Synopsis

Tax today

July 2023

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.

Editor: Al-Marie Chaffey
Simangaliso Manyumwa

The Principal Purpose Test ("PPT") in Double Tax Treaties: What it means for multinational groups

Introduction

Action 6 of the OECD/G20 Base Erosion and Profit Shifting ("BEPS") Project identifies treaty abuse, and in particular "treaty shopping", as one of the most important sources of BEPS concerns. Treaty shopping involves, according to the OECD, strategies through which a person who is not a resident of a State attempts to obtain benefits that a double tax treaty ("DTT") concluded by that State grants to residents of that State, for example by establishing a letterbox company in that State.

There are existing DTTs containing provisions that deny all or part of treaty benefits in certain circumstances. These provisions may have a narrow application and do not cover all benefits of DTTs, rather only the benefits under specific articles, for example dividends, interest and royalties. Also, these rules consider the "main purpose" or "primary purpose" of an arrangement enjoying treaty benefits. New treaty anti-abuse rules have been introduced into many existing DTTs through the OECD's "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" (generally abbreviated to "MLI"). Certain of these new rules are considered in further detail below.

The 2017 edition of the OECD Model Tax Convention ("MTC") reflects a consolidation of the treaty-related measures resulting from the work on the BEPS Project, including Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances). The anti-abuse rules may well form part of DTTs where bilateral negotiations between countries were facilitated based on the 2017 MTC.

See our *June 2023 Synopsis* for an overview of the MLI's modification of existing DTTs that require careful consideration. This article focuses on one of the anti-abuse rules, namely the Principal Purpose Test, generally abbreviated to "PPT", and identifies certain key considerations to determine whether treaty benefits will be available when applying the provisions of the PPT.

The preamble

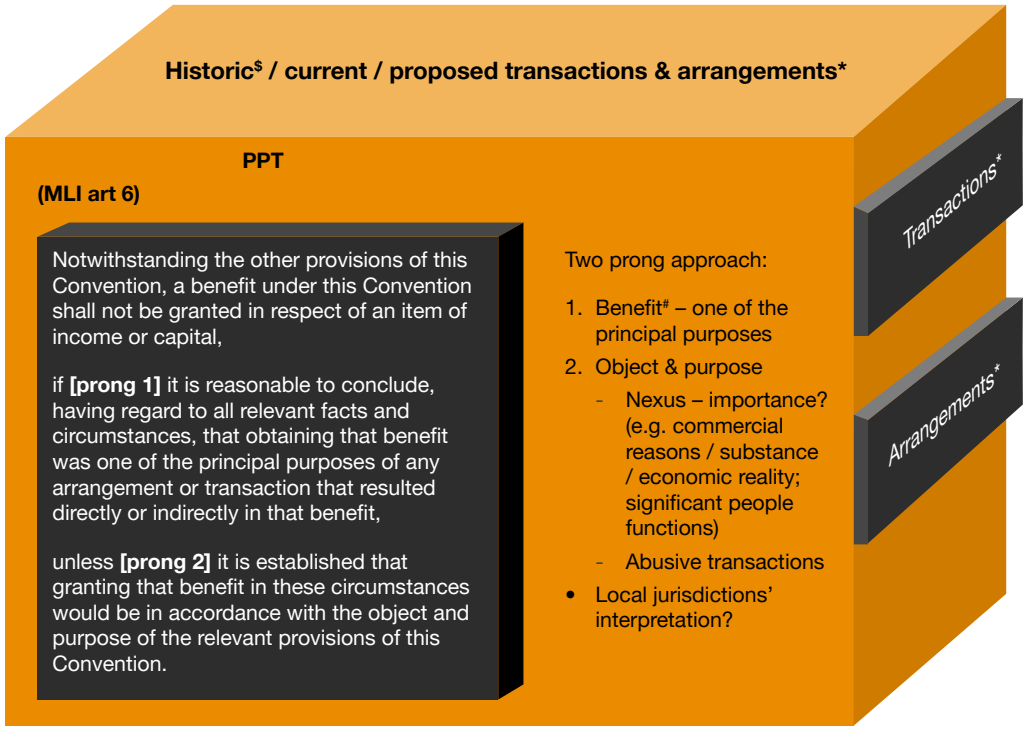
In compliance with Action 6, the preambles of DTTs should include a statement that the common intention of the parties is to eliminate double taxation but "without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping arrangements".

What does the PPT rule say?

In more detail, the PPT denies a benefit in respect of an item of income or capital under a DTT if:

- notwithstanding any other provisions of the treaty;
- it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes;
- of any arrangement or transaction that resulted directly or indirectly in that benefit;
- unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty.

Specialists observe that the PPT consists of "two prongs".



Notes:

$ No grandfathering provisions.

* To be interpreted broadly.

