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The Tax Director series
SARS Watch

Synopsis

Tax today

January 2019

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

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

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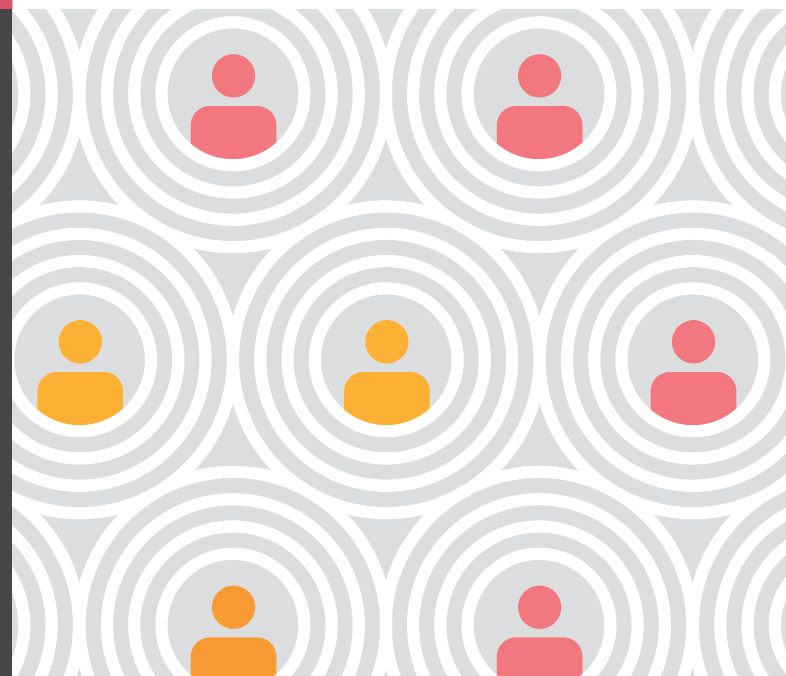


Important decision by the Dutch Supreme Court

In a previous edition of *Synopsis* (September 2017), paragraph 10 of Article 10 (the "most favoured nation", or MFN, clause) in the double taxation agreement (DTA) between South Africa and the Netherlands ("the SA-NL DTA") was discussed at length. Readers will recall that, already at the time when that *Synopsis* was published, the position taken by many taxpayers was that the MFN clause, when read with at least two other double DTAs, could effectively result in an exemption from Dutch or South African dividends tax (provided, of course, that the requirements regarding beneficial ownership and shareholding in the company declaring the dividends are met).

On Friday, 18 January 2019, the Dutch Supreme Court, on appeal by the Dutch authorities against a decision of the Dutch Court of Appeals (Hertogenbosch), issued a judgment which was resoundingly in favour of the taxpayer (a PwC client who was represented by PwC in the matter) in relation to the application of the MFN clause.

Technically, the decision of the Dutch Supreme Court applies only in respect of dividends paid by Dutch resident companies to their South African shareholders. Regarding dividends paid by South African residents to their Dutch shareholders, the impact of the decision on SARS's approach to the interpretation and application of the Dutch MFN clause will presumably become apparent in the near future. Although South African courts are not bound by the decisions of Dutch courts, we are of the view that it would be extremely difficult for our courts to depart from the interpretation of the MFN clause given by the Dutch Supreme Court.

Please look out for the next edition of *Synopsis*, in which this matter will be discussed in more detail.

Future expenditure – the contractual link

A judgment in the Tax Court in the Western Cape had given the impression that a taxpayer's right to claim an allowance for future expenditure did not necessarily have to relate to income actually received in terms of that contract. The Supreme Court of Appeal has made it clear that there must be a direct contractual link between the income received and the future expenditure in respect of which an allowance is claimed.

The Tax Court (*Income Tax Case No. 1905* 80 SATC 223) had determined that the future costs to refurbish fast food restaurants in compliance with the requirements of a franchise agreement qualified as "future expenditure" as contemplated in section 24C of the Income Tax Act ("section 24C").

The argument that had been advanced on behalf of the taxpayer, and by which the Court was persuaded, was that the franchise agreement was the cause of the income that accrued to the taxpayer.

It followed that, where the franchisee was bound to incur expenditure in the future to refurbish or upgrade the operating premises in compliance with the franchise agreement, the obligation to incur the expenditure arose under the same agreement. There was therefore the necessary causal connection between the receipt of the income and the obligation to incur the future expenditure.

