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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Simangaliso Manyumwa

Requesting the remission of interest post the conclusion of a voluntary disclosure programme application

In the recent Supreme Court of Appeal ("**SCA**") case (i.e. *The Commissioner for the South African Revenue Service v Medtronic International Trading S.A.R.L* (case no 456/2021) [2023] ZASCA 20 (03 March 2023)) the key question was whether a taxpayer may, pursuant to entering into a Voluntary Disclosure Programme ("**VDP**") agreement and after the terms of the VDP agreement had been fulfilled, request the South African Revenue Service ("**SARS**") to remit the interest in terms of section 39(7) of the Value Added Tax Act, No. 89 of 1991 ("**VAT Act**").[1]

The facts in this matter are that an employee of the Taxpayer "*exploited weaknesses in both SARS and Medtronic International's accounting systems to perpetrate fraud of some breath-taking proportions.*[2]" Such employee had embezzled an amount of R537,236,176 from the Taxpayer and "*executed her carefully orchestrated fraudulent scheme by submitting false VAT returns to SARS and thereafter seeking reimbursements from SARS with a view to concealing her embezzlement.*[3]"

The Taxpayer sought to regularise its affairs via the VDP. During the VDP process, the Taxpayer requested that the VDP unit of SARS waive the interest payable as a result of its default of payment of VAT to SARS, taking into account the circumstances under which the loss had occurred. In response, SARS advised that it was not empowered to waive interest under the VDP. SARS went on to advise the Taxpayer, in no uncertain terms, that the latter could either pay what SARS termed the post-relief amount in full, or alternatively, withdraw from the VDP and follow the normal course in remedying its default. As the Taxpayer did not want to potentially expose itself to the liability for penalties (of up to 200 per cent of the capital amount owed in respect of outstanding VAT) in addition to mora interest, it elected to proceed under the VDP.

On 14 and 18 June 2018, two VDP agreements were concluded between SARS and the Taxpayer. According to these VDP agreements the Taxpayer was liable for the payment of the capital (VAT) and interest. SARS' VDP unit had waived all understatement and administrative non-compliance penalties and also agreed to refrain from pursuing any criminal action against the Taxpayer. The Taxpayer proceeded to sign the VDP agreement as well as pay over the capital and interest amounts to SARS.

1 At paragraph 28, the court said that "[e]xcept for certain provisions, the TAA came into effect on 1 October 2012. The TAA inter alia brought about certain amendments to the VAT Act. Section 39(7) of the VAT Act was deleted by s 271 of the TAA but the deletion has not yet come into effect. Consequently, s 39(7) of the VAT Act, as it stood before its impending deletion, is to all intents and purposes still of full force and effect. In the scheme of things s 187(6) of the TAA will, once it comes into operation, regulate the remission of interest where the default relating to the payment of a tax debt in terms of a tax Act is attributable to circumstances beyond the control of a taxpayer. Thus, s 39(7) remains in force insofar as it relates to any interest payable in respect of a VAT debt, and the Commissioner is still empowered under certain circumstances to remit interest."

2 See paragraph 4.

3 See paragraph 4.

The Taxpayer then sought to have the interest remitted in terms of section 39(7) of the VAT Act, which states:

> "Where the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3), (4), (6), (6A) or (8) or on the date referred to in subsection (5), as the case may be-
>
> (a) was due to circumstances beyond the control of the said person, he or she may remit, in whole or in part, the interest payable in terms of section ...."

Further, the Taxpayer relied on the explanation of what constitutes "circumstances beyond a person's control" per Interpretation Note 61:[4]

> "circumstances beyond a person's control are generally those that are external, unforeseeable, unavoidable or in the nature of an emergency, such as an accident, disaster or illness which resulted in the person being unable to make payment of VAT due."

According to the Taxpayer, the embezzlement of funds by an employee of the Taxpayer was beyond the control of the Taxpayer.

However, SARS argued that the Commissioner may not enter into a VDP agreement, and then effectively amend it by acceding to a request for the remission of interest.

On application to the Gauteng High Court it was held that, in the absence of an explicit provision in the Tax Administration Act, No. 28 of 2011 ("**TAA**") proscribing remission of interest upon a discharge by performance of a VDP agreement, it followed axiomatically that the Commissioner for SARS is vested with powers to entertain requests for remission of interest and adjudicate them on their merits. In reaching that conclusion the learned Judge, in essence, reasoned that:

1. the dispute between the parties entailed the interpretation of the relevant statutory instruments;
2. the principles applicable to statutory interpretation are settled;
3. on a proper interpretation of Chapter 16 of the TAA and, in particular, sections 228 to 233 thereof, read with section 39(7) of the VAT Act, nothing precluded SARS from entertaining and giving consideration to an application for remission of interest after the conclusion and discharge of the vendor's obligations under the VDP agreement;
4. SARS's refusal to even entertain and then consider the application for remission of interest was influenced by 'errors of law'.[5]

Ultimately, SARS' refusal to consider the Taxpayer's request for the remission of interest in terms of section 39(7)(a) of the VAT Act, was referred back to SARS for consideration. SARS subsequently applied and was granted leave to appeal to the SCA against the Gauteng High Court's order.

