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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SARS wants to have its cake and eat it too

In February 2024, the South African Revenue Service ('SARS') issued a Draft Interpretation Note on the Consequences of an Employer's Failure to Deduct or Withhold Employees' tax ('the Draft IN') for public comment.

The Draft IN addresses the employees' tax and income tax consequences for the employer and the employee where an employer fails to withhold the correct amount of employees' tax from an employee's remuneration, but then pays the amount due to SARS in terms of the employer's personal liability (for the under recovery of the employees' tax) under the Tax Administration Act 28 of 2011, as amended ('the TAA').

SARS concludes in the Draft IN that where an employer does not recover the amount paid by the employer to SARS from the employee, the employee will remain liable for income tax on the portion of their remuneration on which the employer failed to withhold the employees' tax, with no credit for the employees' tax paid by the employer.

SARS' rationale for this conclusion is that the specific section of the TAA (section 157(2)) that provides that the employer's payment to SARS will be an amount of income tax paid on behalf of the individual in respect of their income tax liability (under section 5 of the ITA) is in conflict with the provisions of the Fourth Schedule – hence the provisions of the Fourth Schedule will prevail to prevent any tax credit (for the amount paid by the employer) being claimed by the employee against their income tax liability.

We disagree with SARS' interpretation in this regard and set out the basis for our opposing view in this article, having regard to applicable sections of the Income Tax Act 58 of 1962, as amended ('the ITA') and the TAA.

An individual's income tax liability

Section 5(1) of the ITA provides that –

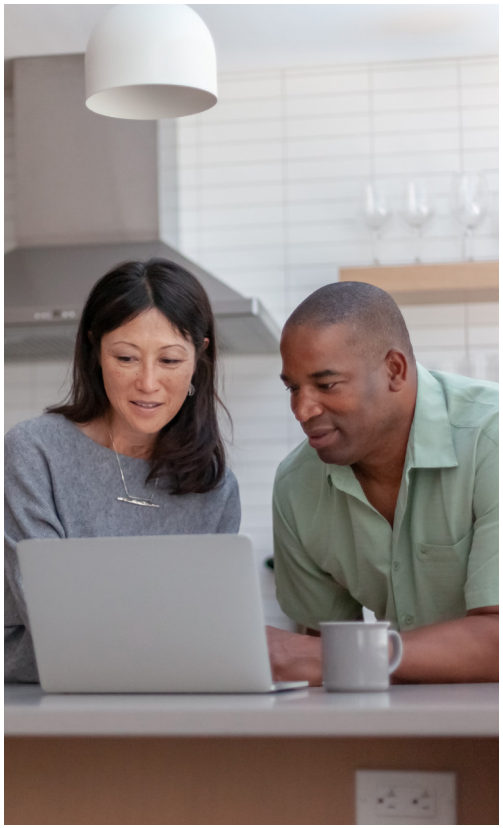
> 'Subject to the provisions of the Fourth Schedule there shall be paid annually for the benefit of the National Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of…any person (other than a company) during the year of assessment ending during the period of 12 months ending the last day of February each year.' [Our underlining]

SARS cites the 2002 judgment in the Estate Late GA Pitje case (66 SATC 219 (W), where it was held that:

> 'It is thus clear, even on a superficial reading of paragraph 5 in its entirety, that the ultimate liability to pay income tax rests with an employee. It follows, in my view, that the collection mechanism created by the Act to give efficacy to the legislation and in particular the pivotal role played by the employer in that scheme, does not extinguish the liability of the employee.' [Our underlining]

The Draft IN states that the learned judge in the abovementioned case concluded that the legislature had, in paragraph 28(1)(*b*), in clear and unambiguous language, placed the burden for the payment of the (income tax) shortfall on the taxpayer, that is, the employee.

Whilst we agree with SARS' statement that the individual (employee) is ultimately responsible for the payment of any 'shortfall' in their income tax liability, the pertinent question is how to determine this 'shortfall' for which the individual (employee) is ultimately liable, when having regard to the provisions of the Fourth Schedule of the ITA and the provisions of the TAA (noting that the TAA came into effect in 2012, i.e., post the 2002 judgment in the *Pitje* case), and numerous changes were also made to the Fourth Schedule subsequent to the TAA coming into effect.



Employer's obligations in terms of the ITA and the TAA

Interaction between the provisions of the Fourth Schedule and section 157 of the TAA

The ITA (Fourth Schedule) and the TAA provide for the following obligations and liabilities on the part of an employer:

a. In paragraph 2 of the Fourth Schedule – an employees' tax withholding agent obligation *[liability 1]*; and

b. In section 157 of the TAA – a personal liability *[liability 2]*, if the withholding obligation was not met by the withholding agent (employer).

Where the employer incurs a personal liability *[liability 2]* under section 157(1) of the TAA, paragraph 5(1) of the Fourth Schedule then provides for the timing of the payment by the employer of this liability –

> '[If] an employer is personally liable for the payment of employees' tax under Chapter 10 of the Tax Administration Act [i.e., s157], the employer shall pay that amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2 [of the Fourth Schedule].'

Paragraph 5(1A) provides that if an employer pays over the amount in terms of the personal liability (i.e., settles liability 2), then liability 1 [the withholding agent liability] will also be discharged.

Paragraph 5(3) provides that –

> 'An employer who has not been absolved from liability as provided in subparagraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of subparagraph (1) [i.e., the amount paid in terms of the employer's personal liability imposed by s157 of the TAA] in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner may determine.'

Accordingly, paragraph 5(1) and paragraph 5(3) specifically refer to section 157 of the TAA, and the employer's right of recovery against the employee arises because of the employer's payment *[liability 1]* made in terms of section 157.

As the employer now has a right of recovery against the employee (individual) for the income tax liability paid on their behalf (in terms of section 157, read with paragraph 5(3)), the legislature provided in section 157(2) of the TAA that the payment by the employer is an amount of income tax paid on behalf of the individual in respect of their income tax liability under section 5 of the ITA.

> '(2) An amount paid or recovered from a withholding agent in terms of subsection (1) is an amount of tax [normal tax] which is paid on behalf of the relevant taxpayer in respect of his or her liability under the relevant tax Act [i.e., normal tax in terms of section 5 of the ITA].' [Our underlining]

Are there any conflicts or inconsistencies between section 157(2) of the TAA and the Fourth Schedule?

SARS seemingly takes the position that an employee will not be able to claim the employees' tax as credit against their normal tax liability by applying the following logic:

> 'Although an employees' tax certificate is prima facie proof of the employees' tax so deducted or withheld, paragraph 5(4) provides that, until the employee has repaid the amount due under paragraph 5(3) to the employer, the employee is not entitled to an employees' tax certificate. Only amounts of employees' tax that were actually deducted or withheld from the employee's remuneration may be offset against the employee's income tax liability. If an employer fails to deduct or withhold employees' tax as required, no tax will have actually been deducted or withheld by the employer. The employee will not be in possession of an employees' tax certificate, and also will not be able to prove that any employees' tax was actually deducted or withheld. The employee will therefore not be able to claim any employees' tax credit on assessment and will be liable to SARS for any shortfall in taxes due.'

