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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What is meant by “a part or amount of a disputed assessment not objected to” in Rule 32(3) of the Tax Court Rules?

The rules prescribed for the resolution of disputes and the conduct of appeals under section 103 of the Tax Administration Act were repealed and replaced in 2014. Under Rule 32, a taxpayer may not include in the statement of grounds of appeal “a new ground of objection against a part or amount of a disputed assessment not objected to [in the notice of objection] under Rule 7.”

In Tax Court Case IT 45710, the Tax Court in the Western Cape was faced with interpreting and applying this aspect of Rule 32(3).

Facts

In the 2018 year of assessment, the taxpayer reflected an amount in its annual financial statements as an expense. The amount in question was the share of profit to which a partner in a partnership venture with the taxpayer (a connected person in relation to the taxpayer) was entitled. It is evident, though not expressly recorded in the judgment, that the income and expenditure of the partnership had been reported in the income statement as part of the operating net income and that the share of the partner had been accounted for by reducing the net income. In this way the net income of the taxpayer reflected only its stand-alone income and its share of the partnership profit.

When the taxpayer submitted its return of income for the year of assessment, it made no adjustment to the income disclosed in the income statement in respect of the share of the partnership net income to which the other partner was entitled. The South African Revenue Service (“SARS”), following an audit, included in taxable income the amount of partnership profit that was attributable to the partner and certain other amounts.

The taxpayer filed an objection against the inclusion of the amount in taxable income. The judgment records at paragraph [18]:

> “The objection was to the effect that the Commissioner had erred in adding back the disputed amount, because such disputed amount met the requirements of the General Deduction Formula (i.e., section 11(a) read with section 23(g) of the ITA) and therefore qualified as a valid deduction from the applicant's taxable income (‘the deduction ground’).”

SARS allowed the objection in respect of the other amounts assessed to normal tax but disallowed the objection in respect of the partnership profit amount. The taxpayer then proceeded on appeal to the Tax Court.

In the statement of grounds of objection in terms of Rule 32, the taxpayer added a further ground of objection, namely that the amount that had been included in gross income was not its gross income (because it was neither a receipt by nor an accrual to the taxpayer on its own behalf or for its own benefit); rather, in simple terms, it belonged to the partner.

SARS challenged the new ground on the basis that it constituted a new ground of objection against a part or amount of a disputed assessment not objected to under Rule 7. As such, SARS asserted that the new ground was prohibited in terms of Rule 32(3).

Submissions made by the taxpayer

The taxpayer submitted that Rule 32(3) permitted a new ground of objection in this instance. It contended that the objection was to the inclusion in taxable income of an amount of R11 million and that it was irrelevant whether the basis for the objection was that an amount should have been allowed as a deduction or that the amount was not part of the gross income of the taxpayer. Put differently, the taxpayer asserted that the premise of both the new ground (relating to the receipt/accrual) and the old ground (relating to the deduction) is that the disputed amount should not have been included in the applicant's taxable income.

Further, the taxpayer contended that Rule 33(2) caters for the Commissioner to set out a clear and concise reply to any new grounds, material facts or applicable law in the Rule 32(3) statement filed by the taxpayer. Thus Rule 33(2) clearly countenances “new grounds” being included in a rule 32 statement.

Submissions made by SARS

SARS raised three issues:

1. The taxpayer initially challenged the disallowance of a deduction from its income in its Rule 7 grounds of objection and was now challenging the amount of the gross income assessed. The fundamental criteria/tests for purposes of these arguments are two distinct processes. A determination of whether an amount constitutes a valid deduction under sections 11(a) and 23(g) of the Income Tax Act, No. 58 of 1962 (‘Income Tax Act”) is founded on establishing whether the amount was expended in the production of income for the purposes of trade. A determination of a taxpayer’s gross income is founded on establishing the amounts in cash or otherwise that had been received by or had accrued to such taxpayer for the benefit of that taxpayer in the relevant tax period, excluding amounts that were capital in nature.
2. The taxpayer objected to a globular amount and not to the amount of gross income included in the assessment in its Rule 7 grounds of objection.
3. Despite the fact that the quantum involved in both grounds was the same, it did not follow that the new ground reflected an amount or part of the disputed assessment.