In the SCA, SARS submitted that:

> "[35] …the high court erred in finding that the TAA does not preclude it from considering the request for the remission of interest made in terms of s 39(7), in circumstances where Medtronic International had entered into a VDP agreement. In advancing this argument, SARS contended that, in requesting the Commissioner to consider remitting the interest, Medtronic International was in effect seeking to reduce its liability under the VDP agreement and renege on its undertaking to pay interest. This would constitute an amendment of the VDP agreement (which was precluded under the TAA). There is no reference to relief in the form of a remission of interest under the TAA and accordingly, SARS further submitted, the VDP unit had no authority to grant such remission nor any duty to consider the request, which it believed was invalid."

The crux of SARS' case was essentially that when the TAA came into effect, it 'gave rise to a permanent VDP relief statutory framework in respect of which interest is now excluded'. Additionally, whilst section 39(7) of the VAT Act remains in force, it finds no application in respect of interest on outstanding VAT dealt with in terms of Chapter 16, Part B, of the TAA.[6]

4 This Interpretation Note deals with the remission of interest, in terms of section 39 of the VAT Act.

5 See paragraphs 16 & 17.

6 See paragraph 37.

The Taxpayer, on the other hand, advanced the following principal contentions:

"[38]…

- That notwithstanding the coming into effect of the TAA, s 39(7) still remains in force and is the only statutory provision in terms of which interest on late payment of VAT is levied;
- That Medtronic International's liability for interest on its outstanding VAT debt arose from s39(1) of the VAT Act;
- That what the VDP does is to provide a dispensation for errant taxpayers to regularise their tax affairs and does not by itself levy tax, interest or penalties for late payment of tax;
- That in refusing to even consider the request for remission, SARS is not consistent in its application of the TAA, as it has done so in relation to PricewaterhouseCoopers[7], thereby treating taxpayers differently. And that by treating taxpayers differently, SARS' conduct is inimical to the values underpinning the Constitution.[8]"

Split SCA judgment - the majority judgment (3/5 Judges)

The SCA, per Petse DP, stated that this case was primarily concerned with statutory interpretation. It noted that SARS refused to even entertain the Taxpayer's application for the remission of interest and, as a result, did not consider and determine the application on its merits.

The question that the SCA was thus called upon to decide was whether SARS could lawfully do so. The answer to this question lay in section 33 of the Constitution and Promotion of Administrative Justice Act, No. 3 of 2000 ("**PAJA**")[9].

The SCA at paragraph 43 stated that:

"[43] In its Preamble, PAJA provides that it seeks to give effect 'to the right to administrative action that is lawful, reasonable and procedurally fair . . . as contemplated in section 33 of the Constitution. . .' Tellingly, s 33(3)(b) of the Constitution imposes a duty on the State in all its manifestations to give effect to the rights in ss 33(1) and 33(2) of the Constitution…

Accordingly, the Commissioner's refusal to consider and determine Medtronic International's request altogether undermines one of the fundamental rights entrenched in the Bill of Rights which is the bedrock of our democratic order. Such conduct is inimical to the constitutional duty that SARS bears as an organ of state in terms of which it must respect, protect, promote and fulfil the rights in the Bill of Rights as decreed in s 7(1), 7(2) and s 8(1) of the Constitution."[10]

The SCA, per Petse DP, concluded that SARS bears a statutory duty buttressed by the Constitution to, at the very least, give consideration to the request and decide it on its own merits.[11] Nowhere does the VAT Act nor the TAA provide expressly or by necessary implication that a taxpayer who has entered into an agreement under the VDP is excluded from the benefit for which section 39(7) of the VAT Act provides and, in particular, when such an agreement has been discharged through performance of the contractual obligations undertaken in terms of the contract.[12] It was found (per the majority judgment) that SARS was at the very least, required to entertain the Taxpayer's application for remission and to consider and adjudicate it on its merits.[13]

Split SCA judgment - the dissenting judgment (2/5 Judges)

The SCA, per Goosen AJA, stated in paragraph 84 that:

"[84] Important consequences attach to the assessment process. It is the mechanism by which a tax is levied or imposed. It renders the tax debt payable. It establishes liability for the payment of penalties, where imposed, and interest. In the latter case the assessed liability is the foundation upon which the calculation of interest occurs…[i]n the absence of an assessment a tax debt is not payable. Thus, in order to establish liability for the payment of a tax debt which flows from an understatement, and to render such debt due and payable (and therefore recoverable by SARS), something other than an assessment is required. The Legislature determined, for sound reasons, that the mechanism was to be an agreement – a contract entered between the taxpayer and SARS which is enforceable in the ordinary course as a contractual obligation. This is the principal purpose of the voluntary disclosure agreement…"

The SCA, per Goosen AJA, went on to state at paragraphs 88-91 that:

"[88] …The agreement is the centerpiece of the voluntary disclosure programme. It serves as the basis upon which outstanding tax may be recovered in exchange for a waiver of punitive sanctions. The conclusion of the agreement is the culmination of a process of engagement between the taxpayer and SARS.

