

³ Case no. 520/2020 [2021] ZASCA 116 (16 September 2021).

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Indemnity payments

Indemnity payments received by a vendor are excluded from the formula where it relates to extraordinary income.

Securities lending transactions

Manufactured dividends or interest received by a vendor under a security lending arrangement must be included in the formula, limited to the difference between the prime and JIBAR lending rates applied to the manufactured dividends or interest.

Raising funds through equities or derivatives

This is regarded by SARS as extraordinary income and is excluded from the formula.

Interest

SARS accepts that interest on current or day-to-day bank accounts can be excluded, as this is not for investment purposes but rather to facilitate a vendor’s business transactions. However, interest on call accounts or other similar investment accounts must be included in the formula but limited to the difference between the prime and JIBAR lending rates.

SARS has further permitted the inclusion of net interest (that is, interest received less interest paid) to the extent that the interest is earned in respect of borrow to on-lend activities.

This equally applies to zero-rated interest earned in this manner.

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The formula makes further adjustments in certain other instances, for example:

- where no interest is paid by the vendor in relation to its borrowing activities (e.g., using own funds);
- bad debts;
- interest-free funding;
- financing from own funds; and
- connected persons.

Investment interest is generally limited to the interest earned for the year \times (prime rate – JIBAR).

Lastly, SARS requires the gross interest to be included in the formula under the following circumstances:

- interest levied on debtors' accounts; and
- interest levied by a retailer in respect of credit provided to facilitate the sale of its goods.

Trading in financial assets

SARS requires that a three-year moving average of the gross trading margin be included in the formula. Any negative margins must be included as an absolute value. Lastly, SARS provides for a formula to apply in splitting the gross trading margin between exempt and zero-rated amounts.

Dividends

Dividends received are now limited in the formula based on a three-year moving average of dividends received or accrued during the year \times (prime rate – JIBAR).

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Profit share from joint ventures or partnerships

SARS limits the inclusion of this income in the formula to a three-year moving average of the profit share received or accrued during the year, multiplied by the prime rate less JIBAR.

Debt securitisation

It is now acknowledged that including the full value of a debt sold creates a distortion. The inclusion is now limited by applying the formula of

- Proceeds on the sale of debts under a securitisation transaction during the year \times (prime rate – JIBAR)

However, where the debts are sold immediately after origination and before earning any interest, the interest equal to the origination fees must be included in the formula as a proxy for the exempt activity.

Notes to the formula

The BGR 16 includes Notes stating:

- How the interest rates are to be used, i.e., the prime rate and JIBAR/ZARONIA rates are added;
- Where the previous year’s turnover was used to determine the ratio, an adjustment must now be made within nine months from the end of the FY.

Application of the method

The new method envisaged in the BGR 16 will apply to financial years commencing on or after 1 January 2024, subject to certain exceptions. Issue 2’s method is withdrawn.

If a vendor falls under an approved industry method, the STBM in the BGR 16 cannot be used. This will equally apply to a vendor that has an alternative method approved in a VAT ruling or VAT class ruling, unless the vendor applies to SARS to request confirmation that the STBM can be applied. Such request must be in a VAT ruling and submitted before expiry of the 2024 financial year.



Practical implications & key takeaway

Vendors who do not have a specifically approved alternative method or an industry-approved method are required to apply the STBM as set out in BGR 16.

In comparison to its predecessor, BGR 16 now provides for a lot more interpretation in the classification and treatment of the receipts to be included in the formula. This is a very different approach from the previous version of the method and usual SARS practice.

In addition, the above approach taken in the BGR affirms the self-assessment nature of the tax, and this creates additional risk for vendors.

It is likely that SARS will focus on the application of this method in its VAT audit procedures. It is therefore crucial for vendors to carefully document:

- why the STBM is fair and reasonable in their particular circumstances; and
- any adjustments made and the reasoning for conclusions reached regarding the inclusion of particular amounts or receipts.

