



Synopsis

Tax today

June 2019

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

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

Editor: Al-Marie Chaffey

SARS Watch: Linda Mathatho





Internal processes do not defer enforcement

Litigation between the South African Revenue Service and Mark Lifman, in which the latter has sought to stay the attachment in execution of property owned by him and associated entities to satisfy tax debts, commenced in 2015. The enforcement of the claims has been delayed repeatedly by applications and appeals lodged by the taxpayers to defer the sale of assets. The most recent application came before the Western Cape High Court and was decided on 11 June 2019.

In the matter of *Mark Roy Lifman and others v Commissioner for the South African Revenue Service and others* (Case No 22820/2016), Baartman J outlined a history of events in which the affairs of the applicants had been investigated by SARS commencing in May 2014. The ultimate result of all of the investigations and audits was that SARS had amassed a claim for payment of an amount in excess of R350 million.

The applicants had not objected to any of the assessments raised by SARS and had failed to adhere to the undertakings given for payment by instalment of amounts owing under the first six assessments. They sought to intervene in the process only after SARS had attached property

in execution of civil judgments it had obtained. The first application for stay of execution was dismissed in June 2015 and, having served notice to seek leave to appeal, the applicants failed to prosecute an appeal. When SARS resumed execution, the applicants again sought to stay execution. The second application was dismissed in November 2015.

The applicants now sought for a third time to stay execution. The basis for their application in this case was that 'SARS had undertaken to conduct an internal review and reconsider the assessments'. They asserted that execution could not take place until the assessments were reconsidered.

The issues

The text of the letter dated 3 November 2016 on which the applicants relied stated:

'Please note (and as clarified) the purpose of the review is to compile an internal report. Therefore it is unlikely that the details of our review findings will be communicated to yourself. However SARS will communicate its decision to revise, or not, the current assessment for each taxpayer within the group structure.'

This letter was in response to a complaint by Mr Lifman that he had 'on more than one occasion complained that SARS officials were acting in an untoward and subjective manner.'

In February 2018, SARS had notified Mr Lifman that the process of internal review was not contemplated in the Tax Administration Act and that no such review would be undertaken. The letter concluded that the assessments raised were 'final and conclusive' and invited the applicants to withdraw their application for stay of execution.

Subsequently, SARS gave notice that the internal review had been completed and that the official was not able to share details with the applicants. Despite this the applicants persisted in asserting that the execution could not progress until SARS had notified its decision 'to revise the assessments or not'.





The judgment

In her judgment Baartman J was quick to dispose of the applicants' assertions that an internal process was a ground for review of the decision to attach their property in execution of a judgment (at paragraph [13]):

'The applicants cannot elevate a complaint about "treatment received" to a ground of review.'

In any event, Baartman J continued (at paragraph [14]):

'... [The] Tax Administration Act makes no provisions for the reconsideration of an assessment contended for in this application.'

The judgment emphasises (at paragraph [14]) that the applicants had been passive throughout the process until execution commenced:

'Each assessment was preceded by letters of findings issued to the relevant applicants in 2015-2016, indicating the tax debt SARS intended to raise and the facts relied upon for its conclusion. The amounts totalling R352 235 074.28, were such that one would have expected the applicants to have availed themselves of any opportunity to dispute the proposed assessments.'

At paragraph [15], Baartman J found:

'The applicants did not lodge any objection ... Instead, it seems that the initial dissatisfaction was about treatment received which the applicants have belatedly and opportunistically sought to raise to an objection against the assessments. That is not permissible; it follows that on this ground, the application must also fail. The assessments are undisputed, final, due and payable.'

Argument that section 93 of the Tax Administration Act permits the issue of a reduced assessment in the absence of an objection or appeal were rejected in that none of the circumstances permitting the issue of a reduced assessment applied in this instance.