The Commissioner, clearly unsettled by the implications that such a judgment could have on the application of section 24C, not only in the context of franchise operations but in many other commercial arrangements as well, appealed against the Tax Court's decision to the Supreme Court of Appeal ("SCA"), in the matter of *CSARS v Big G Restaurants (Pty) Ltd* [2018] ZASCA 179 (3 December 2018).

The judgment

The unanimous judgment of the SCA was delivered by Schippers JA. The provisions of section 24C were stated in full in the judgment, but the critical element of the judgment consisted of the provisions of subsection (2), as reproduced below with emphasis added by Schippers JA [par. 8]:

> If the income of any taxpayer in any year of assessment includes or consists of an amount *received by or accrued to him in terms of any contract* and the Commissioner is satisfied that such amount will be *utilised in whole or in part to finance future expenditure* which will be *incurred by the taxpayer in the performance of his obligations under such contract*, there shall be deducted in the determination of the taxpayer's taxable income for such year such allowance (not exceeding the said amount) as the Commissioner may determine, in respect of so much of such future expenditure as in his opinion relates to the said amount.

The Court homed in on the primary requirements, namely the receipt of income *in terms of a contract* and the obligation to incur expenditure in performing obligations *under such contract*. The critical issue was the manner in which the phrases "in terms of a contract" and "under such contract" should be interpreted.

Decisions in the SCA (and its predecessor) had frequently been split on whether terms of this nature should be interpreted widely or narrowly. Mindful that the interpretation depends on the context, Schippers JA identified the enquiry that had to be made, at paragraph [14]:

> The next stage of the enquiry is to consider the sense in which the phrase is used in s 24C(2). The section has two basic requirements. First, there must be income received or accrued in terms of a contract. Second, the Commissioner must be satisfied that such amount, i.e. the income received from the contract, will be used wholly or partially to finance future expenditure that a taxpayer will incur in performing its obligations under that same contract. There is thus a direct and immediate connection between these two requirements. The section does not allow for different income-earning and obligation-imposing contracts. (*Footnote removed*)

In essence, the interpretation that should be applied to each term should be in its narrow or direct sense. Support for the interpretation is given in paragraph [16] of the judgment:

> The narrow meaning of the phrase, in my view, is supported by the context and the background to the provision. Section 24C constitutes an exception to the general prohibition contained in s 23(e) of the Act, which provides that no deduction shall in any case be made in respect of income carried to any reserve fund or capitalised in any way. Section 24C was introduced by s 18(1) of the Income Tax Act 104 of 1980. According to the explanatory memorandum, the purpose of s 24C was to address situations where a contract, typically a construction contract, provides for an advance payment to enable the recipient to finance the performance of its obligations under the contract (e.g. to purchase materials). In the situation contemplated by the explanatory memorandum, the same contract creates the right to the income (the advance payment) and the obligation which has to be performed. (*Footnote removed*)

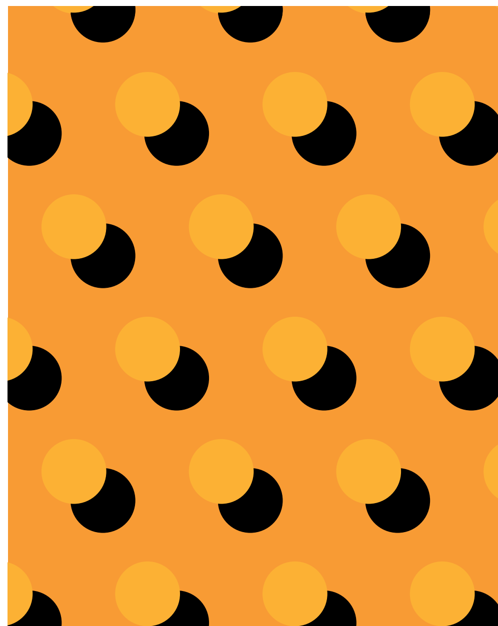
In response to the argument that the franchise agreement caused the receipt of income, Schippers JA stated at paragraph [18]:

> The taxpayer does not receive any advance payment or indeed any income from the franchise agreement, but earns income from each patron contract. Patrons have the right to receive food sold to them by the taxpayer and the corresponding obligation to pay for the food. The taxpayer's income is derived from payments received from patrons, directly as a result of food sold to them. If it does not sell food to patrons, the taxpayer will not receive any income.