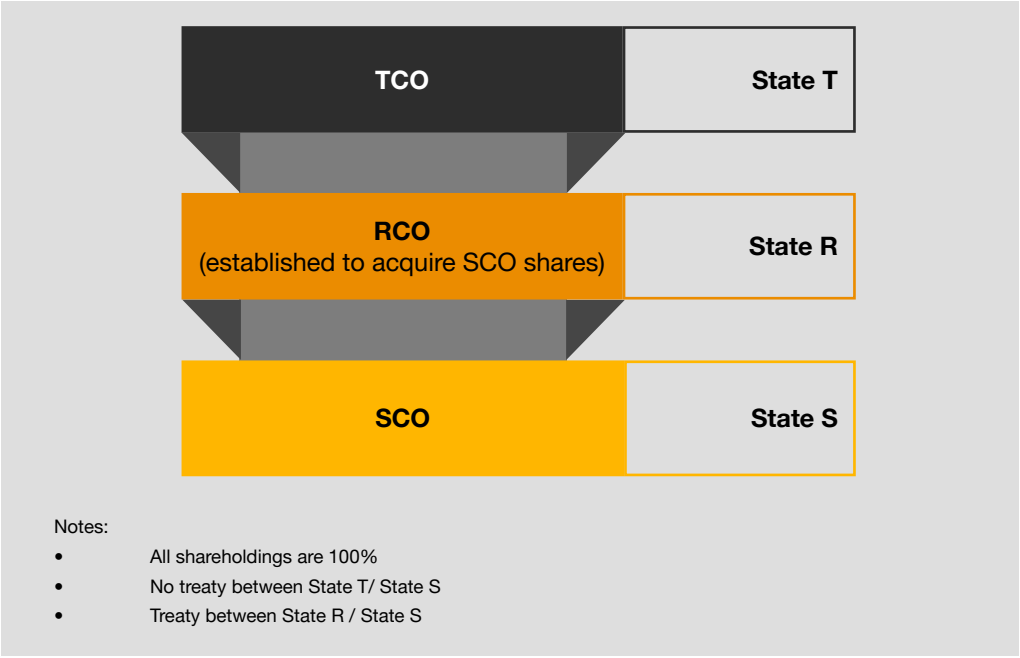
The concept of a benefit under a DTT contemplates DTT limitations on source taxation under the distributive rules of a DTT, as well as DTT benefits attributable to an elimination-of-double-taxation article.

The first prong, sometimes referred to as the "subjective test", determines whether one of the principal purposes of the arrangement is to obtain a treaty benefit.

The second prong, also referred to as the "objective test", determines whether the object and purpose of the relevant treaty provisions is to grant that benefit regardless of the principal purpose. This prong essentially ensures treaty benefits to the taxpayer even though it is reasonable to conclude that one of the principal purposes of the transaction was to obtain a treaty benefit, provided the taxpayer is able to establish that granting such benefits would be in accordance with the object and purpose of the relevant provisions of the treaty.

A practical example

To illustrate the impact of the PPT, let us use a hypothetical example involving three different companies resident in different jurisdictions.



TCO, a company resident in State T, wishes to invest in SCO, a company resident in State S. State T does not have a DTT with State S. In accordance with the domestic law of State S, any dividend paid by SCO to TCO is subject to a withholding tax on dividends of 25%. TCO has a subsidiary in State R (RCO) and the decision is taken for RCO to acquire the shares in SCO. RCO has unrestricted ownership of the SCO shares and is under no obligation to pass on dividends received by it from SCO. RCO's ownership of TCO shares is not merely temporary, but long-term. The State R-State S DTT reduces withholding tax on dividends from 25% to 5%, provided that certain requirements are met. This DTT is modified by the MLI and the PPT is applicable.

SCO distributes a dividend to RCO and the question now arises whether the applicable withholding tax is 5% or 25%. In practice, the facts and the application of a DTT provision in respect of the facts are rarely straightforward. There may be reasons to question the residence of RCO or the beneficial ownership of the dividends (for example, if there is an

arrangement between TCO and RCO that effectively renders RCO a nominee for TCO). Let us assume that RCO is indeed a resident of State R and "beneficial owner" of the dividends.

Will RCO be entitled to the reduced withholding tax rate of 5% in terms of the State R-State S DTT?

Whose view counts?

The source state, in this case State S, will apply the provisions of the State R-State S DTT. The taxpayer of the residence state, in this case State R, must accept the outcome of State S's interpretation. As a result, residents of State R must accept interpretations not informed by State R tax law.

Making sense of the two prongs

First prong – One of the principal purposes?

Does the reference to "one of the principal purposes" mean that obtaining that benefit need not be the "sole" or "dominant" purpose of an arrangement or transaction and would suffice even if one of the principal purposes were to obtain the benefit?

The rule envisages the existence of several principal purposes. There are no criteria in place to distinguish between principal purposes and secondary purposes on the one hand, and different principal purposes on the other. This will in many cases lead to uncertainty, as the taxpayer can never be too sure whether their fiscal motive for an arrangement or transaction among several other nonfiscal motives would qualify as a principal purpose rather than an ancillary purpose.

There are extra textual sources that are potentially relevant for legal interpretation, all of which should, it is submitted, be considered. For example:

- The 2015 BEPS Action 6 Final Report sets out not only the original rationale for the PPT recommendation, but also the detailed recommendation on how the PPT should appear in DTTs, as well as a recommended interpretive commentary.
- Given that the MLI itself is essentially an administrative instrument to insert (amongst others) the PPT into pre-existing DTTs, it is perhaps to be expected that the Explanatory Statement to the MLI is less helpful. That is, the Statement focuses more on the administrative mechanisms for how the PPT (amongst others) should be adopted into treaties and on the protocols and elections to be observed by the MLI signatories — and does not really focus on the substance of the PPT itself apart from referring back to the Action 6 Report.

- It is submitted that the 2017 OECD MTC specifically Art. 29(9) — represents perhaps the most influential of the OECD publications, albeit to be read together with the other two papers mentioned above.

In this respect, a pertinent treaty interpretation question concerns the role of examples about the meaning of the PPT that are not only first articulated in the 2015 Action 6 Report but also (importantly) replicated *verbatim* in the final revised 2017 MTC Commentary on Art 29(9). Additional examples, not included in the Action 6 report, are also provided. When some examples are studied, it can be questioned whether indeed they illustrate the PPT alone or whether they go beyond illustration by adding key requirements for its application.