The final throw of the dice also found no favour (at paragraph [18]):

'The applicants contend that there are exceptional circumstances present in this matter justifying a stay of the execution process. SARS is a special body with extensive powers and can legitimately intrude on the rights of taxpayers. However, the power SARS exercised is circumscribed and the applicants have been unable to identify any flouting or abuse of those powers. The applicants have had ample opportunity to engage the dispute or appeal mechanisms available and have chosen not to do so.'

Baartman J accordingly found that there would be no injustice in a failure to suspend execution and dismissed the application.

The only ray of relief that the applicants enjoyed was that, despite a finding that the application appeared to be an abuse of process, they were not ordered to pay SARS's costs because the applicants had, until February 2018, been under the impression that a lawful review process was in progress.

The takeaway

The Tax Administration Act provides mechanisms by which SARS may obtain information, raise assessments and recover tax debts. SARS's powers are balanced by mechanisms by which a taxpayer may engage with SARS in the event of a dispute.

A taxpayer who chooses not to engage in dispute or make use of the applicable administrative processes as outlined in the Tax Administration Act with SARS does so at his peril, as this matter so aptly demonstrated.

A taxpayer aggrieved by an assessment should ensure that he is aware of his right to dispute the assessment and the process by which to engage the dispute mechanisms. Inactivity until the last moment is not an option.



Elle-Sarah Rossato

Lead: Tax Controversy and Dispute Resolution

+27 (0) 11 797 4938

Email: elle-sarah.rossato@pwc.com



The Tax Director series (new): Article 6

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

Tax as a priority in every finance transformation

New competitors are transforming entire industries within brief periods of time. New services are taking the place of long-established business and market models. Innovative technological developments are displacing entire ranges of products – a trend not restricted to any one industry or sector. As part of this change, the finance functions and CFOs of companies are gaining a huge amount of importance in both strategic and operational terms. They are becoming the main navigators for this emerging transformation. At the same time, operational business is placing ever-higher requirements on the finance function, requiring

more accurate forecasting and more consistent information in order to respond appropriately to changes in the market.

Key to a high-performing finance function is its ability to balance the three competing objectives of control, efficiency and insight. Recently the focus has been on control and efficiency with a streamlining of back-office models. The focus now has shifted to insight. The requisite of CEOs and CFOs alike is for the finance function to be smarter and faster – however, each organisation is unique and so there is no ‘one size fits all’. There are, however, leading practices that successful finance organisations continue to drive as they are forced to do more with less in an increasingly complicated regulatory and competitive environment.

While the C-suite may be primarily invested in growth, it is the finance function that provides the institutional baseline understanding of financial capability and infrastructure that enables the selection of the right business strategy as well as its successful execution.

Finance transformations represent risk and opportunities for tax functions. The term finance transformation is a broad term used to describe any change programme focused on the finance function. There are broadly two types: organisational change and finance system change. Either of these generic change programmes will impact on the tax function’s ability to continue to remain tax compliant, as inevitably the data, systems and processes which tax relies on to deliver tax compliance and reporting will be impacted.





Why is tax involvement critical for success?

It is imperative that the tax function is fully engaged in the finance transformation. The tax function must participate both to ensure its continued ability to meet its own global compliance obligations, using high-quality data, and also to help enhance the overall operational effectiveness of finance. Transformation initiatives without tax can conflict with basic tax function requirements, with adverse consequences for the organisation as a whole.

To provide further context, tax relies on data provided by finance functions, systems maintained by finance and

processes established by finance. Evolution in tax policy has been felt around the world, and business leaders need to quickly understand how these new or proposed rules help (or challenge) structural aspects of the organisation. Agility is key to managing the complexity of incorporating new rules associated with tax policy changes. Now, more than ever, you will need to be able to quickly access data for decision-making and planning for potentially complex and overlapping rules. It is clear then that tax, and the wider organisation, can no longer deliver its legislative commitments effectively if it accepts data from finance that is not suited to its requirements, or where the finance processes inadequately support the tax function.

A finance transformation project is the opportunity for tax to communicate and imbed its requirements in the finance systems and processes. If tax is able to position itself as a primary customer of the finance transformation the benefits and opportunities can be tremendous.

