Synopsis
Tax today
June 2016

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 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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SCA clarifies the meaning of farming "produce" that is "held and not disposed of" at the end of the tax year

The decision of the Supreme Court of Appeal in Avenant v Commissioner for the South African Revenue Service *[2016] ZASCA 90, in which judgment was delivered on 1 June 2016, centred on the question whether, when grapes were delivered by a wine farmer to a co-operative where they were pressed into pulp and mixed with the pulp provided by other farming members of the co-operative for later processing into wine, part of the combined pulp constituted "produce" of the taxpayer that was "held and not disposed of" at the end of the tax year, as envisaged in the Income Tax Act 58 of 1962.*

The Western Cape Tax Court gave an affirmative answer to this question, and its decision was reported as *A v Commissioner for the South African Revenue Service* [2014] ZATC 3.

The appellant apparently felt strongly that the Tax Court decision was wrong; hence the costly and multi-faceted appeal to the Supreme Court of Appeal.

The decision of the Supreme Court of Appeal

In the result, the Supreme Court of Appeal affirmed the decision of the Tax Court and similarly answered the question in the affirmative.

It was held that the pulp delivered by the taxpayer to the co-operative, when mixed with the pulp provided by other farmers, remained "produce" that was "held and not disposed of" by the taxpayer at the end of the tax year in question.

Consequently, the value of the shareholder's part of that combined pulp was required to be included in his income at the end of that tax year, and then qualified for a balancing deduction in terms of the Act.

The tax treatment of trading stock

Section 26(1) of the Income Tax Act 58 of 1962 reads:

'The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of the First Schedule.'

That provision must be read with paras 2 and 3(1) of the First Schedule to the Act, which provide respectively that –

'Every farmer shall include in his return rendered for income tax purposes the value of all livestock or produce held and not disposed of *by him at the beginning and the end of each year of assessment.'* (emphasis added)

and

'. . . the value of livestock or produce held and not disposed of at the end of the year of assessment shall be included in income *for such year of assessment and there shall be allowed as a* deduction from such income *the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.'* (emphasis added)

Para 9 of the First Schedule provides that –

'The value to be placed upon produce included in any return shall be such fair and reasonable value as the Commissioner may fix.'

The appellant was a wine farmer and a member of a farming co-operative

It was common cause that the appellant carried on farming operations and that part of his income was derived from wine farming (*wingerdboerdery*).

Most of his income came from payments that he received from a farming co-operative, of which he was a member, in respect of grapes that he delivered to the co-operative to be made into wine.

On delivery to the co-operative, the farmer's grapes were pressed into pulp and mixed with the pulp from grapes delivered by other members of the co-operative. Thereafter, the co-operative bottled or packaged the wine, marketed it, and sold it. Each farmer who participated in the pool received from the co-operative a pro rata share of the net proceeds of the sale of the wine.

The application of the Act to the facts of the case

In its judgment, the Supreme Court of Appeal ruled inter alia that –

- the transformation of the grapes into wine did not result in the income from the sale being other than income derived from farming operations;
- after the appellant's grapes had been pulped and the pulp had been mixed with the pulp from other farmers' grapes, his aliquot part of the mixture remained the appellant's *produce*. The court rejected the farmer's argument that the pulp ceased to be *produce* and that it instead became *work-in-progress in a process of manufacture*, that is to say, the manufacture of wine, carried on by the co-op and not by the appellant.

In *R v Giesken and Giesken* 1947 (4) SA 561 (A) it had been held that the sale of milk provided by the taxpayer's own dairy farming operations would be the product of those farming operations, but that the farmer's distribution business ceased to constitute *farming operations* where his milk was, prior to sale, mixed with milk provided by other farmers.

In the present case, the farmer argued that, applying the *Giesken* decision, once the pulp from the grapes provided by the appellant had been mixed with pulp provided by other farmers, no part of the resultant mixture was *produce*.

The Supreme Court of Appeal rejected this argument. The decision in *Giesken*, said the court, involved a particular statutory exemption from regulations applying to the dairy trade if the activity was part of a "farming operation". Once milk purchased from other farmers had been introduced into the appellant farmer's distribution business, that business lost the character of *farming operations*, whether or not his milk was mixed with that from other farmers. The *Giesken* decision, said the Supreme Court of Appeal, thus concerned a different issue from the one in the present case.

Was the conversion of grapes to wine part of the farming operation or a process of manufacture?