It may also be prudent to obtain advice or some form of assurance to support both the vendor’s application of this method and adjustments made to certain inclusions.

The above recommendations are to prevent any uncertainty and to mitigate and protect the business from potential future SARS audit assessments and the levying of understatement penalties and/or interest.

The new BGR is welcomed and in our view represents a positive development for both vendors and SARS.



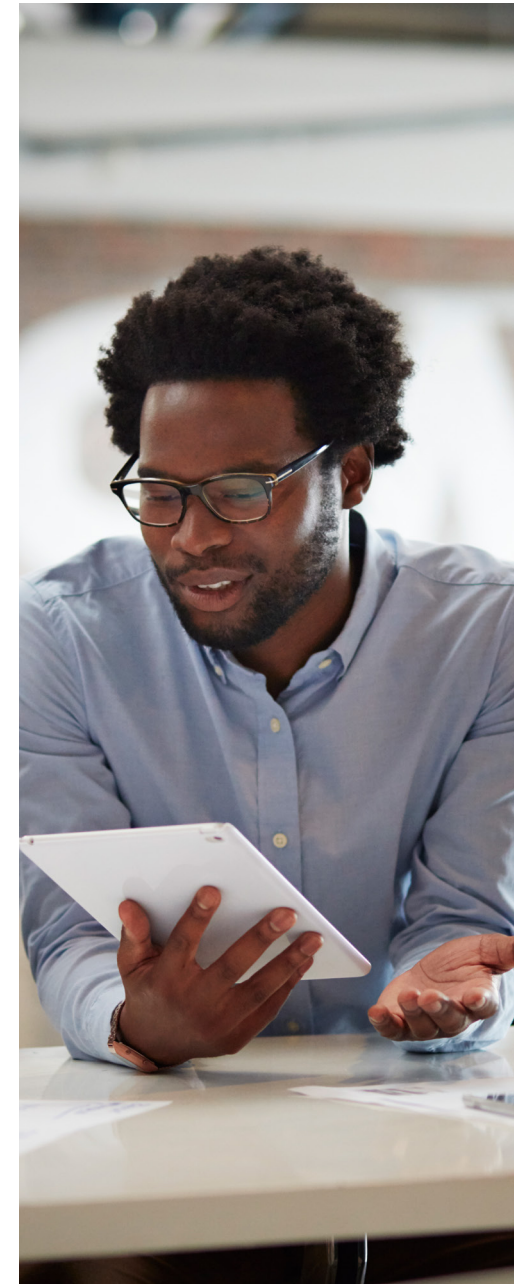
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Legislation

22 December 2023	Rates and Monetary Amounts and Amendment of Revenue Laws Act 19 of 2023	The Amendment Act was promulgated on 22 December 2023 in Government Gazette No. 49948.
22 December 2023	Tax Administration Laws Amendment Act 18 of 2023	The Amendment Act was promulgated on 22 December 2023 in Government Gazette No. 49947.
22 December 2023	Taxation Laws Amendment Act 17 of 2023	The Amendment Act was promulgated on 22 December 2023 in Government Gazette No. 49894.
6 December 2023	Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003 Table B – A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months	The average exchange rates have been updated.