Counsel for the taxpayer argued that contracts to sell food to customers and the franchise agreement were inextricably linked and could not be distinguished in this context. The argument was rejected at paragraph [20]:

> The argument is unsound. It is simply another way of putting the argument for the wide interpretation of the phrase. The argument acknowledges that the contract creating the right to the income is the patron contract but places reliance on the fact that the patron contract is able to be concluded because of the existence of the franchise agreement. The fact that a contract is useful or even necessary to enable a taxpayer to earn income does not mean that its income is earned 'in terms of' such contract. A taxpayer's income is not earned 'in terms of' the lease under which it occupies its commercial premises or 'in terms of' the overdraft agreement which provides it with the necessary working capital.

Judgment was therefore given in favour of SARS and the deduction was disallowed.



The takeaway

It is relatively easy to be misled by the argument that because a contract is a sine qua non, it is causally relevant. This tendency was noted in the matter of CIR v Shell Southern Africa Pension Fund 1984 (1) SA 672 (A), in which Nicholas JA warned that:

> *A conditio sine qua non* is not, however, necessarily a causally relevant factor.

The error in the Tax Court was that the Court conflated the contract by which the machinery to derive income had been established with the contracts through which the income actually accrued. While it was true that the franchise agreement was a necessary element to operate a fast food restaurant, it was not the agreement by which income accrued to the taxpayer. Income accrued as consideration for supplying food to customers.

It is submitted that the interpretation of the SCA is wholly appropriate and consistent with the context in which the special deduction under section 24C was introduced into the Income Tax Act. There must be a direct causal link between the receipt of the income and the obligation to incur future expenditure under that contract.

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Services provided at the expense of an employer

Over the past 30 years, since the introduction of the Seventh Schedule to the Income Tax Act, our courts have from time to time considered the question of whether services paid for by an employer equate to taxable fringe benefits. The High Court in South Gauteng recently dismissed an appeal against a judgment in the Tax Court in which it had been found that the services of tax practitioners in assisting in the preparation and filing of income tax returns for a company's expatriate secondees constituted a taxable fringe benefit.

The facts in *BMW South Africa (Pty) Ltd v Commissioner for the South African Revenue Service* Case No. A553/16 are simple.

The appellant ("BMW") is part of a worldwide group of luxury motor vehicle manufacturers. From time to time, BMW requires the assistance of employees of other group companies.

These employees are seconded from their home countries to work in South Africa on short-term or medium-term contracts.

A material aspect of international assignments within the group is that the secondment is subject to the group tax equalisation programme, in terms of which the host employer is required to settle the tax liabilities of the employee incurred during the period of secondment.

The expatriate secondee is required to comply with the tax laws in force in South Africa. To ensure compliance, the contract between BMW and the secondees required that BMW should appoint a tax consultant to provide taxation services in respect of the secondees. BMW paid the fees in respect of the services performed by the tax consultants.

SARS assessed BMW to additional employee tax on the basis that BMW had failed to report the fees paid for the professional services rendered by the consultants to its expatriate secondees as a taxable fringe benefit.

BMW objected to the assessment and, on disallowance of the objection, appealed to the Tax Court, which dismissed the appeal and found in favour of the Commissioner. The matter then came to the High Court for determination.