[89] In this case the VDA records, in clause 11, that it is the whole agreement. It records that no variation to any part of the agreement (which plainly includes the part that stipulates the amount of the tax debt) has any effect unless reduced to writing and signed by both parties. It also records that the agreement constitutes a legal, valid, binding and enforceable agreement on the parties.

[90] It is a well-established principle of our law of contract that due and proper recognition is given to the bargain struck between contracting parties. A party who agrees to payment of a debt cannot escape the obligation unless the agreement was induced by misrepresentation, error or fraud or some other recognised ground of repudiation.[14]

[91] In this case, no basis was advanced to suggest that the agreement was concluded in circumstances which would render it unenforceable. Nor, as I mentioned earlier, was it suggested that the amount of the interest included in the tax debt occurred under reservation of rights."

7 PricewaterhouseCoopers Inc and Another v Minister of Finance and Another [2021] ZAGPPHC 38; 2021 (3).

8 The PwC case illustrated that SARS did not consider itself to be functus officio, in relation to a request for interest to be remitted after the conclusion of a VDP agreement.

9 PAJA is the legislative measure contemplated in section 33 of the Constitution.

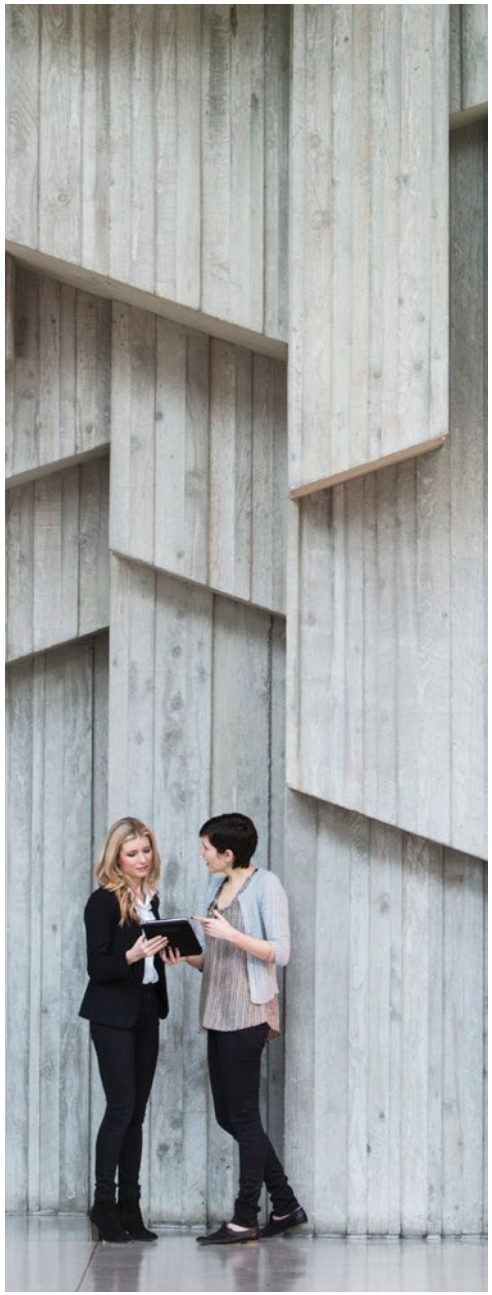
10 Section 7 reads: '(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. (2) The state must respect, protect, promote and fulfill the rights in the Bill of Rights.' Section 8(1) provides: 'The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.'

11 See paragraph 45.

12 See paragraph 46.

13 See paragraph 49.

14 Barkhuizen v Napier [2007] ZACC 5; 2007 (7) BCLR 601 (CC); 2007 (5) SA 323 (CC) paragraphs 65, 66, 70 and 87.



The SCA, per Goosen AJA, concluded that the provisions of Part B of Chapter 16 of the TAA, properly interpreted, do not permit a taxpayer who has entered into a voluntary disclosure agreement to seek a remission of interest, the amount of which was incorporated in the determined tax debt due, after the conclusion of the voluntary disclosure agreement. To hold otherwise would undermine the legal consequences that attach to the conclusion of such agreement.[15] However, the provisions relating to the VDP do not exclude consideration of remission of interest *prior* to determination of the tax debt. In this instance, the Taxpayer did not pursue such relief and it was not open to it to do so after it had concluded the agreement. It was thus found (per the dissenting judgment) that SARS correctly refused to consider the Taxpayer's request for remission of interest.[16]

Key takeaways

- The judgment is an important one for taxpayers that apply for a VDP (and pay the VDP capital and interest) under very specific circumstances such as those showcased in this case, i.e. the embezzlement of funds that were beyond the taxpayer's control.
- Whilst the SARS VDP unit may not be empowered to remit the interest, this does not prohibit taxpayers from seeking the remission of such interest via the standard/normal procedures and remedies i.e. separate from or subsequent to the conclusion of its VDP application. It, however, does not mean that the interest will be remitted by SARS, but requires SARS to at least consider the taxpayer's application for the remission of interest.
- Given the 3/2 split in respect of the majority and the dissenting judgments, it is likely that SARS will apply for leave to appeal to have the matter heard in the Constitutional Court of South Africa.