A further argument advanced by the farmer in the present case was that his overall modus operandi that culminated in the production of wine was not a *farming operation* that gave rise to *produce* but was a *process of manufacture* because it involved a "substantial or essential change of the character of the materials" out of which the finished article was made.

This decision will clarify the application of the trading stock principles to every kind of farming in which the farmer delivers his produce to a farming co-operative, where it is processed and then sold, regardless of whether his produce is mixed with the produce of other farmers prior to sale by the co-op.

Rejecting this argument, the Supreme Court of Appeal held (at paras [20] and [22]) that wine remains grape juice, albeit in a fermented form, and that the pulped and fermenting grapes did not make them essentially different from the produce of the harvest. It was held further that –

"the concept of 'wine in process' falls comfortably within the concept of the 'produce' of a wine grape farmer as envisaged in the First Schedule to the Act."

Did the pulped grapes, when delivered to the co-operative and mixed with those of other farmers, cease to be "held and not disposed of" by the taxpayer?

The strongest argument put forward by the appellant was that what he delivered to the co-operative in the present case could not, at the end of the tax year, be classified as *produce held and not disposed of* by him, as envisaged in para 2 of the First Schedule.

The argument was based on the proposition that, to fulfil this requirement, the taxpayer must be the owner of the thing in question and that in the present case, once the appellant had delivered his grapes to the co-operative and they had been pulped and mixed with the pulp from other farmers' grapes, he then had only "fractional ownership" in the combined pulp and it therefore ceased to qualify as his "produce".

Moreover, argued the appellant, the pulp was not in his possession, nor was it held by the co-op on his behalf; rather, it was held by the co-op for the purpose of sale by itself.

The Supreme Court of Appeal (at para [27]) rejected this argument, holding that the appellant retained joint ownership, in an undivided share on a pro rata basis, of the pooled pulp and later in the pooled wine. The mixing of the pulp was not accompanied by an intention to transfer ownership and the pulp was held by the co-op for the appellant.

Finally, the court held (at paras [33] – [34]) that the appellant's argument that the pulped grapes had a nil value was unrealistic; it was held that they had an ascertainable value.

In the result, the Supreme Court of Appeal held that the tax court had been correct in referring the matter back to SARS for further consideration and re-assessment.

The issues of principle settled by this judgment

This judgment now finally settles the correct tax treatment to be applied in respect of wine farmers whose *modus operandi* is that of the appellant in this case – that is to say, who deliver their grape harvest to a co-operative that pulps the grapes, mixes the pulp with the pulp of grapes provided by other farmers, and then converts the grape juice into wine.

The decision also finally establishes that produce qualifies as being *held and not disposed of* by a farmer if he parts with possession of it – as in this case through delivery to a co-operative – but remains the owner of that produce, even if it is only joint ownership in undivided shares.

The application of this judgment to other kinds of farming

This decision will clarify the application of the trading stock principles to every kind of farming in which the farmer delivers his produce to a farming co-operative, where it is processed and then sold, regardless of whether his produce is mixed with the produce of other farmers prior to sale by the co-op.

In terms of the decision in this case, the principles applicable to this case will apply provided that the farmer retains ownership of the produce he delivers to the co-operative – even if he has parted with possession and even if his sole ownership mutates into ownership in undivided shares of a larger entirety. So long as the farmer's produce does not change its identity into something qualitatively different in a *process of manufacture*, his farming produce will remain *produce* and will be seen to be *held and not disposed of* until ownership passes into the hands of another party.

Editor's note

This judgment raises more questions than answers.

The point at issue was the status of produce that had been delivered to a 'co-operative winery'. The term 'co-operative' is defined in the Income Tax Act ('the Act'), and an entity that is a 'co-operative' is also, by definition, a 'company' for purposes of the Act. As such it has a separate legal personality from its members and should be separately assessed to tax.

Swain JA, in the course of his judgment (at para [14]), defined wine farming by citing a passage from a judgment of Centlivres JA in *Ko-operatieve Wynbouwers Vereniging van Zuid-Afrika Beperk v Industrial Council for the Building Industry and Others* 1949 (2) SA 600 (A) at 614:

Wine farming consists of a number of different operations, such as cultivation of vineyards, pruning of the grape vines, rendering the vines free from disease, gathering the crop, pressing the grapes into wine and probably delivering the finished product to the 'first buyer'.