The judgment

The judgment reviewed the history of the relevant rule from its earliest iteration in the Income Tax Act up until the promulgation of the current rules in 2014. In this review it was apparent that the courts considered that, in applying rules prohibiting the introduction of new grounds of appeal, the Appellate Division (as it then was) had suggested, as early as 1987, in relation to the relevant provisions then in the Income Tax Act that:

> “It is naturally important that the provisions of s 83(7)(b) be adhered to, for otherwise the Commissioner may be prejudiced by an appellant shifting the grounds of his objection to the assessment in issue. At the same time, I do not think that in interpreting and applying s 83(7)(b) the court should be unduly technical or rigid in its approach. It should look at the substance of the objection and the issue as to whether it covers the point which the appellant wishes to advance on appeal must be adjudged on the particular facts of the case.”[1]

Subsequently, the review records that the Tax Court in a matter heard in 2010 had considered that the introduction of new grounds of assessment by the Commissioner did not unduly burden the taxpayer and stated that both the taxpayer and the Commissioner will be entitled to add additional grounds and additional defences in their statements that they would be required to file under the rules as then promulgated. The Court in that matter went as far as to indicate that “it cuts both ways”[2], suggesting that what was permissible for the Commissioner should also be permissible for the taxpayer.

1 Matla Coal Ltd v Commissioner for Inland Revenue 1987 (1) SA 108 (A).
2 ITC 1843 73 SATC 229.

The case of *HR Computek (Pty) Ltd v CSARS*[3] was also cited. Here the taxpayer had objected against the imposition of a penalty and interest in respect of an amount of additional tax assessed. On appeal, the taxpayer sought to add a new ground of appeal challenging the amount of the additional tax assessed by SARS. This was rightly rejected by the SCA. The taxpayer had not objected to the amount of additional tax in its original grounds of objection and was precluded at the appeal stage from bringing a new ground that related to the additional tax assessed. Without doubt, the additional tax was an amount or part of the disputed assessment not objected to.

The kernel of the issue, *in casu*, was whether the new ground related to "a part or amount of the disputed assessment not objected to under rule 7". Van Zyl AJ discussed at length ITC 1912[4], which held that the introduction of a new ground of appeal was not outlawed in Rule 32(3). The Court, in that matter, had concluded that:

> "The fact that the taxpayer had adopted a different approach to the same issue would not place the Commissioner at an unfair disadvantage. It would have all the tools at its disposal to ensure that the issues were fully ventilated at the appeal hearing. The Commissioner conceded at the hearing that if the application were not successful, there would be no prejudice to it in the appeal."

Although agreeing with the decision in ITC 1912, Van Zyl AJ considered that he doubted whether it supported the taxpayer's contentions "given the particular nature of the new ground in the present case" (at paragraph [61]).

The essence of Van Zyl AJ's reasoning is disclosed in paragraph [77]:

> "In the present matter the new ground essentially relates to a different amount (the gross income amount) of the assessment as compared to that of the objection. The new ground seeks alteration on appeal of that different amount of the assessment, even though it uses the disputed amount of R11 million as the tool to achieve such alteration. Having regard for the substance of the applicant's objection and the facts of the case, it cannot be correct that an objection to the disallowance of an expense amount for failing to meet the requirements of sections 11(a) and 23(g) of the ITA is equivalent to an objection against the gross income amount of the assessment on the basis that this amount is to be reduced because a portion thereof actually accrued to a non-taxpayer third party."

In regard to SARS' second issue, Van Zyl AJ, at paragraph [78], reproduced the statement of amounts objected to in the Rule 7 grounds of objection:

	Description on assessment letter	Amount of Adjustment	Tax Value
A	Employment tax incentive included in gross income	R4,197,000	R1,175,160
B	Property rental	R300,000	R84,000
C	Profit share distribution	R11,072,237	R3,100,226.36
D	Understatement penalty		R310,022.63
E	Underestimation of provisional tax		R188,758
	89quat(2) interest		R293,94.74

Then, at paragraph [79], the judgment continues:

> "The applicant only objected to these adjustments, which formed part of the disputed assessment. Its gross income amount was not adjusted in any assessment issued to the applicant. It therefore did not object to the gross income amount."

It appears that the listing of the amounts objected to was to enable the Court to reject the taxpayer's statement that it had objected to the full amount of the disputed assessment, because the additional assessment had also included adjustments to which the taxpayer did not object.