Binding rulings

14 December 2023	Binding Private Ruling 403 – Taxation of covered persons in respect of equity-linked notes	This ruling determines the tax treatment of amounts causally connected to the financial assets and financial liabilities of a “covered person” that is subject to section 24JB(2) of the Income Tax Act.
14 December 2023	Binding Private Ruling 402 – Transfer of long-term insurance business to a local branch of a foreign reinsurer	This ruling determines the tax implications of the transfer of life reinsurance business from a resident reinsurer to a local branch of a foreign company.
14 December 2023	Binding Private Ruling 401 – Leasehold improvement allowance	This ruling determines the tax consequences for a lessor in respect of improvements effected by a lessee.
14 December 2023	Binding Private Ruling 400 – Donations tax implications on the issue of shares at nominal value to enhance BBBEE credentials	This ruling determines whether donations tax will be payable on the amendment of a company’s memorandum of incorporation (MOI) to allow for the issue of shares at nominal value to a Corporate Social Investment (CSI) trust in order to enhance the BBBEE status of a group of companies.
12 December 2023	Binding Private Ruling 399 – Asset-for-share transaction and replacement asset	This ruling determines the consequences where, almost simultaneously, an asset acquired in an asset-for-share transaction is disposed of and an election is made under paragraph 66 of the Eighth Schedule to the Income Tax Act for its replacement with another asset.
1 December 2023	Binding General Ruling 68 – Acceptable Documentation for Input Tax on Upward Adjustments on Imports	This ruling sets out the documentation acceptable to the Commissioner to substantiate an input tax deduction on an upward pricing adjustment in respect of goods previously imported into the Republic.

Customs and excise

31 January 2024	Correction Notice R.4294 – <ul style="list-style-type: none"> Part 1 of Schedule No. 1, by the deletion of tariff subheadings 1212.99.11, 1212.99.13, 1212.99.19, 1212.99.90, 7210.61.10, 7210.70.10, 7219.11.90, 7219.12.90, 7219.13.90, 7219.14.90, 7219.21.90, 7219.22.90, 7219.23.90, 7219.24.90, 7219.31.90, 7219.32.90, 7219.33.90, 7219.34.90, 7219.35.90, 7219.90.90, 7220.12.90, 7220.20.90, 7220.90.90, 7314.39, 9401.91.20, 9401.99.20, 9403.20 and 9403.70, where it appears under substitutions in Notice No. R.4281 of Government Gazette No. 50045 on 26 January 2024; Schedule No. 1, by the substitution of the date “** November 2023” with “31 January 2024” in the General Note O.5.(b) where it appears in Notice No. R.4287 of Government Gazette No. 50045 on 26 January 2024; and Part 1 of Schedule No. 1, by the substitution of the rate of duty under tariff subheading 8207.19.10 from “9” to “9%” where it appears under substitutions in Notice No. R.4281 of Government Gazette No. 50045 on 26 January 2024. 	Published in Government Gazette No. 50053 with an implementation date of 31 January 2024.
31 January 2024	Correction Notice R.4293 – by the substitution of the preamble where it appears in Notice No. R.4285 of Government Gazette No. 50045 on 26 January 2024 to replace the wording “with effect from 26 January 2024 up to and including 25 January 2026” with “with effect from 25 January 2026”	Published in Government Gazette No. 50053 with an implementation date of 31 January 2024.
26 January 2024	Notice R.4291 – Substitution of the DA 177 – Environmental Levy Account for Carbon Dioxide Emission Levy (DAR255)	Published in Government Gazette No. 50045 with effect from 1 February 2024.
26 January 2024	Notice R.4290 – Amendment to Part 2 of Schedule No. 4, by the creation of a temporary rebate provision for the importation of certain cold-rolled steel and painted steel classifiable under tariff subheadings 7211.29 and 7212.40 – ITAC Report No. 612	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
26 January 2024	Notice R.4289 – Amendment to Part 2 of Schedule No. 4, by the insertion of rebate item 460.15./7301.10/01.06 in order to provide for the creation of a temporary rebate of the customs duty for the importation of sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements, excluding those that are cold-rolled (cold-reduced) classifiable under tariff subheading 7301.10 – ITAC Report No. 690	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
26 January 2024	Notice R.4288 – Amendment to Part 1 of Schedule No. 3, by the creation of a full-duty rebate facility on titanium dioxide classifiable under tariff subheading 3206.11, for use in the manufacture of white masterbatch, classifiable in tariff heading 3206.19.90 – ITAC Report No. 670	Published in Government Gazette No. 50045 with an implementation date up to and including 25 January 2027.
26 January 2024	Notice R.4287 – Amendment to Schedule No. 1, by the substitution of General Note O, to implement the African Continental Free Trade Area (AfCFTA) Agreement	Published in Government Gazette No. 50045 with effect from 31 January 2024.
26 January 2024	Notice R.4286 – Amendment to Schedule No. 1, by the insertion of Notes in Part F in the General Notes and the substitution of Appendix IV to Annex 2 on Rules of Origin in Part F, to implement the African Continental Free Trade Area (AfCFTA) Agreement	Published in Government Gazette No. 50045 with effect from 31 January 2024.
26 January 2024	Notice R.4285 - Amendment to Part 1 of Schedule No. 3, review of rebate item 311.18/63.09/01.04 applicable to “wiping rags” – ITAC Report No. 694	Published in Government Gazette No. 50045 with effect from 26 January 2024 up to and including 25 January 2026.