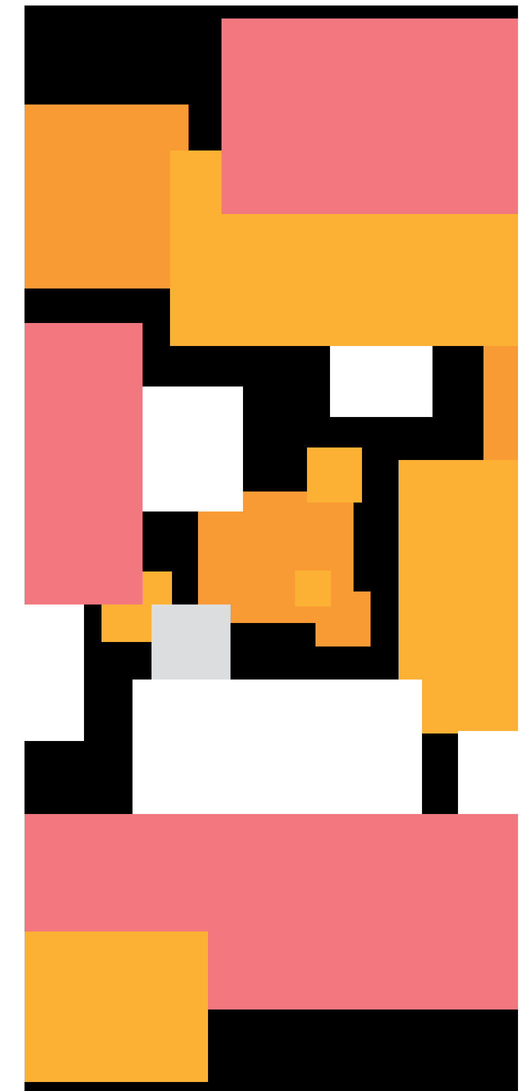
The arguments

SARS contended that the services by the consultants were rendered to the secondees at the expense of the employer (BMW) and, as such, fell squarely within the ambit of paragraph 2C of the Seventh Schedule to the Income Tax Act. This paragraph recognises that a taxable fringe benefit arises where:

> any service … has at the expense of the employer been rendered to the employee (whether by the employer or by some other person), where that service has been utilized by the employee for his or her private or domestic purposes and no consideration has been given by the employee to the employer in respect of that service …

BMW argued that the hiring of the consultants was undertaken for purposes of the administration of the tax equalisation policy to establish that the secondees were not advantaged or disadvantaged because of differences in tax treatment of their remuneration package between their home country and the host country. There was no intention to confer a benefit on the employees. On the contrary, the purpose was to ensure that they derived no benefit from secondment to BMW.

Further, BMW argued that the services in question were not used for the private benefit of the secondees but were used for purposes of ensuring proper management of the group tax equalisation policy.



The judgment

The unanimous judgment of the Full Bench was delivered by Carelse J. The issue is summarised in paragraph [8] of the judgment:

> What this court is required to determine in this appeal is whether or not SARS was correct in its determination that the professional fees paid by the appellant to the consultancy firms amounted to taxable benefits in terms of paragraph (i) in section 1 of the Income Tax Act read with paragraph 2(e) of the Seventh Schedule …

The court then considered the merit of BMW's assertion that secondees should be treated differently than employees who were South African residents, because of the tax equalisation policy, which required that the employees should be neither advantaged or disadvantaged by a secondment because of differences in tax treatment. If there was no advantage, BMW argued, no benefit inured to the secondees.

Here, the Court found, in paragraph [12] of the judgment, that:

- The question whether a benefit was enjoyed by secondees was to be determined objectively and not subjectively;
- Whether the tax consultants' services actually resulted in a further benefit to the employees was irrelevant;
- The service itself was the benefit;
- The service had monetary value; and
- The secondees therefore derived a benefit when BMW paid the consultants for their services.

It now fell to establish whether the provisions of paragraph 2(e) of the Seventh Schedule applied to that benefit.

The principal issue was whether the services were used by the secondees for their private benefit. BMW asserted that the employer used the services for its benefit in administering the tax equalisation. The common cause facts identified that "*In order to protect the interests of the appellant and BMW group, certain payments were made to identified tax consultancy firms for services rendered in respect of the appellant's expatriate employees*".

Reliance was placed on the commentary on paragraph 2 (e) of the Seventh Schedule in Juta's Income Tax, to the following effect:

> It is the actual use to which the service was put, not the intention with which it was provided, which is the determining factor here. The determination of this use is one of fact. The use must be wholly private or domestic — if used partially for the business or affairs of the employer, it falls outside this provision.

The judgment in this regard is not entirely clear, as there is no record in the judgment of the exact nature of the services rendered, although it may be assumed from the context that the consultants assisted the employees in the completion and submission of returns of income to ensure full compliance with the Income Tax Act. The judgment in paragraph [16] found that there was no evidence that services were rendered by the tax consultancy firms to the BMW group.

It was therefore found that the services by the consultancy firms were rendered wholly for the private use of the employees and not partially.

In the result, the appeal was dismissed and the assessments were upheld.

The takeaway

Employers permitting employees to make use of services for which the employer undertakes the liability to make payment should exercise extreme caution before concluding that no taxable fringe benefit is created.

The High Court, in this instance, illustrated the approach to be adopted, namely whether there was prima facie an amount as contemplated in the definition of "gross income" and, thereafter, whether that amount met the requirements of paragraph (i), read with the relevant paragraph in the Seventh Schedule.