In the sentence following the passage cited by Swain JA, the following observation had been made by Centlivres JA:

To say that a person who receives grapes from farmers for conversion into wine or brandy, or who receives distilling wine from farmers, and deals with the grapes and distilling wine as he thinks fit, is a wine farmer, is a misuse of language.

The relationship between a co-op and its members was clearly illustrated by Centlivres JA, at page 613 - 614:

If I understand counsel correctly ... he stressed the fact that membership of the appellant company is confined to those interested in wine farming and contended that the appellant, being an agricultural co-operative company, [and] its activities must be regarded as the activities of each of its members. This contention, however, overlooks the fact that the applicant is a persona distinct from that of its members. It is deemed to have been registered under Act 29 of 1939 and under that Act it is clear that the applicant is a company with limited liability, its activities being its own activities and not those of its individual members. A wine farmer produces grapes and converts them into wine and brandy: there is no allegation that the applicant produces any grapes.

The 1949 judgment made it abundantly clear that the production of wine by a co-operative is separate and distinct from the growing and harvesting of the grapes by the co-operative's members and cannot be described as 'farming'.

It is astonishing that, having referred expressly to the judgment of Centlivres JA in support of his findings, Swain JA did not follow the rest of that judgment, relying instead on the following conclusion at paragraph [27]:

That ownership was retained by the appellant means that the pulp could never have been held by the co-op for the purpose of sale by itself. The pulp had to have been held by the co-op for the appellant. (emphasis added)

The Court appears to have accepted without demur the statement of fact that the appellant retained ownership of the grapes, and relied almost exclusively on that 'fact' to support its findings. It should have been abundantly clear to the Court that this proposition was questionable and that, by operation of law, ownership in the grapes could not have been retained by the appellant. No inquiry is made as to the basis on which ownership was purported to have been retained.

The statement of facts recognised that the co-op produced wine from grapes delivered by its members, bottled and sold the wine in its own name, and then paid bonuses to its members out of the net profits.

It is apparent that the grapes were delivered to the co-op so that the co-op could carry on its activities in terms of its objects and purpose. There seems to be little to support a conclusion that ownership in the grapes had not been transferred to the co-op as stated in the summation of the facts on which the judgment relied so heavily.

There is no indication that the grapes were loaned to the co-op, as the co-op did not appear bound to return a like harvest to the appellant at some time in the future. Even if this were so, such a transaction would effect change of ownership under the common law.

Editor’s note (cont.)

Further, it is evident that the co-op did not act as custodian or agent of the appellant. The co-op was free to do with the grapes as it wished and did in fact act in that manner. By way of *quid pro quo*, the appellant became entitled to share in the profits of the co-op’s activities on a proportional basis. The appellant retained no residual rights in the grapes: his rights derived from his membership of the co-op. The ‘fact’ of ownership was without substance – yet it is a cornerstone of the decision.

Swain JA at paragraph 32 of his judgment states that the appellant ‘retained joint ownership, in an undivided share, in the pooled pulp’. With respect, this is a mixed metaphor. Exclusive ownership was not retained. It was exchanged for a participation right in the activities of the co-op. To say that this is the same as the appellant’s having retained ownership of his produce is a leap too far. The appellant exercised no control over the produce after it had left his hands, whether directly or indirectly.

In principle, it was inappropriate for the SCA to conflate the farming activities of the appellant with the wine-making activities of the co-operative and treat them as if they were a single continuous operation.

This decision is diametrically opposed to the clear principles of separate personality between co-op and member laid down in *Ko-operatieve Wynbouwers Vereniging van Zuid-Afrika Beperk v Industrial Council for the Building Industry and Others*, which have stood unchallenged for some 66 years and which were not addressed in the judgment.

It is submitted that the dispute should have been decided on clear principles based on the substance of the arrangements, giving due recognition to the separate personalities and roles of the players.

From which date may interest be claimed from SARS?

In a recent judgment handed down in the North Gauteng High Court, a company had claimed interest on a refund that was payable to it by the South African Revenue Service: Customs and Excise. It was found in that matter that the customs and excise legislation did not impose an automatic liability on SARS to pay interest on the refund from the date on which it became due and payable, but that interest could only be claimed for a delay (mora) reckoned from the date upon which the taxpayer demanded payment of the refund (Annique Health & Beauty (Pty) Ltd v C:SARS *[2016] ZAGPPHC 413 – judgment delivered 10 June 2016). In light of this decision, where do taxpayers stand in relation to refunds for other taxes administered by SARS?*

The Tax Administration Act

The payment of interest is specifically dealt with in the Tax Administration Act ("TAA"), which applies in respect of all taxes administered by SARS, excluding customs and excise legislation.

