Synopsis

Tax today

January 2021

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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Another VAT hurdle

Background

On 18 December 2020, the Supreme Court of Appeal ('SCA') handed down its judgment in the matter of Consol Glass (Pty) Ltd v The Commissioner for the South African Revenue Service (1010/2019) [2020] ZASCA 175. The case concerned an appeal against additional VAT assessments raised by SARS against the appellant, Consol Glass (Pty) Ltd ('Consol'). The additional assessments disallowed input tax deductions by Consol relating to services provided by local vendors, and imposed VAT on imported services procured by Consol. Consol lodged an objection against the additional assessments, which was disallowed by SARS. After unsuccessfully appealing the additional assessments in the tax court, Consol appealed to the SCA.

The Consol group manufactures and sells glass containers. During April 2007, Consol acquired the businesses of Consol Limited and two of its subsidiaries as going concerns. This acquisition formed part of a reorganisation of the Consol group. After the acquisition, Consol commenced trading, continuing the glassmaking businesses previously conducted by the three companies.

Consol was able to make these acquisitions by securing debt funding in the form of issuing Eurobonds. The debt, as well as Consol's obligations to pay interest and redeem the bonds, was denominated in Euros. However, as Consol's revenue was Rand-based, it also entered into collateral hedging agreements to cover the risk of Rand volatility against the Euro.

The cost of servicing Consol's Euro debt, and securing hedge cover for its Euro exposure, became increasingly expensive over the period from 2007 to 2012 due to the volatility of the Rand and its depreciation against the Euro. As a result, Consol sought competitive funding in the South African market to replace the Eurobond debt and unwind its hedging positions. A consortium of banks provided some R5bn, which was used to redeem the Eurobonds and unwind the hedging instruments (hereinafter referred to as the 'refinancing transactions').

Consol procured services from local service providers, who advised on the arrangement and drafted agreements to put in place the refinancing transactions. Foreign service providers were also asked to advise on the early redemption of the Eurobonds and the unwinding of Consol's hedging positions.

Consol deducted input tax on the local costs incurred and did not declare VAT on imported services for the foreign costs incurred.

Issue

The definition of 'input tax' in section 1(1) requires that goods or services be acquired *'for the purpose of consumption, use or supply in the course of making taxable supplies'*. If the services were acquired for any other purpose, the definition of 'input tax' would not be met, and Consol would not be entitled to the input tax deduction.

The definition of 'imported services' in section 1(1) contains a similar test however the requirement in this instance is whether the services are 'utilised or consumed in the Republic otherwise than for the purpose of making taxable supplies'. An obligation to declare VAT arises only to the extent that such imported services are used for purposes other than making taxable supplies.

It was therefore of vital importance for the SCA to determine the purpose of the services being acquired by Consol, and specifically whether such services were acquired for the purposes of making taxable supplies, or for other purposes.

Arguments

SARS's view

The Commissioner submitted that both the local and foreign services were acquired to make an exempt supply in the form of financial services. The Commissioner was of the view that in securing the loans from the consortium of banks, Consol was issuing a debt security, which constitutes 'financial services' falling under section 2(1)(c). The provision of financial services is exempt from VAT under section 12.

In SARS's view, Consol was not entitled to deduct input tax for the VAT incurred on the cost of the local services on the basis that such costs were incurred in the course of making exempt supplies. Similarly, in SARS's view, the foreign services met the definition of 'imported services' and Consol had an obligation to declare VAT thereon.

Consol's view

The grounds of appeal put forward by Consol was that the Eurobonds were initially used to acquire assets which enabled Consol to manufacture and sell glass containers and thus make taxable supplies. The refinancing transactions substituted the foreign debt with local debt and permitted Consol to continue the same business it had acquired in 2007 – i.e. the making of taxable supplies through the manufacture and sale of glass containers – and therefore it had been correct in deducting input tax, and not declaring VAT on imported services.

Judgment

The SCA dismissed the Commissioner's argument that the costs were incurred by Consol in the course of making exempt supplies. The SCA concluded that the enterprise carried on by Consol was the manufacture and sale of glass containers and neither the original issuance of Eurobonds nor the subsequent loans secured locally could be seen as transforming Consol's enterprise into that of one supplying exempt financial services. Under these circumstances Consol was the borrower and the recipient of financial services, and not the lender and the supplier thereof.

Despite the SCA's dismissal of the Commissioner's argument regarding the supply of financial services, it was still necessary to consider whether the services were acquired in the course of making taxable supplies. In doing so, the court considered whether a functional link existed between the original issue of the Eurobonds and subsequent local financing, and the making of taxable supplies.