In one example, RCO, a company resident of State R is considering establishing a manufacturing plant in a developing country, to benefit from lower manufacturing costs. All three countries identified provide similar economic and political environments. After considering the fact that State S is the only one of these countries with which State R has a tax convention, the decision is made to build the plant in that State. The OECD is of the view that it is clear that the principal purposes for making that investment and building the plant are related to the expansion of RCO's business and the lower manufacturing costs of that country. Further, it cannot reasonably be considered that one of the principal purposes for building the plant is to obtain treaty benefits.

The second prong – Object and purpose

As indicated above, the second prong determines whether the object and purpose of the relevant treaty provisions are to grant that benefit regardless of the principal purpose.

Uncertainty prevails on how to interpret the second prong. For example, should the requirement be examined based on the object and purpose of the relevant treaty provision or based on that of the treaty as a whole? The OECD Commentary gives no concrete answer to this question, neither expressly nor by illustration in its examples.

How the interpretation of the two prongs will play out in courts is yet to be seen.

Significance of commercial substance and nexus

It is possible that certain courts may view commercial substance as a benchmark for the PPT test, and it is submitted that this would be an appropriate perspective (given the overall rationale for the PPT in the first place). Thus, where there are two principal purposes (i.e., the treaty-benefit purpose and the business purpose), while the arrangement may fail under the first prong, the business purpose may be strong enough to conclude that granting the tax benefit is in accordance with the object and purpose of the treaty.

Regarding commercial substance, the OECD notes that where an arrangement is inextricably linked to a core commercial activity, and its form has not been driven by considerations of obtaining a treaty benefit, it is unlikely that its principal purpose will be to obtain that treaty benefit.

The OECD is silent on the standard for determining relevant commercial substance, which has also been the subject of some academic discourse. Some scholars proffer an analysis based on transfer principles to construe substance.

It is also possible that certain courts would consider the reality of the connection of the taxpayer with the state of its residence. This connection is often referred to as the "nexus" with the residence state. A sufficient nexus can for example be tested by looking at a taxpayer's activities, e.g., whether it conducts trade or business in the residence state and whether there is a sufficiently strong connection between that trade or business and the income in respect of which treaty benefits are claimed.

However, a sufficient nexus of the taxpayer with its state of residence is not enough for it to be entitled to tax treaty benefits. If that resident would enter into an "abusive" transaction that would effectively result in the availability of tax treaty benefits to persons for whom those benefits were not intended treaty benefits should, nevertheless, not be available.

Again, how the role of substance and nexus will play out in courts is yet to be seen.

How many of South Africa's DTTs are already affected?

When South Africa deposited its instrument of ratification with the OECD on 30 September 2022, South Africa chose to apply the PPT in Covered Tax Agreements ("CTAs"), rather than reserving in favour of other treaty abuse rules, e.g. a detailed limitation-on-benefits ("LOB") rule.

While the DTTs that South Africa have concluded with Australia, Brazil, Bulgaria, Chile, Hong Kong, Japan, the Netherlands, Nigeria, Oman, Qatar, Singapore, the United Arab Emirates and the United Kingdom contained provisions that deny treaty benefits, many of these provisions would be substantially bolstered by the PPT.

South Africa did not include its tax treaties with Germany, Malawi and Zambia in the list of the tax treaties to be covered by the MLI, and therefore modified by the PPT, because these tax treaties are currently under bilateral renegotiations and BEPS recommendations are likely to be incorporated in the renegotiated agreements. South Africa did not include its tax treaties with Grenada and Sierra Leone as these tax treaties do not follow the standard OECD and UN Model formats and are thus incompatible with the provisions of the MLI.

For South Africa's CTAs for which the MLI modifications are fully in-force, the other treaty partners have similarly chosen to apply the PPT in CTAs. Certain countries have indicated an intention, in time, to adopt a detailed LOB in addition to or instead of the PPT. The countries include Canada, Chile, Kuwait, India, Norway and Poland. It follows that the DTTs with these countries will be renegotiated to address treaty abuse by adopting detailed LOB provisions.

The takeaway

If you are availing of a treaty benefit, you need to consider the PPT. There is a lot to be considered as part of the MLI's modification of DTTs, but the PPT is a key anti-avoidance issue.

For existing structures set up pre-MLI, you will need to go back and review to ensure you are happy that they do not fall foul of the PPT. Structures may have been fine at the time when implemented, but how are they operating now? For "new" structures, if you are relying on treaty benefits, you need to consider PPT at the outset.

No one knows how precisely the MLI will be interpreted by the courts. The level of complexity is expected to result in cross-border disputes about the meaning of the PPT.

In these circumstances, one possible practical approach is to adopt the "best practice" as was known at the time to demonstrate "commercial substance" in the jurisdiction concerned, and to document the commercial rationale to satisfy the PPT, if questioned.

Deon De Villiers
Associate Director
+27 (0) 83 272 8584

What happens in the arena stays in the arena — or does it?

Arena Holdings (Pty) Ltd and Others v South African Revenue Service and Others

The recent Constitutional Court ("CC") case of *Arena Holdings (Pty) Ltd t/a Financial Mail and Others ("the applicants") v South African Revenue Service ("SARS") and Others (CCT 365/21) [2023] ZACC 13 (30 May 2023)*, pronounced on the competing rights of privacy, the right to access to information and freedom of expression and SARS' duty to keep taxpayer information confidential. The CC judgment was based on the appeal against an earlier order of the High Court, in terms of which the High Court found as follows:

> "[14] The High Court held that the assertion of the right to privacy and secrecy relied on by SARS and the Ministers did not fulfill the limitation test as set out in section 36 of the Constitution. Therefore, the limitations on the access to information are not justified. The High Court found that the argument that public interest overrides the limitation of taxpayer confidentiality was justified. The Court held that the blanket prohibitions of disclosure of taxpayer information contained in section 35 of PAIA and section 69 of the TAA unjustifiably limit the right of access to information provided for in section 32 of the Constitution. It concluded that a "reading-in" of the "public–interest override" provisions contained in section 46 of PAIA was justified and competent."
>
> "[15] The High Court thus declared the impugned provisions invalid and unconstitutional…"

Ultimately, the CC found that all things considered, public interest is the overriding factor.