Section 187(1) of the TAA makes it clear that, if a refund due by SARS is not paid in full by the effective date, interest accrues and is payable on the amount of the outstanding balance of the refund. Further, the period over which interest is determined and the rate at which it is payable are also prescribed.

As to the period over which interest should be determined, section 188(3)(*a*) of the TAA provides:

Unless otherwise provided under a tax Act-

(a) interest on an amount refundable under section 190 is calculated from the later of the effective date or the date that the excess was received by SARS to the date the refunded tax is paid …

So far, so good.

However, there is a major hindrance in relation to interpreting the refund mechanism, and that is that the term 'effective date' is defined in the TAA as the dates prescribed under section 187(3), (4) and (5) of the TAA. The dates prescribed under section 187(3), which potentially relate to refunds of taxes paid, have not been proclaimed into law and will only come into effect on a date yet to be proclaimed. The only effective dates that are enforceable against SARS relate to an understatement penalty under section 187(3)(*f*) and refunds paid in error under section 187(3)(*g*), which are the effective dates of the tax understated and payment of the refund respectively.

The bottom line is that interest may not be claimed under the TAA in respect of any refund due from SARS, because the quantum cannot be determined. Thus, interest may only be claimed if the specific legislation under which the tax is imposed provides for the payment of interest by SARS, or under the common law.

Specific legislation

The Income Tax Act and Value-Added Tax Act contain provisions for the determination of interest in respect of refunds of taxes overpaid in relation to assessed income tax or VAT. However, provisions in the Income Tax Act providing for refunds of withholding taxes are silent as to the determination of interest in respect of such refunds.

One must therefore conclude that, other than in the case of refunds of income tax overpaid or VAT refunds, the only basis upon which interest may be recovered from SARS is under the common law.

The common law

In *Annique Health & Beauty v C:SARS* (*supra*), the issue in dispute was based on the following facts:

- The applicant had paid an amount of R500 000 on 2 September 2010 in respect of a disputed liability to excise duty and lodged an appeal process against the assessment raised;
- SARS, under threat of litigation and in terms of a compromise, withdrew its determinations on 6 July 2012 and became liable to refund the amount of R500 000 to the applicant;
- No repayment was made, and on 26 May 2015 the applicant made application for an order of court compelling payment of the amount of R500 000 and delivered notice of the application to SARS; and
- SARS refunded the amount of R500 000 on 25 September 2015 but did not tender interest in respect of the amount refunded.

The applicant therefore applied for an order that it be paid interest on the amount of R500 000 from 6 July 2012 until 25 September 2015. As there was no provision in the relevant legislation for the payment of interest on amounts refunded, interest was claimed at the legal rate of interest.

Mabuse J dealt with the common law provisions that relate to the payment of interest where a debtor delays in making payment of the principal amount. The delay (*mora*) entitles the creditor to claim interest over the period of the delay (interest *a tempore morae*). In so doing, he referred to two decisions arising out of the law of contract.

In the first decision, *Lodhi 5 Properties Investments CC v Firstrand Bank Limited* (2015) 3 ALL SA 32 (SCA), the court had stated at paragraph [23]:

On the question of interest it seems to me that the appellant's argument misconceives the nature of the interest sought here - that it was not based on the enforcement of a contractual undertaking but rather on Lodhi 5's default. It is trite that a party which has been deprived of the use of its capital for a period of time has suffered a loss which, in the normal cause of events, will be compensated by an award of mora interest. The term 'mora' simply means delay or default; interest a tempore morae constitutes the damages that now (sic) naturally (without the need to place the debtor in mora) from the contract itself by reason of a debtor having failed to perform a contractual obligation within the agreed time.

In the second, *Crooks Brothers Limited vs Regional Land Claims Commissioner for the Province of Mpumalanga and Others* (2013) 2 ALL SA 1 (SCA), the following statement was made:

When the contract fixes the time for performance, mora (mora ex re) arises from the contract itself and no demand (interpellatio) is necessary to place the debtor in mora. In contrast, where the contract does not contain an express or tacit stipulation in regard to the date when performance is due, a demand (interpellatio) becomes necessary to put the debtor in mora. This is referred to as mora ex persona ... the purpose of mora interest is, therefore, to place the creditor in the position that he or she would have been in had the debtor performed in terms of the undertaking. Here a demand (interpellatio) was necessary to place the respondents in mora.