Consol's appeal rested on the premise that the Eurobonds were used in 2007 to acquire the businesses from Consol Limited in order to make taxable supplies. The SCA however found that this acquisition did not make any material change to the operating businesses acquired by Consol, that is, the reorganisation of the Consol group was of no consequence to the enterprise carried on by these businesses as it continued the business of manufacturing and selling glass containers both before and after the reorganisation.

It further stated that the refinancing was intended to place Consol in a position to continue to fund the original reorganisation, but at a lesser cost. What the savings achieved by Consol permitted it to do then was a matter of effect rather than purpose, something that was beyond the remit of the case.

The SCA found that Consol's premise did not hold, and that there was no functional link between the issue of the Eurobonds and the making of taxable supplies. As a consequence, there was also no functional link between the costs incurred to affect the refinancing agreement and the making of taxable supplies.

The SCA dismissed Consol's appeal with costs.

The takeaway

The VAT Act provides limited guidance on how close a relationship there needs to be between costs incurred and the making of taxable supplies, for the costs to be considered incurred 'in the course of making taxable supplies'. The court has cautioned against taking a very restrictive interpretation in this regard, as such interpretation could disregard the diversity and complexity of a modern economy.

The SCA's judgment, in our view, confirmed the principles established in the De Beers case,[1] where the court determined that there should be a causal link between expenses incurred and the enterprise's taxable activities for the expense to qualify for an input tax deduction.

Bearing in mind the aforementioned, it is important to note that businesses, even if only making taxable supplies, cannot assume that all their expenses will qualify for input tax deductions. It is therefore critical that all costs incurred should be analysed on their own merits, and should the costs incurred not have a functional link to the activities a business conducts in making the taxable supplies, they will not qualify for an input tax deduction. The same principles need to be applied when considering whether a person has a liability to declare VAT on imported services: that is, if there is no functional link between the foreign service costs and the person's taxable supplies, a VAT liability for imported services will arise.

We must caution that this judgment does not imply that the VAT incurred on all financing transactions is not deductible or, with regard to foreign services, will always result in a liability to pay VAT on imported services. The SCA was very clear that where the financing was wholly or partly for the acquisition of goods or services for the purposes of making taxable supplies, such would have a functional link to the making of taxable supplies. In such circumstances, input tax would be wholly or partly deductible.

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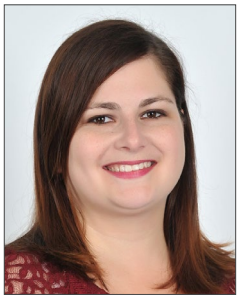

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1 Commissioner for South African Revenue Services v De Beers Consolidated Mines Ltd (503/11) [2012] ZASCA 103; 2012 (5) SA 344 (SCA); [2012] 3 All SA 367 (SCA)

The influence of transfer pricing adjustments on value for customs purposes

Where an importer has been issued with both credit and debit note(s) during the same period, a consideration must, at year-end, be made to both credit and debit notes issued during that year (when the net total of all upward and downward transfer pricing adjustments occurring in a fiscal period is identified).

> '… The aim of both Customs valuation and transfer pricing methodologies is very similar: whereas Customs are establishing whether or not a price has been "influenced" by the relationship between the parties, the tax objective is to seek an "arm's length price". Each is ensuring that the price is set as if the parties were not related and had been negotiated under normal business conditions …' [Chapter 4 of the WCO Guide to Customs Valuation and Transfer Pricing, (New Edition 2018)]

We set out below a comprehensive discussion relating to the influence of transfer pricing adjustments on value for customs purposes and the treatment of both credit and debit note(s) issued during the same financial year.

Debit and/or credit notes

An importer is obliged to notify the South African Revenue Service ('SARS') of any debit and/or credit note issued in relation to an import transaction. In this regard, the importer should inform SARS within a period of one month from the date of the issue of the relevant credit and/or debit note. This includes debit and credit notes applicable in respect of Transfer Pricing Adjustments ('TP Adjustments') made in respect of a financial year (Section 41(4)(b), read with section 41(4)(a) of the Customs and Excise Act, 1964 (Act No. 91 of 1964) ('the Customs Act')).

Transfer pricing and transfer pricing adjustments

The Organisation for Economic Co-operation and Development (OECD) Transfer Pricing (TP) Guidelines ('the guidelines'), which provide guidance for multinational corporations and tax administrations regarding the practical application of the arm's-length principle, are the most influential source on transfer pricing.

According to the guidelines, where the price or profit margin used in a controlled transaction falls within the arm's-length range (see illustration below), no TP adjustment will generally be made. However, where the price or profit margin falls outside of the arm's-length range, an appropriate point within the range will need to be selected.

