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The Tax Director series
SARS Watch

Synopsis

Tax today

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

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

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Loyalty programmes and section 24C of the Income Tax Act

Since its introduction into the Income Tax Act in 1980, section 24C has spawned a number of disputes between taxpayers and SARS. The most recent reported decision in the Tax Court on the interpretation of the terms used in that section dealt with customer loyalty awards, an issue which had not previously been judicially determined.

In *Case No. 13988* (judgment delivered 1 November 2018), the appellant company, referred to in the judgment as ABC (Pty) Ltd ("ABC"), was a nationwide retailer.

ABC operated a loyalty programme. Customers may apply for a loyalty card, and, upon acceptance of the application, a loyalty card is issued to the customer. Under the loyalty card contract, points are awarded to a customer that presents the loyalty card to the cashier when making a purchase. One point is awarded for every R5 spent, subject to a minimum transaction value of R10. For every 100 points awarded, a voucher entitling the customer to a discount or credit of R10 is issued to the customer. Vouchers are issued quarterly (at the end of each designated quarterly period) to each customer that has amassed 100 or more loyalty points at the end of the quarter.

Vouchers cannot be redeemed for cash. However, where a customer presents a voucher to a cashier when purchasing goods at an ABC store, ABC is obliged to supply goods to the customer to a value equal to the amount reflected on the voucher.

In its 2009 return of income, ABC had included some R58 million in its income relating to the awarding of loyalty points. Although the judgment is unclear, it appears that this represents the retail value of loyalty points awarded during the year of assessment. In addition, it had claimed approximately R44 million as an allowance for future expenditure in terms of section 24C of the Income Tax Act ("s24C"), representing the cost of goods that it expected to supply to customers on redemption of loyalty vouchers.

SARS disallowed the claim for the deduction of the allowance for future expenditure. ABC duly objected, and the objection was disallowed.

ABC noted an appeal against the disallowance of the objection, and after some delay, it was agreed that the matter would be determined having regard to the basis on which SARS disallowed the claim for deduction of future expenditure.

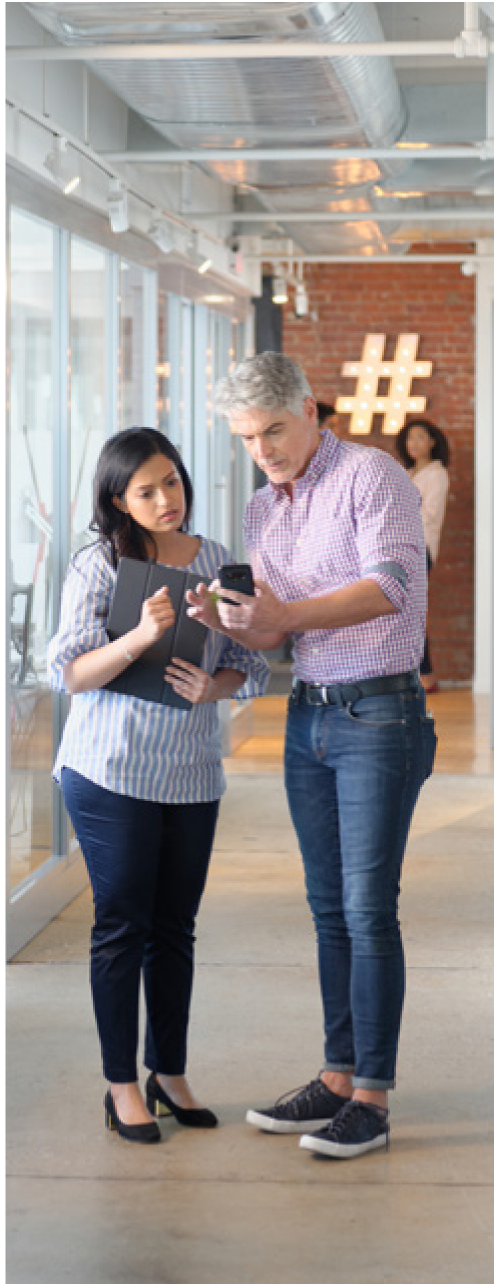
SARS' argument

In disallowing the deduction, SARS distinguished three contracts. The first is the "loyalty card contract" in terms of which the customer applies for and is issued with a loyalty card. The second and third contracts entail a purchase contract under which the points are awarded ("the first purchase and sale contract") and a purchase contract under which the voucher is redeemed ("the second purchase and sale contract").

SARS argued that the points were awarded pursuant to the loyalty card contract. However, no income accrued under the loyalty card contract and therefore no allowance for future expenditure could be claimed. Alternatively, it argued that no obligation arose under the first purchase and sale contract, but that the obligation only arose under the second purchase and sale contract. Thus, SARS argued, the income arose from a different contract than that under which the expenditure was incurred.

ABC's argument

Differentiating the loyalty card contract from the first purchase and sale contract is artificial. The documentary evidence of the income that accrues and the rewards generated is recorded on the till slip at the time of the first purchase and sale contract. An enforceable obligation arises only when the first purchase and sale contract is concluded. Without the first purchase and sale contract, no loyalty points are awarded. The only contract that generates the obligation is the first purchase and sale contract.