These two passages, said Mabuse J, are equally applicable to the operation of a statute, and the implications were thus explained in paragraphs [25} and [26] of the judgment:

[25] Quite clearly what the above passage mean (sic) is that there are two different scenarios referred to in the passage. The first scenario is where a contract stipulates the time for performance and the second scenario is where the contract does not fix performance time. Where a party is required to perform on an agreed date by the terms of the contract such a party is automatically in mora if he fails to do so. In this scenario, interest would become due and payable immediately when the party that is obliged to pay fails to pay and becomes in mora. This first scenario takes place where time in a contract is of essence.

[26] The passages above fully explain the second scenario. Where the contract contains no express or tacit stipulation with regard to the time of performance, a demand becomes necessary to put the debtor in mora. This principle applies in all instances even where there no (sic) contract is involved. In order to put a party that has to perform in mora, it is necessary that a demand in one way or the other be made. Where there is no contract, like the instant case, it is important that a demand to perform be made by the party in order to put the other party in mora...

It followed therefore that, until time was made of the essence, namely until repayment had been demanded, the respondent (SARS) had not been placed in *mora*.

The applicant argued that its action in contesting the imposition of the charge on 2 September 2010 constituted a demand for repayment or, at least, by the compromise under which the determinations were withdrawn and therefore it was entitled to claim interest at least from 6 July 2012. To this, Mabuse J responded (at paragraph [28]):

For two reasons there is no merit in this argument. The first is that compromise, as [applicant's counsel] argued, did not contain a demand for the refund of the said amount nor did it result in an agreement between the parties for the refund of the said amount. The second reason is that the noting of an appeal in terms of s 96(1) of the Act did not constitute a demand for payment of the required money.

The applicant was therefore awarded interest with effect from 26 May 2015 to 25 September 2015.

The takeaway

Persons who make payment under the ‘pay now – argue later’ rule and who wish to contest determinations by or seek refunds from SARS should satisfy themselves whether the statute in question provides for the payment of interest and the basis upon which payment of interest is determined. Where it is clear that the statute does not provide for the payment of interest on refunds of the applicable tax, measures should be put in place to ensure that SARS is placed in *mora*. It is evident that, until a refund is claimed, SARS cannot be placed in *mora*. It is equally evident that an objection against a determination or assessment is not the same as a demand for the payment of a refund.

Typically, refunds are claimed by completion of a prescribed form. In the event that it may be necessary to ensure that interest becomes payable on any refund that might be payable, it is submitted that it may be prudent, in addition to filing the claim, to make a separate and simultaneous demand for the immediate payment of the refund. This demand should ensure that SARS is made aware that it has been placed in *mora*.

Foreign services reportable arrangements giving rise to uncertainties

On 3 February 2016, SARS issued a public notice in the Government Gazette listing transactions or arrangements that would constitute reportable arrangements for the purposes of the Tax Administration Act, No. 28 of 2011 ("TAA"). The notice lists an additional reportable arrangement relating to the presence of foreign persons in South Africa in respect of service contracts.

The additional reportable arrangement is an arrangement for the rendering of consultancy, construction, engineering, installation, logistical, managerial, supervisory, technical or training services to a resident or a non-resident with a permanent establishment in South Africa to which that arrangement relates and in terms of which arrangement:

- a non-resident or an employee, agent or representative of the non-resident
- was or is physically present in the Republic or
- is anticipated to be physically present in the Republic
- in connection with or for purposes of rendering those services and the expenditure in respect of those services under that arrangement
- incurred or to be incurred, on or after 3 February 2016, exceeds or is anticipated to exceed R10 million in aggregate and
- does not qualify as remuneration for purposes of the Fourth Schedule to the Income Tax Act.

Issues to consider

Per SARS' interpretation, they expect taxpayers to consider the application of the reportable arrangement notice widely as these provisions are not taxing provisions, but are rather focused on information gathering. The result is that the R10 million aggregate value should be attributed not only to the South African leg of the services but to the full contract value.