SARS goes on to state that:

> 'The purpose of paragraph 5(4) is to prevent the employee from claiming any employees' tax credit on assessment when no taxes were paid via the employees' tax systems during the course of the year. To the extent that the rule under section 157(2) of the TA Act, which provides that the payment by the employer in discharge of its personal liability is a payment on behalf of the employee for the employee's liability for income tax, is in conflict with paragraph 5(4) and paragraphs 28(1) and (2), the provisions of the Fourth Schedule will prevail to prevent any tax credit being claimed by the employee.'

Paragraph 5(4) provides that –

> Until such time as an employee pays to his employer any amount which is due to the employer in terms of subparagraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

Paragraph 28 in turn provides that –

> (1) There shall be set off against the liability of the taxpayer in respect of any taxes (as defined in subparagraph (8)) due by the taxpayer, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Commissioner...
>
> (2) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be prima facie evidence that the amount of employees' tax reflected therein has been deducted by the employer. [Our underlining]

We agree with SARS' comment in the Draft IN that –

> 'to the extent that the rule under section 157(2) of the TA Act, which provides that the payment by the employer in discharge of its personal liability is a payment on behalf of the employee for the employee's liability for income tax, is in conflict with paragraph 5(4) and paragraphs 28(1) and (2), the provisions of the Fourth Schedule will prevail.'

This is in terms of section 4(3) of the TAA, which provides that '*in the event of any inconsistency between this Act and another tax Act, the other Act prevails*'.

However, when applying the principles of interpretation* to section 157 of the TAA and paragraphs 5(4), 28(1) and 28(2) of the Fourth Schedule, there is no conflict or inconsistency as:

- Paragraph 5(4) purely deals with an administrative matter in respect of the collection method (employees' tax), namely the issuance of the employees' tax certificate by the employer as and when the employee settles their debt to the employer (i.e., for the income tax paid by the employer on their behalf in terms of section 157(2)). This paragraph does not provide that, until such time that the employees' tax certificate is issued, the amount paid by the employer may not be regarded as an amount of income tax paid on behalf of the employee as provided for in section 157(2).
- For purposes of paragraph 28(1), the meaning of the phrase 'deducted or withheld' should be given a broader meaning than its narrow literal meaning. As soon as the employer pays the amount of tax in accordance with paragraph 5(1), an automatic right of recovery from the employee arises. Paragraph 5(3) gives the employer a right to recover that debt from the employee, which may not necessarily be in the form of a deduction from remuneration. To suggest that the payment of an amount of employees' tax by an employer on behalf of the employee does not amount to a deduction or withholding of employees' tax would result in an anomalous, if not absurd, position whereby economic double taxation could arise. That could not possibly have been the purpose of the provision.
- Paragraph 28(2) simply provides that the burden of proof that any amount of employees' tax has (actually) been deducted or withheld by the employer will be upon the taxpayer, and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has (actually) been deducted by the employer. In other words, the employees' tax certificate is only a mechanism by which to discharge the burden of proof. It is not a prerequisite for the deduction of employees' tax against the liability for normal tax in terms of section 5 of the ITA.

Accordingly, in terms of section 157(2), the amount paid by the employer (in terms of section 157(1)) *should be allowed* as a deduction from the employee's income tax liability when determining whether there is any 'shortfall' in the individual's income tax liability.

The apparent inconsistency (as asserted by SARS) between the ITA and the TAA arises only because, it is submitted, SARS misinterprets the provisions of the ITA in this regard. However, the interpretation advanced by us above eliminates this inconsistency and the anomalous position that would arise on SARS' interpretation and should therefore be preferred.

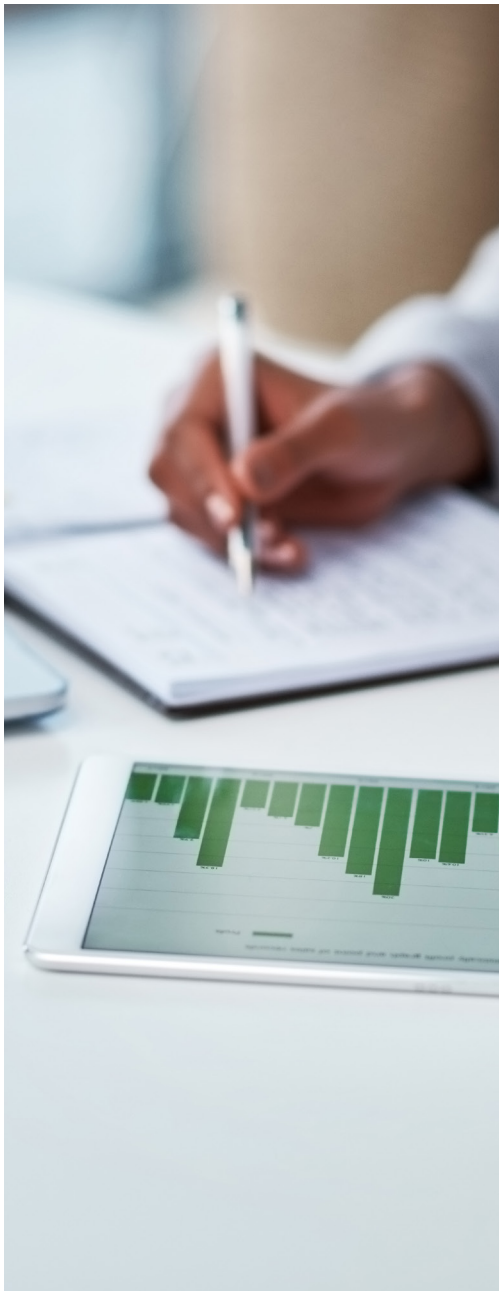
Conclusion

When applying the abovementioned provisions to a scenario where an employer has neglected his withholding agent obligation, but subsequently paid the amount of income tax owing by the employee on the remuneration earned from this employer to SARS in terms of the employer's personal liability, the outcome is that the fiscus has received the income tax due on the applicable portion of the employee's income (i.e., remuneration paid by the employer), and the employer has a right to recover the amount paid to the fiscus from the employee, should he wish to do so (noting that in the event that the employer will not be recovering the amount, the amount payable should be grossed up for fringe benefit tax purposes, and the payment of the employees' tax will not be allowed as an income tax deduction for the employer), with the result that the employees' tax in question has been deducted or withheld as contemplated in para 2(1) when read with the provisions of para 5(1A).

* Principles of interpretation

It was held in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) that:

> 'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, 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. Where more than one meaning is possible, each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.'