The judgment concludes on the second issue raised by SARS at paragraph [83]:

> "Even if the applicant had for the sake of the argument objected to the whole of the disputed assessment, this would not suffice to prove that it had objected to the gross income amount specifically, which was not adjusted in the assessment and which would require specific identification in the objection to satisfy the requirements of rule 7."

This conclusion was purportedly justified by reference to the *HR Computek* case, where Van Zyl AJ noted, at paragraph [89]:

> "The Court in *HR Computek* confirmed that a globular objection to a full assessment amount does not by implication constitute an objection to every amount of the assessment. Thus, even if the applicant had objected to the whole of the disputed assessment, its failure to specify the objection to the gross income amount in detail in the letter of objection means that it is precluded at this stage from raising the new ground challenging this amount in the rule 32 statement."

3 HR Computek (Pty) Ltd v CSARS 75 SATC 104 (SCA).
4 ITC 1912 80 SATC 417.

On SARS' third issue, the judgment makes mention of the unreported Tax Case ITC 13796 (at paragraph [98]) where the Tax Court had prohibited a taxpayer from raising a new ground disputing an amount as gross income. Originally the taxpayer had asserted that the amount was a loan and in the new ground asserted that it had accrued when he was insolvent and did not accrue to him but to his trustee in insolvency. The Court in that case had found that the new ground did not address an amount or part of the assessment objected to under rule 7.[5]

In deciding on the third issue, the Court's reasoning is reflected in paragraphs [91] to [93]:

> "[91] As set out above, the original ground seeks as its outcome the allowance of a deduction amount of R11 072 237.00 paid as a profit distribution to the BECP. This outcome would be achieved by an upward alteration of the total deductions allowed in respect of the disputed assessment, on the basis that the Commissioner erred in the disallowance of the expense.
>
> [92] The new ground, on the other hand, seeks an alteration of the gross income amount of the disputed assessment downward so as to reduce the applicant's income tax liability. The new ground would achieve this by shifting a portion of the applicant's declared gross income to a third party."

By extension of the argument, the learned acting judges stated at paragraph [93]:

> "The outcomes sought, properly considered, are thus not similar. That the final desired result, being the reduction of the applicant's income tax liability, is similar is unsurprising but also immaterial, as this is a tax appeal where the applicant is disputing its income tax liability as assessed."

In conclusion, Van Zyl AJ stated at paragraph [103]:

> "In all of these circumstances, I find that the new ground does not fall within the ambit allowed by rule 32(3) for introduction at this stage. This is because, for the reasons set out above in the course of the discussion of the Commissioner's case, the new ground, properly considered, constitutes an entirely new case on appeal, aimed at the reduction of an amount to previously objected against, namely the applicant's gross income. The new ground is not merely a 're-packaging' of the legal basis upon which the applicant wishes to have the disputed amount disregarded for the purposes of the determination of its income tax liability."

Commentary

This judgment cannot stand without a challenge. It is premised on an erroneous statement in paragraph [13]:

> "The applicant listed an amount of gross income of R320 846 361.00 for the 2018 tax year in its tax return for that period, thereby declaring that this amount of gross income had been received by or had accrued to it for the 2018 tax year. Its Annual Financial Statements ('AFS') for the 2018 year disclose gross income in the amount of R320 846 361.00. The applicant's income tax assessments for the 2018 tax year reflect a gross income in the same amount." (Emphasis added)

This is compounded in paragraph [14]:

> "The applicant claimed an amount of R73 215 161.00 in expense deductions for the 2018 tax year as per this ITR14 return. The deduction amount of R73 215 161.00 claimed includes an amount of R11 072 237.00 ('the disputed amount') that relates to the distribution of profits paid to a related party referred to in the AFS as the Taxpayer B Partnership ('the BECP')." (Emphasis added)

In its guide for the completion of the return of income for companies, SARS states at paragraph 13.2.30[6]:

> "The figures to be used are the figures reflected in the annual financial statement of the Company… When completing the Gross Profit/Loss part of the return, the normal accounting meaning attached to the terms reflected in the tax return must be followed." (Emphasis added)

The statements in paragraphs [13] and [14] reveal that the Court had little appreciation of the manner in which a tax return is completed. It is abundantly clear that the tax return does not require the taxpayer to submit a return reflecting gross income, exempt amounts, deductions and prohibited deductions to arrive at taxable income. Rather, the return requires that the accounting income be disclosed and adjustments then be made to arrive at the taxable income as prescribed in the Income Tax Act.