The objective inquiry was therefore whether there would be a financial benefit to the employee if the employer paid for the services. This would be a taxable fringe benefit if the services were used only by the employee.

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The Tax Director series (*new*)

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

Responsible tax functions are...

- Value-focused – demonstrating strong returns in short time frames, using next-generation tools
- Looking ahead to the future of work – embracing a new way of working and accompanying opportunities
- Taking a big-picture perspective – developing creative solutions and experimenting.

To remain relevant to the business, tax functions must chart a course for continuous transformation that is immediate, holistic and practical. Successful change will require the re-engineering of 'end-to-end' processes and not just of the final outputs. This should involve an assessment of the current capabilities of the tax function against a tax maturity model, followed by the development of a clear vision of the desired future state. Companies can then develop a road map for successful change, using the central building blocks of governance, data, technology, process and people within the context of the global regulatory and legislative landscape.

A successful transformation will make the tax function a strategic business asset that adds value on a companywide basis.

We will be publishing a series of articles that focus on the tax director's need to:

1. Align tax with the business strategy
2. Reduce the cost of delivery
3. Manage tax risk and implement robust tax governance to increase transparency and trust
4. Engage with stakeholders and report on total contribution to the economy
5. Reflect business and technology changes in the organisation's tax operating model
6. Leverage finance transformation for tax
7. Understand the maturity of the tax function pre- and post-deal
8. Accelerate the impact of technology in delivering on tax needs
9. Unlock data insights to add more value to the business
10. Have robust and accurate data for the business and tax administration functions
11. Have an efficient and effective tax reporting process
12. Have confidence and certainty over compliance.

Article 1 in the Tax Director series

Align tax with the business strategy

Many organisations are required to disclose their tax strategy. In doing so, they need to ensure that they can confidently talk about tax to a range of stakeholders in the knowledge that what they say externally aligns to internal practice.

A responsible and transparent tax strategy is one of the fundamental concepts and corporate citizenship considerations put forward in King IV™. It reinforces the notion that good corporate governance is a holistic and interrelated set of arrangements, to be understood and implemented in an integrated manner – good governance, including tax governance, is not a tick box or compliance exercise. Rather, it is a lever for value creation.

Determining your tax strategy requires the mindful application of the King IV Code™ and its recommended practices. It should be interpreted and applied in a way that is appropriate for the organisation and the sector in which it operates. Mindful application harnesses the benefits of corporate governance in the interests of the organisation.

Although King IV™ is a set of voluntary principles and good practices, it is binding for entities with a primary listing on the JSE Limited Securities Exchange.

Beyond legal requirements, an organisation's tax strategy must be intrinsically linked to the commercial and overall strategic objectives of the business and then implemented effectively, ensuring tax is at the heart of the enterprise-wide framework for risk and opportunity management.

Put your organisation's tax strategy at the forefront of the executive agenda. Prioritising your tax strategy allows the tax function to make the big choices that shape its future. It is sometimes a challenge to make the connection between your tax strategy and the things your organisation does every day. Yet poor tax management and lack of governance can have a negative commercial and reputational impact on the business. To achieve a tax strategy that aligns to your wider commercial aims and objectives, it is essential to engage in a collaborative exercise with internal and external stakeholders to define your strategic objectives on tax in a structured way.

Can you articulate the three to six strategic objectives that will enable your organisation's tax function to deliver on its value proposition? Have you defined the capabilities to execute your tax strategy? Are your strategic tax objectives reinforced by your performance management system, KPIs and practices? Are all internal role-players in your organisation familiar with your tax strategy, and do they understand how your tax strategy is distinctive?

Each organisation's tax strategy will be different. There is a clear spectrum of approaches. The most common objectives include the organisation's approach to risk management and governance; its attitude towards tax planning; the level of risk that it is prepared to accept; and its approach towards its dealings with the tax authorities.

Prominent words used include authorities, management, compliance, reporting, board, audit committee, planning and transactions. Specific frameworks and the review of controls, although referred to less frequently, provide the comfort that the strategy is supported by operational practice and strong systems of internal governance and control.

Certain organisations are also talking about stakeholders, value and responsibility. Acknowledging different stakeholder interests in tax is key to determining your strategic response to tax transparency – 'transparency to whom and for what purpose?' Some companies are clearly going beyond a statement of compliance with tax legislation by discussing tax in the context of wider functions within the business or as a corporate responsibility issue.