The application of the rules of interpretation to words in a statute was further clarified in *Telkom SA SOC Ltd v Commissioner for the South African Revenue Service* [2020] ZASCA 19 (25 March 2020). In summary, it was held that (para 14 – 17):

- Context is all important, regardless of the nature of the document. Endumeni (para 18) emphasised this by stating that the interpretation of words used in the document had to take into account '... the circumstances attendant upon its coming into existence'.
- It must be emphasised that in Endumeni (para 19) it was stated that this approach to the interpretation of documents was consistent with the emerging trend in statutory construction, with Endumeni adopting the second of the two possible approaches mentioned by Schreiner JA in *Jaga v Dönges NO and Another* and *Bhana v Dönges NO and Another* 1950 (4) SA 653 (A) at 662G-663A, namely that from the outset one must consider the context and the language together, with neither predominating over the other.
- It is important to recall that in Jaga, the correct approach to statutory construction was described in the following terms:

> 'Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose and, within limits, its background.'

This approach is echoed in the words of *Endumeni* (para 18), namely:

> 'The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

When applying the above principles to the applicable sections, we note the following:

- The words in the applicable sections of the Fourth Schedule and section 157 of the TAA are clear and there is no ambiguity.
- When considering the ITA as a whole and the context in which the Fourth Schedule appears in the ITA, it is clear that the Fourth Schedule was included in the ITA to implement a monthly income tax collection mechanism for employees' remuneration, with the purpose of making the tax collection more efficient (see the Judge's comment in the *Estate Late GA Pitje* case), i.e., employers are appointed as withholding agents to assist SARS with income tax collection.
- The Fourth Schedule sets out the withholding agent's (employer's) obligations, the consequences of the employer's failure to adhere to their withholding agent obligations and the furnishing of employees' tax certificates.

- When considering the circumstances attendant when the applicable provisions came into existence, the following should be noted regarding the 2011 tax amendments:
  - Prior to its amendment at the time of the introduction of the TAA (2012), para 5(1) of the Fourth Schedule provided for the employer's personal liability if they should fail to withhold or deduct the employees' tax in terms of their withholding agent obligation, i.e., the Fourth Schedule at this time provided for both the withholding agent liability as well as the personal liability of the employer.
  - When the TAA was introduced in 2012, section 157 was included in the TAA to govern the personal liability of the employer, should they fail to deduct or withhold employees' tax in terms of their withholding agent obligation (in terms of the Fourth Schedule). Accordingly, the TAA removed the employer's personal liability from the Fourth Schedule (to include it in section 157 of the TAA), and the legislature amended paragraph 5(1) to refer to the TAA (section 157) and to govern the timing of the payment by the employer that arises under section 157 of the TAA. The reason for the reference in the Fourth Schedule to the payment in terms of the employer's personal liability (in section 157 of the TAA) is *to still treat the payment by the employer as employees' tax* for purposes of the Fourth Schedule so as to ensure that interest can be levied on late payment by the employer of the employees' tax (although it was paid by the employer in respect of their personal liability for the payment of the employees' tax).
  - Further, note that the current section 157 was included in its totality (i.e., both sub-sections 1 and 2 were included) in 2011 when the TAA was introduced and has not been amended since its introduction. Accordingly, when having regard to the '*material known to those responsible for its production*', it is clear that the legislature would have considered the provisions of the

Fourth Schedule as it read at that time[1] and would not have intended that the introduction of section 157(2) of the TAA would be in conflict or inconsistent with the provisions of the ITA.

- We note that if SARS' interpretation as set out in the Draft IN were followed, it would result in insensible and unbusinesslike outcomes in that:
  - the fiscus would collect tax twice on the same amount of income, albeit in the hands of different taxpayers;
  - where an employer decides not to recover the employees' tax from the employee, this would result in an additional liability for employees' tax and normal tax on the basis of a waiver of a debt, while the employee would still have to pay normal tax with no credit for employees' tax in relation to the original remuneration on which employees' tax was not withheld;
  - it may be practically impossible for the employer to recover the debt, e.g. because the employee is uncontactable, has died or has emigrated; and
  - the absurdity is illustrated by the fact that an employer, instead of waiving the debt, could simply elect to pay a once-off amount of remuneration equal to the employees' tax (grossed up) and set off the amount of employees' tax recoverable against the once-off remuneration (in our law set-off is regarded as akin to payment).

1 Note that the wording of the current paragraphs 5(4) and 28(2) has not been amended, and only the text of paragraph 28(1) has been amended since 2011.

Takeaway

Individual taxpayers should be mindful of SARS' interpretation of the provisions of the Fourth Schedule, read with section 157(2) of the TAA, in the Draft IN and the impact this may have on their personal income tax liabilities where their employer failed to withhold the correct amount of employees' tax on their remuneration. While submissions have been made to SARS on the Draft IN, SARS may not be persuaded to change its view. Accordingly, taxpayers should monitor developments in this regard and take any actions as appropriate to mitigate the tax risks associated with such a scenario.

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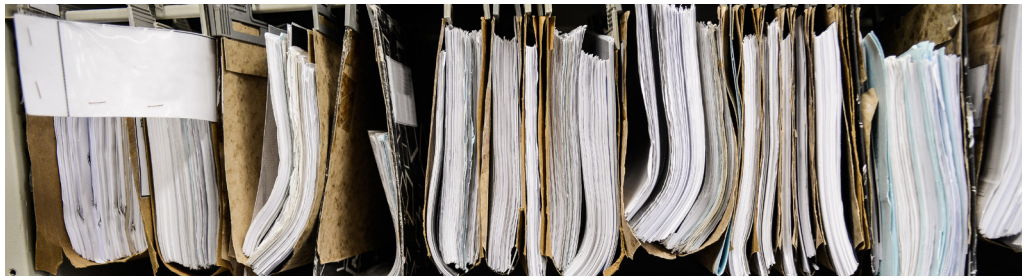
Requests for relevant material and redacted documentation



In a recent High Court case (*The Commissioner for the South African Revenue Service ('SARS') v J Company* (case no. (14944/19) [2024] ZAWCHC 63 (29 February 2024)) the court had to consider whether the taxpayer had to comply fully with SARS' request for relevant material in terms of section 46 of the Tax Administration Act, No. 28 of 2011 ('TAA') and whether SARS was entitled to demand unredacted information from the documents provided.

The relief sought by SARS was that the taxpayer documents be produced 'in a form free of redaction or alteration'.[1]

Background

On 4 September 2018, SARS requested the taxpayer to provide copies of specified relevant material, in terms of section 46 of the TAA, within 21 business days as follows:

> '…2. Please provide copies of the Company's 2017 and 2018 annual financial statements ('AFS').
>
> 3. Please explain the nature of each amount comprising the sales and other expenses reflected in the ITR14 returns filed by the Company in respect of its 2017 and 2018 years of assessment. Please also provide supporting documentation of whatever nature that refers to or is related to any such amount, including but not limited to any invoice, legal agreement or related documentation, payment advice, internal or external memorandum or correspondence of any nature, including emails.'