Automation for better decision-making

Successful transformation activities typically enhance the quality of data gathered from business operations for finance purposes. With strong collaboration, tax functions can achieve a higher degree of efficiency through less time devoted to the manual manipulation of source information. Further, risk is most effectively managed by obtaining data integrity at its source when generated, as opposed to in downstream processes where it is consumed.

Integrating finance and tax data from multiple systems, applications, and spreadsheets into a common information and reporting platform can significantly reduce the time and effort spent on manual data gathering, business and legal entity reconciliation, and tax reporting. The focus is changed from spreadsheet-driven

manipulation to system or database-driven analysis and forecasting. Most importantly, the tax function is enabled to devote more time to prospective analysis and planning in order to provide quicker responses to questions from executives and auditors, and facilitate the effective use of alternative resource models.

Companies are re-evaluating their data sources to determine their ability to supply decision-makers with real-time access to key performance information and are designing standardised data structures and calculations for core business drivers. Specifically with respect to tax, most companies are beginning to use professional data analysis tools to help identify risk areas for audit and perform projections or scenario planning.

Finance transformation typically includes boosting enterprise resource planning (ERP) and process functionality through automation to eliminate waste and better meet functional requirements. Time-consuming and error-prone manual tasks are becoming automated. Successful ERP projects can increase the effectiveness of compliance processes and controls and accelerate cycle times, while also facilitating high performance.



In addition to the traditional IT-driven technology, which forms part of finance transformation, tax can also benefit from small automation as an opportunity to accelerate the drive towards end-to-end automation, which fills the many gaps left unaddressed by large-scale technology development. It also delivers quick wins when used as part of your overall tax technology strategy. What is the key to small automation success? When orchestrating multiple technologies, including new and emerging technology, tax should be leading from the front seat and playing a key role in driving the change needed, including governance and internal controls around financial data and processes.

Looking towards the future, it is necessary to recognise that artificial intelligence (AI), including machine learning, has taken a foothold in tax and finance transformation. Many organisations are using emerging technology in their core business operations; however, in the broader tax and finance functions, many have not yet considered how these new solutions could be useful or practical. We expect these models to have a direct impact on all functional areas, with some quick wins available in compliance,

mergers and acquisitions (M&A) due diligence, controversy, and document management. Another hurdle for the tax professional is determining how these emerging technologies can solve existing challenges. It's important to understand the power of these new tools and how they can deliver a good return on investment.

Based on PwC's 2019 AI Predictions survey, 58% of finance executives will implement continual learning initiatives in 2019 that include AI, so employees can integrate the learnings into the way they work. For digital upskilling, here are three ways to begin to bring new digital competency to life within your finance and tax function:

- Implement 'fingers on the keyboard' practical training for all.
- Look to gamify your digital upskilling approach to make it more interesting.
- Incorporate and lead with digital upskilling as a core element of your talent framework.





Aligning strategy with business priorities, focusing on people, process and risk

Aligning the tax service delivery model with stakeholder needs and organisational strategy is a growing trend. This includes challenging the traditional tax function operating structure – is it a core competency to have an in-house tax function? Is insourcing, co-sourcing or outsourcing an alternative? The strategy could include migrating repeatable tasks to shared service centres and centres of excellence. Alternatively, the business may have a strategic priority to expand into new markets, which may require incorporating a flexible operating model that can streamline efforts during expansion and growth. Or, if lowering financial risk is a core goal, bolstering resources and processes may be in order.

Successful transformation activities reflect the organisation's tolerance for risk. In particular, senior management increasingly focuses on how tax risk is being managed and how that aligns with the overall goals of the organisation. Risk can no longer be considered in isolation from the wider business due to the potential for unexpected errors, exposures, or reputational damage. Specifically, an

organisation's tax control framework must now include strong governance, which clearly reflects the expectations of stakeholders, an in-depth understanding of where key risks lie, effective and efficient controls, internal and external communication strategies, and ongoing monitoring for all these areas.