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26 January 2024	Notice R.4284 – Amendment to the rules under sections 49 and 120 – Trade agreements (DAR256)	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
26 January 2024	Notice R.4283 – Amendment to Part 2A of Schedule No. 1, by the substitution of tariff items 104.37.19 and 104.37.21 in order to increase the rates of excise duty for heated tobacco products, to give effect to the Budget proposals announced by the Minister of Finance on 22 February 2023	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
26 January 2024	Notice R.4282 – Amendment to Part 2 of Schedule No. 4, by the creation of temporary rebate provisions under item 460.03 for the importation of meat and edible offal of the species Gallus Domesticus classifiable under tariff subheading 0207.1– ITAC Report No. 726	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
26 January 2024	Notice R.4281 – Amendment to Part 1 of Schedule No. 1, by the substitution of various tariff subheadings to implement changes to the rates of customs duties in terms of the African Continental Free Trade Area (AfCFTA) Agreement	Published in Government Gazette No. 50045 with effect from 31 January 2024.
26 January 2024	Notice R.4280 – Amendment to Part 2 of Schedule No. 4, by the creation of temporary rebate provisions for the importation of certain flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated, classifiable under tariff subheadings 7208.26 and 7208.27 – ITAC Report No. 662	Published in Government Gazette No. 50045 with an implementation date of 26 January 2024.
24 January 2024	Correction Notice R.4267 – <ul style="list-style-type: none"> by the deletion of tariff subheadings 7225.92.20, 7225.92.30, 7225.92.40 and 7225.92.50 where they appear under insertions in Notice No. R. 4262 of Government Gazette No. 50012 on 19 January 2024, with retrospective effect from 1 January 2024; and by the substitution of the wording “of” with “or” in the article description of tariff subheading 3002.41.63 where it appears under insertions in Notice No. R. 4262 of Government Gazette No. 50012 on 19 January 2024, with retrospective effect from 1 January 2024. 	
19 January 2024	Notice R.4265 – Amendment to Part 1 of Schedule No. 2, by the imposition of definitive anti-dumping duties on windscreens for vehicles, classifiable in tariff subheading 7007.21.20, originating in or imported from China – ITAC Report 722	Published in Government Gazette No. 50012 with an implementation date of 19 January 2024.
19 January 2024	Notice R.4264 – Amendment of Appendix II to Annex 1 of the SADC Protocol on Trade, where it appears in Part B to the General Notes in Schedule No. 1, is being amended to substitute the 12-block SADC Certificate of Origin template with the 13-block SADC Certificate of Origin template as agreed on at the 28th meeting of the SADC CMT	Published in Government Gazette No. 50012 with an implementation date of 19 January 2024.
19 January 2024	Notice R.4263 – Amendment to Part 2 of Schedule No. 4, by the creation of a temporary rebate provision for the importation of optic fibre cables and electrical apparatus, classifiable under tariff subheading 8544.70, used in the international submarine optical fibre cable infrastructure, as well as the creation of a temporary rebate provision for electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1000 volts, other, classifiable under tariff subheading 8536.90.90, for use in international submarine optical fibre cable infrastructure – ITAC Report 614	Published in Government Gazette No. 50012 with an implementation date of 19 January 2024.