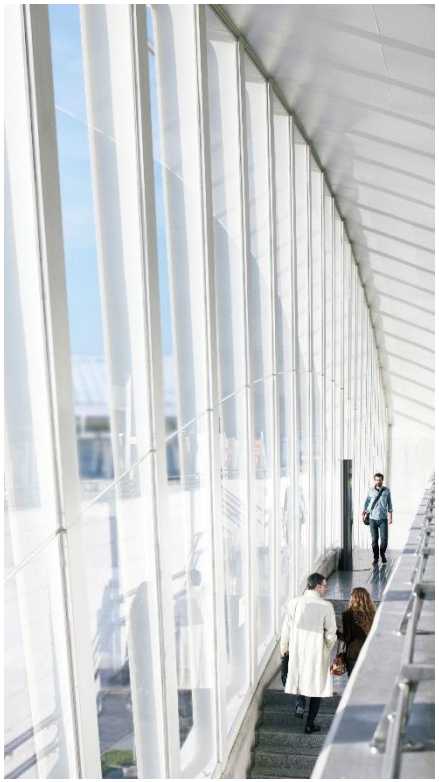
For example, a reportable arrangement can exist where a South African taxpayer enters into a contract for the provision of call center support services to be rendered in another country and as part of the service the foreign service provider visits South Africa periodically to provide feedback on the types of calls and quality issues that are experienced.

It is important to note that in terms of section 37 of the TAA, any 'participant' is obliged to report the relevant arrangement, and the definition of a 'participant' specifically includes "any person who is party to an arrangement listed in a public notice referred to in section 35(2)".

As a result, South African residents (or non-residents that have a permanent establishment in South Africa) entering into arrangements with foreign service providers in excess of R10 million in aggregate may have a reporting obligation.

Taxpayers will have to consider both current and future events in relation to arrangements to assess whether a reporting obligation exists, both in terms of any presence in South Africa in connection with the arrangement and the quantum of the expenditure in relation to the arrangement. A difficulty for a large company will be to identify such existing arrangements within the group and to monitor all such future arrangements going forward. More often than not such arrangements are entered into at an operational level, with the tax function having little visibility thereof.

Taxpayers will in addition have to consider the services rendered by non-residents and anything in connection with such services more closely. If any portion of such services entails or is anticipated to entail a presence in South Africa, the entire arrangement is potentially tainted. It will be necessary to assess such arrangements throughout the duration thereof, and it might in certain instances be necessary to report the arrangement upfront.



Certain agreements present other challenges. For example, there is uncertainty whether broad framework agreements such as a master services agreement, that includes a variety of ad hoc services, will in itself be reportable. Should that be the case, it is uncertain whether there is a once-off reporting requirement in relation to that agreement or whether reporting will be necessary for individual services provided under the main agreement. Furthermore, should such a master services agreement incorporate ad hoc services that all fall below the R10 million monetary threshold, it is uncertain whether the arrangement will be reportable at all or whether the individual services should be aggregated for purposes of determining if they are reportable. Ultimately, every case will have to be assessed on its own merits.

Uncertainty also exists in respect of mixed supply contracts. For example, a supply and installation agreement with a single composite price may entail the provision of both goods (not reportable) and services (potentially reportable). It is not clear how the provisions should be applied in such a situation – should the price be allocated between the different components, or should the value of the contract as a whole be taken into account in determining whether the arrangement is reportable?

The takeaway

Given the purpose of the reportable arrangement provisions and the penalties for not reporting, parties to such service arrangements should consider erring on the side of caution if there is any doubt and report such arrangements. The reporting process is relatively straightforward and does not entail significant resources. Furthermore, consideration should be given to the introduction of systems and controls at an operational level to identify such service arrangements. This should apply to arrangements existing prior to 3 February 2016, given that the notice applies to such arrangements, as well as to new arrangements.