Effective transformation initiatives evaluate resource allocation with a fresh eye, with no hesitation to redesign or redeploy responsibilities. The tax function will need to be highly proficient in technology as well as project management in order to address many issues that can arise during finance transformation initiatives. Upskilling your workforce is mission critical to attract, develop, and retain employees – focus on both tax technical and digital skills is essential.

Benefits to the organisation if tax does participate in finance transformation planning:

- Reduced risk of errors in financial statement and tax filings.
- Diminished risk of 'regulatory' entanglements and improved ability to address tax audits.
- Stronger tax control framework, equating to lower financial tax risks.
- New analytical capabilities, adding to the organisation's ability to plan, forecast and collaborate on new business opportunities.
- A more empowered, strategically placed workforce, enabling quicker change.
- Improved communication and workflows between finance and tax personnel can boost efficiency, paving the way for greater cohesiveness going forward.

Adverse consequences that may occur if tax does not participate in finance transformation planning:

- Increased compliance costs due to, for example, headcount needed to complete intensive manual processes within tax.
- Financial statement errors (resulting in financial statement internal control deficiencies and restatements), e.g. due to reduced quality of data received by tax.
- Delays in the financial statement closing process, e.g. due to the delay in receiving tax-ready data.
- Risk of higher tax liabilities upon audit, e.g. due to the need for significant manual process intervention that may increase errors.
- Lack of time for tax planning, which can help reduce a company's effective tax rate and cash taxes paid.
- Less time for business support, resulting in business changes that do not appropriately consider tax ramifications.



What is required for tax to be an integral part of finance transformation initiatives from the outset?

- Comfort with the language of finance transformation.
- A commitment to working with and influencing finance leadership and relevant experts, and a clear recognition of the importance of success.
- Tax functions should seek support to improve their literacy with finance transformation project terminology, to define data and business requirements in this context, and to understand the fundamentals of how such programmes run.
- Tax can establish itself in an integrated role in the programme governance, ensure authority to sign off and review project stages and obtain appropriate resources to ensure tax requirements gathering, design and testing are adequately covered for tax.
- In many cases work may be required to define the business case for tax's involvement and to bridge the comfort gap experienced between both traditional tax practitioners, and traditional finance and IT practitioners.