Most companies use profit margins to control their transactions to ensure that they fall within a tested arm's-length range. This means that, if actual results are not in line with the established (agreed) targeted arm's-length operating profit (as established based on independent benchmarking studies), the results can be adjusted by means of allowances or debit notes, whichever apply. Thus, if:

- the actual profit earned by an importer falls within the range of profits earned by comparable independent companies, no price adjustment is required; or
- the actual profit earned by an importer exceeds the upper end of the arm's-length range, the importer normally pays the difference between the actual operating income and the operating income equal to the median of the arm's-length range; or
- the lower end of the arm's-length range exceeds the actual profit earned by the importer, the importer normally receives the difference between the actual operating income and the operating income equal to the median of the arm's length range.

The issuance of debit and/or credit notes (whether for interim or year-end TP adjustments) is normally dependent on the operating income of the local entity (the importer) as follows:

- If the operating income falls within the tested range, no debit or credit will be issued; or

- If the operating profit falls outside of the tested range, a debit or credit note is required to bring the operating profit within the tested range.

It therefore follows that debit and credit notes are issued to ensure the operating profit is within the agreed range. In many instances, in order to control the operating profit during a financial year, interim adjustments are also considered. Interim adjustments are normally issued during a financial year to keep the operating profit within the required range. However, it is the final (year-end) TP adjustment that will ensure that the operating profit for the financial year is within the required range (i.e. at arm's length).

This means that debit and credit notes issued during the year (interim adjustments) will also be taken into account to establish the value of the final adjustment to be issued at year-end.

Customs valuation

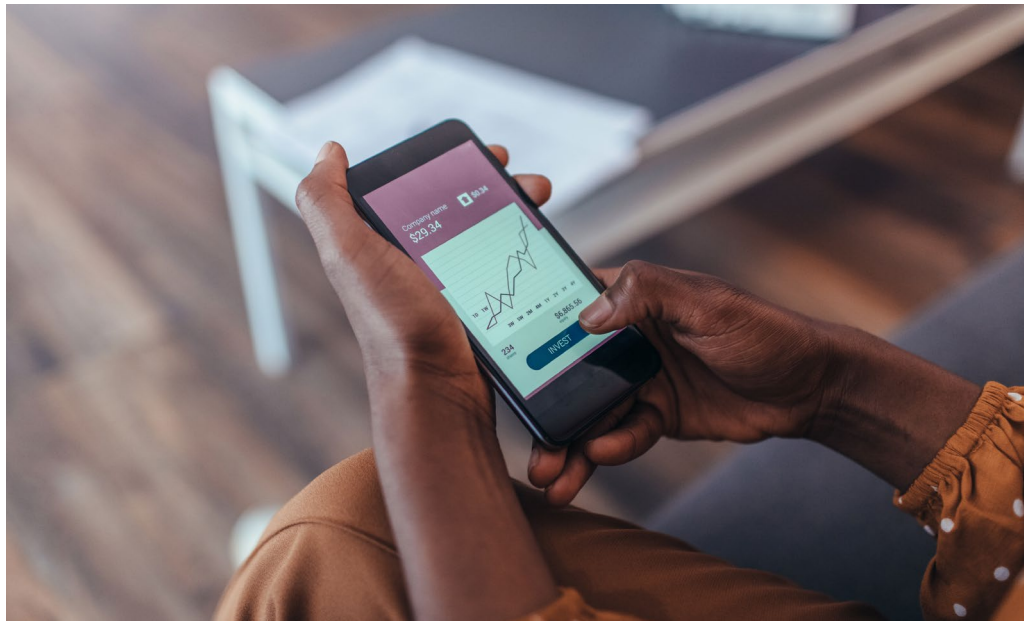
Where the TP adjustment is initiated by the taxpayer (in relation to goods imported), an adjustment is recorded in the accounts of the taxpayer, and a debit or credit note issued, this could (depending on the nature of the adjustment) be considered to have an impact on the total price actually paid or payable for the imported goods for customs valuation purposes.

In this regard, where such an adjustment takes place after importation of the goods (i.e. it is recorded in the accounts of the taxpayer and a debit or credit note is issued after customs clearance of the goods), the relevant customs authority may consider that the customs value is to be determined on the basis of the adjusted price (applying the principles established in Commentary 4.1 – Price Review Clauses [adopted as an Instrument of the Customs Valuation Technical Committee under the World Customs Organisation (WCO), 3rd Session, 23 March 1982, 28.560]).