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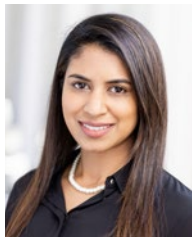

Jadyne Devnarain
Associate Director

15 See paragraph 92.
16 See paragraph 94.

Diesel refund system for manufacturers of foodstuffs

On 10 March 2023 the South African Revenue Service ('SARS') published the draft amendments to give effect to the Budget 2023 proposal for a diesel refund for manufacturers of foodstuffs, available for a two-year period from 1 April 2023 to 31 March 2025, for public comment. The due date for comments was 31 March 2023.

Background

The diesel refund system was implemented in 2000 to provide full or partial relief for the general fuel levy and the Road Accident Fund (RAF) levy to primary sectors, i.e. the farming, forestry, fishing, and mining sectors.

Considering the electricity crisis and to limit the impact of power cuts on food prices, it was announced in the Budget that government is proposing to extend the diesel refund for the RAF levy to manufacturers of foodstuffs (who are purchasers and users of distillate fuel) for a two-year period.

In terms of the draft provisions published by SARS, the refund is limited to 80% of the RAF levy and does not extend to any portion of the general fuel levy. No reasons have been provided for this policy decision. For mining, fishing, agriculture and forestry and the generation of electricity by Eskom, at least a portion of the general fuel levy qualifies for the refund. This should equally be the case for diesel used to generate electricity by manufacturers of foodstuffs if, as stated, the intention is to limit the impact of power cuts on food prices. Similarly, given this objective, it is questionable why the concession is only made available to manufacturers and not to all components of the food value chain, including distribution, wholesale and retail.

The legislation

Customs and Excise Act

Section 75 of the Customs and Excise Act (the Act) makes provision for *specific rebates*, drawbacks and *refunds of duty* subject to any conditions which may be imposed by the Commissioner in the relevant Schedules.

Proposed draft amendment to Schedule No. 6

The draft provisions in respect of the refund for the manufacturers of foodstuffs have been included in Part 3 of Schedule No. 6. These draft provisions deal with:

- Application of provisions and definitions
- Application for registration and claiming refunds
- Keeping of records, books, accounts and other documents

Key issues to consider

Definition of 'electricity generation'

This term is defined as electricity generated from distillate fuel used in *stationary fixed electric power generators* ('fixed generators') and excludes *mobile portable electric power generators* ('portable generators'). This was a late addition to the draft provisions and SARS has provided no explanation as to why portable generators are excluded.

The effect of the definition is to exclude many small business enterprises from the refund as they are the likely users of portable generators in their operations and gives rise to a narrowing of the concession compared to what was intimated in the Budget (as will be apparent in this article, there are a number of areas where the concession is narrowed).

Definition of 'foodstuffs'

The definition refers to products and preparations for human consumption that are classifiable in chapters 2 to 21 of Part 1 to Schedule No. 1. These chapters are comprehensive and include a wide range of food products such as live animals, processed meats, dairy products, nuts, flour, cereals, and confectionary.

Although the term has been defined widely, it is, however, limited by the exclusion of goods of chapters 5, 6, 13, 14, and 22 (including products and preparations for making beverages of Chapter 22) which is likely to result in interpretational issues. Chapter 22 includes such products as soft drinks, alcoholic drinks and even vinegar.

To illustrate, some of the products that are used to make the beverages of Chapter 22 include sugar, different kinds of fruits and grains, barley, corn, rye, and wheat. Not only are these products basic food staples but they are used in the production of several qualifying foodstuffs. It is unclear whether it is intended that these products be excluded or only products that are exclusively used for making beverages of Chapter 22 are excluded. However, one interpretation is that it applies to any product used or which could be used as an ingredient in such products.

Definition of 'manufacture'

The definition refers to the definition of 'manufacture' in section 1(1) of the Act ('the section 1(1) definition'), *with any necessary changes as the context may require* for the manufacture of foodstuffs at the manufacturing premises, including the fuel used for own electricity generation in such manufacture.

This definition may lead to interpretational issues as the meaning of the term '*any necessary changes as the context may require*' is not clear. For example, what changes will "the context" require to the section 1(1) definition and if a change is indeed required, how should the section 1(1) definition be changed and who decides on the appropriate changes to be made?