The judgment

In the judgment, Nuku J dealt extensively with the submissions of counsel for the parties. The judgment set out the applicable provisions of s24C at paragraph [12]:

> "24C Allowance in respect of future expenditure on contracts—(1) For the purposes of this section, 'future expenditure' in relation to any year of assessment means an amount of expenditure which the Commissioner is satisfied will be incurred after the end of such year— (a) in such manner that such amount will be allowed as a deduction from income in a subsequent year of assessment; or (b) in respect of the acquisition of any asset in respect of which any deduction will be admissible under the provisions of this Act.
>
> (2) If the income of any taxpayer in any year of assessment includes or consists of an amount received by or accrued to him in terms of any contract and the Commissioner is satisfied that such amount will be utilised in whole or in part to finance future expenditure which will be incurred by the taxpayer in the performance of his obligations under such contract, there shall be deducted in the determination of the taxpayers [sic] taxable income for such year such allowance (not exceeding the said amount) as the Commissioner may determine, in respect of so much of such future expenditure as in his opinion relates to the said amount."

The arguments of the respective parties were extensively recorded, but the crisp issues were narrowed down at paragraphs [32] to [34]:

> "[32] The respondent [SARS], however, maintains that no obligation to incur future expenditure arises when the first purchase and sale contract is concluded. The respondent's view is that only income is earned at this stage without any concomitant obligation to incur future expenditure. This, in my view, is not factually correct. As will be recalled when the customer concludes the first purchase and sale contract with a spend of R10 or more the appellant awards the customer points which the customer may redeem in the future.
>
> [33] In my view, the conclusion of the first purchase and sale contract results in two things, namely
>
> (a) the appellant earns income, and
>
> (b) the appellant incurs an obligation to incur future expenditure towards the customer. The obligation to incur future expenditure arises from the fact that the appellant will in future be obliged to provide goods to the customer when the customer redeems his or her voucher. At this stage the appellant is aware of its obligation to the customer. Thus, I cannot agree that no obligation to incur future expenditure arises from the first purchase and sale contract.
>
> [34] What the respondent refers to as "the third agreement of purchase and sale which simultaneously earns income for the appellant and creates a liability on the appellant to grant the customer a predetermined credit or discount", appears to be the transaction by which the customer redeems the voucher and which I have referred to as the "second purchase and sale contract". If the second purchase and sale contract comprises of [sic] only the redemption of a voucher, the appellant does not earn an income. In this scenario the appellant only incurs the actual expenditure in respect of the obligation which arose upon the conclusion of the first purchase and sale contract."

Nuku J found that it was artificial to distinguish two contracts as giving rise to the obligation to incur future expenditure. At paragraph [36] of the judgment, he found:

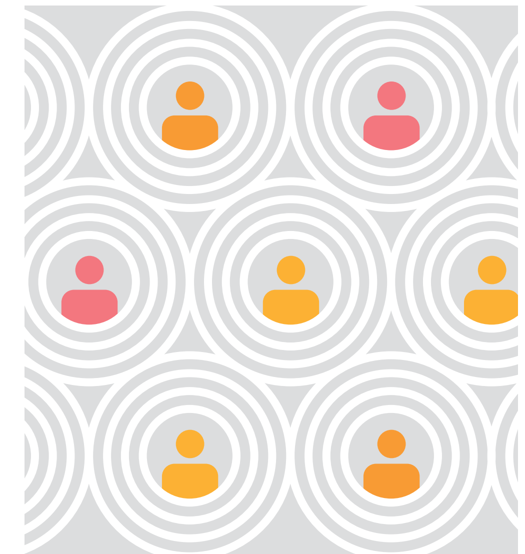
> "In fact, in my view, it is not only artificial to do so but it is factually incorrect. The first purchase and sale agreement incorporates the terms of the loyalty card contract. Despite that the first purchase and sale contract remains the contract that triggers both the earning of income by the appellant as well as an obligation by the appellant to incur future expenditure."

Thus, Nuku J concluded, at paragraph [37]:

> "Based on the finding that the income is earned on the same contract that gives rise to the obligation to incur future expenditure, it follows that the appellant's section 24C claim meets the requirements of section 24C."

SARS made a submission in the course of the proceedings that the obligation to incur future expenditure was contingent and that ABC had not discharged the burden of proving that the expenditure would actually be incurred, as this required that the customer should make a further purchase.

This was rejected by Nuku J, firstly because this was not the basis upon which the parties had agreed that the matter should be adjudicated and secondly because the issue had not been raised by SARS in its statement of reasons for assessment issued under Rule 31 of the rules for the conduct of objections and appeals.



The takeaway

The quantum of the amount in dispute would tend to indicate that the matter is likely to be taken on appeal, particularly as the Supreme Court of Appeal (“SCA”) has subsequently dealt in detail with the interpretation of s24C in the matter of *CSARS v Big G Restaurants (Pty) Ltd*, reported in the January 2019 issue of *Synopsis*.