5 It is not possible to comment on the Court's description of and reasoning in ITC 13796, as it is not reported on SARS' website or in the South African Tax Cases reports.

6 SARS' External Guide: How to complete the income tax return (ITR14) for companies, at page 133.

It was the Court's view, at paragraph [15], that:

> "The applicant bore the burden in terms of section 102(1)(b) of the TAA of proving that the amount of R11 072 237.00 paid as a profit distribution to the BECP was an allowable deduction meeting the requirements of section 11(a), read with section 23(g), of the ITA."

These statements underpin the Court's reasoning. In short, the Court appears to assert that the taxpayer declared an amount as gross income in the return and another amount as a deduction in the return, but it only objected to the disallowance of a deduction.

The fact is that the taxpayer disclosed its accounting income and adjustments to that accounting income to arrive at the amount of taxable income. It is not evident from the judgment whether the profit distribution had simply been recorded as part of the financial information to reflect the profit before tax as reported in the annual financial statements (which is the most likely event) or whether an adjustment had been made in the tax computation part of the return to reflect the amount as a deduction that had not been reflected in the income statement. If no adjustment was made to the reported profit before tax, the taxpayer's action cannot be interpreted as an admission that the gross income was the amount referred to in paragraph [13] and that the deductions allowable under the Income Tax Act included the amount referred to in paragraph [14].

Section 102(a) of the Tax Administration Act states that the taxpayer bears the burden of proving that an "amount, transaction, event or item is exempt or otherwise not taxable". It would have been helpful if the Court had not limited its examination of burden of proof to the question whether a deduction had been properly claimed.

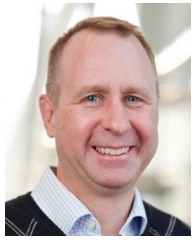
The purpose of the objection was to challenge the additional assessment to the extent that it included amounts listed in the Rule 7 grounds of objection and not to challenge the classification of amounts in the assessment as gross income or as deductible expenditure.

This is a prime case of SARS taking a position on appeal that leads to an unfair advantage. Rule 33 provides that SARS may respond to any new ground raised in the Rule 32 statement. SARS was therefore not ambushed or placed at a disadvantage at this early stage. The taxpayer's assertion that the amount in question was a share of partnership profit due to a partner was common cause (paragraph [14]). On this basis, the amount of R11 million should not have been assessed as part of its taxable income. SARS had every tool at its disposal under the Rules to require the discovery of information that related to the partnership to enable it to put the taxpayer's assertion to proof at trial.

It is submitted that, in this matter, the Court's reliance on the *HR Computek* case is misplaced as the two matters are entirely distinguishable from each other. In the *HR Computek* case, the taxpayer sought to appeal an amount that had never been objected to. In this case, the taxpayer sought to introduce a new ground of appeal in relation to the same amount that had been objected to. All that the taxpayer did was to submit another basis on which the same amount should not be subject to tax. The purpose of the Rules is to provide a basis for a fair contest to establish the true tax liability. This judgment, regrettably, did not result in a fair basis for trying the merits. It is not known whether the taxpayer has noted an appeal against the decision.

The takeaway

Where a taxpayer is subjected to an assessment and wishes to object to the assessment, it is prudent to follow every avenue available to it in the Tax Court Rules. In other words, as a starting point, specific reasons should be requested from SARS, for the issuance of the assessment (to ultimately enable the taxpayer to formulate an objection in the prescribed form and manner). Thereafter, all possible reasons should be carefully canvassed and considered before filing the grounds of objection. This will leave limited wiggle room for SARS to take technical positions to contest the taxpayer's grounds of appeal where its objection has been disallowed by SARS.



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VAT Documentary requirements: Repossession or surrender of goods

On 20 January 2023, SARS issued Binding General Ruling No. 63 ("BGR 63") setting out the further particulars and additional documentation required by a vendor deducting input tax on goods repossessed or surrendered under an instalment credit agreement.

Overview

SARS issued BGR 63 prescribing the further particulars that a vendor must obtain and retain to substantiate an input tax deduction made on a deemed taxable supply of goods repossessed or surrendered under an instalment credit agreement ("ICA").