The section 1(1) definition read as follows:

"**manufacture**", when used as a noun, includes—

(a) in the discretion of the Commissioner, any process—

  (i) in the manufacture or assembly of any excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

  (ii) in the conversion of any goods into excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

  (iii) whereby the dutiable quantity or value of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods is increased in any manner;

  (iv) in the recovery of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods from excisable goods or any other goods;

  (v) in the packing or measuring off of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods; or

  (vi) in the generation of electricity liable to environmental levy; or

(b) any process as may be prescribed in any Part of Schedule No. 1 wherein such duty or levy is specified; or

(c) any other process in respect of goods contemplated in paragraph (a) that the Commissioner may prescribe by rule,

and, when used as a verb, has a corresponding meaning; and "**manufacturer**" has a corresponding meaning;'

In addition, the definition has the potential to add to the above interpretational issues for the following reasons:

- Discretion of the Commissioner
  The Commissioner has a discretion in respect of when the processes that are listed in paragraph (a) of the definition qualify as 'manufacture'.

- Inherent challenges with the interpretation of the term 'manufacture'
  Given the narrow context in which the definition of manufacture has had to apply in the context of the Act historically, the expansion thereof to a potentially much wider context will lead to significant uncertainty.

  The concept of a process of manufacture is fairly well established in the context of Income Tax. However, the application of those principles in the context of the diesel refund for the manufacture of foodstuffs may lead to unintended consequences with numerous processes being excluded. This is because it has been held, for example, (in *SIR v Safranmark (Pty) Ltd*) in the context of income tax) that the term "process of manufacture" denotes an action or series of actions directed to the production of an object or thing which is essentially different from the materials or components which went into its making.

  The potential problem is illustrated by Practice Note No. 42 where, insofar as foodstuffs are concerned, numerous processes are regarded as a process of manufacture while many others are not, for example rather being regarded as processes similar to a process of manufacture (and therefore not actually processes of manufacture). Examples falling into this category include:

  - manufacture of split peas and drying of grain
  - slaughtering and preparing of chickens for market
  - bulk sorting, washing and packing by machine of fruit and vegetables
  - abattoirs
  - preparation and freezing of vegetables
  - bulk processing of meat

Aligned to the above is the question of where the manufacturing process begins and ends. To illustrate, where a manufacturer of 'ready to eat meals' freezes and stores the product on the manufacturing premises prior to its delivery to wholesalers, distribution warehouses or retailers, does the diesel used to power the freezers at the end of the production process qualify as manufacturing?

Definition of 'manufacturing premises'

The term 'manufacturing premises' has been defined as an industrial facility for the manufacture of foodstuffs and excludes any premises at which wholesale distribution or retail sales activities occur.

The effect of this definition is to exclude food manufacturers that do not maintain or do not have the means to maintain separate facilities for manufacturing and distribution/retail activities. This is particularly the case for small businesses where it is common to produce products and to retail the products from the same premises. A good example of this would be bakeries, but can include any number of food products.

The definition also has the potential to lead to interpretational difficulties as it uses the terms 'industrial facility' and 'premises' which are not defined terms.

It is not clear whether the "premises" refers to a building or to a plot of land, i.e. if both the manufacturing building and the distribution facility/retail outlet building are on the same plot of land (adjacent) will it still qualify as "manufacturing premises"?

Administrative compliance burden

The registration and compliance requirements are burdensome, especially considering that this is a temporary relief measure:

- Registration requirement
  The taxpayer is required to register as a 'refund user' and to also register each of its manufacturing premises by completing form DA 185 and Annexure DA 185.4A3.

  The taxpayer is also required to be registered for VAT even though the diesel refund will be by way of submitting a DA 66 form.

- Compliance requirements
  A taxpayer is required to keep record of each manufacturing or other operation or process performed at the manufacturing premises, including the manufacturing method or elements and ratio of distillate fuel used in relation to the manufacture of foodstuffs.

  Records, books, accounts or other documents (including purchase invoices, sales invoices, storage logbooks and usage logbooks) must show in respect of each refund claim how the quantity of diesel on which a refund was claimed was calculated.

  These record-keeping requirements are onerous and seemingly nonsensical in the context of diesel used in electricity generators.

The takeaway

SARS has a history of withholding refunds for various reasons resulting in delays in payment and, as primary producers will attest to, is particularly strict when it comes to the documentation requirements.

Taxpayers should carefully familiarise themselves with the requirements of the diesel refund and its applicability to their particular circumstances. It will also be important to put the necessary systems and processes in place for the records required by SARS to substantiate any refund claims and minimise the potential for any disputes.