The taxpayer responded on 28 September 2018, attaching the requested annual financial statements. The taxpayer also provided an income statement analysis for the 2017 year of assessment, consisting of 21 items, and a similar income statement analysis in respect of the 2018 year of assessment, consisting of 44 items. However, whilst reflecting each item of income and expenditure, these schedules omitted the identity of the supplier or recipient of the services to which each item related. The taxpayer in addition provided supporting invoices relating to the income statement analysis that were severely redacted, and in certain instances the identities of the debtors as well as the nature of the services rendered were also redacted, including the applicable VAT numbers.

Similarly redacted documents were provided for the income statement analysis schedule for 2018. This affected eight invoices for advisory fees and expenses incurred for professional services provided in respect of instructing of attorneys and a consulting service. The identity of the attorney dealing with the specific matter was redacted as well as the reason for the professional services rendered. In certain instances, the attorney's bank details were also redacted.

The taxpayer did not explain the reason for the redactions in its response to SARS and stated, inter alia, that it noted that the taxpayer 'has not been notified of any audit by SARS and would therefore technically speaking not have been obliged to respond to the Request at this time'.

The law

Section 46 of the TAA provides the following:

> (1) SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.
>
> (2) A senior SARS official may require relevant material in terms of subsection (1) –
>
> a. in respect of taxpayers in an objectively identifiable class of taxpayers; or

1 The Notice of Motion seeks an order:

"1. Compelling the respondent to comply with its obligation to respond to requests directed to it by SARS in terms of section 46 of the Tax Administration Act 28 of 2011 ('the TAA') on 4 September 2018, 1 October 2018 and 12 November 2018 ('the section 46 requests'), by furnishing to SARS all the information furnished to the applicant by the respondent in purported compliance with the section 46 notice in a form free of redaction or alteration;

2. Directing the respondents to pay the costs of this application."

b. held or kept by a connected person, as referred to in paragraph (d) (i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer, located outside the Republic.

…

(6) Relevant material required by SARS under this section must be referred to in the request with reasonable specificity.

Section 1 of the TAA defines 'relevant material' as follows:

'"[R]elevant material" means any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act as referred to in section 3.'

Section 3 of the TAA reads as follows:

'… (2) Administration of a tax Act means to –

(a) obtain full information in relation to –

(i) anything that may affect the liability of a person for tax in respect of a previous, current or future tax period;

(ii) a taxable event; or

(iii) the obligation of a person (whether personally or on behalf of another person) to comply with a tax Act;

(b) ascertain whether a person has filed or submitted correct returns, information or documents in compliance with the provisions of a tax Act;

(c) establish the identity of a person for purposes of determining liability for tax;

(d) determine the liability of a person for tax;

(e) collect tax debts and refund tax overpaid;

(f) investigate whether a tax offence has been committed, and, if so—

(i) to lay criminal charges; and

(ii) to provide the assistance that is reasonably required for the investigation and prosecution of the tax offence;

(g) enforce SARS' powers and duties under a tax Act to ensure that an obligation imposed by or under a tax Act is complied with;

(h) perform any other administrative function necessary to carry out the provisions of a tax Act;

(i) give effect to the obligation of the Republic to provide assistance under an international tax agreement; and

(j) give effect to an international tax standard.'

SARS' argument

SARS stated that in seeking the unredacted documentation, it was lawfully exercising its powers in terms of section 46 of the TAA. It required the taxpayer to produce certain material 'in respect of the taxpayer'. It argued that it does not limit the enquiry only to the tax affairs of the taxpayer and that they are entitled to require the taxpayer, or another person, to submit relevant material.

SARS contended that 'the refusal of the taxpayer to comply with the section 46 notice is untenable' and that 'the taxpayer is not entitled to withhold information or documentation from it, nor to unilaterally delete, and thereby conceal from SARS, information that appears on the documentation.'

SARS further argued that 'the section 46 notice is aimed at establishing the nature of the business undertaken by the taxpayer and the parties with whom it transacted such business.' They contend that 'the ascertainment of that information is a matter that falls legitimately within section 46, especially in this case, since how a taxpayer interacts with its clients and service providers, and who those clients and service providers are, is an issue that ostensibly goes to the administration of a tax Act in relation to a taxpayer.'

SARS also stated that 'on a proper construction of section 46, a taxpayer cannot *mero motu* decide what information it will provide to SARS or what information is relevant for the administration of tax Acts. That decision [it says] is reserved to SARS in terms of the TAA and it is not for the taxpayer to attempt to perform this function on behalf of SARS. Nothing in section 46 of the TAA requires that prior to SARS making a request thereunder it must first have formed a view that there has been potential non-compliance by the taxpayer receiving the notice or any other taxpayer.'

Finally, SARS argued that it is incorrect to state that a clarification or expansion of the section 46 request to, in this instance, the taxpayer, its clients and service providers is impermissible as constituting a fishing expedition.

Respondent's argument

The taxpayer stated that it identifies itself as a private company incorporated in South Africa which procures and provides advice and project management services to clients undertaking various corporate and commercial transactions. It charges a fee to clients for its services, and typically recharges to the client any amounts paid by it to specialist advisors, including attorneys, engaged on behalf of the client. It contends that it is fully tax compliant; has furnished all returns required of it timeously; and has paid all taxes owing by it by the due date as required.

It argued that it had provided the information as requested by SARS and had, 'on legal advice provided by its attorneys of record, redacted those parts of the documentation provided which falls

outside the legitimate ambit of section 46'.

It further contended that SARS 'failed to state on what basis it had purportedly formed an opinion that the requested information is "foreseeably relevant for the administration of a tax Act".' It contends that 'it is insufficient in an application such as this to merely make the averment that it has formed the opinion that the redacted information is relevant without stating on what reasonable grounds it has formed the relevant opinion'.

The taxpayer also argued that the requests is not aimed at obtaining any information which may be relevant to the tax affairs of the taxpayer. instead, it is aimed at 'solely attempting to ascertain who the taxpayer's clients are what transactions the clients were advised on, and in circumstances where SARS has no basis to consider that there has been any potential non-compliance by any such clients. The requests…therefore amount to nothing more than an open-ended fishing expedition in relation to the taxpayer's clients, which exceed the legitimate bounds of section 46.'

The taxpayer submitted that a legitimate request 'may pertain to the tax affairs of the recipient'. It may also pertain to 'material… in respect of taxpayers in an objectively identifiable class of taxpayers'. It argued that the unspecific reference to '*clients and service providers*' of the taxpayer does not meet the requirements of an '*objectively identifiable class of taxpayers*'.

The taxpayer finally contended that SARS' case has not remained constant given the content of the two separate requests.

It argues that the first request pertained to 'relevant material indicated below in respect of the taxpayer'. It was only in later correspondence that SARS sought a wider field of reference, by contending in its second request that SARS considered the requested material 'to be foreseeably relevant for the administration of a tax Act in relation to it and/or clients and service providers.'