Clause 5 of the Commentary 4.1 – Price Review Clauses states the following:

> 'The transaction value of imported goods, defined in Article 1 of the Agreement, is based on the price actually paid or payable for the goods. In the Interpretative Note to that Article, the price actually paid or payable is the total payment made or to be made by the buyer to the seller for the imported goods.
>
> Hence, in contracts containing a price review clause, the transaction value of the imported goods must be based on the total final price paid or payable in accordance with the contractual stipulations.
>
> Since the price actually payable for the imported goods can be established on the basis of data specified in the contract, price review clauses of the type described in this commentary should not be regarded as constituting a condition or consideration for which a value cannot be determined (see Article 1.1 (b) of the Agreement).'

Consequently, for the purposes of establishing the final price actually paid or payable (as per Article 1 of the GATT Agreement), interim debit and credit notes issued during the financial year must also be taken into account when establishing the final year-end TP adjustment. This means the actual customs value of imported goods imported during the financial year can only be determined after the final TP adjustment is made at year-end.



Therefore, a final year-end TP adjustment (together with the original invoiced price) represents the transaction value (i.e., the total price actually paid or payable for the goods being valued) (Section 65 and 66 of the Customs Act). This means that interim TP adjustments made during the financial year cannot be considered to be the full and final price paid or payable for the goods imported.

A brief discussion of practices in other jurisdictions (i.e. (a) Canada, the customs authority being the Canada Border Services Agency ('CBSA') and the United States of America (USA), the customs authority being the United States Customs and Border Protection ('CBP') is instructive.

Provided that a transfer pricing policy is in place, the CBSA and the CBP refer to the original import value (i.e., invoiced price) as the correct value for customs purposes. In this regard, the CBSA refers to the original value as the 'uninfluenced price paid or payable for imported goods'.

As is the case in South Africa, payments made to the vendor and/or adjustments to the price after importation must be declared to the CBSA. However, actual corrections to the declared value for duty purposes must be submitted to the CBSA when the net total of all upward and downward TP adjustments occurring in a fiscal period is identified.

In light of the above, it is clear that the CBSA requires the importer to declare interim payments/adjustments during the financial year. However, corrections to the value for customs purposes must

be made when the final adjustment is known (identified). This means that the CBSA requires corrections to the value for customs purposes as soon as the correct transaction value is known (i.e. when the total price actually paid or payable for the imported goods can be established).

In Internal Advice HQ W548314 (published in Customs Bulletin and Decisions, Vol. 46, No. 23), the CBP detailed its position as follows:

> 'Based on the above referenced factors, in this case the Importer's transfer pricing policy may be considered a formula in place prior to importation for purposes of determining the price within the meaning of 19 CFR §152.103(a)(1).
>
> Therefore, all adjustments to the price pursuant to the Importer's transfer pricing policy, which were reported to CBP, shall be taken into account in determining transaction value. Lastly, we find that the related party prices are settled in a manner consistent with the way the seller settles prices in sales to unrelated buyers …'

In this regard, it is noted that taxpayer's overall performance can be accurately established only at year-end and in turn will yield the correct transaction value for customs valuation purposes.

The takeaway

It is therefore noteworthy that where the importer has been issued with both credit and debit note(s) during the same period, a consideration must be made to both credit and debit notes issued during the year (at the year-end) when the net total of all upward and downward TP adjustments occurring in a fiscal period is identified. This will enable the importer to establish the 'net total payment' actually made or to be made by the buyer to the seller for the imported goods. If the credit notes are not taken into consideration, this will result in the incorrect determination of the transaction value, which, in turn, will mean that the customs value will be incorrect (i.e. the customs value will not be represented by the total price actually paid or payable in terms of sections 65 and 66 of the Customs Act).

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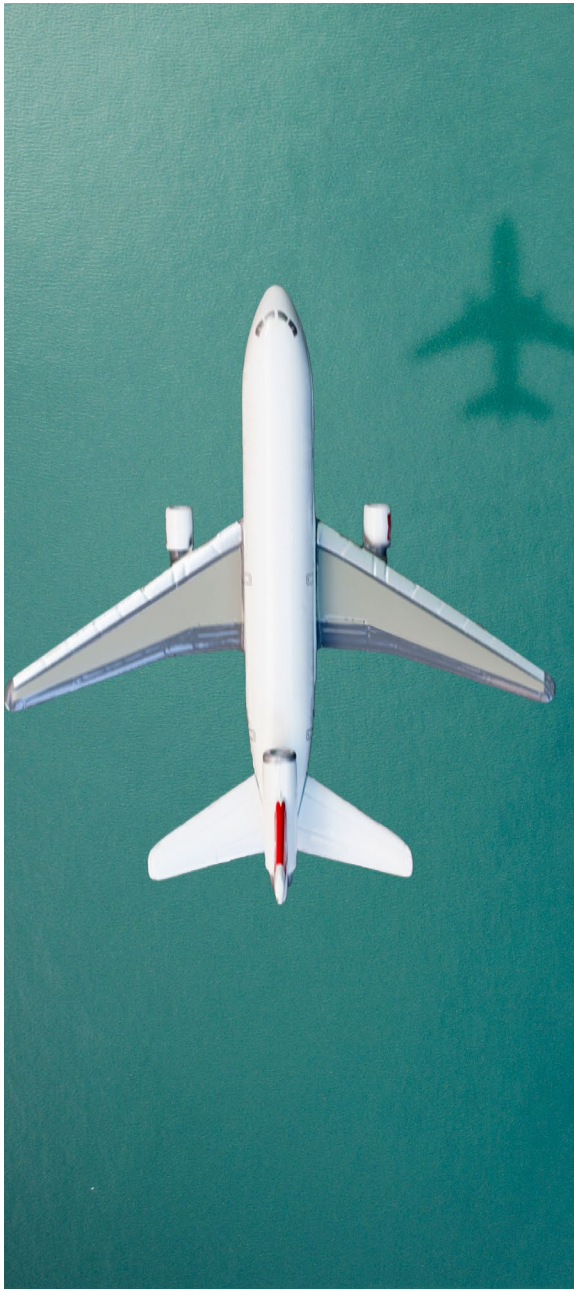