Consideration should be given to how the organisation communicates its tax strategy in a manner that adds value to all stakeholders. It should be noted that King IV™ asks organisations to be transparent in the application of their corporate governance practices, including how their tax strategy fits into their organisation's efforts towards good corporate citizenship.

To remain relevant to the business while at the same time being a responsible taxpayer, tax functions should chart a course for continuous transformation that is immediate, holistic and practical.
A fit-for-purpose tax function addresses the challenges of the changing tax environment and recognise that the tax operating model must be modernised.

The common threads which run through any well-managed tax operating model are:

- Strong tax governance with an agreed tax strategy that is in line with the wider business objectives, reflecting clearly the expectations of customers, clients, staff and other stakeholders;
- An in-depth understanding of where the key tax risks lie within the business;
- Effective and efficient tax controls in place to mitigate identified risks;
- A clearly defined and transparent communication strategy that sets out the approach to managing tax both internally and externally; and
- Ongoing monitoring activities in relation to the above.

If an organisation has clarity around its tax management, its tax strategy will be aligned to its business strategy. This will help reduce reputational risk and tax disputes.

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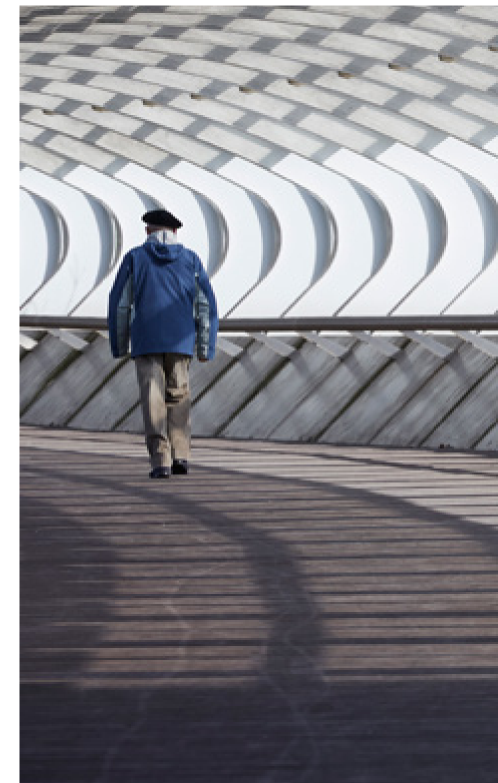

SARS Watch

Legislation		
21 Jan 2019	Memorandum on the Objects on the Tax Administration Laws Amendment Bill 2018	Updated memorandum on the Objects of the 2018 TALAB, which was promulgated on Thursday, 17 January 2019 to Act No. 22.
18 Jan 2019	Final Response Document on the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018	Updated response document taking into account submissions and decisions made following further inputs by stakeholders and the Standing Committee on Finance during public hearings on the 2018 Rates Bill.
18 Jan 2019	Final Response Document on Taxation Laws Amendment Bill, 2018 and Tax Administration Laws Amendment Bill, 2018	Update response document taking into account submissions and decisions made following further inputs by stakeholders and the Standing Committee on Finance during public hearings on the 2018 TLAB and TALAB.
18 Jan 2019	Explanatory Memorandum on the Taxation Laws Amendment Bill, 2018	Updated explanatory memorandum to the 2018 TLAB, which was promulgated on Thursday, 17 January 2019 to Act No. 23.
18 Jan 2019	Rates and Monetary Amounts and Amendment of Revenue Laws Act 21 of 2018	The Act was promulgated on Thursday, 17 January 2019 and published in Government Gazette No. 42171.
18 Jan 2019	Tax Administration Laws Amendment Act 22 of 2018	The Act was promulgated on Thursday, 17 January 2019 and published in Government Gazette No. 42169.
18 Jan 2019	Taxation Laws Amendment Act 23 of 2018	The Act was promulgated on Thursday, 17 January 2019 and published in Government Gazette No. 42172.
16 Jan 2019	Draft Rules under sections 38 and 59A, relating to persons who are not South African citizens	Comments had to be submitted to SARS by Thursday, 31 January 2019.
14 Jan 2019	Draft tariff amendment notice – Part 7A of Schedule No. 1, relating to the Health Promotion Levy on Sugary Beverages	Comments had to be submitted to SARS by Monday, 28 January 2019.
10 Jan 2019	Draft rule amendment notice and forms – Health promotion levy on sugary beverages	Comments had to be submitted to SARS by Thursday, 31 January 2019.
28 Dec 2018	Explanatory memorandum to the amendments to Schedules No. 1, 3, 4, 5 and 6, to implement changes to the rates of customs duties in terms of the Economic Partnership Agreement between the European Union and the Southern African Development Community EPA States for 2019 and other miscellaneous amendments	The draft amendments of the Schedules to the Customs and Excise Act, 1964, Act No. 91 were implemented with effect from 1 January 2019.
28 Dec 2018	Amendment to Part 1 of Schedule No. 1, 3, 4, 5 and 6 to implement changes to the rates of customs duties in terms of the Economic Partnership Agreement between the European Union and the Southern African Development Community EPA States for 2019 and other miscellaneous amendments	Notice 1438 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Part 2A of Schedule No. 1, to delete tariff items in Part 2A of Schedule No. 1 as a consequence to a deletion in Part 1 of Schedule No. 1	Notice 1439 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Part 1 of Schedule No. 3 – to delete rebate item 315.05/7308.90.90/01.01 in Part 1 of Schedule No. 3 as a consequence to a deletion in Part 1 of Schedule No. 1 and to insert rebate item 315.05/7308.90.99/01.01; and to delete Note 10 to rebate item 317.03 which covered the transitional note for the migration from the MIDP to the APDP as it has become redundant	Notice 1440 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.