The judgment

The judgment considered section 46 and stated that:

> 'The question thus that needs to be answered is whether SARS is entitled to demand, without more, the unredacted information from the documents already provided and which, as contended by the taxpayer, does not relate to it as the taxpayer but rather to its clients and suppliers – and as a consequence – does not fall within the definition of "relevant material". Secondly and in any event, if it is found to be material, then this Court has to ascertain whether there has been non-compliance of the TAA by SARS in determining an "objectively identifiable class of taxpayers" as required in sections 46(1) and (2)(a) of the TAA and as a result, whether the Request amounts to a so-called "fishing expedition".'

The High Court then cited the case of *Commissioner for the South African Revenue Services v Brown*[2] on the general principle of interpretation:

> '…I start of [sic] with the general principle of interpretation. As was stated in Commissioner for the South African Revenue Services v Brown, there can be little doubt, having regard to the language used in the light of ordinary rules of grammar and syntax, the context in which the provision appears and the apparent purpose of the Act, that the provisions of section 46 are peremptory. The explicit and unambiguous wording of the section simply does not allow for any other interpretation.'

The judgment also states that this approach agrees with international tax practice and refers to the case of *Australia & New Zealand Banking Group Ltd v Konza*[3], where it was held:

> 'It is… for the recipient to decide for himself, difficult though the task may be, which of the documents answer the description. If his decision is wrong, he exposes himself to prosecution and penalty. The existence of this hazard is not a sufficient basis for the conclusion that the section requires the Commissioner to give notice in such terms as would enable the recipient on reading it and on examining the documents in his custody or control to determine whether they fall within the ambit of the Commissioner's powers. To so hold would be to impose an impossible burden on the Commissioner. In many, if not most, cases he will be unaware of the contents of the documents of which he seeks production.'

The judgment in paragraph [30] cites *Mason J in Federal Commissioner of Taxation v Australia and New Zealand Banking Group (1979) 143 CLR 499 at 536* regarding the taxpayer's allegation that SARS' request amounted to an 'open-ended fishing expedition':

> 'The strong reasons which inhibit the use of curial processes for the purposes of a "fishing expedition" have no application to the administrative process of assessing a taxpayer to income tax. It is the function of the Commissioner to ascertain the taxpayer's taxable income. To ascertain this he may need to make wide-ranging inquiries, and to make them long before any issue of fact arises between him and the taxpayer. Such an issue will in general, if not always, only arise after the process of assessment has been completed… The court confirmed that, like all statutory powers, the power must be used in a bona fide manner and for the purpose for which it was conferred and accordingly, the Commissioner must exercise the

2 (561/2016)[2016] ZAECPEHC 17 (5 May 2016) at para 27

3 [2012] FCA 196

statutory power for the purposes of the ITAA, the primary purpose of which is the levy of tax upon taxable income. Furthermore, the Commissioner is permitted to conduct a 'fishing expedition' in the sense of a wide-ranging inquiry, to ascertain a taxpayer's taxable income.'

From a domestic context, the judgment states at paragraph [32] that the Applicant referred to the following passage from LAWSA:

'It would be impractical for SARS to provide reasons in every request for information as to why the relevant material requested is considered relevant. Although SARS determines what relevant material is required, this does not mean that the taxpayer has no remedies during the audit process. The taxpayer may request SARS to withdraw or amend its decision to request material, pursue the internal administrative complaints resolution process of SARS, approach the Tax Ombud or the Public Protector. Information is the lifeblood of the commissioner's taxpayer audit activity, and the whole rationale of taxation would break down with the burden of taxation falling on the diligent and honest taxpayers if SARS had no effective powers to obtain confidential information about taxpayers who may be negligent or dishonest. Inadequate investigation of tax evaders, or aggressive tax planners who only purport to comply with tax laws, is unfair to taxpayers who are compliant. Allowing this would undermine public confidence in the tax system, and would reduce voluntary compliance by taxpayers, such compliance being an integral feature of an effective tax system.'

At paragraph [33] the judgment notes that the memorandum on the objects of the Tax Administration Laws Amendment Bill, 2014, which sets out the purpose of the definition of 'relevant material', states that according to literature:

'…the test of what is "foreseeably relevant" follows the following broad grounds, being:

(a) whether at the time of the request there is a reasonable possibility that the material is relevant to the purpose sought;

(b) whether the required material, once provided, actually proves to be relevant is immaterial;

(c) an information request may not be declined in cases where a definitive determination of relevance of the material to an ongoing audit or investigation can only be made following receipt of the material;

(d) there need not be a clear and certain connection between the material and the purpose, but a rational possibility that the material will be relevant to the purpose; and

(e) the approach is to order production first and allow a definite determination to occur later.'

At paragraph [34] the judgment states that:

'The golden thread which emerges is that, in most cases, [SARS] does not know what information or documentation there is in order for it to fully discharge its function of assessing a taxpayer's tax liability. It therefore stands to reason that [if] [SARS] does not know, then it requires a mechanism to be able to fulfil its constitutional mandate of fiscus collection in a manner that is open and transparent and within the bounds and scope of its power. There however also has to be a reciprocal obligation on the part of the taxpayer to play its part, since it can hardly be considered fair if a dutiful and law-abiding tax citizen is penalized for its compliance with the tax laws viz a viz aggressive tax planners with the sole purpose of evading tax laws or simply to avoid tax altogether. As contemplated in the memorandum, it is accepted that information is the lifeblood of a revenue authority's taxpayer audit activity and the whole rationale of taxation would break down and the whole burden of taxation would fall on diligent and honest taxpayers if a revenue authority had no effective powers to obtain confidential information about taxpayers who may be negligent or dishonest.'

In terms of the taxpayer's claim that SARS did not identify an 'objectively identifiable class of taxpayer', the judgment notes at paragraph [35] that:

'… this aspect does not need to be considered… the taxpayer itself and identified by name, is obliged to provide information and documents in an un-redacted form of persons or entities which it deals with and which pertains to it since this may impact on [SARS] ability to properly assess the taxpayers liability…given the fact that the majority of the redacted invoices relate to clients and suppliers of the taxpayer who seem to be in the legal field, I would find that there is sufficient information, notwithstanding the taxpayer's obstructive conduct in redacting the relevant information and concealing same from [SARS], in order for the taxpayer to identify the class of taxpayers, i.e. the attorney and law firms, which forms the ambit of [SARS'] enquiry and to which the notice or request pertains.'

In conclusion, the judgment states at paragraph [50]:

'…that nothing prohibits SARS from broadening its scope of material or information sought, since the very purpose of section 46, which falls within [the] scope of chapter 5, deals with the ambit of information gathering and the like. It would be an absurd proposition to restrict a fiscus gathering institution to one request in terms of section 46 for information sought and for it later to be precluded from issuing further notices in the event that information initially provided yields more questions or necessitates further investigation or inquiry.'