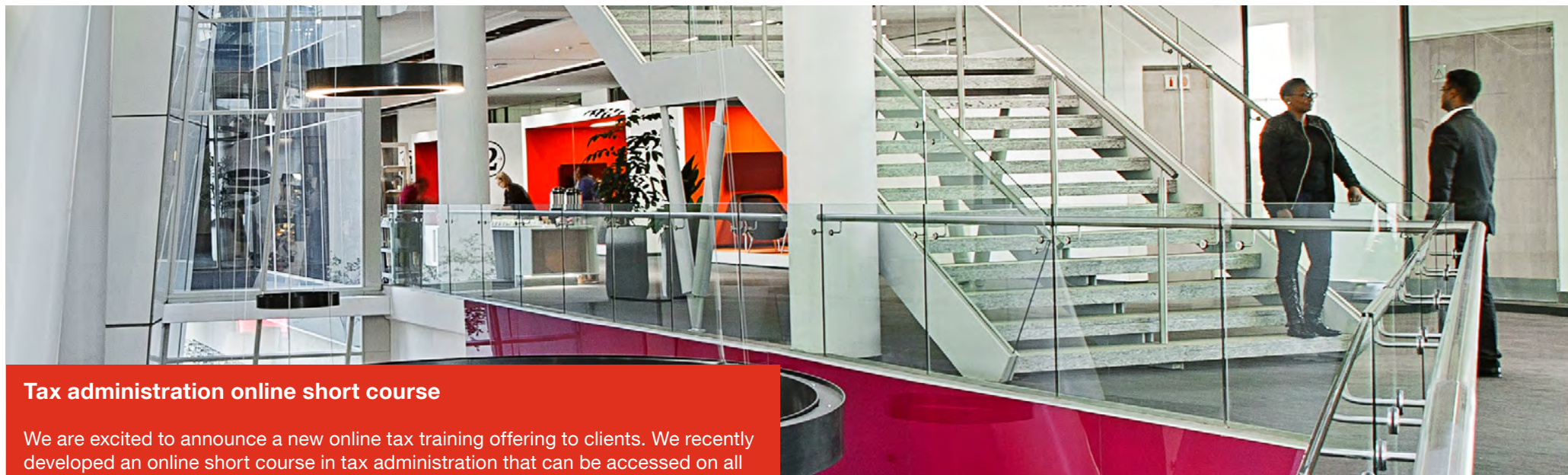
Gert Meiring

Lead: Tax Reporting and Strategy

+27 (0) 11 797 5506

+27 (0) 83 703 2254

Email: gert.meiring@pwc.com



Tax administration online short course

We are excited to announce a new online tax training offering to clients. We recently developed an online short course in tax administration that can be accessed on all electronic devices.

About this course

This online short course aims to provide you with a comprehensive understanding of tax administration in South Africa. The Tax Administration Act is applicable to all tax Acts administered by the Commissioner of SARS and establishes the powers and obligations of SARS on the one hand and the rights and obligations of taxpayers on the other. Tax administration impacts both individuals and business entities.

Short course description

The online short course consists of four modules and assessments. Throughout the four modules, key concepts are unpacked with interactive activities and you will have the opportunity to visit a wealth of additional resources.

You will have access to knowledge obtained by experienced PwC experts in this field, with the benefit of real-life practical examples.



Al-Marie Chaffey

National Tax Technical

+27 (0) 11 797 5644

Email: al-marie.chaffey@pwc.com

For more information about the course please see our [brochure here](#).