The judgment of Schippers AJA in the SCA set out the requirements in the following terms:

> “The section has two basic requirements. First, there must be income received or accrued in terms of a contract. Second, the Commissioner must be satisfied that such amount, i.e. the income received from the contract, will be used wholly or partially to finance future expenditure that a taxpayer will incur in performing its obligations under that same contract. There is thus a direct and immediate connection between these two requirements. The section does not allow for different income earning and obligation-imposing contracts.”

Furthermore, the SCA made it clear that the terms in s24C are to be interpreted narrowly, since they are an exception to the prohibition of deductions for amounts carried to a reserve.

It is also pertinent that the question whether the liability was unconditional was not raised by SARS in the reasons for assessment and was therefore not considered in the Tax Court. SARS has successfully argued in earlier decisions that the incurral of the expenditure must be established with a degree of certainty. Tax Courts have found, on more than one occasion, that anticipated expenditure in respect of warranty obligations does not meet the certainty requirement, as it is contingent on an uncertain future event. Similar considerations may also apply to loyalty award redemptions.

In effect, while the judgment is informative and well reasoned, its general applicability is a matter of some doubt.

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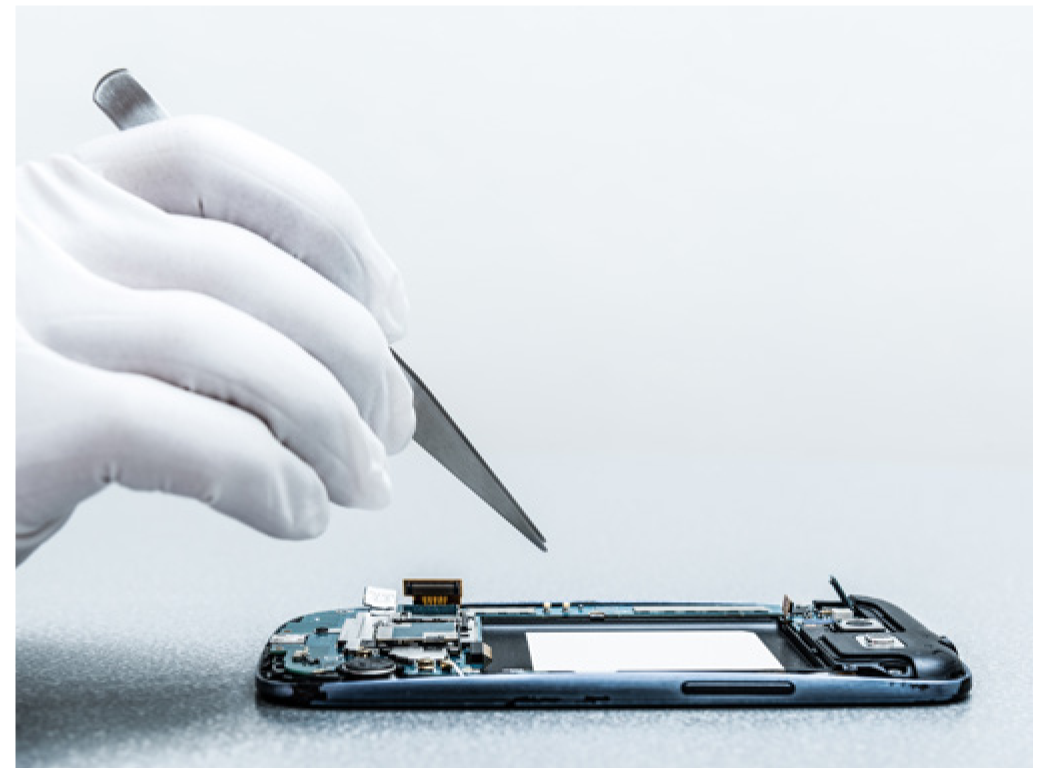

Mining – the SCA takes a pragmatic stance

In two decisions in 2017, the Tax Court in Johannesburg had interpreted the definition of "mining" and "mining operations' in section 1 of the Income Tax Act in a restrictive manner, despite the broad terms found in the definition. Not surprisingly, the decision in one of the judgments has been the subject of an appeal to the SCA, which has adopted a pragmatic approach to determine whether a person is carrying on mining.

In the matter of *Benhaus Mining (Pty) Ltd v Commissioner for the South African Revenue Service* [2019] ZASCA 17 (22 March 2019), the issue was simply whether the appellant ("Benhaus") conducted mining or mining operations.