Law

The sale of taxable goods under an ICA is subject to VAT at the standard rate (unless the goods qualify to be zero rated). The supplier (being the credit provider) must account for output tax on the full amount of the goods supplied (excluding any finance charges) in the tax period the goods are delivered or any payment of the consideration is received, whichever is the earlier. This time of supply rule applies even if the credit provider accounts for VAT on the payment basis. The recipient ("the debtor") will consequently be entitled to deduct the full input tax under the same time of supply rule, provided that:

- the goods are acquired for making taxable supplies and not a denied deduction under section 17; and
- the debtor is in possession of all the required documentation.

Section 8(10) of the VAT Act[1] deems a debtor to make a supply of goods to the credit provider where goods initially supplied to the debtor under an ICA are repossessed or surrendered to the credit provider.

The credit provider, being a vendor, is permitted to deduct input tax on this deemed supply, provided that the goods are acquired by the credit provider for the purposes of making taxable supplies and that it is in possession of the prescribed documentation to substantiate the deduction. The credit provider, being a vendor, is permitted to deduct input tax on this deemed supply, provided that the goods are acquired by the credit provider for the purposes of making taxable supplies and that it is in possession of the prescribed documentation to substantiate the deduction.

1 Value-Added Tax Act No. 89 of 1991.

Previous position

Section 20(8) previously prescribed the records, information or documentation that the credit provider was required to obtain and retain in order to substantiate its input tax deduction in respect of goods repossessed or surrendered under an ICA.

The requirements of section 20(8) were effectively captured in the VAT264 form to be completed and signed by the debtor as a declaration at the time of repossession or surrender. The VAT264 form included, inter alia, a statement regarding the debtor's VAT registration status and whether the deemed supply was taxable in nature.

However, credit providers experienced difficulties in complying with the requirement to obtain a signed VAT264 form to support its input tax deduction, which the Commissioner became aware of. In essence, credit providers were not always able to obtain the signed VAT264 form mainly due to the debtor's reluctance to cooperate with the credit provider at this stage of the process. In addition, obtaining the information required in any other written format is/was similarly difficult.

To overcome this difficulty, the Commissioner previously considered the matter and issued rulings under section 72 of the VAT Act providing relief to credit providers in terms of the manner in which the records could be obtained.

Section 72 was, however, amended in the last couple of years to make the requirements for the Commissioner exercising his discretion much tighter and more stringent. The legislature however acknowledged the reality of the difficulty experienced in the industry and therefore introduced the amendments under section 20(8A) to cater for this scenario.

Current position

Section 20(8A) now determines which documents or records a credit provider must have to deduct input tax on repossession or surrender of goods as follows:

- "The date upon which the goods were repossessed or surrendered, as the case may be;
- Particulars referred to in paragraphs (a), (c), (d) and (e) of subsection (8); and
- Further particulars in the form and manner as the Commissioner may prescribe."

Section 20(8A)(c) makes provision for the Commissioner to prescribe further records to be retained by the credit provider. BGR 63 was issued by SARS in accordance with this section and effective 1 January 2023, the following is now prescribed with regards to the records, information or documentation that the credit provider must obtain and retain in order to substantiate its input tax deduction in respect of goods repossessed or surrendered under an ICA.

Where the debtor **is not** a vendor, the following additional records must be obtained and retained:

- Written correspondence that at the time of the repossession or surrender, the debtor is not a vendor; **or**
- Written confirmation that the debtor is not a vendor at the time of entering into the ICA, as contained in either the debtor's application, the ICA agreement or any other correspondence; **and**
- Written communication from the credit provider informing the debtor of its obligation to disclose any change in its VAT registration status. This must be contained in the debtor's application, the ICA or any other correspondence.

Where the debtor **is** a vendor:

- Written correspondence at the time of the repossession or surrender, that the debtor is a vendor and does not use the goods for taxable supplies; **or**
- Written confirmation that the debtor (being a vendor) acquired the goods other than for the purpose of making taxable supplies, at the time of entering into the ICA, as contained in either the debtor's application, the ICA agreement or any other correspondence; **and**
- Written communication from the credit provider informing the debtor of its obligation to disclose if the goods are subsequently applied for the purpose of making taxable supplies. This must be contained in the debtor's application, the ICA or any other correspondence.

In addition to the above, BGR 63 also sets out certain other records that the credit provider must have. We discuss this further below.