The judgment also notes at paragraph [53] that the taxpayer has not claimed a right to legal privilege, and at paragraph 64 states '*In casu*, the taxpayer does not claim privilege for the basis of its refusal to provide unredacted versions of the documents'.

The High Court ordered that the taxpayer should provide SARS with the unredacted documents within 21 (twenty-one days) of the date of the judgment.

The takeaway:

It is important for taxpayers to be aware of the extent of SARS' information-gathering powers regarding requests for relevant material in terms of section 46 of the TAA, and that these are wide, with a relatively low threshold for SARS to meet. It remains to be seen whether this judgment will be appealed to the Supreme Court of Appeal, but it seems that there can be few quarrels with the correctness of this decision.

That, however, does not mean that SARS is entitled to everything it may ask for. Note in this regard the grounds for what is foreseeably relevant, set out in paragraph [33] of the judgment and highlighted above. In particular, we draw your attention to the first ground, being 'whether at the time of the request there is a reasonable possibility that the material is relevant to the purpose sought'. As you would note, the definition of 'administration of tax Act' is wide and comprises numerous different elements.
In being able to assess whether there is a reasonable possibility that the material sought by SARS is relevant to the purpose, it is important that taxpayers establish precisely which element/s of tax administration SARS seeks the material for. This is because what is foreseeably relevant for one element may not be relevant for another element. We remain of the view that, when it comes to establishing liability for tax or the correctness of tax returns, SARS is not entitled to tax opinions (whether legally privileged or not) or other documents that set out the tax implications or risks associated with a particular matter. This is because the views of others on the tax implications of a given set of facts and circumstances should be entirely irrelevant to SARS' determination of what the tax implications of those facts and circumstances are. Rather, SARS is required to apply its own mind and independently arrive at its own conclusions based on full information relating to the facts and circumstances, to which it is undeniably entitled. It is therefore the facts and circumstances that are relevant rather than the opinions of others on the application of the law to those facts and circumstances.

That is not to say that tax opinions are never relevant for purposes of administering a tax Act. They may be relevant, for example, in the assessment of understatement penalties by SARS. However, that is something that follows SARS' arriving at a conclusion on the tax implications and cannot be relevant before that point.

Taxpayers should therefore carefully consider their obligations in responding to requests for relevant material from SARS.

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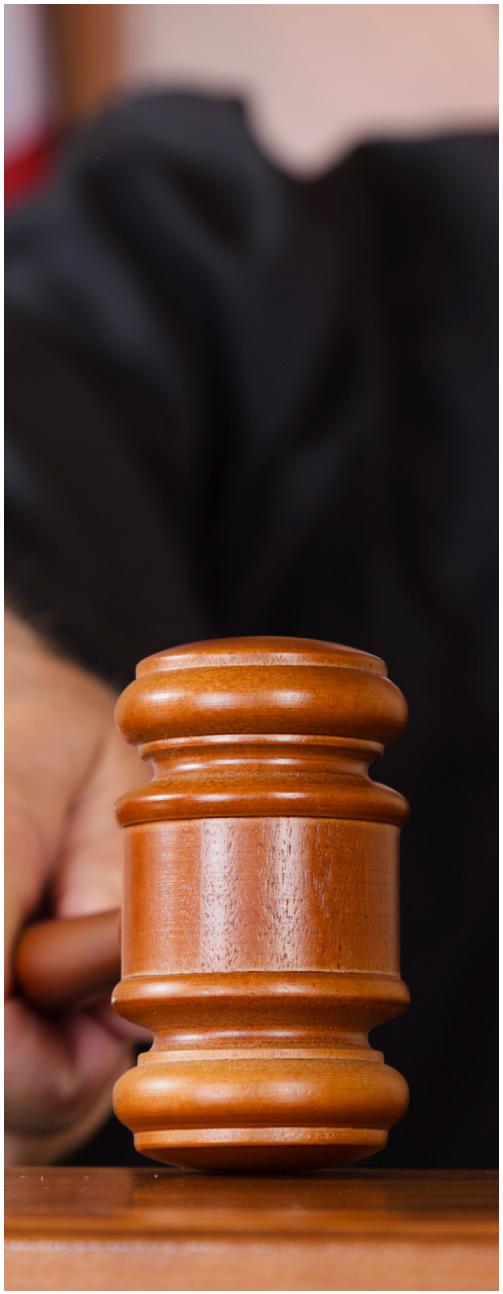

SARS Watch

SARS Watch 1 March 2024 – 31 March 2024

Legislation		
6 March 2024	Tax Directives regarding involuntary transfer before retirement	To ensure parity among members of retirement funds who are subject to an involuntary transfer — and who have reached normal retirement age in terms of the fund rules, but have not yet opted to retire from the fund — the following changes have been made to the Act: • Such individuals can have their retirement interest in that pension fund or provident fund transferred to another pension fund or provident fund without incurring a tax liability. • The value of the retirement interest, including any growth, will remain ring-fenced and preserved in the receiving pension or provident fund until the member retires from that fund. This means that these members will not be entitled to the payment of a withdrawal benefit in respect of the amount transferred.
6 March 2024	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 2024.
6 March 2024	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 2024.
Binding rulings		
18 March 2024	VAT ruling 007 – Apportionment	This ruling approves the method of apportionment, being the varied turnover-based method, which is applied to a vendor in the micro-lending industry.
18 March 2024	VAT ruling 006 – Apportionment	This ruling approves the method of apportionment, being the varied turnover-based method, which is applied to a vendor in the asset-based financial services.
15 March 2024	VAT ruling 008 – Apportionment	This ruling approves the method of apportionment, being the varied input-based method, which is applied to a vendor in the short-term insurance industry.
Customs and excise		
28 March 2024	Notice R.4556 – Amendment to Part 5A of Schedule No. 1, by substitution of Note 8 as well as an increase of 1c in the carbon fuel levy from 10c/li to 11c/li for petrol and from 11c/li to 14c/li for diesel, respectively, to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with effect from 3 April 2024.