Kyle Mandy
Partner

SARS Watch

SARS Watch 1 March 2023 – 31 March 2023

Legislation		
29 March 23	Draft Notice – Returns of information to be submitted by third parties in terms of section 26 of the Tax Administration Act 28 of 2011 ('TAA')	Comments due to SARS by Friday, 14 April 2023.
10 March 23	Rules promulgated under section 103 of the TAA	Notice 3146 published in Government Gazette no. 48188 with an implementation date of 10 March 2023.
10 March 23	Notice of address of service specified by the Commissioner in terms of section 11(5) of the TAA with regard to any notice or process by which legal proceedings are instituted	Notice 3136 published in Government Gazette no. 48187 with an implementation date of 10 March 2023.
10 March 23	Notice of addresses at which a document, notice or request is to be delivered or made for purposes of rule 2(1)(c)(ii) and rule 3(1) read together with rule 2(c)(iii) of the rules promulgated in terms of section 103 of the TAA	Notice 3135 published in Government Gazette no. 48187 with an implementation date of 10 March 2023.
8 March 23	Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003	The table has been updated to include the average exchange rate as of February 2023.
8 March 23	Table B – A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months	The table has been updated to include the average exchange rate as of February 2023.
6 March 23	Draft Explanatory Memorandum to Draft Notice on tax exemption of bulk payments to former members of closed retirement funds	Comments due to SARS by Thursday, 6 April 2023.
6 March 23	Draft Notice on tax exemption of bulk payments to former members of closed retirement funds in terms of Paragraph 2D of the Second Schedule to the Income Tax Act 58 of 1962	Comments due to SARS by Thursday, 6 April 2023.
3 March 23	Regulations for purposes of paragraph (a) of the definition of "international tax standard" in section 1 of the TAA, promulgated under section 257 of the TAA	Notice R.3118 published in Government Gazette no. 48165. An intermediary's obligation to disclose a Common Reporting Standard Avoidance Arrangement or Opaque Offshore Structures to SARS meant to come into effect on 1 March 2023 to commence on 1 March 2024.
3 March 23	Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)(ii) (daily & overnight allowance)	Income tax notice no. 3113 published in Government Gazette no. 48162 with an implementation date of 1 March 2023.
3 March 23	Fixing of rate per kilometre in respect of motor vehicles in terms of section 8(1)(b)(ii) and (iii)	Income tax notice no. 3112 published in Government Gazette no. 48162 with an implementation date of 1 March 2023.
Interpretation		
30 March 23	Draft Interpretation Note – Meaning of 'employee' for purposes of the Employment Tax Incentive Act	Comments due to SARS by Friday, 12 May 2023.
14 March 23	Interpretation Note 35 (Issue 5)	This Interpretation Note discusses the employees' tax implications and the deductions that may be claimed by a personal service provider or a labour broker.
Customs and excise		
31 March 23	Item 202.00 of the Schedule to the rules is hereby amended by the substitution of the following form (DAR244) • DA 186 – Application for accredited client status under section 64E of the Customs and Excise Act 91 of 1964	Notice R.3231 published in Government Gazette no. 48340 with an implementation date 31 March 2023.

31 March 23	Amendment to rules under section 19A for the implementation of tobacco products related excise duties on nicotine and nicotine-substitute solutions in vaping products – Special provision in respect of customs and excise warehouses in which excisable or fuel levy goods are manufactured or stored	Notice R.3230 published in Government Gazette no. 48340 with an implementation date 1 June 2023.
31 March 23	Item 202.00 of the Schedule to the rules is hereby amended by the substitution of the following form (DAR243) • DA 180 – Environmental Levy Account for Carbon Tax (front page) • Completion notes to DA 180 carbon tax account	Notice R.3229 published in Government Gazette no. 48340 with an implementation date 31 March 2023.
31 March 23	Part 5A of Schedule No. 1, to provide for an increase of 1 c/li on carbon fuel levy from 9c/li to 10c/li for petrol and from 10c/li to 11c/li for diesel respectively	Notice R.3235 published in Government Gazette no. 48345 with an implementation date of 5 April 2023.
31 March 23	Amendment to Part 2 of Schedule No. 4, by the substitution of rebate item 460.03/0207.14.9/01.07, in order to increase the annual quota for frozen bone-in cuts of the species Gallus Domesticus originating in or imported from the United States of America from 71 290 tonnes to 71 632 tonnes – ITAC Minute M04/2022	Notice R.3234 published in Government Gazette no. 48344 with an implementation date with retrospective effect from 1 April 2022.
24 March 23	Amendment to rules under sections 19A and 120 – Rule 19A4.01(b)(ii), to clarify that a special customs and excise storage warehouse may be licensed for the storage of fuel levy goods received from a customs and excise manufacturing warehouse for removal to a BELN country or for export (including supply as stores for foreign-going ships) (DAR242)	Notice R.3194 published in Government Gazette no. 48293 with an implementation date with retrospective effect from 11 March 2011.
17 March 23	Imposition of provisional payments in relation to anti-dumping duties against the alleged dumping of other flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, otherwise plated or coated with zinc, of a thickness of less than 0,45 mm classifiable in tariff subheading 7210.49.10, originating in or imported from the People's Republic of China – ITAC Report No. 710.	Tariff notice no. R.3155 published in Government Gazette no. 48211 with an implementation date of 17 March 2023 up to and including 16 September 2023.
13 March 23	Draft amendments to rules under sections 77H and 120 – Internal administrative appeals	Comments were due to SARS by Friday, 31 March 2023.
10 March 23	Draft amendment to DA 185.4A3 – Registration client type 4A3 – Rebate/refund user	Comments were due to SARS by Friday, 31 March 2023.
10 March 23	Draft amendment to DA 185 – Application forms: Registration / Licensing of Customs and Excise clients	Comments were due to SARS by Friday, 31 March 2023.
10 March 23	Draft amendment to Part 3 of Schedule No. 6 – Insertion of Note 14 and refund item 670.05/00.00/01.00	Comments were due to SARS by Friday, 31 March 2023.
10 March 23	Authorised Economic Operator Programme	Applications are open for eligible traders to apply for AEO status.
8 March 23	Updated Registration, Licensing and Designation Policy	The facility codes used in Box 30 on the Customs Clearance Declaration have been updated with a name change of transit shed P2 in ORTIA from Lonrho Logistics (PTY) Ltd. to PCA Logistics (PTY) Ltd.
Case law		
In accordance with the date of judgment		
24 March 23	United Manganese of Kalahari (Pty) Ltd v CSARS (12312021) [2023] ZASCA 29	Whether the court has jurisdiction in light of section 105 of the TAA which states that a taxpayer may only dispute an assessment by objection and appeal in terms of sections 104 to 107, unless the high court directs otherwise.
24 March 23	CSARS v Rappa Resources (Pty) Ltd (12052021) [2023] ZASCA 28	Whether the court has jurisdiction and can make an order compelling delivery of a record in a review in light of section 105 of the TAA.