SARS Watch

SARS Watch 1 December 2021 – 31 January 2021

Legislation		
29 January 2021	Extension of submission on the SARS eFiling platform of income tax returns relating to provisional taxpayers for the 2020 tax year to 15 February 2021	Public notice 58 published in Government Gazette 44119 with an implementation date of 29 January 2021 extending the date for submission of returns by provisional taxpayers is extended to 15 February 2021.
29 January 2021	Part 3 of Schedule No. 6 by the substitution of Note 6(a)(xii) to provide for the refund of fuel levy as a consequence to the publication of the Taxation Laws Amendment Act 2020	Notice R53 published in Government Gazette No. 44107 with retrospective effect from 20 January 2021.
29 January 2021	Schedule 8 by the substitution of item 805.26 to extend the validity period of carbon tax manufacturing warehouse licences	Notice R52 published in Government Gazette No. 44107 with retrospective effect from 1 June 2019.
28 January 2021	Draft Excise form – DA 180 – carbon tax account (front page and completion notes)	Comments must be submitted to SARS by Friday, 18 February 2021.
22 January 2021	Correction Notice – By the substitution of the reference to Note 3(a)(i) with Note 6(a)(i), where it appears in Notice No. R. 1404 of Government Gazette No. 44029 on 24 December 2020 in Note 8 to item 620.24	Notice No. R36 of Government Gazette No. 44029 with an implementation date of 22 January 2021.
22 January 2021	Amendment to insert Part E in the Schedule to the General Notes, to implement the Rules of Origin contained in Protocol 1 to the EPA between the SACU Member States and Mozambique (SACU-M), of the one part, and the UK and Ireland on the other part	Notice R33 published in Government Gazette No. 44090 with retrospective effect from 1 January 2021.
22 January 2021	Amendment to insert Part 1C to Schedule No. 10, to give effect to the implementation of the EPA between the SACU Member States and Mozambique (SACU-M), of the one part, and the UK and Ireland on the other part	Notice R32 published in Government Gazette No. 44090 with retrospective effect from 1 January 2021.
22 January 2021	Part 1 of Schedule No. 3, by the substitution of rebate item 306.02/5208.21/01.06, in order to increase the extent of rebate from full duty less 11% to full duty – ITAC Report 628	Notice No. R.31 of Government Gazette No. 44090 with an implementation date of 22 January 2021.
22 January 2021	Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2020	This Explanatory Memorandum relates to Act No. 24 of 2020.
22 January 2021	Explanatory Memorandum on the Taxation Laws Amendment Bill, 2020	This Explanatory Memorandum relates to Act No. 23 of 2020.
22 January 2021	Final Response Document on the 2020 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020 Draft Taxation Laws Amendment Bill, 2020 Draft Tax Administration Laws Amendment Bill	National Treasury and SARS's responses to the draft tax legislation amendments presented to the Standing Committee of Finance.
20 January 2021	Tax Administration Laws Amendment Act 24 of 2020	Tax Administration Laws Amendment Act 24 of 2020 published in Government Gazette No. 44082 promulgated on Wednesday, 20 January 2021.
20 January 2021	Taxation Laws Amendment Act 23 of 2020	Tax Laws Amendment Act 23 of 2020 published in Government Gazette No. 44082 promulgated on Wednesday, 20 January 2021.
20 January 2021	Rates and Monetary Amounts and Amendment of Revenue Laws Act 22 of 2020	Rates and Monetary Amounts Amendment Act 22 of 2020 published in Government Gazette No. 44082 promulgated on Wednesday, 20 January 2021.
8 January 2021	Amendment to Part 2 of Schedule No. 4, by the insertion of various items under rebate item 460.15, in order to create a rebate provision on Aluminium plates, sheets or strips – ITAC Report No. 622	Tariff amendment notice R6 published in Government Gazette 44058, with retrospective effect from 31 December 2020.
31 December 2020	Amendment to the General Notes to Schedule No. 1, to give effect to the implementation of the agreement to establish the African Continental Free Trade Area (AfCFTA)	Notice R1429 published in Government Gazette No. 44049 with effect from 1 January 2021.
31 December 2020	Amendment to insert Part F in the Schedule to the General Notes to implement the Rules of Origin contained in Annex II to the African Continental Free Trade Area (AfCFTA)	Notice R1431 published in Government Gazette No. 44049 with effect from 1 January 2021.