SARS Watch 21 May to 25 June 2016

Legislation

24 June	Status overview of all DTAs and protocols	Summary of all treaties for the avoidance of double taxation up to and including 24 June 2016
24 June	Lesotho Double Taxation Agreement (DTA)	This DTA was published in Government Gazette No. 40088 with a date of entry into force of 27 May 2016.
24 June	Notice R.752 – Amendment of Part 1 of Schedule No. 1, by the substitution of various tariff subheadings under section 72 to increase the rate of customs duty on other bars, rods and forges from free to 10% – International Trade Administration Commission (ITAC) Report 526	This notice was published in Government Gazette No. 40091 with an implementation date of 24 June 2016.
24 June	Notice 748 – Additional considerations in terms of section 80(2) of the Tax Administration Act according to which an application for a binding private ruling or a binding class ruling may be rejected	This notice was published in Government Gazette No. 40088 with an implementation date of 24 June 2016.
17 June	Customs and Excise: Notice R.728 – Amendment of Part 1 of Schedule No. 2, by the insertion of rebate items listed in Schedule No. 3 and 4 in the column headed ‘Rebate Items’ which will be subject to the payment of anti-dumping – ITAC Minute M10/2015	This notice was published in Government Gazette No. 40076 with an implementation date of 17 June 2016.
10 June	Customs and Excise: Notice R.713 – Amendment of Part 1 of Schedule No. 3, by the insertion of rebate item 311.40/5513.21/01.05 to provide for a rebate provision for woven fabrics used in the manufacture of shirts – ITAC Report 522	This notice was in Government Gazette No. 40059 with an implementation date of 10 June 2016.
10 June	Customs and Excise: Notice R.712 – Amendment of Part 1 of Schedule No. 1, by the substitution of various tariff subheadings under section 72 to increase the rate of customs duty on hot-rolled steel from free of duty to 10% – ITAC Report 524	This notice was in Government Gazette No. 40059 with an implementation date of 10 June 2016.
10 June	Customs and Excise: Notice R.711 – Amendment of Part 1 of Schedule No. 1, by the substitution of tariff subheading 3701.30.25 in order to reduce the rate of customs duty on aluminium printing plates from 15% to free of duty – ITAC Report 523	This notice was in Government Gazette No. 40059 with an implementation date of 10 June 2016.
7 June	Customs and Excise: Draft amendment of section C of Part 1 to Schedule No. 6	Comments had to be submitted to SARS by 15 June 2016.

Legislation (cont)

3 June	Customs and Excise: Draft Rule Amendment Notice in terms of sections 64D and 120 relating to the movement of new imported vehicles on own wheels	Comments had to be submitted by 21 June 2016.
3 June	Customs and Excise: Notice R.679 – Amendment of Part 3 of Schedule No. 6 to make provision for retrospective extension of the open-cycle gas turbine units included under the diesel refund item for independent peak-power producers	The notice was published in Government Gazette No. 40045 with an implementation date of 1 April 2015.
27 May	Customs and Excise: Notice R.593 – Amendment of Part 3 of Schedule No. 2, by the deletion of safeguard item 260.02/2004.10.20/01.08 and the insertion of item 260.02/2004.10.2/01.07 as a consequence to the amendment to Part 1 of Schedule No. 1 to provide for new categories of frozen potato chips. Note that the deletion is permanent and the insertion was up to and including 4 June 2016 where after the safeguard duty has lapsed in its totality.	This notice was published in Government Gazette No. 40014 with an implementation date of 27 May 2016.
27 May	Customs and Excise: Notice R.592 – Amendment of Part 1 of Schedule No. 1, by the deletion of tariff subheadings 2004.10.20 and 2004.10.90, and the insertion of tariff items 2004.10.2; 2004.10.21; 2004.10.29; 2004.10.9; 2004.10.91 and 2004.10.99 in order to provide for new categories of frozen potato products	This notice was published in Government Gazette No. 40014 with an implementation date of 27 May 2016.
27 May	Customs and Excise: Notice R.591 – Amendment of Part 3 of Schedule No. 6 to clarify the position with regard to certain provisions under the diesel refund item	This notice was published in Government Gazette No. 40014 with an implementation date of 27 May 2016.
16 May	Customs and Excise: Draft amendment in terms of section 20 for the insertion of Rule 20.24	The proposed rule amendment restricts the bulk removal of other fermented beverages to combat the illegal movement of such products to the illicit market. Bulk other fermented beverages will only be allowed to move to another licensed manufacturing warehouse or to a licensed special storage warehouse, or for direct export. For purposes of the amendment, bulk other fermented beverages are products that are not in packaging for retail sale. Comments had to be submitted by 30 May 2016.
3 May	Changes in the Harmonized System (HS) nomenclature	The due date for comments has been extended to 25 July 2016.

Interpretation

27 May	Draft Guide on the Taxation of Professional Sports Clubs and Players	Comments had to be submitted by 21 June 2016.