28 Dec 2018	Amendment to Part 2 of Schedule No. 4, to delete rebate item 460.02/12.06/01.04 and rebate item 460.07/39.19/01.04 as they have become redundant	Notice 1441 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Part 3 of Schedule No. 5 – to delete Note 1 to rebate item 537.00 applicable to MIDP; to renumber Note 2 as Note 1; to remove the reference to rebate item 317.04 applicable to MIDP; to delete refund items 537.01, 537.01/8701.20/01.06, 537.01/87.02/01.04, 537.01/87.03/01.04, 537.01/87.04/01.04 and 537.01/87.06/01.04, as they were applicable to MIDP; and to delete refund item 538.00/00.00/02.00 applicable to MIDP	Notice 1443 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Part 1F of Schedule No. 6, to delete rebate items 623.27/105.10/01.01 and 623.27/105.10/02.01 as they have become redundant	Notice 1442 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Schedule No. 1, to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement	Notice 1436 published in Government Gazette No. 42140 with an implementation date of 1 January 2019.
28 Dec 2018	Amendment to Schedule No. 1, to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement	Notice 1437 published in Government Gazette No. 42140 with an implementation date of 1 September 2018 to 31 December 2018.
28 Dec 2018	Amendment to Part 1C of Schedule No. 6, by the insertion of Note 7 as well as a rebate on items 620.25, 620.25/604.15.21/01.01 and 620.25/604.15.23/02.1, to create a rebate provision for unfortified wine used in the manufacturing of foodstuffs	Notice 1435 published in Government Gazette No. 42140 with an implementation date of 28 December 2018.
21 Dec 2018	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 to reduce the rate of customs duty on sugar from 460.86c/kg to 369.57c/kg in terms of the existing variable tariff formula – Minute M12/2018	Notice 1422 published in Government Gazette No. 42131 with an implementation date of 21 December 2018.
14 Dec 2018	Acquittal of Customs Declarations	External policy effective from 14 December 2018.
14 Dec 2018	Incidences of non-compliance by a person in terms of section 210(2) of the Tax Administration Act, 2011, that are subject to a fixed amount penalty in accordance with sections 210(1) and 211 of the Act	Notice 1372 published in Government Gazette No. 42100 with an implementation date of 14 December 2018.
11 Dec 2018	Draft schedule amendment – City Deep business hours	Comments must be submitted to SARS by Monday, 31 December 2018.
Case law		
In accordance to date of judgment		
13 Dec 2018	IT14426	Whether the Appellant was entitled to an employment tax incentive deduction.
05 Dec 2018	Vat Case No. 1558	This matter concerns the interpretation and application of section 8(15) of the Value-Added Tax Act 89 of 1991.
03 Dec 2018	CSARS v Big G Restaurants	The main issue in this appeal, with leave of the court a quo, is whether the income which the taxpayer received from operating a franchise business included any amount received or accrued in terms of a franchise agreement, as envisaged in section 24C of the Act.
01 Nov 2018	TCIT 13988	This matter concerns a claim for an allowance in respect of future expenditure on contracts under section 24C of the Income Tax Act, as amended.
Rulings		
10 Jan 2019	BPR 315 – Future expenditure	This ruling determines the application of the definition of “future expenditure” in section 24C(1) to a precious metals purchase contract.
13 Dec 2018	BPR 314 – Venture capital company – investment in hotel development	This ruling determines the tax consequences of an investment in a new hotel development by a venture capital company.