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19 January 2024	Notice R.4262 – Amendment to Part 1 of Schedule No. 1, to provide for technical amendments, by the insertion of new 8-digit tariff subheadings under Chapters 5, 12, 20, 30, 41 and 72	Published in Government Gazette No. 50012 with retrospective effect from 1 January 2024.
19 January 2024	Notice R.4261 – Amendment to Part 1F of Schedule No. 6, by the substitution of Note 1 to remove the reference to rebate item 623.01, as it no longer exists	Published in Government Gazette No. 50012 with retrospective effect from 1 January 2024.
19 January 2024	Notice R.4260 – Amendment to Part 1 of Schedule No. 1, by the insertion tariff subheadings 2009.89.55 and 2009.90.15 to provide for nut juices in subheading 2009.89 and mixtures of nut juices in subheading 2009.90	Published in Government Gazette No. 50012 with retrospective effect from 1 January 2022.
19 January 2024	Draft amendments to rules under sections 40(3), 41(4) and 120 – Effect of transfer pricing on customs value	Comments are due to SARS by Friday, 9 February 2024.
14 December 2023	South African Traveller Management System (SATMS)	A mobi application for the SATMS has been implemented as another method to access the online Traveller Declaration. Travellers can now use the SATMS Mobi Application to register or create a profile, and complete and submit travelling declarations.
14 December 2023	Notice R.4192 – Amendment to Part 2 of Schedule No. 4, by the insertion of a temporary rebate provision under rebate item 460.15, in order to provide for certain coated or plated flat-rolled steel products that are not manufactured locally – ITAC Report 631	Published in Government Gazette No. 49862 with an implementation date of 14 December 2023.
14 December 2023	Notice R.4191 – Amendment to Part 1 of Schedule No. 1, by the substitution of various subheadings under Chapter 72, in order to increase the rate of customs duty on certain coated or plated flat-rolled steel from free of duty to 10% – ITAC Report 631	Published in Government Gazette No. 49862 with an implementation date of 14 December 2023.
11 December 2023	Draft amendments to rules (and related forms) under sections 21, 60 and 120 – Fuel levy goods	Comments were due to SARS by Friday, 12 January 2024.
8 December 2023	New channel for refunds and drawbacks	Drawback claims can now also be submitted using the electronic data interchange (EDI) channel.
8 December 2023	Automation of Registration Licensing and Accreditation for Authorised Economic Operators	Section 64E of the Customs and Excise Act 91 of 1964 has been updated to enable Customs registrants or licensees to submit their application for accreditation electronically. The existing manual processes have been automated on the Customs Operational Portal.
1 December 2023	Notice R.4135 – Amendment to rules under sections 64E and 120 – Accreditation (DAR254)	Published in Government Gazette No. 49792 with effect from 8 December 2023.
1 December 2023	Notice R.4134 – Amendment to rules under section 120 – Rules numbered 120.13 – Advance import payments (DAR253)	Published in Government Gazette No. 49792 with an implementation date of 1 December 2023.