The activities undertaken by Benhaus for its clients are summarised in paragraphs [11] and [12] of the judgment of Lewis ADP:

> "[11] The services that Benhaus rendered included establishing sites for open cast mining, and fencing them off; constructing workshops; constructing and maintaining access roads, and primary and secondary haul roads; removing topsoil and stockpiling it in designated areas; excavating and stockpiling material extracted from the ground; removing waste; constructing storm water drainage; blasting mineral-bearing ore; delivering the ore to the client's premises for processing; and rehabilitating the mining area after extraction.
>
> [12] The essence of the contracts between Benhaus and its clients was to extract the mineral-bearing ore (the mineral being chrome) on behalf of the client in return for a fee calculated at a rate per ton of chrome-bearing ore that was delivered to the client's processing plant…"

SARS had disallowed the deduction of capital development expenditure claimed by Benhaus in terms of section 15 of the Income Tax Act (which applies to persons conducting mining or mining operations). SARS had argued that Benhaus was not engaged in the entire process of extracting chrome and therefore did not derive income from mining, but rather was a service provider to the person who was carrying on the mining operations. The essence of SARS' argument is that mining is a risky business in which it may take a number of years before income is earned and that the mining allowances are designed to incentivise mining development. It argued that contract miners earned returns immediately upon commencing operations and carried no risk. Policy considerations therefore require that they should not be entitled to claim mining incentives.

Following the disallowance of its objection against the denial of its deductions, Benhaus appealed to the Tax Court. The Tax Court (reported as *ITC 1913* 80 SATC 455) sided with SARS and upheld the disallowance.

The matter was then taken on appeal SCA for adjudication.

The judgment

Lewis ADP (who delivered the unanimous judgment of the Court) took cognisance of SARS' reliance on the policy considerations identified in numerous reports, of which the most recent was the report of the Davis Tax Committee in 2016. She concluded (at paragraph [8]):

> "However, the report has no bearing on the issues on appeal although the Tax Court relied on the reasons advanced for accelerated depreciation in interpreting the Act, stating that they did not apply to contract miners. In my view, the explanations, which are not new, do not bear upon the question whether in fact Benhaus does undertake mining operations."

In essence, Lewis ADP found that the Court was not concerned with policy but with interpreting the law in light of the facts.

The evidence of one of the witnesses had identified that there are three distinct stages in the extraction of chrome:

- The separation of the mineral-bearing ore from the soil, and crushing, screening and delivering the ore to the plant;
- Milling and washing the ore; and
- Melting the ore to produce ferrochrome.

It was common cause that Benhaus was engaged only in the first stage.

The essential question is identified in paragraph [17] of the judgment of Lewis ADP:

> "The Tax Court found that Benhaus was not engaged in mining within the meaning of ss 1 and

15(a) of the Act, and had thus not been entitled to deduct the capital expenditure in respect of the equipment it used for extracting mineral-bearing ore from the ground. Its other findings all flow from this. Thus the essential question is whether the first stage of the process of mining for chrome constitutes mining under the Act."

The Tax Court, in *ITC 1913 (supra)* and *ITC 1907* 80 SATC 271, had gone to great lengths to justify a finding that the core element of mining is the generation of income from the sale of minerals, and that, unless a person is engaged in the sale of the minerals, that person is not carrying on mining operations. In both instances, the finding had been that the contract miner was not engaged in mining operations but was a service provider to the person or persons who were mining.

Lewis ADP did not analyse the Tax Court judgments in detail but focused on two primary issues, which had been central to the judgment of Sutherland J in *ITC 1907*, on which Weiner J in the court *a quo* had placed reliance.

The first issue was the proposition that a person could only be conducting mining operations if it bore the risk inherent in the operation. Here, Lewis ADP (at paragraph [27]) acknowledged that this may have been the case in the precedent that had been relied upon by Sutherland J, but added:

"… but the court did not refer to risk as an element in determining whether the lessor conducted mining operations. And it is not evident to me why the question whether an entity is conducting mining operations is dependent on the miner bearing risk."

Lewis ADP continued at paragraph [28]:

"In any event, as Benhaus points out, it did bear commercial risk. It bought mining equipment at considerable cost (some R391 million over the relevant years of assessment), had to incur labour costs and losses caused if there were strikes, the costs of equipment breakages, and to be paid a lesser fee if the quality of the chrome-bearing ore was below that of the sample agreed."

The second issue was summarised at paragraph [29] of the judgment:

"Sutherland J … rejected the proposition that any part of the process of winning minerals from the earth could constitute mining operations. The definition of mining and mining operations refers to a process 'by which any mineral is won from the soil or from any substance or constituent thereof'. This could be construed in such a way that both the entity that dug the mineral-bearing ore from the earth, and the entity that operated the process of separating the mineral from the ore or rock, would be involved in mining the same mineral. That construction, he held, was incorrect."

After setting out the more detailed arguments advanced by Sutherland J, Lewis ADP briefly dealt with the argument made by Benhaus before dealing with earlier decisions in the SCA itself at paragraph [32], where she stated:

"See too *Richards Bay Iron and Titanium (Pty) Ltd v CIR* 1996 (1) SA 311 (A) and *CSARS v Foskor* [2010] ZASCA 45; [2010] 3 All SA 594 (SCA), both of which dealt with the question whether ore extracted by one entity and delivered to another for processing, constituted trading stock in the hands of the latter for the purposes of ss 1 and 22 of the Act. This court found that the entity that extracted the ore was the miner and that the entity that processed it into an entirely different state was not."