In respect of the cash value:

Section 10(16) deems the consideration for the deemed supply under section 8(10) made by the debtor to the credit provider to be the outstanding cash value. In terms of BGR 63, the outstanding cash value must be contained in a system-generated statement at the time of the supply, being:

- the day the goods are repossessed or surrendered; or
- the day following the last day of any period, in which the debtor may be legally reinstated (applicable where the debtor's rights and obligations under the ICA may be reinstated under any law).

Credit providers are generally required to issue some correspondence under the NCA[2] or other legislation and to follow formal legal procedures when exercising their right to repossess goods or to accept a surrender of goods. In light of the regulated nature of the supplies in question, BGR 63 therefore requires the credit provider to also retain the following notices.

In respect of the repossession of goods:

- A copy of the written notice that the credit provider is required to provide the debtor with under section 86(10) or section 129(1)(a) of the NCA (or any other applicable statute) or the relevant terms agreed on in the ICA; and
- A copy of the relevant court order for the attachment of goods.

In respect of the surrender of goods:

- A copy of the written notice to terminate the agreement that the debtor is required to provide to the credit provider under section 127(1)(a) of the NCA (or any other applicable statute); or
- The relevant terms and conditions as agreed in the ICA.

Implications for vendors who are credit providers under ICAs

The above requirements to some extent still warrant a written confirmation from the debtor. Where the debtor is uncooperative and not willing to assist the credit provider in the process, this may be difficult to obtain and the credit provider may not comply with the necessary records and documents to support the deemed input tax deductions.

The BGR, however, includes an alternative option allowing the credit provider to ensure that the necessary information is obtained on signature of the ICA and that the prescribed statements are included in such communication upfront.

2 National Credit Act No. 34 of 2005.

In the absence of the ICA or other agreement making provision for the above, the vendor may fall short of complying. It is therefore of utmost importance for vendors to review its relevant agreements to ensure that these are compliant and that future ICAs entered into do not pose a risk for the vendor in this position.

We acknowledge that this could potentially create difficulties in respect of existing contracts with debtors which are not already compliant. In this case, the vendor will either have to obtain the required written confirmation at the time of repossession or surrender of the goods from the debtor at which point the debtor (whether a vendor or not) might not be helpful in providing the requested information.

Alternatively, vendors should consider if an amendment or addendum to its existing agreements are necessary and possible to ensure compliance upfront. Debtors may be more co-operative during the lifespan of the ICA to confirm the addendum than at the end where goods are for example being repossessed due to non-payment.

The takeaway

Vendors are not meant to carry unnecessary VAT costs in their enterprise, unless this is specifically intended by the VAT Act. Input tax therefore remains a very important feature of the effective operation of our VAT system.

In accordance with this, SARS has issued BGR 63 to provide a solution to ensure that credit providers will be entitled to deduct input tax in respect of goods repossessed or surrendered under an ICA.