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Case law

In accordance with the date of judgment

12 January 2024	BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service (2021/49805) [2024] ZAGPPHC 1	The first issue was whether the judge had any jurisdiction over the merits of the appeal and review at all, or whether the judge’s role was limited to deciding whether or not the matter should be referred to trial. Secondly, whether the applicant’s application to introduce new affidavits ought to succeed. Thirdly, whether, and to what extent, the applicant’s application should be referred for the hearing of oral evidence. Lastly, how the applicant’s statutory appeal under section 47(9)(e) of the Customs Act interacted with its review of the respondent’s decisions to refuse the rebates applicant claimed and to levy forfeiture penalties.
12 January 2024	BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service (801/2022) [2024] ZASCA 2	Application for leave to appeal an order of the full court of the Gauteng Division of the High Court, Pretoria.
9 January 2024	Unitrans Holdings Limited v CSARS (A3094/2022) [2024] ZAGPJHC 3	Whether interest expenditure incurred in the course of carrying out ‘any trade’ and in the production of income is tax deductible in terms of section 24J(2) of the Income Tax Act.
29 December 2023	FITA and Others v CSARS and Another (115176/2023); Bozza and Others v CSARS and Others (115375/2023) [2023] ZAGPPHC	Whether the applicants’ application for interdictory relief against first respondent, preventing it from implementing Rule 19.09, could be granted.
27 December 2023	Karino Homeland Distribution (Pty) Ltd v Commissioner for the South African Revenue Service (21279/2023) [2023] ZAWCHC 329	This was an application in which the applicant sought the partial upliftment of a lien imposed over its goods by SARS in terms of section 114 of the Customs and Excise Act 91 of 1964 as security for an admitted debt.
18 December 2023	Assmang Proprietary Limited v CSARS and Others (91960/2015) [2023] ZAGPPHC 2036	Whether the mining operations in relation to the diesel refunds claimed by the applicant were carried out in accordance with item 670.04 in Part 3 of Schedule 6 to the Customs Act and whether the diesel was purchased and used in accordance with the provisions of Note 6.
18 December 2023	Enviroserv Waste Management (Pty) Ltd v Commissioner for the South African Revenue Service (154/2022) [2023] ZASCA 180	This appeal concerns the interpretation of section 12C(1)(a) of the Income Tax Act 58 of 1962. The issue is whether cells constructed by the appellant, Enviroserv Waste Management (Pty) Ltd (“Enviroserv”), on its landfill sites constitute plant used directly in a process of manufacture or a process similar to manufacture. Allied to that is the question whether Enviroserv was entitled to claim a depreciation allowance in respect of the cells. A further issue was whether an understatement penalty levied by SARS for Enviroserv’s failure to disclose interest due to it from its Ugandan subsidiary was properly imposed.
13 December 2023	CRRC E-LoCo Supply (Pty) Ltd v Commissioner for the South African Revenue Service (37766/2021) [2023] ZAGPPHC 1985	Application for leave to appeal the court’s dismissal of an application by CRRC to have the recovery by SARS of unpaid taxes by way of issuing of notices to CRRC’s bankers in terms of section 179(6) of the Tax Administration Act 28 of 2011 reviewed and set aside.
11 December 2023	Lamola and Others v Commissioner for the South African Revenue Services (B5917/2023) [2023] ZAGPPHC 2003	The applicants sought the reconsideration of a provisional preservation order on an urgent basis in terms of Uniform Rule 6(12)(c), read together with Uniform Rule 6(8).
8 December 2023	Glencore Operations SA (Pty) Ltd and Others v Commissioner for the South African Revenue Service and Another (15988/2020) [2023] ZAGPPHC 2026	This is an application for leave to appeal against a judgment and order made on 17 July 2023.
8 December 2023	SARSTC VAT 2218 (VAT) [2023] ZATC CPT	The issue was the nature of the supply of services to a non-resident, and whether the supply also constitutes in part a supply to the foreign tourists who subscribe to the foreign tour operator’s tours.

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30 November 2023	Canyon Resources (Pty) Ltd v CSARS (68281/2016) [2023] ZAGPPHC	Application for the setting aside and substitution of a determination by SARS regarding diesel refunds claimed by Canyon Resources under rebate item 670.04, provided for in the Customs and Excise Act 91 of 1964.
29 November 2023	Walter v CSARS (A2023/008433) [2023] ZAGPJHC 1392	Whether the Tax Court (IT 45628) erred in holding that there was a causal link between a restraint of trade payment and Mr Jordi’s past employment or his holding of office with Rappa Holdings and its affiliated companies.