SARS argued that the SCA decisions dealt with a different legal question, to which Lewis ADP responded:

"That is true. But their importance lies in the fact that this court has long recognized that the process of extraction amounts on its own to a mining operation and the processing of the ore is a different one."

The judgment dealt with and rejected SARS' assertion that a mine had to be a "producing mine" before development expenditure could be claimed. Lewis ADP (at paragraph [36]) confirmed the view that *"work done on mineral-bearing property in preparation for winning of the mineral, is covered by the expression 'mining operations'"*.

Finally, Weiner J had held in the Tax Court that Benhaus was not entitled to claim the deduction of development expenditure because it had failed to establish the amount attributable to each mining property, as required under ss 36(7E) and (7F). Lewis ADP identified that this issue had not been raised by SARS in its statement of reasons for assessment and that it could not be pleaded at a later stage. She therefore found that this argument should not have been entertained and must fail.

The judgment concluded at paragraph [41]:

"Benhaus submits that it does the mining work – extracting the mineral-bearing ore from the ground – and that it is entitled to deduct the capital expenditure on mining machinery from income earned from doing so. I consider that to be correct. The client is not required to spend funds on any equipment for the purpose of mining. *Any possibility that both client and miner would be entitled to the special deductions given for miners is remote*. The mining operations commence when Benhaus moves on to site and starts the preparation for digging the mineral-bearing ore out of the earth. It matters not that it is paid a fee for delivering the chrome-bearing ore to the client: that is the work from which it earns its income. It is of no relevance that the contract miner immediately begins to earn an income from mining, and does not have to wait for the mine to produce over many years. It is conducting mining operations and is entitled to the benefits conferred by s 15(*a*) and s 36(7C). This conclusion follows the approach adopted by this court in *Western Platinum* and gives effect to the clear meaning of mining as defined in s 1 of the Act – 'every method or process by which any mineral is won from the soil'. That is precisely what Benhaus did by conducting the first stage in chrome mining using the opencast system as described above." (Emphasis added)

Judgment was given in favour of Benhaus and the additional assessments were referred back to the Commissioner for correction.

The judgment of Mocumie JA

Mocumie JA, while agreeing with the judgment of Lewis ADP, added what appears to be a dissenting view. Lewis ADP had made it clear at paragraph [41] that the risk of there being a "double dip" in relation to capital expenditure is remote where the excavation is undertaken by a contract miner. However, Mocumie JA stated at paragraph [44]:

"Existing case law is clear regarding the beneficiaries of the CAPEX scheme: contract miners and miners are equally entitled to benefit from the accelerated depreciation scheme subject to their participation in significant phases of the mining process. However, in my view, the scheme was designed to incentivise mining as opposed to components thereof which is what contract miners do."

The approach to interpretation requires that:

"… consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production." (per Wallis JA in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at 604).

It is difficult to reconcile the statement in paragraph 44 that Mocumie JA concurred in the judgment of Lewis ADP with her

statement that the decision does not conform with the purpose of the definition of "mining" and "mining operations" in the Income Tax Act.

Mocumie JA continued, stating that the hands of the judiciary are tied and that persons that she considered should not be entitled to claim deduction of mining capital expenditure would continue to benefit because there is no clear and unambiguous definition of the terms "mining" and "mining operations".

The takeaway

Instead of seeking to establish the purpose for special provisions relating to mining in a single word in the definition of "mining" and "mining operations", as the Tax Court had done, Lewis ADP looked to the activity itself and the ordinary usage of the terms. Her judgment relied on earlier findings in the SCA that the excavation and extraction of mineral-bearing ore constitute mining operations.

It is evident that SARS has sought consistently to define the terms narrowly by reference to the ownership of mining rights by refusing mining capital allowances to persons who do not hold mining rights.

It is also evident from the judgment of Lewis ADP that the definition of "mining" and "mining operations" may apply simultaneously to two persons in respect of a single activity. She did not see this as a difficulty, given that development expenditure may only be claimed by the party that carries out the actual excavation activities, resulting in little or no risk of "double dipping".

The development of mining taxation is closely linked to gold and precious metals mining, which had dominated the mining industry for many years. Gold mining is conducted by way of underground mining. However, the use of opencast and strip-mining methodologies in base metal and coal mining has become more prevalent in recent years. Contract miners specialising in these methodologies have emerged over time.

Mining is a vital component of our economy. There should be no confusion over what activities constitute mining. This does not serve either the economy or the *fiscus*. Mocumie JA has called for the amendment of the Income Tax Act. This should not be done in haste. Clear policies should be established for the taxation of mining income and legislation should be framed to give effect to these policies so that the players in the industry can plan for and implement mining ventures with certainty.

An overhaul of the mining tax provisions to provide clarity and clear direction would be a positive undertaking.