28 March 2024	Notice R.4555 – Amendment to Part 5A of Schedule No. 1, by the substitution of Notes 7(a)(vi) and b(vi) in order to change the density factors for the calculation of the carbon fuel levy from 0.75 to 0.7405 kilogram per litre for petrol and from 0.0845 to 0.8255 kilogram per litre for diesel to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with retrospective effect from 1 January 2024.
28 March 2024	Notice R.4554 – Amendment to Part 3F of Schedule No. 1, by an increase of R31 per tonne in the rate of the environmental levy on carbon dioxide equivalent from R159 to R190 per tonne to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with retrospective effect from 1 January 2024.
28 March 2024	Notice R.4553 – Amendment to Part 3D of Schedule No. 1, by an increase of R14 per g/km CO2 in the rate of the motor vehicle carbon dioxide emissions levy from R132 to R146 on new passenger vehicles on emissions exceeding 95g/km, and by R19 per g/km CO2 from R176 and R195 on new double-cab vehicles on emissions exceeding 175g/km, respectively, to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with effect from 1 April 2024.
28 March 2024	Notice R.4552 – Amendment to Part 3C of Schedule No. 1, by an increase of R5/lamp in the rate of the environmental levy on electric filament lamps from R15/lamp to R20/lamp to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with effect from 1 April 2024.
28 March 2024	Notice R.4551 – Amendment to Part 3A of Schedule No. 1, by an increase of 4c/bag in the rate of the environmental levy on plastic bags from 28c/bag to 32c/bag to give effect to the Budget proposals announced by the Minister of Finance on 21 February 2024	Published in Government Gazette No. 50381 with effect from 1 April 2024.
15 March 2024	Notice R.4514 – Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from free of duty to 140.91c/kg in terms of the existing variable tariff formula – ITAC Minute 13/2023	Published in Government Gazette No. 50296 with an implementation date of 15 March 2024.
15 March 2024	Notice R.4513 – Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08; and 260.03/7318.16.30/01.08 to include imports originating in or imported from the Republic of the Philippines to be subject to a safeguard duty at a rate of 44,04% on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – ITAC Report 715	Published in Government Gazette No. 50296 with an implementation date of 24 July 2025 up to and including 23 July 2026.
15 March 2024	Notice R.4512 – Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08; and 260.03/7318.16.30/01.08 to include imports originating in or imported from the Republic of the Philippines to be subject to a safeguard duty at a rate of 46,04% on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – ITAC Report 715	Published in Government Gazette No. 50296 with an implementation date of 24 July 2024 up to and including 23 July 2025.

15 March 2024	Notice R.4511 – Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard items 260.03/7318.15.41/01.08; 260.03/7318.15.42/01.08; and 260.03/7318.16.30/01.08 to include imports originating in or imported from the Republic of the Philippines to be subject to a safeguard duty at a rate of 48,04% on threaded fasteners of iron or steel (excluding those of stainless steel and those identifiable for aircraft) – Minute 11/2023	Published in Government Gazette No. 50296 with an implementation date of 15 March 2024 up to and including 23 July 2024.
11 March 2024	Excise duty / levy payment and submission dates	Excise duty / levy payment and submission dates for 2024/2025 have been published.

Case law

In accordance with the date of judgment

28 March 2024	Cyril and Another v CSARS (186/2023) [2024] ZASCA 32	This appeal arises from an application to intervene in an application to review and set aside the decision of a magistrate to admit certain evidence in a criminal trial. The review application was brought by Mr Walter Cyril and Ms Letisha Cyril, the appellants (the Cyrils). The Cyrils are charged with 41 counts of fraud and 41 counts of contravening s18A(9) read with s80(1)(o) of the Customs and Excise Act 91 of 1964 (the CEA) for allegedly diverting cigarettes without paying duties or VAT, 41 counts of contravening s84(1) of the CEA for allegedly making false declarations and 41 counts of contravening s83(a) read with s47A of the CEA for allegedly unlawfully causing goods not entered for home consumption to be removed and/or dealt with without the payment of duty and VAT.
26 March 2024	Richards Bay Mining (Pty) Ltd v CSARS (2023/045310) [2024] ZAGPPHC 275	This matter concerns the interpretation of two sections in two different statutes. The first is in respect of the scope of section 105 of the Tax Administration Act, Act no. 28 of 2011 (TAA) – whether it contains an ouster of the High Court's jurisdiction in respect of all matters related to the South African tax administration procedures and provisions. The second concerns the interpretation of the provisions of section 4(2) of the Mineral and Petroleum Resources Royalty Act, Act no. 28 of 2008 (the Act), and thereby a determination of the scope of that section.
26 March 2024	Ramudzuli v CSARS and Others (A261/22) [2024] ZAGPPHC 280	The Court considered – a. the unopposed condonation application; b. the late objection to the appeal record on allegations of non-compliance with the Rules; c. whether it was appropriate for Skosana AJ to gravitate to Rule 6(5)(g) when he had already dealt with the merits of the application; and d. the issue of the correctness of the order dismissing the application on its merits with costs.
13 March 2024	Tresping Manufacturing (Pty) Ltd v Commissioner for the South African Revenue Services (1286/2024) [2024] ZAFSHC 84	Reasons for dismissal of an urgent application by the applicant, Tresping Manufacturing (Pty) Ltd, seeking the release and handing over of its truck, two trailers and a consignment of textile detained in terms of section 88(1)(a), read with sections 87 and 102 of the Customs Act.
11 March 2024	South African Agri Initiative NPC v National Commissioner for the South African Revenue Service and Others (2023-022575) [2024] ZAGPPHC 194	The applicant seeks relief in terms of the Promotion of Access to Information Act, Act no. 2 of 2000 that the respondents be obliged to produce a record pertaining to media statements by the South African Police Service concerning the destruction of firearms.
5 March 2024	Bechan and Another v SARS Customs Investigations Unit and Others (1196/2022) [2024] ZASCA 20	The appellants applied to the High Court for relief, by way of the mandament van spolie (spoliation), compelling SARS to return certain items seized, purportedly unlawfully, from Mr Bechan's motor vehicle during the execution of a warrant in respect of Bullion Star (Pty) Ltd.