04 Dec 2018	Draft BGR and Draft IN on no-value rule in respect of the rendering of transport services by any employer	Comments must be submitted to SARS by Monday, 21 January 2019.
Guides and Forms		
23 Jan 2019	Taxation in South Africa 2018	This is a general guide providing an overview of the most significant tax legislation administered in South Africa by the Commissioner for the South African Revenue Service.
18 Jan 2019	Guide to the urban development zone allowance (Issue 7)	This guide is a general guide about the urban development zone allowance provided for in section 13quat of the Income Tax Act 58 of 1962.
International Agreements		
11 Jan 2019	OECD, SARS and National Treasury continue partnership to strengthen tax co-operation	The Memorandum of Co-operation is in place until December 2023.
14 Dec 2018	Memorandum of Understanding on the exchange of financial account information by the Government of the State of Qatar	Memorandum of Understanding on the Exchange of Financial Account Information by the Government of the State of Qatar for the calendar year 2017.
10 Dec 2018	Memorandum of Understanding for Country-by-Country exchanges – Hong Kong	Memorandum of Understanding on the Exchange of Country-by-Country Reports with the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the fiscal years 2017 and 2018.
Interpretation Notes		
24 Jan 2019	IN 108 – Meaning of "bulk" in Schedule 2	This Note provides clarity on the interpretation and application of the word "bulk" as contained in Schedule 2 of the Mineral and Petroleum Resources Royalty Act, 2008.
17 Jan 2019	IN 93 (Issue 2) – The taxation of foreign dividends	This Note provides guidance on the interpretation and application of various provisions of the Act relating to foreign dividends.
11 Jan 2019	IN 95 (Issue 2) – Deduction for energy-efficiency savings	This Note provides guidance on the deduction for energy-efficiency savings under section 12L read with the Regulations.
20 Dec 2018	IN 107 – Deduction in respect of commercial buildings	This Note provides guidance on the interpretation and application of section 13quin, which provides for an allowance on any new and unused buildings or any new and unused improvements to any building, owned and wholly or mainly used by a taxpayer for purposes of producing income in the course of that taxpayer's trade.
20 Dec 2018	IN 106 – Deduction in respect of certain residential units	This Note provides guidance on the interpretation and application of section 13sex, which provides for an allowance on any new and unused residential unit or improvements to a residential unit used for the purpose of trade and an additional allowance on that residential unit if it qualifies as a low-cost residential unit.
National Treasury		
16 Jan 2019	Consultation paper on policy proposals for crypto assets	Comments must be submitted to the South African Reserve Bank by Friday, 15 February 2019.
20 Dec 2018	New Research on Profit Shifting and Corporate Tax Avoidance	A new SA-TIED research study estimates that South Africa loses about 7 billion ZAR a year due to profit shifting by multinational corporations, amounting to about 4% of total current corporate income tax receipts.
Other Publications		
25 Jan 2019	Tax Alert: Foreign-earned income	South African nationals working abroad: Imminent changes to the "foreign-earned income" exemption
21 Jan 2019	Tax Alert: Dutch "Most Favoured Nation" Clause: Dutch Supreme Court rules that zero rate applies	On Friday, 18 January 2019, the Dutch Supreme Court held that the Dutch MFN clause can indeed apply to effectively exempt from Dutch dividends tax dividends paid by a Dutch resident company to a South African resident.
09 Jan 2019	Tax Alert: Fixed non-compliance penalties on Corporate Income Tax returns implemented	Government Notice No. 1372, published in Government Gazette No. 42100, provides for the imposition of fixed-amount penalties in terms of sections 210 and 211 of the TAA in respect of corporate income tax returns.
04 Dec 2018	Legal Alert: Pre-Qualification criteria in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)	In the recent case of Imperial Group Limited v Airports Company South Africa SOC Limited and others [2018] 3 All SA 751 (GJ), the High Court ruled that organs of state active in areas regulated by the B-BBEE Codes do not have the power to impose pre-qualification criteria in respect of tenders unless empowered to do so by the B-BBEE Codes.

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