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The Tax Director series (new): Article 3

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

Manage tax risk and implement robust tax governance to increase transparency and trust

In the February edition of our Tax Director series we focused on the principal success factors for a "Fit for Growth"[1] tax function in its quest to reduce the cost of delivery and manage overall costs for sustainable success. A crucial aspect of this journey is to recognise the importance of a robust tax governance framework and the fact that its components of risk identification, controls, policies, communication and monitoring are key areas that must be modernised.

Increased global compliance requirements combined with inefficient processes will increase risk and drain already strained resources. The potential for unexpected costs can be high. These can occur both 'above the line' due to resource needs and 'below the line' due to increased tax, interest and penalties for incorrect or incomplete tax return filings. Reputational impact can also occur due to unforeseen or misunderstood data arising from global regulatory transparency initiatives.

1 Fit for Growth is a registered service mark of PwC Strategy& An in-depth understanding of where the key risks lie LLC in the United States.

Most tax functions will need to make significant changes to avoid potential financial statement and statutory compliance errors, unnecessary controversy proceedings, delayed financial statements and return submissions, and increased recruitment and retention costs. It is imperative that they maintain appropriate controls over their tax reporting, including the visibility of underlying calculations and documentation. Successful change will require the re-engineering of 'end-to-end' processes and not just the final outputs.

Greater stakeholder scrutiny and reputational risk will force companies to continuously re-evaluate their tax decisions. A strategic focus on open and transparent reporting will be critical to managing tax controversy and the increased need for building relationships based on mutual trust. Companies need to respond in a clear and thoughtful way to a much wider base of stakeholders than ever before.

Forward-thinking tax departments are designing more efficient and effective tax governance processes and implementing technology-enabled solutions to address these challenges. They are also looking to reduce complexity and time-consuming elements of tax reporting to allow sufficient time to address exposure items and mitigate risk.

Tax governance and its role in value creation

The management of tax risk can be defined as the process of identifying and analysing tax risk from an integrated, company-wide perspective. A structured and disciplined approach should be adopted in aligning tax strategy, tax processes, tax professionals, data, technology and in-depth tax knowledge with the purpose of evaluating and managing the tax uncertainties that the organisation faces as it creates value. It is key for the tax function to shift its tax risk management efforts from being primarily defensive to becoming increasingly strategic in nature.

Essential building blocks for managing tax risk

The establishment of governance

Strong tax governance should be established, with an agreed tax strategy[2] that is in line with wider business objectives, owned by the senior management of the organisation, i.e. at governing board level, and a robust tax risk policy that ensures transactions and events are compared with the expected norms and that potential risks of non-compliance are identified and managed.

2 Refer to Article 1 in the Tax Director series in the January 2019 edition of Synopsis, "Align tax with the business strategy"

An in-depth understanding of where the key tax risks lie

In its efforts to enhance stakeholder value, the tax function should be able to identify and mitigate tax risk effectively. This includes ensuring that every important decision of the organisation is made with a full understanding of the associated tax risks. The tax function should:

- Inform strategic decisions;
- Identify and support decision-making processes that have a material impact on the tax risk profile of the business, without becoming a roadblock to the smooth operation of the front line's day-to-day activities and authority; and
- Ensure that the focus of tax risk management at an operational level is robust and that the implications of business decisions at an operational level are clearly linked to an understanding of the underlying tax risk drivers.

Enhanced processes

It is critical for tax functions to define and document processes within all functional areas, including tax compliance, reporting, transfer pricing, controversy, and tax planning. A continued focus on the documentation of processes and controls can help identify gaps, reduce missed or overdue tasks, and improve communication, coordination and control. The documentation of processes facilitates consistency of execution and a smoother internal and external financial and tax audit process. Each documented process should clarify which roles have responsibility for the performance and reviewing of specific tax activities and deliverables.

Robust controls

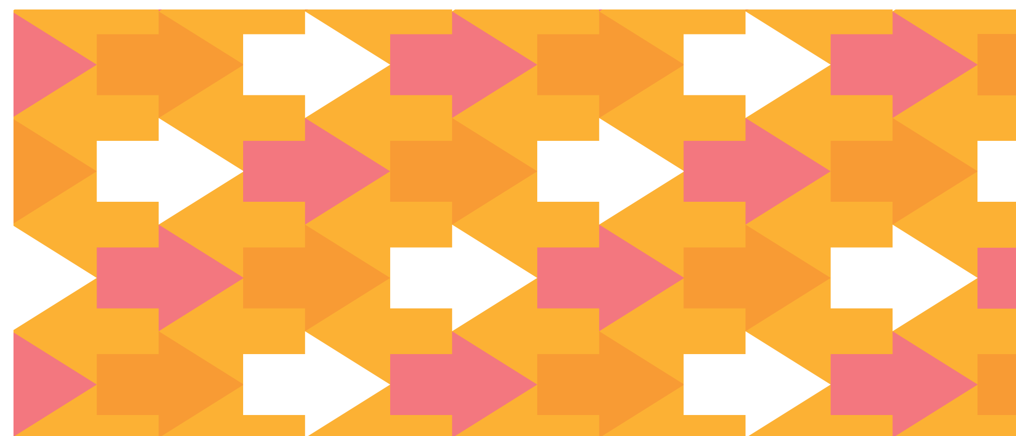
The ability to operate efficiently, with proper controls in place, is of the utmost importance to tax functions where significant amounts of data are gathered from multiple sources.