Guides and forms

26 January 2024	Draft Guide on the Solar Energy Tax Credit provided under section 6C	This draft guide provides general guidance on the newly introduced solar energy tax credit under section 6C of the Income Tax Act. Comments are due to SARS by Friday, 9 February 2024.
26 January 2024	Guide for Provisional Tax – External Guide	The purpose of this guide is to assist provisional taxpayers with the following: <ul style="list-style-type: none">• Completion and submission of their Provisional Tax Return (IRP6)• Calculation of the estimated taxable income for provisional tax payments• Calculation of penalties and interest payable on late or incorrect payments of provisional tax
13 December 2023	Clearance of Continuous Transmission Commodities – External Policy	This policy relates to the movement, declaration and clearance of, and payment for, the importation or exportation of continuous transmission commodities (CTCs) as stipulated under Rule 38.16. The policy is applicable to clients that import or export goods classified as CTC.
11 December 2023	Guide to submit a dispute via eFiling – External Guide	This guide is designed to assist taxpayers with the submission of a Request for Remission (RFR), Notice of Objection (NOO), Notice of Appeal (NOA), Request for Reason, Request for Late Submission (Condonation) and Suspension of Payment form on eFiling when disputing interest and penalties levied, assessments raised and/or administrative penalties levied for Personal Income Tax (PIT), Corporate Income Tax (CIT), Value-Added Tax (VAT) and Pay-As-You-Earn (PAYE), including Employment Tax Incentive (ETI), Unemployment Insurance Fund (UIF) and Skills Development Levy (SDL).
11 December 2023	Guide to completing the Value-Added Tax VAT201 Declaration – External Guide	The purpose of this guide is to assist vendors/tax practitioners to complete the Value-Added Tax (VAT201) return accurately and honestly. Included in this guide are steps on how to request, complete and submit the VAT201 return and make payments.
11 December 2023	Comprehensive Guide to the ITR12 Income Tax Return for Individuals – External Guide	The purpose of this document is to provide guidance on the completion of the ITR12 return and to briefly explain the various sections of the Income Tax Act 58 of 1962 that will be applied during the assessment process.
11 December 2023	Guide to submit your Individual Income Tax Return via eFiling – External Guide	This guide is to assist taxpayers/tax practitioners in filing an income tax return for individuals via eFiling. It is structured such that the user should be able to log in to eFiling, file/submit an income tax return and request a correction via eFiling, among other things. Additional functions embedded on the system pertaining to eFiling and the income tax return are discussed for the effective use of the system when accessing and filing your income tax return.
8 December 2023	Refunds and Drawbacks – External Guide	The purpose of this guide is to provide the trader with step-by-step guidance on customs and excise automated refund and drawback (ARD) claims submitted on eFiling.

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8 December 2023	Refunds and Drawbacks – External Policy	The purpose of this policy is to prescribe the qualifying criteria for customs and excise refund or drawback claims. It describes the legal requirements pertaining to refund and drawback claims at the time of lodging an application, the prescribed time as well as the relevant documents required for the various types of refund or drawback claims.
8 December 2023	Accreditation – External Policy	The purpose of this policy is to outline the accreditation requirements for eligible clients to participate in the customs accreditation scheme in terms of Section 64E of the Customs and Excise Act.
8 December 2023	Registration Licensing and Accreditation – External Policy	The purpose of this policy is to provide clarity and certainty regarding compliance with their listed obligations to air passengers (regarding air passenger tax (APT)) as well as to customs and excise clients, and authorised economic operators.
8 December 2023	Documentary Requirements – External Annexure	This document outlines the supporting document requirements for various customs and excise client types.
8 December 2023	Customs Trader Portal – External Guide	This document provides guidance on the use of the Customs Trader Portal for registration, licensing and accreditation.
4 December 2023	Submission of Advance Import Payments – External Guide	This document provides guidance on the submission of Advance Import Payments (AIP) of R50,000 and above.
4 December 2023	Submission of Advance Import Payments – External Policy	This external policy aims to make it easy for importers intending to apply for an advance foreign exchange payment of R50,000 and above to comply with the advance payment notification (APN) requirements.
1 December 2023	Internal Administrative Appeal – External Policy	This policy describes the process to be followed by traders when dealing with customs and excise internal administrative appeals.
Other Publications		
29 January 2024	OECD: OECD releases statistics from the International Compliance Assurance Programme (ICAP)	The OECD released the first aggregated statistics from the Forum on Tax Administration (FTA) ICAP for a multilateral risk assessment of a multinational enterprise (MNE) group’s key international tax risks. These statistics cover all cases completed by October 2023.
22 January 2024	OECD: Public comments received on proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources	On 16 November 2023, the OECD invited public comments on the proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources. The public comments received have now been published.
4 January 2024	OECD: Tax Database 2023	This document presents comparative information on a range of statutory tax rates and tax rate indicators in OECD countries, encompassing personal income tax rates and social security contributions, corporate income tax rates and value-added taxes between 2000 and 2023.
9 January 2024	OECD: Update on the economic impact assessment of the Global Minimum Tax [webinar]	This webinar discusses the latest results regarding the impact of the global minimum tax on the taxation of MNEs.
4 January 2024	OECD: Senegal commits to start automatic exchange of financial account information by 2025	Senegal has committed to implement the international standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI) by September 2025.
20 December 2023	Tax Policy Alert: OECD releases further Pillar Two GloBE Administrative Guidance and timeline update for Pillar One	This Alert discusses the Administrative Guidance on the Global Anti-Base Erosion Model Rules (GloBE rules) of Pillar Two published on 18 December 2023.