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SARS Watch

1 December 2022 – 30 January 2023

Legislation		
27 January 2023	Legal Counsel: International Treaties & Agreements – Double Taxation Agreements & Protocols – Multilateral Instrument (MLI)	Multilateral Instrument ('MLI') – Synthesised texts. South Africa opted for the development of synthesised texts to the MLI. These texts, which are essentially consolidated versions of the Covered Tax Agreements as modified by the MLI, are aimed at facilitating the understanding of the application of the MLI to a particular tax treaty.
27 January 2023	Table 1 – Interest rates on outstanding taxes and interest rates payable on certain refunds of tax	The interest rate will increase to 10.5% from 1 March 2023.
27 January 2023	Table 2 – Interest rates payable on credit amounts	The interest rate will increase to 6.5% from 1 March 2023.
27 January 2023	Table 3 – Rates at which interest-free or low interest loans are subject to income tax	The interest rate will increase to 8.25% from 1 February 2023.
18 January 2023	Legal Counsel: Preparation of Legislation – Explanatory Memoranda	The following explanatory memoranda have been published: Explanatory Memorandum on the Taxation Laws Amendment Bill, 2022 Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2022.
18 January 2023	Legal Counsel: Preparation of Legislation – Response Documents	Final Response Document on the 2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2022 Draft Taxation Laws Amendment Bill and 2022 Draft Tax Administration Laws Amendment Bill.
5 January 2023	Amendment Acts promulgated on 5 January 2023	Act No 16 of 2022: Tax Administration Laws Amendment Act, 2022 (GG 47827 – 16/01/2022) Act No 19 of 2022: Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2022 (GG 47825 – 19/01/2022) Act No 20 of 2022: Taxation Laws Amendment Act, 2022 (GG 47826 – 20/01/2022).
7 December 2022	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 Table A: A list of the average exchange rates of selected currencies for a year of assessment as from December 2003	Average exchange rates updated.
Customs and excise		
27 January 2023	Customs Duty and Value-Added Tax Treatment of Goods forwarded Free as a Donation	The guide enhances the understanding of the payment of value-added tax (VAT) on goods imported into the Republic.
20 January 2023	Tariff amendment Notice 2934: Amendment to Part 1 of Schedule No. 3 by the insertion of rebate item 306.04/3206.11/01.06 in order to provide for a rebate facility on titanium dioxide, classifiable in tariff subheading 3206.11 for use in the manufacture of paints, varnishes as well as prepared driers classifiable in tariff headings 32.08, 32.09, 32.10 and 32.11 as well as the deletion of the said item	GG 47876 with an implementation date of 20 January 2023 and the deletion of the said item with effect from 20 July 2025.
18 January 2023	Updated: Prohibited and Restricted Imports and Exports list	Tariff heading 9401.61.10 and 8413.70.25 now require a Letter of Authority from NRCS.
6 January 2023	Tariff amendment Notices R.2925, R.2924 and R.2923	Published in Government Gazette 47823 on 6 January 2023.
6 December 2022	Protocol amending Zambia CMAA	Date of entry into force is 27 October 2022.
23 December 2022	Notice R.2884: Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheading 8418.10.90 in order to increase the rate of customs duty (25% to 30%) on combined refrigerator-freezers fitted with separate external doors, and the insertion of tariff subheading 8418.10.20 to exclude those with a total capacity not exceeding 400li	Published in Government Gazette No. 47765 with implementation date of 23 December 2022.

Case law

In accordance with date of judgment

16 January 2023	Commissioner for the South African Revenue Services v Khagiso Afrika Holdings (PTY) LTD and Others (490482021) [2023] ZAGPPHC	The applicant sought an order confirming the provisional preservation order previously granted in terms of section 163 of the Tax Administration Act 28 of 2011 against several respondents. SARS further sought an order confirming the securities provided by the remaining respondents regarding their probable tax liability that may be raised by SARS after concluding its audit investigations, with the curator bonis maintaining limited supervisory powers over the security provided and these respondents undertaking not to dispose, encumber or alienate the assets tendered as security.
28 December 2022	KEPU Trading (PTY) Ltd v Commissioner for the South African Revenue Service (351618) [2022] ZAGPPHC 1026	This is a tariff appeal, in terms of section 47(9)(e) of the Customs and Excise Act 91 of 1964, against a determination made by the respondent in respect of the applicant's claims for refunds of excise duties and levies paid on the purchase and supply of bunker fuel.
29 December 2022	Pacific Solar Technologies (Pty) Ltd v CSARS (715/2021) [2020] ZASCA 166	Whether a solar home system has the essential character of an energy source and power generation device or that of a lighting kit for customs duty purpose.
29 December 2022	IT 45710 (ADM) [2022] ZATC CPT	Tax Court Rule 32(3) states that the appellant "may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7". The issue in this case was whether a new ground may be relied upon by the applicant on the provisions of rule 32(3), or whether it falls beyond the scope of the type of new ground contemplated in the sub-rule.
7 December 2022	Glencore International AG v CSARS (34490/2021) [2022] ZAGPPHC	Review application of the Commissioner's decisions to regard the applicant's goods diverted in terms of section 18(3) of the Customs & Excise Act 91 of 1964. As a result, the goods liable for forfeiture in terms of the provisions of section 88(2)(a) and levied an amount in lieu of forfeiture, outstanding VAT and VAT penalty.