Comprehensive application

All transactions entered into by an enterprise can affect its tax position in one way or another. This means that the tax function should have a clear lens and be able to govern the tax risk originating from the full range of the organisation's activities. Ideally, it should be embedded in the decision-making processes that apply to the day-to-day management of business operations.

Assignment of responsibility

The board of an enterprise is accountable for the design, implementation and effectiveness of the tax governance of the organisation. The role of the organisation's tax function and its responsibility for robust tax governance should be clearly recognised, key performance indicators should be in place and the tax function should be properly resourced. Successful tax professionals of the future will be highly proficient in data analysis, statistics and technology as well as project management, process improvement and change management. Going forward, tax professionals will also require strategic risk management skills. The ability to assess tax risk has historically been a core skill, but this skill will need to evolve to include how tax risk is being managed across the business and how that aligns with the overall goals of the organisation.



Documentation of governance

There needs to be a system of rules and reporting that ensures transactions and events are compared with the expected norms and that potential risks of non-compliance are identified and managed. This governance process should be explicitly documented and sufficient resources should be deployed to implement the tax control framework and review its effectiveness periodically.

Testing and assurance

Compliance with the policies and controls embodied in the governance framework should be the subject of regular monitoring, testing and maintenance. The governance framework should be capable of providing assurance to stakeholders, including external stakeholders such as tax administration functions, that tax risks are subject to proper control and that outputs such as tax returns can be relied upon.

Utilisation of a unified technology platform

Advancements in enterprise technology enable tax functions to build operational interfaces that allow for integrated, secure access to information sources, documents, workflow and analytics across multiple computing devices. Integrated solutions provide an end-to-end approach to workflow, document management and collaboration. There is a reduced need for disparate solutions that may cause inefficiency and increase risk. With the careful planning of assigned tasks by geography and the deployment of workflow, document management and collaboration tools, activities can be performed with more efficiency and less risk.

A clearly defined and transparent communications strategy setting out the approach to managing tax internally and externally

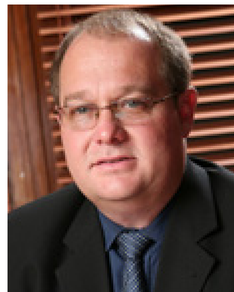
The C-suite as well as investor relations and finance teams need to be aware that there is a growing public perception that organisations are not paying their fair share of taxes, especially in developing countries. For this reason, it is imperative to establish and maintain a formalised approach and strategy with regard to tax transparency and communication that defines key messages to achieve consistency in messaging, participants, roles, channels, format and frequency.

The value of high-impact tax governance that improves effectiveness and efficiencies in the tax function is significant and broad, and includes:

- Improved financial performance through the shifting of risk taking from a compliance-driven process to a value-focused orientation;
- More efficient allocation of resources to those activities with the greatest tax risk-adjusted returns;
- A broader understanding and appreciation of tax risk throughout the organisation, up to board level;
- The incorporation of risk into strategic decision-making (e.g., M&A, financing and new business development); and
- Greater alignment of stakeholder expectations with the organisation's tax risk profile and appetite.

Tax functions need to radically reinvent themselves to prepare for a faster-moving and unpredictable future. Well-targeted investments in tax governance can quickly pay for themselves. Aside from the obvious gains – reducing the risk of costly tax errors and lowering the organisation's effective tax rate (ETR) – an up-to-date and in-control tax function can improve cash management, strengthen legal entity reporting and management, keep its own costs down, and offer strategic input into business planning, new product or service development, and M&A transactions.

For more information, view our Tax *Function of the Future* series here.