Parties

The first applicant was Arena Holdings (Pty) Ltd, which owns various media houses, including the Sunday Times, the Sowetan, the Herald, the Daily Dispatch, the Business Day and the Financial Mail. The second applicant was AmaBhungane Centre for Investigative Journalism NPC. The third applicant was Mr Warren Thompson, a financial journalist, who was employed by Arena at the time of the High Court application.

The first respondent was SARS. The second respondent was Mr Zuma, the former President of South Africa. The third and fourth respondents were the Minister of Justice and Correctional Services ("Minister of Justice") and the Minister of Finance, respectively. The fifth respondent was the Information Regulator ("Regulator"), the authority tasked with the monitoring and enforcement of the Promotion of Access to Information Act, No. 2 of 2000 ("PAIA").

Background to the matter

In early 2019, Mr Thompson made a request to SARS in terms of the PAIA, to access the tax records of Mr Zuma. The request was prefaced on insinuations in Mr Jacques Pauw's book titled *The President's Keepers*, of prevalent "credible evidence" that Mr Zuma was not tax compliant.

On 19 March 2019, SARS refused Mr Thompson's request on the premise that Mr Zuma was entitled to confidentiality under sections 34(1) and 35(1) of the PAIA, as well as the secrecy provisions contained in section 69(1) of the Tax Administration Act, No. 28 of 2011 ("TAA"). Pursuant to SARS' refusal, Mr Thomson lodged an internal appeal against SARS' decision to reject access to the tax records of Mr Zuma, which appeal was subsequently dismissed by SARS on the same basis as its initial reasoning for the refusal.

Section 46 of the PAIA, section 69(2) of the TAA and Section 67(4) of the TAA ("the secrecy provisions")

The nub of the juxtaposition of the two positions (i.e. that of the media houses and that of SARS) was that, according to the media houses, the prohibition to access of the information of a taxpayer on the basis of the secrecy provisions of the TAA is unconstitutional and that such access is in the interests of the public i.e

that a "public-interest override" should permit disclosure of tax information. The media houses further contended that the secrecy provisions pertaining to the disclosure of a taxpayer's information create an impermeable access barrier to tax information through the PAIA or in any other way, i.e an absolute prohibition to access tax information. Furthermore, the media houses contended that the secrecy provisions prohibit the media from reporting on any tax information obtained:

> "[17] even if the information contains conclusive evidence of corruption, malfeasance or other law-breaking".

SARS, in contrast, argued that the relief sought by the media houses infringed on the right to privacy of taxpayers under section 14 of the Constitution, in that the relief would enable a PAIA requestor to freely disseminate tax information to any person, without constraint.

SARS further argued that the regime created by the secrecy provisions does not render an absolute prohibition of tax information but provides controlled exceptions for access and strikes a fair and reasonable balance between the right to privacy and the right to access of information. According to SARS, taxpayers are obliged to make full disclosure of their tax affairs, "*essentially stripping them of the privilege against self-incrimination*". Therefore, SARS submitted that the secrecy provisions aim to preserve taxpayers' secrets and overriding these provisions would breach taxpayers' trust to confide in SARS in so far as their tax affairs are concerned. Finally, SARS tendered that the policy of keeping taxpayers' secrets gives effect to South Africa's obligations under international law. At the core of SARS' submission, it states that the secrecy provisions ensure voluntary tax compliance on the part of the taxpayer community

The Minister of Justice in support of SARS' expostulation, submitted that the applicants' proffered "public-interest-override" is both speculative and discriminatory between ordinary citizens and prominent figures. Therefore, the fact that Mr Zuma has left office warrants him protection as an ordinary citizen because there is no public interest in the disclosure of his tax information.

The Minister of Finance concurred with SARS' contentions and augmented SARS' submissions by submitting that the proposed "public-interest override" is too broad in that the media houses and any other party may "*decide on a whim whose tax records they seek and cloak their request for those tax records under the vague umbrella of public-interest*". Further, that the release of information poses the imminent risk that SARS will not have any control over what is done with the information.

The Regulator adopted the position that SARS as a public body is subject to the right to access its records within the parameters of, "*justifiable limitations aimed at reasonable protection of privacy and, effective and efficient good governance in a manner which balances those considerations with other rights contained in the Bill of Rights*". The Regulator submitted that "*any law that prohibits the disclosure of records of a public or private body without reasonable and justifiable limitation as required by section 36 of the Constitution, as well as without grounds for refusal of access to records as contained in PAIA, is materially inconsistent with the objects of PAIA*". Consequently, the Regulator supported the position in relation to the constitutional invalidity of the secrecy provisions.

The decision of the CC

The judgment by the CC was delivered in two parts, namely a majority ruling and the minority ruling of Judge Mhlantla. Although the majority ruling ultimately sets legal precedent, it is noteworthy to also consider the diverse reasoning of the minority ruling.