31 December 2020	Amendment to Part 1 of Schedule No. 1, by the insertion of the AfCFTA column, in order to give effect to the implementation of the agreement to establish the African Continental Free Trade Area (AfCFTA)	Notice R1434 published in Government Gazette No. 44049 with effect from 1 January 2021.
31 December 2020	Amendment to insert Part 8 to Schedule No. 10 to give effect to the implementation of the agreement to establish the African Continental Free Trade Area (AfCFTA)	Notice R1433 published in Government Gazette No. 44049 with effect from 1 January 2021.
31 December 2020	Amendment to Part 1 of Schedule No. 1, by the substitution of various tariff subheadings under tariff heading 76.06 and 76.07, to increase the rate of customs duty on aluminium rolled sheets, plates, strips, can stock and foil products from free of duty to 15% – ITAC Report 622	Notice R1428 published in Government Gazette No. 44049 with an implementation date of 31 December 2020.
24 December 2020	Amendment to the General Notes in the General Notes to Schedule No. 1, to give effect to the implementation of the EPA between the SACU Member States and Mozambique (SACU-M), of the one part, and the UK and Ireland on the other part	Notice R1407 published in Government Gazette No. 44029 with effect from 1 January 2021.
24 December 2020	Amendment to Part 4 of Schedule No. 6 by the insertion of Note 5 in order to administer refunds of environmental levy on tyres by qualifying persons having the necessary documentary evidence that the tyres have been sold to them by the manufacturer of tyres	Notice R1400 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
24 December 2020	Amendment to Part 1 of Schedule 4, by the insertion of rebate item 413.00, in order to make provision for ship or aircraft stores consumed in the Republic	Notice R1402 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
24 December 2020	Amendment to Part 3 of Schedule 2, by the substitution of safeguard item 260.03/7318.15.39/01.08, to include Thailand in the list of countries liable to payment of safeguard duties – Minute M11/2019	Notice R1403 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
24 December 2020	Amendment to Part 1B of Schedule 6, by the insertion of various notes, to provide for destruction of alcoholic beverages that have become off-specification, contaminated or have undergone post-manufacturing deterioration to be destroyed at premises other than the customs and excise manufacturing warehouse or SVM	Notice R1410 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
24 December 2020	Amendment to Part 1C of Schedule 6, by the insertion of various notes, to provide for destruction of alcoholic beverages that have become off-specification, contaminated or have undergone post-manufacturing deterioration to be destroyed at premises other than the customs and excise manufacturing warehouse or SVM	Notice R1404 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
24 December 2020	Amendment to Part 1 of Schedule No. 1, to provide for technical amendments by the insertion of new 8-digit tariff subheadings for Chapters 11 and 30	Notice R1405 published in Government Gazette No. 44029 with effect from 1 January 2021.
24 December 2020	Amendment to Part 1 of Schedule No. 1, to give effect to various technical amendments in terms of Chapters 44, 72 and 94	Notice R1409 published in Government Gazette No. 44029 with effect from 1 January 2021.
24 December 2020	Amendment to Part 2 of Schedule No. 4, to increase the annual rate quota for bone-in cuts of the species Gallus Domesticus, frozen and imported from or originating in the United States of America (USA) – Minute M06/2020	Notice R1406 published in Government Gazette No. 44029 with retrospective effect from 1 April 2020.
24 December 2020	Amendment to Part 1 of Schedule No. 1, by the insertion of tariff subheadings 3208.20.20, 3906.90.30 and 3906.90.40, in order to increase the rate of customs duty on acrylic resins from 10% and free to 15% – ITAC Report No. 600	Notice R1408 published in Government Gazette No. 44029 with an implementation date of 24 December 2020.
18 December 2020	Correction Notice – By the substitution of the article description where it appears in Notice No. R. 1222 of Government Gazette No. 43901 on 13 November 2020	Correction notice R1371 published in Government Gazette 44011 of 18 December 2020 up to and including 31 May 2021.
18 December 2020	Amendment to Part 1 of Schedule No. 1, to implement the 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	Tariff amendment notice R1366, as published in Government Gazette 44005 with an implementation date of 1 January 2021.
17 December 2020	Draft Schedule amendment (Value-Added Tax Act)	Comments must be submitted to SARS by Friday 15 January 2021.
4 December 2020	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 table has been updated to reflect the average exchange rates as at 30 November 2020.
4 December 20200	Table A: A list of the average exchange rates of selected currencies for a year of assessment as from December 2003	The table has been updated to reflect the average exchange rates as at 30 November 2020.
4 December 2020	Draft rule amendment under section 120 – Insertion of rules relating to sealing of goods	The due date for comments has being extended to 5 February 2021 (previously the due date was Friday, 22 January 2021).