23 March 23	SARSTC IT 45935 (ADM) [2023] ZATC CPT	Whether statement delivered by the respondent ("SARS") in terms of tax court rule 31 may be set aside as an irregular step and the proper interpretation of certain rules/sub-rules, in particular the interplay between rules 4, 52(1), 52(6) and 56.
13 March 23	Commissioner for the South African Revenue Services v Grand Azania (Pty) Limited (33257 2021) [2023] ZAGPPHC 173	SARS launched a liquidation application against the respondent (Grand Azania) during July 2021 based on section 344(f) read with section 345(1)(a)(i) and/or 344(h) of the Companies Act 61 of 1973. The issue is whether SARS made out a case for the liquidation of Grand Azania.
7 March 23	Henque 3935 CC t/a PQ Clothing Outlet (in Business Rescue) v CSARS (2020/35790) [2023] ZAGPJHC	Whether the Commissioner for the South African Revenue Service can set-off a tax liability of a company against the VAT refunds due to the company in circumstances where the tax liability concerns a period prior to the company entering into business rescue, but was only determined after the company had already entered into business rescue.
3 March 23	Commissioner for the South African Revenue Service v Medtronic International Trading S.A.R.L (4562021) [2023] ZASCA 20	Whether s227 of the TAA read with s39(7) of the Value-Added Tax Act 89 of 1991 precludes remission of value-added tax after conclusion and implementation of a voluntary disclosure agreement concluded pursuant to s227 of the TAA.
23 February 23	SARSTC 2022/37 (ADM) [2023] ZATC CPT	Whether good cause was established not to grant the appellant the default judgment it sought.
17 February 23	Siyandisa Trading (Pty) Ltd v CSARS (A201/2021) [2023] ZAGPPHC 126 (17 February 2023)	Appeal against SARS' disallowance of a depreciation claim, disallowance of a deduction of finance charges and the imposition of an understatement penalty.
6 September 22	Dankie Oupa Delwery CC v CSARS (39598/20)	Whether the respondent was correct in determining that • the physical address is a requirement for a valid tax invoice in terms of Schedule 6, Part 3, Note 6 (d) read with section 75(1C) and (iii) of the Customs and Excise Act 91 of 1964; • the applicant's record keeping was insufficient; • it did not act irregularly in failing to allow the applicant the opportunity to prove that the fuel was appropriately used within 30 days of demand; • the applicant's logbooks were legally not compliant, or they contained insufficient details regarding the usage of fuel for eligible purchase; and • there were no exceptional circumstances for the Court to depart from the general rule in section 8(1)(c) of the Promotion of Administrative Justice Act 3 of 2000.
10 June 21	Umbhaba Estates (Pty) Ltd v CSARS (66454/2017) [2021] ZAGPPHC	Whether the Defendant, the Commissioner of the South African Revenue Service was correct in refusing an application by the Plaintiff, one of the major banana farmers in the country, for a refund of the fuel levy paid by it in terms as contemplated in Section 75(1A) of the Customs and Excise Act 91 of 1964.
Guides and forms		
30 March 23	Draft Guide to the Employment Tax Incentive (Issue 5)	Comments due to SARS by Friday, 12 May 2023.
30 March 23	Updated VAT264 form	Form for the declaration for the supply of second-hand goods updated to align with the recent VAT amendment contained in the Taxation Laws Amendment Act, 2022.
30 March 23	Recordkeeping – Imported and Exported Goods	This guide provides information on recordkeeping requirements for imported and exported goods under section 101 of the Customs and Excise Act 91 of 1964.
29 March 23	Validity of Import Entries	This guide provides information on the compliance of import entries with sections 39 and 40 of the Customs and Excise Act 91 of 1964.
27 March 23	FAQs: Employees' tax (PAYE) on your pension or annuity	FAQs relating to the fixed PAYE deduction rate of pension where taxpayer has more than one source of income.
24 March 23	Business Requirements Specification: PAYE Employer Reconciliation	This document specifies the requirements for the generation of an import tax file for the yearly as well as the interim submission, effective from 1 March 2023 for Payroll Suppliers until replaced by an updated version.
3 March 23	Guide for Employers in respect of Allowances	The guide has been updated with the 2023 National Budget Speech announcements.