18 December 2023	OECD: International tax reform: OECD/G20 Inclusive Framework releases new information on key aspects of the Two-Pillar Solution	The OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) released further technical guidance to assist governments with the implementation of the global minimum tax under Pillar Two and a statement on the timeline of the Multilateral Convention (MLC) under Pillar One.
17 December 2023	OECD: Zambia joins Global Forum as 39th African member	Zambia has joined the international fight against tax evasion as the 171st member – and 39th African member – of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).
13 December 2023	OECD: Countering harmful tax practices: Over 54 000 exchanges on tax rulings carried out among more than 130 jurisdictions under the BEPS Action 5 standard	The OECD/G20 Inclusive Framework on BEPS released the latest peer reviewed assessments for 131 jurisdictions in relation to the compulsory spontaneous exchange of information on tax rulings.
11 December 2023	Tax Alert: VAT treatment of staff accommodation and meals	This case was an appeal against additional VAT assessments raised by SARS for the tax periods 07/2012 to 08/2016, disallowing input tax deducted on staff accommodation and meals.
11 December 2023	SARS: VAT enhancements for estimated assessments	The estimated assessment functionality has now been implemented for VAT. If a vendor does not provide the relevant material requested by SARS during the VAT verification process, SARS may raise an estimated assessment in terms of section 95(1)(c) of the Tax Administration Act 28 of 2011.
7 December 2023	OECD: Enhancing global collaboration is key in tackling tax crime in the digitalising economy	Over 120 delegates from 46 jurisdictions met on 5-7 December for the Sixth OECD Forum on Tax and Crime (FTC) to discuss tax crimes and other financial crimes. Four priority areas were identified for further action, namely: <ul style="list-style-type: none"> • Increasing the sharing and pooling of knowledge, including with other international partners; • Developing new mechanisms for more systematic real-time co-operation and sharing of information, including the piloting of a new confidential network of tax crime law enforcement authorities; • Continuing to strengthen and deepen capacity building through the Academy for Tax and Financial Crime Investigation and the joint OECD-UNDP Tax Inspectors Without Borders for Criminal Investigation Programme; and • Enhancing the integrity of administration systems through the use of new technology and new approaches to address vulnerabilities, including by closer working with the OECD's Forum on Tax Administration on the opportunities offered by digital transformation.
6 December 2023	OECD: Global energy crisis and government responses drive a significant fall in tax levels in OECD countries	OECD analysis found that high energy prices triggered by the Russia-Ukraine war prompted governments to reduce excise taxes during 2022, leading to lower tax levels in many countries.



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