Case law

In accordance to date of judgment

12 January 2021	Mobile Telephone Networks (Pty) Limited v CSARS (79960/2019) [2021] ZAGPPHC	Mobile Telephone Networks (MTN) brought a declaratory order requesting the high court to determine the correct application of section 10 of the VAT Act on the supply of multi-purpose airtime vouchers.
6 January 2021	SARSTC IT 14305	Whether the appellant's application to separate issues under Rule 33(4) should be allowed.
18 December 2020	Consol Glass (Pty) Ltd v CSARS (1010/2019) [2020] ZASCA 175	Whether Consol was entitled to deduct as input tax the VAT paid on the services supplied to it by local service providers depended upon whether these services were acquired by Consol for the purpose of consumption, use or supply in the course of making taxable supplies; whether Consol was obliged to pay VAT on the services supplied to it by the service providers who carried on their business outside of South Africa.
15 December 2020	Public Protector v CSARS and Others (CCT63/20) [2020] ZACC 28	Whether the Public Protector is authorised to subpoena taxpayer information under section 7(4) of the Public Protector Act 23 of 1994, whether the Commissioner for the South African Revenue Service may withhold such information under section 11(3) of the Public Protector Act read with section 69(1) of the Tax Administration Act 28 of 2011 and whether an order that the Public Protector must pay de bonis propriis (in her personal capacity) 15% of the costs of the Commissioner ought to stand.
11 December 2020	SARSTC 24863	Whether certain Kruger coins should be valued under section 5(1) of the Estate Duty Act.
11 December 2020	SARSTC VAT 1715	Whether the appellant was liable for output tax in respect of commissions on airline tickets.
9 December 2020	SARSTC 14184 (IT) 14186 (PAYE) 1544 (VAT)	Whether the appellant was liable for understatement penalty (USP).
4 December 2020	CSARS v Zikhulise Cleaning Maintenance and Transport CC (14886/2016), Mpisane v Zikhulise Cleaning Maintenance and Transport CC and Another (181010/2016) [2020] ZAGPPHC (4 December 2020)	Whether leave to appeal the judgment of Colllis J (14 October 2020) should be granted.
25 November 2020	SARSTC 24674	An appeal by the taxpayer against a decision of CSARS to impose understatement penalties of 15% on the grounds of 'no reasonable grounds for tax position taken'.
12 November 2020	SARSTC IT 24502; IT 24503	Whether the appellants' application to strike out and dismiss the respondent's Rule 31 Statement should be allowed.
5 November 2020	Rappa Resources (Pty) Ltd v CSARS (20/18875) [2020] ZAGPPHC (5 November 2020)	The applicants ('Rappa') approached the court on an urgent basis for an ostensibly interim order that the respondent ('SARS') make payment of VAT refunds which SARS has withheld, pending a review of SARS's decision to withhold payment of those VAT refunds.
27 October 2020	SARSTC 13230	Whether the respondent was correct to include in the appellant's gross income certain foreign income amounts.
20 October 2020	SARSTC 0035/2018	Whether the appellant, by way of a Rule 56 application, was entitled to judgment against the respondent.
1 September 2020	SARSTC 0085/2019	Whether the appellant was entitled to the relief it sought in terms of filing a late objection.
31 August 2020	SARSTC 14302	Whether the appellant was entitled to the relief sought under a Rule 56 application wherein it sought to compel the respondent to discover certain documents.
3 June 2020	SARSTC 0034/2019	Whether the appellant was entitled to the relief sought under a Rule 56 application wherein it argued that SARS failed to comply with a court order
1 June 2020	SARSTC 0037/2019	Whether the appellant was entitled to the relief it sought in terms of a Rule 52 application.
27 May 2020	SARSTC 24720	Whether an alteration of an assessment is competent.