Majority ruling

The majority ruling found that the secrecy provisions in the TAA are unconstitutional and agreed with the earlier finding of the High Court. The court found that:

1. The limitations on divulging tax information, as stipulated in the secrecy provisions, are unreasonable, unjustifiable, and stringent; with cumbersome checks and balances, therefore, rendering the prohibition in the secrecy provisions absolute, which is unconstitutional.
2. Taxpayers are aware that tax information may be passed to other law enforcement agencies of the state such as the South African Police Service ("SAPS") and the National Prosecuting Authority ("NPA"). In the absence of the secrecy provisions there would still be no absolute confidentiality.
3. Therefore, the notion that absolute confidentiality is paramount to attain taxpayer compliance is baseless in principle and there is no irrefutable evidence to support it. The purpose of the Constitution was never to provide impassable privacy protection in instances where there is a threat to society.

4. International comparisons are valuable and welcomed by national jurisdictions in shaping laws. However, they are limited and do not supersede localised considerations that weigh more in shaping national laws such as prevalent legal culture, the written constitution, the timeframe of enactment, and other salient factors. The matter at hand requires deciphering whether the secrecy provisions measure up to the South African constitutional framework.
5. The cloak of confidentiality can admissibly be lifted in instances of unlawful contraventions that pose a high-level threat to the public such as serious criminality and grave environmental or health risks. The "public-interest override" therefore, culminates in a balance of maintaining high-level confidentiality; and providing dexterous and arduous grounds for the lifting of confidentiality in the interest of the public.
6. The involvement of law enforcing organs of the state such as SAPS and the NPA in investigating, prosecuting and arbitrating tax matters, constitutes the fulfillment of their duties. The involvement does not serve to disclose tax information in alignment with the interest of the public.
7. The order of invalidity of the High Court was confirmed and Mr Thompson may supplement his original request to SARS for the tax records of Mr Zuma.

In addition, findings were made regarding the constitutional invalidity of certain provisions of the PAIA. The CC ordered that Parliament, within the next 24 months considers measures to address the constitutional validity of these provisions and until Parliament remedies the constitutional invalidity, it ordered a "read-in" to PAIA and the TAA. The CC also stated that in the event that Parliament does not remedy the constitutional defects within 24 months of this order, the "read-in" shall continue to apply.

Minority ruling

In summary, it was found that extending the "public-interest override" would impact public figures and ordinary civilians/ private individuals alike in the disclosure of taxpayer information where there is evident serious criminality or an imminent risk to the environment, health and/or safety of the public.

However, the extension may be prejudicial to ordinary civilians/ private individuals who may warrant a higher level of privacy. For this reason, the limitations of the secrecy provisions in granting the applicants access to Mr Zuma's tax records as an ordinary civilian (no longer in office) are justifiable.

The secrecy provisions promote taxpayer confidence and compliance; maintain compliance with South Africa's international law obligations; and contain adequate parameters for striking a balance between the access to taxpayer information and maintaining taxpayer secrecy. Any matters pertaining to unlawful violations must be lodged with the applicable investigative or prosecutorial authorities being SARS, the NPA and/or SAPS.

Key takeaways

Taxpayer confidentiality is not sacrosanct and may now be accessed in the public interest in certain limited circumstances.

As taxpayers move from the sanctum of their personal lives to the public space, the right to privacy shrinks and must be moderated against the interests of the public.[1]

Instances that pose significant risks to the public and place public interest in a perilous state, such as serious criminality, warrant the lifting of the veil of taxpayer confidentiality.

Elle-Sarah Rossato
Partner
+27 (0) 82 771 7417

Ashley Mhona
Senior Associate
+27 (0) 62 083 4713

1 Bernstein v Bester N.N.O. [1996] ZACC 2; 1996 (2) SA 751; 1996 (4) BCLR 449 at para 65.

SARS Watch

SARS Watch 1 July 2023 – 31 July 2023

Legislation		
31 July 2023	2023 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill 2023 Draft Taxation Laws Amendment Bill Draft Explanatory Memorandum on the Draft Taxation Laws Amendment Bill 2023 2023 Tax Administration Laws Amendment Bill Draft Memorandum on the Objects of the 2023 draft TALAB for public comment and introduction in Parliament Draft amendments to Regulations in terms of paragraph (d) of the definition of "Research and Development" in section 11D(1) of the Income Tax Act, 1962, on additional criteria for multisource pharmaceutical products Draft amendments to Regulations in terms of paragraph (e) of the definition of "Research and Development" in section 11D(1) of the Income Tax Act, 1962, on criteria for clinical trials in respect of deduction for research and development Draft amendments to Regulations on domestic reverse charge relating to valuable metal in terms of 74(2) of the Value-Added Tax Act, 1991 (the VAT Act) Draft Explanatory Memorandum on domestic reverse charge relating to valuable metal in terms of 74(2) of the VAT Act Draft amendments on Carbon Offsets Regulations	2023 Draft Tax Bills and Draft Regulations have been published. Comments are due to SARS and National Treasury by Thursday, 31 August 2023.
11 July 2023	Table 1 – Interest rates on outstanding taxes and interest rates payable on certain refunds of tax	The prescribed rate will increase to 11,75% (currently 11,25%) from 1 September 2023.
11 July 2023	Table 2 – Interest rates payable on credit amounts	The prescribed rate will increase to 7,75% (currently 7,25%) from 1 September 2023.
Interpretation		
21 July 2023	Draft Interpretation Note 78 (Issue 2) – Allowance for future expenditure on contracts	Comments are due to SARS by Friday, 15 September 2023.
14 July 2023	Interpretation Note 106 (Issue 2) – 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.
12 July 2023	Interpretation Note 101 (Issue 2) – Gains or losses on foreign exchange transactions	This Note provides guidance on the interpretation and application of section 24I. Section 24I deals with the income tax treatment of foreign exchange gains and losses on exchange items as well as premiums or like consideration received or paid in respect of FCOCs entered into and any consideration paid in respect of an FCOC acquired by certain persons.
Customs and excise		
28 July 2023	Notice R.3735 - Amendment to Part 1 of Schedule No. 2, by the insertion of anti-dumping items under 207.02, in order to impose anti-dumping duties against the alleged dumping of new pneumatic tyres of rubber of a kind used on motor cars, buses or lorries classifiable in tariff heading 40.11, originating in or imported from the People's Republic of China – ITAC Report 714	Published in Government Gazette No. 49047 with implementation date of 28 July 2023.