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SARS Watch

SARS Watch 26 February 2019 – 25 March 2019

Legislation		
22 Mar 19	Imposition of provisional payment in relation to the alleged dumping of clear float glass, classifiable in tariff subheadings 7005.29.17; 7005.29.23; 7005.29.25; and 7005.29.35, originating in or imported from Saudi Arabia and the United Arab Emirates – ITAC Report 599	Notice R448 published in Government Gazette No. 42324 with an implementation date of 22 March 2019 up to and including 22 September 2019.
18 Mar 2019	Regulations Prescribing Electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1(1) of the Value-Added Tax Act, 1991. An explanatory memorandum was also published.	Regulation R.429, published in Government Gazette 42316 – Prescribing electronic services. Commencement date 1 April 2019.
12 Mar 2019	Draft Rule Amendments under Section 8 of the Customs and Excise Act, 1964	Comments had to be submitted to SARS by Friday, 29 March 2019.
27 Feb 2019	Draft schedules were published for consideration and comments as a result of the rewrite of the Customs and Excise Act, 1964	Comments had to be submitted to SARS by Friday, 8 March 2019.
Case law		
In accordance with date of judgment		
22 Mar 2019	Benhaus Mining v CSARS (165/2018) [2019] ZASCA 17	A company that excavates ground and digs up mineral-bearing ore for a fee on delivery to another entity that processes the ore, undertakes mining operations within the meaning of sections 1 and 15(*a*) of the Income Tax Act 58 of 1968. It is thus entitled to claim deductions of the full amount of capital expenditure on mining equipment in the tax year in which it is incurred, in terms of s 36(7C) of the Act.
07 Mar 2019	Ellies Electronics (Pty) Ltd v The South African Revenue Service (47899/2017) [2019] ZAGPPHC 61	This is an appeal in terms of the provisions of section 47(9)(*e*) of the Customs and Excise Act, 91 of 1964 relating to a determination by the respondent of the applicable tariff in respect of goods imported by the applicant.
06 Mar 2019	Commissioner for The South African Revenue Service and Another v Naude	This is an application in terms of rule 27(1), for an order condoning the late filing of an answering affidavit by the Commissioner of the South African Revenue Service and extending the date of filing of the answering affidavit to include the date on which it was filed.
27 Feb 2019	TCIT13868	Whether the Appellant was entitled to a postponement and condonation for filing its appeal.
26 Feb 2019	Purlish Holdings (Proprietary) Limited v The Commissioner for The South African Revenue Service (76/2018) [2019] ZASCA 4	An appeal against the imposition of understatement penalties. The appellant's conduct fell within one of the categories listed in items (a) to (d) of the definition of 'understatement' in section 221 of the Tax Administration Act.
Rulings		
20 Mar 2019	BPR 319 Tax implications of group restructuring transactions	This ruling determines the tax consequences of a group restructuring.
18 Mar 2019	BGR50 – No-value provision in respect of the rendering of transport services by any employer	This BGR provides clarity on the no-value provision in respect of the rendering of transport services by an employer to employees in general, and must be read with BGR 42, "No-value Provision in respect of Transport Services", dated 22 March 2017.
15 Mar 2019	BGR 49: The supply and importation of sanitary towels (pads)	This BGR sets out the general VAT treatment of the supply and importation of sanitary towels (pads).
Guides and Forms		
20 Mar 2019	Frequently asked questions: Supplies of electronic services	The FAQs are drafted purely to assist foreign electronic services suppliers, intermediaries, vendors and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects relating to the updated regulations and amendments.

Interpretation notes		
18 Mar 2019	Draft IN – Apportionment of surplus and minimum benefit requirements – Pension Funds Second Amendment Act	Comments had to be submitted to SARS by Friday, 31 May 2019.
18 Mar 2019	IN111 – No-value provision in respect of the rendering of transport services by any employer	This note provides clarity on the no-value provision in respect of the rendering of transport services by an employer to employees in general, and must be read with BGR 42, "No-value Provision in respect of Transport Services".
18 Mar 2019	IN14 (Issue 4) – Allowances, advances and reimbursements	This note provides clarity on the tax treatment of allowances, advances and reimbursements granted to employees and office holders, and gives guidance on the record-keeping requirements relating to motor vehicles.
05 Mar 2019	IN17 (Issue 5) – Employees' tax: Independent contractors	This note explains the statutory tests and the common law tests to assist SARS officials and employers to classify a worker efficiently and effectively.
National Treasury		
14 Mar 2019	Response to NCOP Submissions on Carbon Tax Bill & C&E Bill 120319	The Select Committee on Finance invites stakeholders and interested parties to submit written submissions on the Carbon Tax Bill, for which a public hearing was held on 12 March 2019.
Other publications		
22 Mar 2019	Tax Alert: South African VAT treatment of the supply of electronic services: an update	This alert highlights the electronic services regulations effective from 1 April 2019, published by the National Treasury on Monday, 18 March 2019.
22 Mar 2019	OECD: The Role of Digital Platforms in the Collection of VAT/GST on Online Sales	The report includes new measures to make e-commerce marketplaces liable for VAT/GST on sales made by online traders through their platforms. Other measures include data sharing and enhanced co-operation between tax authorities and online marketplaces.
21 Mar 2019	OECD: Taxation and the future of work	This paper investigates the potential for certain opportunities for eight countries. It models the labour income taxation, inclusive of social contributions, of standard employees as compared with that of self-employed workers (with applicable tax rules detailed in the paper's annex).
20 Mar 2019	OECD: Beneficial Owner Toolkit	The toolkit contains policy considerations that Global Forum member jurisdictions can use to implement legal and supervisory frameworks to identify and collect beneficial ownership information, which is now a requirement in terms of international standards.
26-Feb-19	Tax Alert: Non-resident company held by a non-resident trust: participation exemption disregarded	This alert deals with the new rules that came into effect on 1 March 2019 that have a potential impact on South African tax resident individuals who are settlers and/or beneficiaries in relation to non-resident trusts that hold interests in foreign companies where the foreign company would have constituted a CFC, had the foreign trust been a resident.

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