Interpretation notes

8 December 2020	Draft Interpretation Note 91 (Issue 2) – Concession or compromise of a debt	Comments must be submitted to SARS by Friday, 5 February 2020.
8 December 2020	IN 68 (Issue 3) – Provisions of the Tax Administration Act, 2011, that did not commence on 1 October 2012 under Proclamation No. 51 (GG 35687)	This Note identifies those interest provisions that have come into operation and those that have not yet come into operation.

Guides and forms

25 January 2021	How to download the new SARS eFiling Browser – External Guide	The purpose of this guide is to assist taxpayers and traders to easily download the new SARS eFiling Browser in order to successfully view, complete and submit SARS forms that have not been migrated to Hyper Text Markup Language (HTML5) on eFiling.
25 January 2021	Return and Submission of HTML5 forms via eFiling – External Manual	This manual is an interim measure to assist Excise clients in submitting their accounts/returns via eFiling using the new EXD forms, which are in HTML format.
20 January 2021	IT3 Data Submission v3.0.0-32	This BRS is applicable for the data submission period starting 1 March 2021 and onwards.
20 January 2021	IT3 Data Submission v2.0.3-27	For the annual submissions period with the reporting due date 31 May 2021 the current version of the BRS is applicable which is (v2.0.3-27).
20 January 2021	Duty Exemption on Ships' Stores Consumed in the Republic	This guide has been prepared to clarify the circumstances in which duty relief is granted on ships' stores consumed in the Republic.
12 January 2021	African Continental Free Trade Agreement External Stakeholders Engagement	This presentation sets out the steps that SARS has taken to implement the African Continental Free Trade Agreement (AfCFTA).
15 December 2020	The SARS Online Query System	The purpose of this document is to assist taxpayers to understand how to raise queries with SARS on the SARS Online Query System (SOQS) so that they don't have to go to a branch.
15 December 2020	African Continental Free Trade Area (AfCFTA) Implementation FAQs	This document addresses general questions asked regarding AfCFTA.
11 December 2020	PAYE BRS Employer Reconciliation version 19.5	This document specifies the requirements for the generation of an import tax file for the yearly as well as the interim submission.
11 December 2020	VAT 409 – Guide for Fixed Property and Construction for Vendors	This guide is a general guide concerning the application of the VAT Act in connection with fixed property and construction transactions in South Africa.
7 December 2020	Declaration of Dividends Tax via eFiling	The DTR02 form has been converted from Adobe Flex to HTML5 format for better user experience and compatibility and the Guide has been updated to assist with users using the new format.
2 December 2020	External BRS on the OECD CbC Reporting V 2.7.5	CbC reporting requires MNE Groups to report on their operations in every country that they operate in enabling governments to investigate irregular activities, monitor and eradicate corrupt practices and ensure that MNEs satisfy their tax obligations and pay taxes that are legally owed by them in the countries that they operate in.

Other publications

29 January 2021	Tax Alert: Loop structures: Tax and Exchange Control developments	This Alert provides an overview of the SARB Circular: South African resident individuals and companies – loop structures, effecting the Exchange Control Rules.
21 January 2021	OECD: Updated guidance on tax treaties and the impact of the COVID-19 crisis	This guidance represents the Secretariat's views on the interpretation of the provisions of tax treaties (i.e. each jurisdiction may adopt its own guidance to provide tax certainty to taxpayers).
16 December 2020	OECD: Public comments received on the Reports on Pillar One and Pillar Two Blueprints	The OECD has published the public responses received from Stakeholders on Pillar One and Two.
14 December 2020	OECD: Toolkit for Establishing and Running an Effective Exchange of Information Function	The toolkit is aimed at assisting countries in establishing or improving their exchange of information (EOI) units' operation. It underlines policy considerations and provides guidance on setting up and managing an effective EOI function in order to improve cooperation among tax administrations and better tackle tax evasion.
14 December 2020	Tax Alert – COVID-19: the impact of the pandemic on transfer pricing	While we await guidance to be issued by the OECD's Working Party No. 6 on the transfer pricing implications of the COVID-19 pandemic, this Alert highlights the transfer pricing considerations that should be top of mind for multinational corporations in the context of a potential global recession induced by the pandemic.
9 December 2020	OECD: Peer Review of the Automatic Exchange of Financial Account Information	This report presents the conclusions of the peer reviews of the legal frameworks put in place by each jurisdiction to implement the AEOI standard. The results relate to the 100 jurisdictions that committed to commence AEOI from 2017 or 2018.
1 December 2020	OECD: Confidentiality and Information Security Management Toolkit	The toolkit is designed to ensure more developing countries can benefit from the Automatic Exchange of Financial Account Information.