21 July 2023	Notice R.3698 - Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08 and 260.03/7318.16.30/01.08 to amend the safeguard duties to a rate of **44,04%** on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – ITAC Report 715	Published in Government Gazette No. 49013 with implementation date of 24 July 2025 up to and including 23 July 2026.
21 July 2023	Notice R.3697 - Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08 and 260.03/7318.16.30/01.08, to amend the safeguard duties to a rate of **46,04%** on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – ITAC Report 715	Published in Government Gazette No. 49013 with implementation date of 24 July 2024 up to and including 23 July 2025.
21 July 2023	Notice R.3696 - Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08 and 260.03/7318.16.30/01.08, to extend the safeguard duties with a rate of **48,04%** on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – ITAC Report 715	Published in Government Gazette No. 49013 with implementation date of 24 July 2023 up to and including 23 July 2024.
20 July 2023	System enhancements for the administration and interpretation of the Southern African Customs Union (SACU) and Mozambique (SACUM) and the United Kingdom (UK) (SACUM-UK) Economic Partnership Agreement (EPA)	The UK's post-Brexit policy is that from the beginning of 2021, trade would be governed by new bilateral Free Trade Agreements (FTAs), also referred to as Economic Partnership Agreements (EPAs). Consequently, the customs systems required enhancements to distinguish SADC-EU EPA and SACUM-UK EPA. The system went live with the enhancements on 14 July 2023 and traders can now register and lodge customs declarations under the SACUM-UK EPA as well as the SADC-EU EPA.
14 July 2023	Notice R.3669 - Amendment to Part 3 of Schedule No. 6, by the insertion of Note 14 as well as rebate item 670.05/000.00/01.00, in order to provide for a partial refund of the Road Accident Fund Levy on fuel used in the manufacturing of foodstuffs	Published in Government Gazette No. 48959 with retrospective effect from 1 April 2023.