Other Publications

28 March 23	OECD: Global Forum publishes seven new peer review reports on transparency and exchange of information on request	The Global Forum on Transparency and Exchange of Information for Tax Purposes ('Global Forum') published seven new peer review reports on transparency and exchange of information on request ('EOIR'), for six of its members (Albania, the Czech Republic, Mexico, Nigeria, Saint Lucia and Togo) and one non-member, which had previously been deemed of relevance to its work on EOIR (Nicaragua).
22 March 23	OECD: Viet Nam joins Multilateral Convention to tackle tax evasion and avoidance	Deputy Finance Minister of Viet Nam signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (or the Convention), bringing the total number of jurisdictions that participate in the Convention to 147.
21 March 23	OECD: Sustained progress demonstrated in the latest OECD peer review results on the prevention of tax treaty shopping	These peer review results reveal that members of the Inclusive Framework on BEPS are respecting their commitment to implement the minimum standard on treaty shopping and further confirms the importance of the BEPS Multilateral Instrument (MLI) as the tool used by the vast majority of jurisdictions that have started to implement the BEPS Action 6 minimum standard.
16 March 23	Deregistration of tax types	Presentation which outlines the relevant procedures to be followed when a taxpayer applies for a deregistration of a tax type.
16 March 23	OECD: Public consultation meeting on compliance and tax certainty aspects of global minimum tax	The Inclusive Framework on BEPS invited input from stakeholders on compliance and co-ordination aspects of the Pillar Two global minimum tax. The public consultation meeting discussed the input provided to assist members of the Inclusive Framework in completing the work relating to those aspects and preserve consistent and co-ordinated outcomes for MNEs while minimising compliance burdens and avoiding the risk of double taxation.
15 March 23	Tax Alert: Diesel refund system for manufacturers of foodstuffs	This tax alert provides details on the draft amendments published by SARS to give effect to the Budget 2023 proposal for a diesel refund for manufacturers of foodstuffs, available for a two-year period from 1 April 2023 to 31 March 2025.
15 March 23	OECD: Mexico deposits its instrument for the ratification of the Multilateral BEPS Convention	Mexico has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention). The BEPS Convention will enter into force on 1 July 2023 for Mexico.
9 March 23	OECD: Environmental Tax Policy Review of Andalusia	The Environmental Tax Policy Review of Andalusia provides a detailed review of the environmentally related tax framework in the areas of greenhouse gas emissions and air pollution, water usage and pollution, and waste and circular economy of Andalusia, Spain.
8 March 23	OECD: Angola joins Global Forum as 166th member	Angola has joined the international fight against tax evasion by becoming the 166th member – and 35th African member – of the Global Forum.
7 March 23	Tax Alert: Issuing section 18A donation receipts: additional information requirements and preparing for third-party reporting by section 18A-approved organisations	SARS's notice (published in the Government Gazette on 24 February 2023) provides that additional information will have to be included on receipts, issued on or after 1 March 2023, to donors in terms of section 18A(2)(a)(vii) of the Income Tax Act 58 of 1962. This tax alert outlines the changes and additional information that organisations approved by SARS to issue section 18A donation receipts should note and ensure to obtain from donors timeously to support their issuing of valid section 18A receipts and to prepare for the third-party reporting to SARS.
3 March 23	15th Annual Edition of the Tax Statistics.	The 2022 edition provides an overview of tax revenue collections and tax return information for the 2018 to 2022 tax years, as well as the 2017/18 to 2021/22 fiscal years.
2 March 23	OECD: Tracking carbon prices	OECD blog post on tracking carbon prices.
1 March 23	Tax Alert: Donations receipts to claim income tax deductions — additional information requirements	SARS's notice (published in the Government Gazette on 24 February 2023) provides that additional information will have to be included on receipts, issued on or after 1 March 2023, to donors in terms of section 18A(2)(a)(vii) of the Income Tax Act 58 of 1962 ('section 18A'). This tax alert outlines the changes and additional information requirements for taxpayers making donations on or after this date.

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