1 March 2024	BP Southern Africa (Pty) Ltd v Commissioner for the South African Revenue Service (2021/49805) [2024] ZAGPPHC 160	The applicant, BP, seeks leave to appeal against the court's judgment of 12 January 2024. In that judgment, BP's appeal under section 47 (9) (e) of the Customs and Excise Act 91 of 1964 ('the Customs Act') against determinations made under the Act by the respondent, the Commissioner, was dismissed. Those determinations were that BP did not qualify for refunds of duty paid on fuel BP says was exported to Zimbabwe. The court also referred to trial BP's review of the Commissioner's further decision, taken in terms of section 88(2)(a)(i) of the Customs Act, to levy payment in lieu of forfeiture on the allegedly exported fuel.
29 February 2024	Commissioner for the South African Revenue Service v J Company (14944/19) [2024] ZAWCHC 63	This is an application in which SARS seeks an order compelling the taxpayer to comply with its obligation to respond fully to requests for certain supporting documents in terms of section 46 of the Tax Administration Act 28 of 2011. The relief sought in the notice of motion is that those documents be produced in a form free of redaction or alteration.
26 February 2024	Finequest Enterprise (Pty) Limited v Commissioner for the South African Revenue Service (008272/22) [2024] ZAGPPHC 170	This is an application in which the applicant (Finequest) seeks the review and setting aside of a decision of the respondent (SARS) taken in terms of the Customs and Excise Act 91 of 1964 to seize and declare forfeit goods which Finequest had sought to clear through customs while they were in transit to Mozambique. An order is also sought for the release of those goods for return to Botswana.
14 February 2024	ABD Limited v Commissioner for the South African Revenue Service (14302) [2024] ZATC	In this case, ABD Limited appeals against an increased assessment imposed on it by SARS. In the assessment, SARS increased the royalty payments ABD Limited received for the right to use its intellectual property from its various Opcos as SARS contends that the royalties were not at arm's length. Central to the case is how an arm's length price is determined.
2 February 2024	Bullion Star (Pty) Ltd v CSARS (18176/2022) [2024] ZAGPPHC 184	This is an application for the reconsideration and setting aside of a warrant obtained *ex parte* by the South African Revenue Services on 28 March 2022 for the search and seizure of certain premises connected to Bullion Star (Pty) Ltd.
Guides and forms		
28 March 2024	Ad Valorem Excise Duty – External Policy	The purpose of this policy is to outline the liability and obligations for Ad Valorem Excise Duty in terms of the Act, as amended, including Schedule 1 Part 2B, which specifies the goods on which duty is levied, each with its own applicable rate of duty.
28 March 2024	Ad Valorem Value Determination – External Annexure	This Annexure provides guidance on the assessment of value and calculations formulae.
27 March 2024	Other Fermented Beverages – External Policy	The purpose of the policy is to stipulate the requirements, activities, and liabilities of the other fermented beverages (OFB) industry.
25 March 2024	Spirits – External Policy	The purpose of the policy is to explain: i. The activities that are permitted in the spirit warehouses; ii. Completion of the DA 260 account; iii. The assessment of excise duty, which involves duty paid removals and non-duty paid removals; and iv. Reprocessing, destruction or abandonment.
25 March 2024	DA 180 Environmental Account for Carbon Tax – External Guide	The purpose of this guide is to assist business entities that generate carbon emissions liable to carbon tax in South Africa, to complete the DA 180 Environmental Account for Carbon Tax and its annexures.

25 March 2024	Quick Reference Table to Amendments, Substitutions, and Cancellation of Bills of Entry	This guide enhances the understanding of amendments, substitutions, and cancellation of bills of entry.
20 March 2024	An Overview of Manufacturing Rebate and Drawback Procedures	This guide enhances the understanding of the customs processing procedures.
19 March 2024	Manage Submission of Third-Party Data – External Guide	The guide unpacks the overall process of user adoption regarding the use of eFiling, detailing the process involved during registration and activation of third-party data tax types (e.g. IT3). This is to ultimately ensure that SARS issues the taxpayer or organisation their tax return (e.g. IT3-01) during tax seasons for submission. Additionally, the guide unpacks how registered representatives can add administrators to their organisation's eFiling profile, so that tax administrators can administer the tax responsibilities of their organisation/entity. Lastly, it unpacks the enrolment process of the organisation and the tax administrators for the submission of the IT3 third-party data.
19 March 2024	Guide for the Submission of Third-Party Data using the Connect Direct channel – External Guide	This guide describes the process to submit third-party data files to SARS via the Connect: Direct channel. This includes the various steps required for submission, such as the enablement of eFiling users, data preparation, submission of the data/file and finally the declaration of the data file submitted to SARS.
19 March 2024	Guide for the Submission of Third-Party Data using the HTTPS channel – External Guide	This guide describes the process to submit third-party data files to SARS via the Secure Web: HTTPS channel. This includes the various steps required for submission such as the data preparation, enablement of eFiling users, submission of the data/file and finally the declaration of the data file submitted to SARS.
18 March 2024	Customs Outward Processing Procedure	This guide enhances the understanding of the customs outward processing procedure. Outward processing is a customs procedure whereby goods that are in free circulation (that is, not subject to customs control) are temporarily exported from the Republic to undergo processing or repair abroad. The processed or repaired goods are re-imported and released for home use with partial relief from import duty as only the added value, being the cost of repair or processing, is subject to the payment of duty and VAT on re-importation.
8 March 2024	Guide on the Solar Energy Tax Credit Provided under Section 6C	This guide provides general guidance on the newly introduced solar energy tax credit under section 6C of the Income Tax Act 58 of 1962.
7 March 2024	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 interim submissions. The requirements as defined in this version of the BRS will become effective from 1 March 2024 for payroll suppliers until replaced by an updated version.
Other Publications		
20 March 2024	OECD: Steady progress in the implementation of the BEPS Action 6 minimum standard: latest peer review results	Members of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) continue to make steady progress in the implementation of the BEPS package to tackle international tax avoidance, as the OECD releases the latest peer review report assessing jurisdictions' efforts to prevent tax treaty shopping and other forms of treaty abuse under Action 6 of the OECD/G20 BEPS Project. A revised peer review document forming the basis of the assessment of the BEPS Action 6 minimum standard was also released.
18 March 2024	SARS: Third Party Data Annual Submissions	The SARS Third Party Data Annual Submissions process for the period 1 March 2023 – 29 February 2024 opens on 1 April 2024 and will close on 31 May 2024.

15 March 2024	Tax Alert: South Africa publishes draft Pillar Two legislation	In South Africa's 2024 Budget Speech (22 February 2024), the Finance Minister announced the implementation of the Global Minimum Tax regime, commonly known as the Pillar Two rules, for South Africa. Draft legislation published on the same day proposes two taxes, namely the income inclusion rule ('IIR') top-up tax, and the domestic minimum top-up tax ('DMTT'), applying to fiscal years commencing on or after 1 January 2024. These rules will apply to multinational enterprise groups with a consolidated group turnover of at least EUR 750 million (approximately ZAR 15 billion). It is expected that the legislation will be finalised and enacted following a process of public consultation, subject to any amendments arising from the public consultation process. South Africa's National Treasury has invited submissions on the draft legislation and also welcomes continued engagement with stakeholders. Comments are due by 31 March 2024. The following are key aspects of the draft legislation: 1. The IIR appears to have been adopted in line with the Model Rules, with no key exceptions. 2. The undertaxed profits rule ('UTPR') will not apply, although it could be introduced at a later stage. 3. The DMTT applies according to the Model Rules, with certain specific measures included.
13 March 2024	OECD: Watch OECD Tax and Development Days 2024	This event provided an update on some of the OECD's initiatives to strengthen tax capacity and improve tax policy and compliance in developing countries and explore future challenges.
5 March 2024	OECD: OECD organises a regional transfer pricing capacity-building workshop in Accra for West African countries	As part of the Fiscal Transition Support Programme in West Africa, the OECD organised a transfer pricing capacity-building workshop attended by representatives from 13 West African countries' tax administrations, and from the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU) Commissions.
4 March 2024	SARS: Media release – SARS welcomes High Court decision on BPSA	The Commissioner for the South African Revenue Service, Mr Edward Kieswetter, welcomed the High Court decision, which dismissed an application for leave to appeal by British Petroleum of South Africa (BPSA) to review the Commissioner's decision to refuse its refund claims and levy forfeiture under the Promotion of Administrative Justice Act (PAJA).