Case law

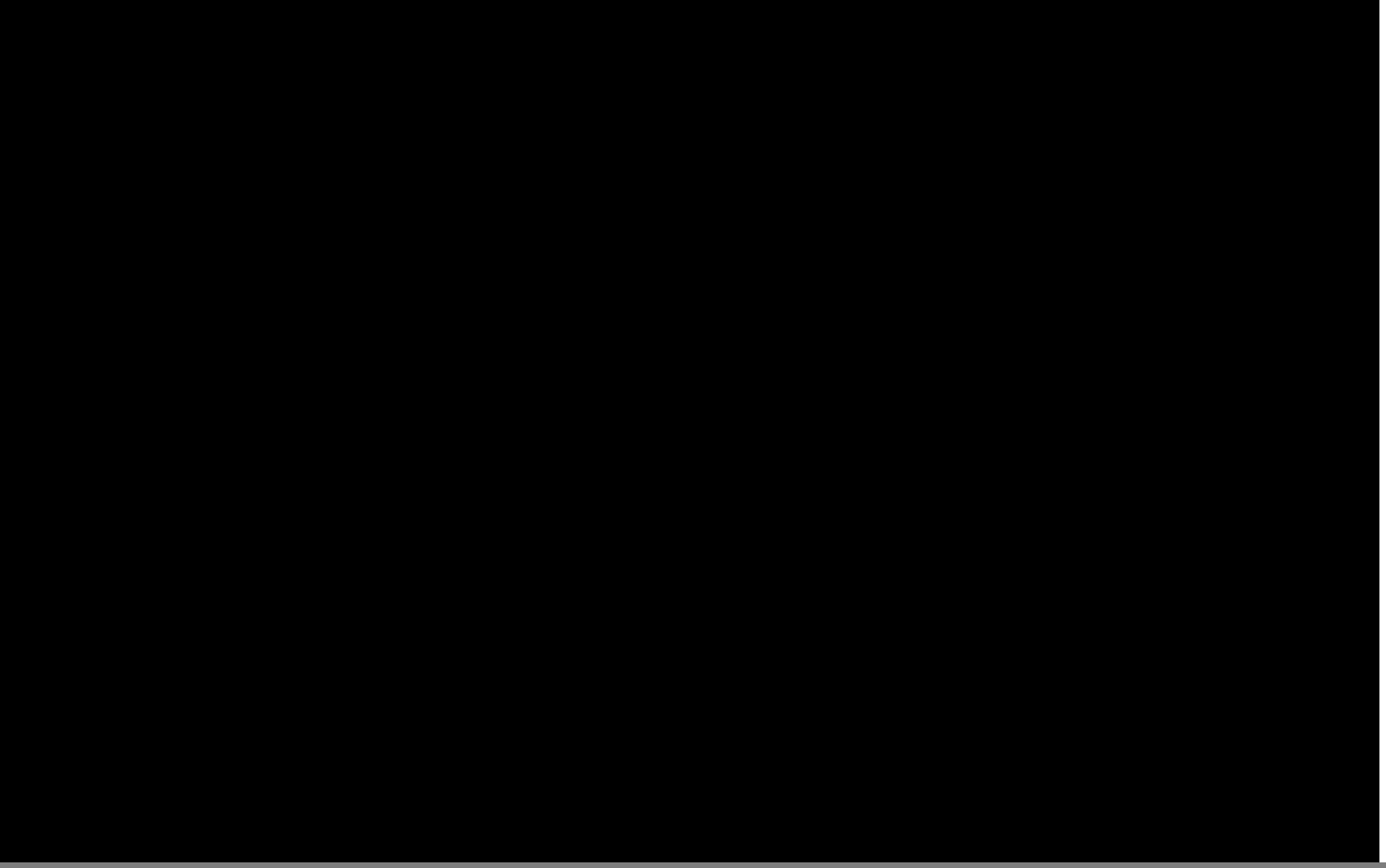
In accordance with the date of judgment

24 July 20233	Trustees of the CC Share Trust and Others v Commissioner for the South African Revenue Service (38211/21) [2023] ZAGPPHC 597	Whether the applicants had been correctly assessed by SARS, whether the assessments may be set aside because they were unlawfully made for want of compliance by SARS with its own statutes and whether the Commissioner ought to withdraw the assessments.
17 July 2023	NCP Alcohols (Pty) Ltd (D7515/2020) [2023] ZAKZNDBNHC	The issues include whether SARS was entitled to impose custom duty, VAT, interest on VAT and penalties against the applicant when it exercised administrative powers in terms of section 18A of the Customs and Excise Act, 1964
17 July 2023	Glencore Operations SA (Pty) Ltd and Others v CSARS and Another (15988/2020) [2023] ZAGPPHC	Whether the Third Applicant (Goedenvonden JV) was the person in possession of the necessary mining authorisation granted or ceded in terms of the Mineral Petroleum Resources Development Act 28 of 2022, as contemplated in Note 6(f)(ii)(cc) of Part 3 of Schedule No. 6 of Customs and Excise Act 91 of 1964. Whether the National Appeal Committee had jurisdiction to entertain the appeal and was empowered to make a new determination by adding a finding in paragraph 2(i) that the JV did not comply with Note 6(f)(ii)(cc) and was empowered to amend the original determination in terms of section 47(9)(d) of the Customs and Excise Act.
06 July 2023	Tall v Commissioner for the South African Revenue Service (IT 24870; IT 25162; IT 25166) [2023] ZATC 12	Whether the applicant is entitled to rely, in respect of its 2012 year of assessment, on the grounds of appeal pleaded in paragraphs 10 to 53 of its rule 32 statement filed in the underlying appeal proceedings for the consolidated 2013 to 2016 years of assessment, to the extent that these are applicable to the 2012 year of assessment.

06 July 2023	Commissioner for the South African Revenue Services v M (A5036/2022) [2023] ZAGPJHC 769	The issue is whether undeclared receipts and deposits into the taxpayer's personal bank accounts and other accruals were income or the repayment of loans.
05 July 2023	Diageo SA (Pty) Ltd v Commissioner for the South African Revenue Services (A223/2021) [2023] ZAGPPHC 508	This is an appeal heard by the Full Court against the whole of the judgment and order handed down by the court a quo on 17 March 2021. The issue is whether Cape Velvet Cream Original, a liqueur manufactured by Diageo, is classifiable under Tariff Item 104.23.22 and Tariff Subheading 2208.70.22 of Part 1 of Schedule No.1 to the Customs and Excise Act 91 of 1964, or under Tariff Item 104.23.21 and Tariff Subheading 2208.70.21.
03 July 2023	Taxpayer RPC v Commissioner for the South African Revenue Service (VAT 1373 & 13862) [2023] ZATC 9	Whether the taxpayer under-declared income from mining activities and other income (non-mining income) for the relevant period, whether the taxpayer was entitled to claim capital expenditure, and whether SARS was justified to impose an understatement penalty of 200%.
29 July 2023	Lion Match Company (Pty) Ltd v CSARS (A 202/2020; IT 13950) [2023] ZAGPPHC 384	An appeal against the refusal of the application for postponement by the appellant and counter appeal against the refusal by the Tax Court to grant the adjustment to the assessment sought against the assessment made by SARS.
24 July 2023	Tomson NO and Others v CSARS and Another (33918/2021) [2023] ZAGPPHC 359	Whether SARS's decision to decline the trust's request in terms of section 18A(2A)(b)(i) of the Income Tax Act, 1962, to waive the minimum distribution requirements provided by the section should be reviewed.
31 July 2023	SSN Taxpayer v Commission for the South African Revenue Services (25334) [2023] ZATC 10	Whether SSN Taxpayer had mining rights in respect of those areas where third party infrastructure was located and subsequently relocated elsewhere.
Guides and forms		
25 July 2023	Transfer Duty Guide (Issue 6)	This document provides guidance on the meaning of various definitions, how the imposition of transfer duty works, whether a transaction is subject to VAT or transfer duty, how to calculate the transfer duty which is payable, and how to establish if an exemption applies.
24 July 2023	SARS Payment Rules – External Guide	This guide details the payment rules that must be adhered to when paying SARS to ensure timeous and accurate payment allocation. Cash deposits to a SARS Customs and Excise bank account at any bank branch is no longer available as a payment option.
21 July 2023	Sufficient Knowledge Competency Assessment for AEO – External Guide	Accreditation requires traders to demonstrate sufficient knowledge of Customs Law and procedures, as per section 64E(1)(b)(iv) of the Customs and Excise Act. This guide aims to assist traders with the application and completion of the AEO sufficient knowledge competency assessment.
14 July 2023	Guide to the Exemption from Normal Tax of Income from Films (Issue 2)	This guide provides general guidance on the exemption from normal tax for the receipts and accruals of income derived from the exploitation rights of a film.
04 July 2023	Updated Confirmation of Disability Diagnosis (ITR-DD) form	An updated ITR-DD form was published.
Other Publications		
26 July 20233	OECD: OECD and IGF received public comments on draft toolkits to support developing countries in addressing base erosion and profit shifting risks when pricing minerals	Published comments relating to the toolkits on Determining the Price of Minerals: A Transfer Pricing Framework and Determining the Price of Minerals: A Transfer Pricing Framework, Schedule A: Bauxite