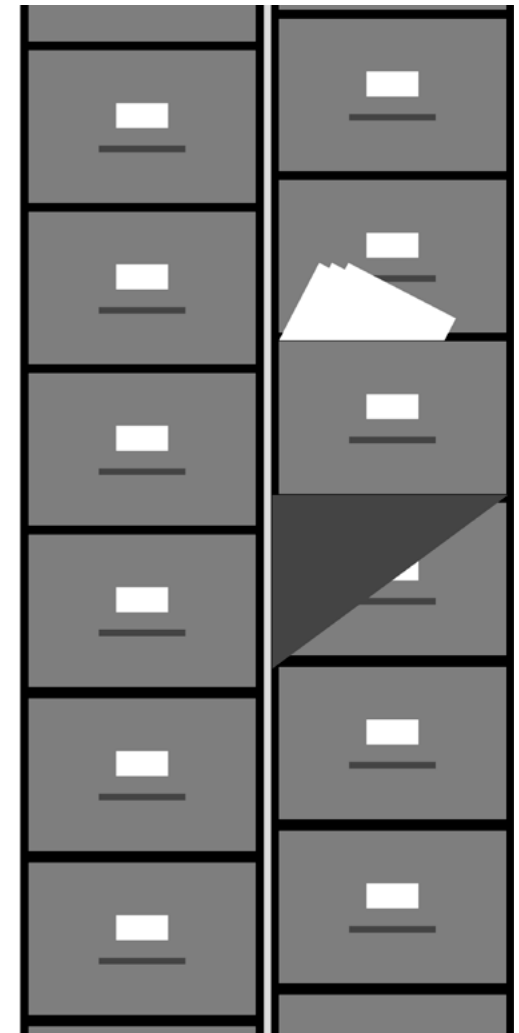


SARS Watch

SARS Watch 26 May 2019 – 25 June 2019

Legislation

20 Jun	Draft rule amendment notice and related forms – Rules under sections 8, 59A and 60 of the Customs and Excise Act, 1964 for public comment	Comments must be submitted to SARS by Friday, 19 July 2019.
14 Jun	Amendment to the Rules in terms of the Customs and Excise Act, 1964, relating to compulsory tariff determinations for wine	Notice R925 published in Government Gazette No. 42530 with an implementation date of 1 April 2019.
14 Jun	Amendment to Part 1 of Schedule No. 1 by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 67.51c/kg and 101.26c/kg to 95.80c/kg and 143.69c/kg respectively, in terms of the existing variable tariff formula – Minute 03/2019	Notice R924 published in Government Gazette No. 42529 with an implementation date of 14 June 2019.
10 Jun	Public comments on initial batch of the 2019 Draft TLAB	Comments to be submitted to SARS and National Treasury by 25 June 2019.
31 May	Draft rule amendment notice and related forms – Insertion of rules 107A - requirements in respect of tobacco leaf threshers	Comments must be submitted to SARS by Friday, 28 June 2019.
31 May	Amendment to the Rules in terms of the Customs & Excise Act, 1964, relating to part-shipment	Notice R845 published in Government Gazette No. 42497 with an implementation date of 31 May 2019.
31 May	Amendment to Part 3 of Schedule No. 6, to exclude the carbon fuel tax as announced by the Minister of Finance on 20 February 2019 from the diesel refund scheme	Notice R844 published in Government Gazette No. 42497 with an implementation date of 5 June 2019.
31 May	Amendment to Part 5A of Schedule No. 1, to give effect to the budget proposal to implement the carbon fuel tax on fuel as announced by the Minister of Finance on 20 February 2019	Notice R843 published in Government Gazette No. 42497 with an implementation date of 5 June 2019.





Case law

In accordance to date of judgment

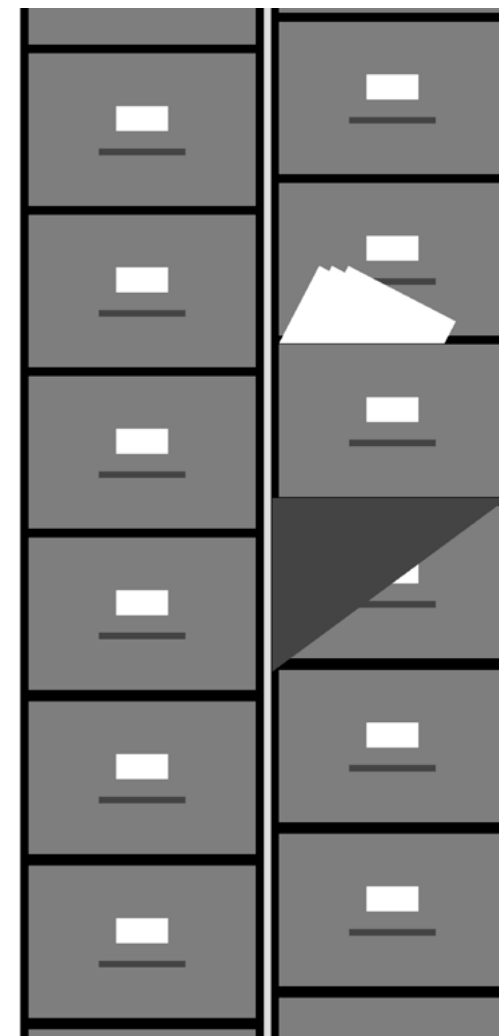
11 Jun	Lifman and Another v Commissioner for the South African Revenue Service and Others	An application to stay the execution process commenced pursuant to taxes raised following the late filing of VAT and tax returns, and a section 50 enquiry under Part C, Chapter 5 of the Tax Administration Act, 28 of 2011.
--------	--	---

Interpretation Notes

21 Jun	IN 112 – Section 18A: Audit certificate	This Note provides guidance on the interpretation and application of section 18A(2B) and (2C) in relation to the audit certificate that must be obtained and retained in specified circumstances for section 18A receipts issued by an approved organisation or department.
--------	---	---