Binding rulings

15 June	BPR 242 – Venture capital company investment in qualifying companies carrying on business as hotel keepers	This ruling determines: • the meaning of 'controlled group company' and 'equity share' with reference to companies that propose to issue different classes of ordinary shares; • the application of section 12J(6A)(b)(ii) of the Income Tax Act in relation to the granting of an option to purchase additional assets once qualifying shares have been issued to the venture capital company and the subsequent exercising of the option; and • the meaning of 'hotel keeper' and the allowances that a hotel keeper may claim.
13 June	BPR 241 – Award received for a black economic empowerment (BEE) training initiative	This ruling determines the income tax and capital gains tax consequences for the recipient of an award of participation units in a trust received in pursuance of a BEE training initiative and its entitlement to claim a section 24C Income Tax Act allowance against the award.
13 June	BPR 240 – Taxation of parties to share index-linked notes	This ruling determines the income tax consequences resulting from the issue of notes that provide a return determined with reference to a share index, issued by a special purpose vehicle to its holding company that is an insurer.
10 June	BPR 239 – Cash contributions made to a special purpose vehicle established to provide housing to mine workers	This ruling determines the income tax consequences resulting from cash contributions to be made by the applicant (as a party to a mining joint venture) to a special purpose vehicle established to provide housing for the employees of the joint venture and the group of companies of which the applicant forms part (the group).
9 June	BPR 238 – Taxation of receipts by or accruals to a programme of activities of a clean development mechanism (CDM) project	This ruling determines the taxability of receipts of a managing entity that manages a CDM project, as defined in section 12K of the Income Tax Act, carried on under a programme of activities modality.
9 June	BCR 053 – Programme of activities of a CDM project	This ruling determines the tax consequences for the participants in a CDM project, as defined in section 12K of the Income Tax Act, carried on under a programme of activities modality.
7 June	BPR 237 – Reinstatement of a deregistered company to transfer immovable properties	This ruling determines that the reinstatement of a deregistered company in order to complete the transfer of immovable properties pursuant to an amalgamation transaction will not be a step taken to withdraw or invalidate the deregistration of that company as envisaged in section 44(13) of the Income Tax Act.

Binding rulings

31 May	BPR 236 – Set-off of a loan account arising from an intragroup transaction to acquire equity shares	This ruling determines the income tax consequences resulting from the acquisition of equity shares by setting off a loan account, arising from an intragroup transaction, against the subscription price.
31 May	BPR 235 – Income tax consequences for parties to an unbundling transaction	This ruling determines certain income tax consequences for the parties to an unbundling transaction that follows asset-for-share transactions.
31 May	BCR 052 – Income tax and securities transfer tax consequences for the shareholders of a listed company following an unbundling transaction	This ruling determines the tax consequences for resident and non-resident shareholders of a listed company in terms of an unbundling transaction in relation to the shares of the co-applicant company.
27 May	BGR 35 – The value-added tax treatment of the supply and importation of frozen potato products	This BGR sets out the VAT rate applicable to the supply and importation of frozen potato products.

Case law

1 June	Avenant v CSARS (367/2015) [2016] ZASCA 90	The SCA dismissed an appeal in which the appellant had unsuccessfully challenged a tax assessment by the respondent before the Tax Court. It was decided that the delivery of grapes by the appellant to a co-operative winery of which he was a member, which had been pressed into a pulp as the first step in making wine and thereafter mixed with the pulp of other members of the co-operative, as at the end of the tax year, qualified as 'produce held and not disposed of' by the appellant for the purposes of paragraphs 2, 3(1), 4(1) and 9 of the First Schedule to the Income Tax Act 58 of 1962.

SARS publications

8 June	Table A – Average exchange rates for a year of assessment	A list of the average exchange rates of selected currencies for a year of assessment as from December 2003.
8 June	Table B – Average monthly exchange rates	A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months.
7 June	Practice Note RF 1/2004 on payment of annuities in arrear was withdrawn and came into effect on 7 June 2016 due to legislative amendments to paragraph 4(1) of the Second Schedule to the Income Tax Act.	The purpose of this practice note is to reconfirm the conditions for approval of retirement funds in relation to the payment of annuity benefits annually (or otherwise) in arrears.
3 June	Notice R.671 Income Tax 2016 – Notice to furnish returns for the 2016 year of assessment	Notice published in Government Gazette No. 40041 terms of section 66(1) of the Income Tax Act, 1962, read together with section 25 of the Tax Administration Act, 2011 to furnish returns for the 2016 year of assessment. The implementation date was 3 June 16.