26 July 2023	OECD: The OECD and Global Forum support ECOWAS in strengthening the fight against BEPS and improving tax transparency in West Africa	As part of the European Union's Fiscal Transition Support Programme in West Africa, the OECD and the Global Forum have collaborated with the Economic Community of West African States and the West African Economic and Monetary Union commissions in the development of three community legal tax instruments.
25 July 2023	OECD: Modest recovery in Asia-Pacific tax revenues as the after-effects of COVID-19 weigh on tourism	New OECD report released on Revenue Statistics in Asia and the Pacific 2023.
24 July 2023	SARS: Tax directives trade testing	SARS will introduce enhancements to the Tax Directives process. Trade testing is planned to start on Wednesday, 16 August 2023.
19 July 2023	Tax Alert: Certainty at last as SARS publishes the final provisions in respect of the diesel refund system for manufacturers of foodstuffs.	SARS published the final provisions in respect of the diesel refund system for manufacturers of foodstuffs, bringing much sought-after certainty for taxpayers. This Tax Alert highlights some of the key changes from the last published draft provisions.
19 July 2023	OECD: OECD Tax Talks #21	Update on recent developments in the OECD's international tax agenda with experts from the Centre for Tax Policy and Administration.
19 July 2023	Tax Policy Alert: OECD releases Pillar Two GloBE Rules Administrative Guidance and GloBE Information Return.	The OECD/G20 Inclusive Framework on BEPS (IF) released a number of documents relating to the Two-Pillar solution on 17 July 2023, one of which was a second set of Administrative Guidance on the Pillar Two GloBE Model Rules. The guidance covers a range of issues where stakeholders sought additional clarity, including the Qualified Domestic Minimum Top-up Tax (QDMTT) and Transitional UTPR Safe Harbours, the treatment of transferable tax credits, application of the Substance Based Income Exclusion (SBIE) and others. This Alert provides more details.
19 July 2023	Tax Policy Alert: OECD releases Pillar Two STTR.	On 17 July 2023 the OECD Inclusive Framework (IF) released a report with model treaty text to give effect to the Subject-to-Tax Rule (STTR), together with an accompanying commentary explaining the purpose and operation of the STTR. The OECD Secretariat also published a summary of the STTR, titled "The Subject to Tax Rule in a Nutshell," to assist in understanding the STTR model provisions. This Alert provides more details.
19 July 2023	Tax Policy Alert: OECD Releases Pillar One Amount B.	On 17 July 2023, the OECD released an updated public consultation document on Amount B of Pillar One, which attempts to simplify the transfer pricing of certain baseline wholesale marketing and distribution activities by providing agreed returns, as laid out in a "pricing matrix," to the source country on such activities. The OECD also published a short overview, titled "Amount B in a Nutshell," to assist stakeholders in understanding Amount B. This Alert provides more details.
18 July 2023	SARS: Multilateral Instrument (MLI) synthesised texts	SARS published MLI synthesised texts for Cameroon, Hong Kong, Romania, Pakistan, Malaysia, and New Zealand.
17 July 2023	Tax Policy Alert: OECD presents report to G-20 Finance Ministers and releases key documents under Pillar One and Pillar Two.	This Alert provides a short summary of the key documents published under Pillar One and Pillar Two.
17 July 2023	OECD: OECD reports strong progress to G20 on international tax reforms	The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) is making strong progress with ongoing reforms of the international tax system, according to the OECD Secretary-General's latest tax report to G20 Finance Ministers and Central Bank Governors.
17 July 2023	OECD: OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors	This report sets out the latest developments in international tax reform since February 2023.

17 July 2023	OECD: Tax challenges of digitalisation - OECD invites public input on Amount B under Pillar One relating to the simplification of transfer pricing rules	Interested parties are invited to submit their comments on the discussion by Friday, 1 September 2023.
13 July 2023	Tax Policy Alert: OECD releases Outcome Statement on the two-pillar solution.	This Alert discusses the Outcome Statement released by the OECD.
12 July 2023	OECD: 138 countries and jurisdictions agree historic milestone to implement global tax deal	138 members of the OECD/G20 Inclusive Framework on BEPS agreed on an Outcome Statement recognising the significant progress made and allowing countries and jurisdictions to move forward with historic, major reform of the international tax system.
10 July 2023	Tax Alert: Submission of third-party returns	SARS published a notice ('the notice') to notify certain specified persons that they are required to submit third party returns. Importantly, the notice places reporting obligations on trusts and public benefit organisations for the first time. This Alert summarises the content of the notice.
09 July 2023	SARS: Launched Tax Return Status Dashboard	The SARS Online Query System has a new feature called the Tax Return Status Dashboard to provide taxpayers, registered representatives and practitioners with a visual status of the progress of Personal Income Tax returns in terms of submission, verification/audit and refund processing.
06 July 2023	OECD: New African voices help amplify international efforts for tax transparency	Launched during the 13th Meeting of the Africa Initiative, Tax Transparency in Africa 2023 presents African countries' latest advances in tackling the major issue of tax evasion and other illicit financial flows through transparency and exchange of information for tax purposes.
06 July 2023	SARS Media release: Africa focuses on Tax Transparency to counter tax evasion and illicit financial flows	SARS hosted the 13th Meeting of the Africa Initiative with an emphasis on the importance of tax transparency tools in the armour of tax administrations to counter tax non-compliance. The media release provides more details.



At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 152 countries with over 327,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.