Rulings

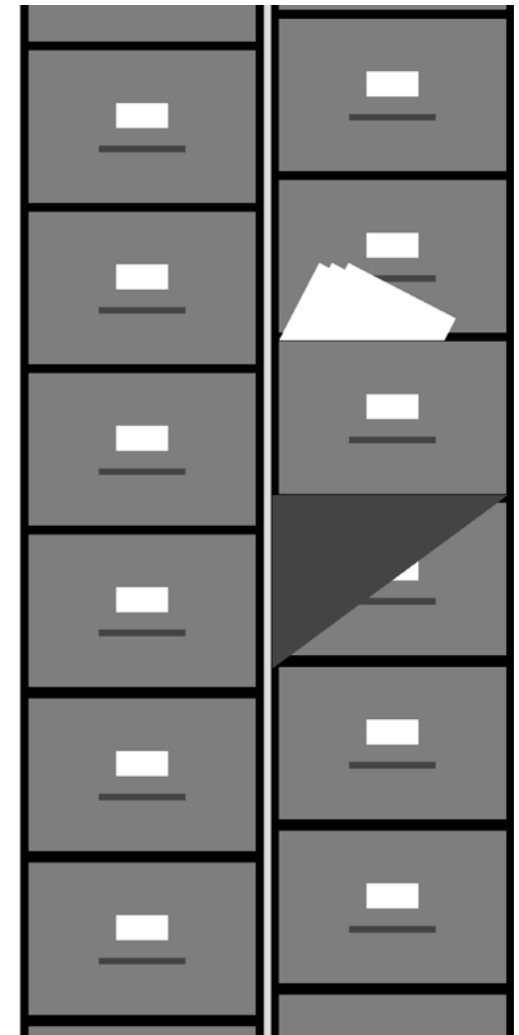
6 Jun	BCR 67 – Tax consequences for members arising out of conversion of association to private company	This ruling determines the income tax and value-added tax (VAT) consequences for the members of an unincorporated universitas, formed to administer a national sporting league, (the Applicant) of its conversion to a newly formed private company (Company A) and related matters.
6 Jun	BPR 320 – Conversion of association to private company	This ruling determines the income tax, value-added tax, transfer duty and securities transfer tax consequences of the conversion of an unincorporated universitas to a newly formed private company and certain related matters.
4 Jun	BGR 51: Cancellation of registration of a foreign electronic services supplier	The purpose of this BGR is to make an arrangement under section 72 for a foreign electronic services supplier that will have taxable supplies of a value not exceeding R1 million in a 12-month period to apply to cancel their registration.





Other publications

25 Jun	Tax Alert: Dutch 'Most Favoured Nation Clause': South African Tax Court finds in favour of taxpayer	The Alert looks at the Tax Court judgment dealing with the issue in respect of South African dividends tax on dividends paid by a South African resident company to a Dutch resident.
13 Jun	OECD: Money Laundering and Terrorist Financing Awareness Handbook for Tax Examiners and Tax Auditors	The aim of this Handbook is to raise the awareness of the tax examiners and tax auditors about the possible implications of transactions or activities related to money laundering and terrorist financing and is not meant to replace domestic policies or procedures.
8 Jun	OECD : Secretary General Tax Report to the G20	This report contains two parts. Part I reports on the activities and achievements in the OECD's international tax agenda. Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
31 May	OECD: International community agrees on a road map for resolving the tax challenges arising from digitalisation of the economy	The OECD announced that the international community has agreed on a road map for resolving the tax challenges arising from the digitalisation of the economy, and committed to continue working toward a consensus-based long-term solution by the end of 2020.
31 May	Media statement: Technical adjustment to the composition of the fuel levy rates announced in the 2019 Budget	This adjustment will include a technical correction to fully align with the methodology in the recently promulgated Carbon Tax Act No 15 of 2019, and will be effective from 5 June 2019.





At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with over 250,000 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.

©2019 PwC Inc. [Registration number 1998/012055/21] ("PwC"). All rights reserved.

PwC refers to the South African member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/za for further details.

(19-24062)