Interpretation Notes

17 January 2023	Interpretation Note 127: Taxable income of certain persons from international transactions: Intra-group loans	This Note provides taxpayers with guidance on the application of the arm's length principle in the context of the pricing of intra-group loans. The pricing of intra-group loans includes a consideration of both the amount of debt and the cost of the debt.
12 December 2022	Interpretation Note 10 (Issue 4)	An update of this Interpretation Note which provides guidance on the interpretation and application of section 4(c) of the Skills Development Levies Act 9 of 1999 which exempts any PBO contemplated in section 10(1)(cN) from the payment of skills development levy, provided the PBO solely carries on qualifying PBAs; or solely provides funds to PBOs that solely carry on qualifying PBAs.
9 December 2022	Interpretation Note 18 (Issue 5)	This Interpretation Note explains the scope, interpretation and application of section 6quat of the Income Tax Act which provides for a rebate or deduction for foreign taxes on income. The Note was updated for legislative changes, an expanded view on the interpretation of "other than taxes contemplated in (1A)" in section 6quat(1C)(a) and other minor clarifications.
2 December 2022	Interpretation Note 126	This Interpretation Note provides guidance on extraordinary dividends treated as income or proceeds on the disposal of certain shares with reference to section 22B and paragraph 43A of the Eighth Schedule to the Income Tax Act 58 of 1962.

Rulings

20 January 2023	VAT: Binding General Ruling 63 – Further particulars prescribed by the Commissioner under section 20(8A)(c)	This BGR sets out the further particulars prescribed by the Commissioner under section 20(8A)(c) that the creditor must obtain to deduct input tax in instances in which a debtor makes a deemed supply to the creditor (not being a taxable supply) of goods repossessed or surrendered under section 8(10).
16 January 2023	Income Tax: Binding Private Ruling 388 – Application of the de-grouping rule following previous intra-group transactions under section 45	This ruling determines the tax consequences for the Applicants following the proposed distribution by a holding company of shares in an intermediate holding company to its shareholders in terms of the de-grouping rules in section 45(4).
12 December 2022	Binding General Ruling 62: Value-added tax implications of securities lending arrangements	This BGR clarifies the VAT consequences for the lender in respect of the consideration the lender charges in terms of a securities lending arrangement.

9 December 2022	Binding Private Ruling 387: Attribution of nett income to a public benefit organisation	This ruling determines the tax consequences of a public benefit organisation holding a participatory interest in a controlled foreign company, which is a foreign incorporated charity.
9 December 2022	Binding Class Ruling 085: En commandite partnerships investing in photovoltaic solar energy plants	This ruling determines the deductibility of expenditure to be incurred by en commandite partners in investing in photovoltaic solar energy plants to be owned by the en commandite partnerships which will be installed at clients' premises in terms of power purchase agreements.
9 December 2022	Binding Class Ruling 084: Transfer of funds held in trust to a "beneficiary fund"	This ruling determines the tax consequences of the transfer of assets of a vesting trust to a "beneficiary fund".
Other publications		
31 January 2023	Trade statistics for December 2022	SARS released trade statistics for December 2022 recording a preliminary trade balance surplus of R5.43 billion attributable to exports of R163.27 billion and imports of R157.83 billion.
27 January 2023	Multilateral Instrument (MLI) synthesised texts	• SARS released synthesised texts which are essentially consolidated versions of the Covered Tax Agreements as modified by the MLI. These texts are aimed at facilitating the understanding of the application of the MLI to a particular tax treaty. They do not constitute a source of law. The authentic legal texts of the tax treaty and the MLI take precedence and remain the legal texts applicable.
14 December 2022	Tax Alert: Scrip-lending arrangements: Binding General Ruling No. 62	This alert discusses BGR 62 on the Value-Added Tax implications of securities lending arrangements.
20 December 2022	OECD: OECD releases consultation document on the withdrawal of digital service taxes and other relevant similar measures under Pillar One and an implementation package for Pillar Two	The implementation package released consists of the following elements: • Guidance on Safe Harbours and Penalty Relief; • A public consultation document on the global anti-base erosion rules (GloBE) Information Return; and • A public consultation document on Tax Certainty for the GloBE Rules.
21 December 2022	Tax Policy Alert: OECD announces Pillar One unilateral measures consultation	This alert provides a short overview of the proposed rules and initial observations.
21 December 2022	Tax Policy Alert: OECD releases Pillar Two guidance on Safe Harbours and Penalty Relief	This tax policy alert considers the release on Safe Harbours and Penalty Relief which include: • Transitional Country-by-Country Reporting Safe Harbour • Simplified Calculations Safe Harbour • A Transitional Penalty Relief Regime
21 December 2022	Tax Policy Alert: OECD announces Pillar Two tax certainty framework consultation	This tax policy alert considers the tax certainty release.
22 December 2022	Tax Policy Alert: OECD announces Pillar Two GloBE information return consultation	This tax policy alert considers the public consultation document on the GloBE Information Return.

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