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SARS Watch

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Proposed amendment to clarify the treatment of foreign exchange differences when there is no accrual for the creditor

Section 23M underwent significant amendments during the 2021 legislative cycle as part of measures to broaden the corporate income tax base. These amendments came into effect for years of assessment ending 31 March 2023. Since then, taxpayers have had to grapple with a number of anomalies in the wording of these amendments. This has resulted in several so-called "clarificatory" amendments to the section, the first batch of which was seen during the 2023 legislative cycle.

Most recently, in the 2025 Budget Review Government announced proposals for three further amendments to section 23M under the heading "Clarifying the interest limitation rules". These are:

- Refining and clarifying the definition of "interest" to enhance certainty;
- Reviewing the carve-out for the interest limitation rules; and
- Clarifying the treatment of foreign exchange ("forex") differences when there is no accrual for the creditor.

This article unpacks the proposal to amend the treatment of forex differences when there is no accrual for the creditor (the "Proposed Amendment").

Background to the Proposed Amendment

Limitation of forex deductions under section 23M

Section 24I governs the tax treatment of forex differences arising on "exchange items". Its purpose can be ascertained in the extract below, taken from the Explanatory Memorandum on the Income Tax Bill, 1993:

> '[Section 24I has] the object of treating, for tax purposes, all gains made and losses incurred in respect of foreign exchange transactions in a manner which takes into account as far as possible the principles of fairness, simplicity, economic reality, current tax principles and generally accepted accounting practice.
>
> **As a starting point it has been taken that gains and losses on foreign exchange transactions mainly represent finance charges**. Accordingly, a consequence of this approach is that gains and losses of this nature have to be brought into account for tax purposes at the end of a year of assessment irrespective of whether they have been realized or not. In addition, this approach also has the effect that such a gain or loss is taken into account against income, regardless of whether it is of a capital nature or not.' (Emphasis added.)

Simply put, section 24I provides for the inclusion in or deduction from a person's income of any forex gain or loss, respectively, that is related to an exchange item when determining that person's taxable income. This requirement applies regardless of whether the forex difference is of a capital nature or whether it is unrealised, subject to section 24I(10A).

Despite forex losses generally being seen as representing finance charges, as explained in the extract above, they are excluded from the definition of "interest" in section 24J and were not previously subject to the interest limitation rules under section 23M.

To illustrate the liberal nature of the Income Tax Act regarding the deductibility of forex losses, a company can claim a deduction of forex losses incurred even if it is not engaged in a trade. This is because section 24I does not impose a "trade" requirement for companies.

However, this changed with the overhaul of section 23M during the 2021 legislative cycle, which resulted in the broadening of the "interest" definition, amongst other changes. The definition of "interest" in section 23M now includes amounts taken into account in determining taxable income in terms of section 24I(3) and section 24I(10A). This means that forex losses that are incurred by a South African ("SA") company are now subject to the interest limitation rules in section 23M.

The rationale for the broadening of the "interest" definition to include inter alia forex differences was that the "old" interest definition in section 23M, which only made reference to interest as defined in section 24J, was found to be narrow relative to the OECD/G20 BEPS recommendations and did not consider opportunities for tax avoidance, where interest could be labelled as other types of payments to circumvent the application of these rules.

Following the broadening of the "interest" definition in section 23M, forex differences now fall within the scope of section 23M. This outcome is aided by section 23M(7), which deems forex gains and losses that are taken into account in determining taxable income in terms of sections 24I(3) and 24I(10A) to have accrued or to be incurred by the taxpayer, respectively.

Whilst these amendments have ensured that forex differences are brought within the scope of section 23M, uncertainty exists as to whether section 23M, as currently worded, can in fact apply to limit the deduction of forex losses.

The issue

The requirements for the application of the interest limitation rules in section 23M can be summarised as follows:

- Interest is incurred by a SA tax resident debtor (the "debtor");
- during a year of assessment;
- in respect of a debt owed to a creditor that is in a controlling relationship with the debtor; and
- such interest has **accrued** to the creditor but is not subject to tax (in SA) in the hands of the creditor.

The requirement that creates uncertainty as to whether section 23M applies to limit the deductibility of forex losses is the requirement for an accrual in the hands of the creditor.

Technically, when a debtor incurs a forex loss there is – in most cases – no corresponding forex gain that "accrues" to the creditor. The accounting journals that would be processed by the debtor would be to debit the forex loss and to credit the liability owing to the creditor. In other words, the forex loss is expensed and the debt is increased. However, these entries are one-sided if the debt is denominated in the currency of the creditor, since the translation only happens in the books of the debtor. From the perspective of the foreign creditor, its receivable, denominated in the local currency, remains the same. There is therefore no "accrual" of a corresponding forex gain, at least not in terms of a strict or literal interpretation of the word "accrue". (In the rarer scenario where the debt is denominated in a third currency, i.e., representing foreign currency for both the SA debtor and the foreign creditor, it might be possible that the creditor derives a forex gain (income accrual) in tandem with the debtor suffering a forex loss.)

Proposed Amendment

It is proposed that section 23M be amended to address the issue highlighted above. The following detail is provided in relation to this proposal:

> 'The interest limitation rules acknowledge foreign exchange differences on foreign exchange instruments under section 23M(7) of the act. However, it is unclear how foreign exchange differences should be treated when foreign exchange gains do not accrue to creditors. It is proposed to make it clear that the objective is to **first test whether the underlying debt should be limited. Where this is the case, the foreign exchange difference thereon will also be limited**.' [Our emphasis]

Currently, our Income Tax Act does not contain rules for determining the limitation of debt. Arguably, what the Proposed Amendment means by this "first test" is that it should be determined whether a controlling relationship exists between the debtor and the creditor. Where this test is met, and other requirements for the application of section 23M are met too, then the deductibility of the forex loss would be subject to the limitation.

Further details on this proposal are expected to be included in the draft bills to be issued in the coming months. The key takeaway at this stage is that the proposal seeks to clarify that the interest limitation rules may apply to limit the deductibility of forex losses incurred by a debtor even in instances where there is no accrual of a corresponding forex gain for the creditor.

Key considerations for taxpayers in relation to the Proposed Amendment

Taxpayers who have incurred forex losses on debts with creditors in a controlling relationship are urged to carefully consider the application of section 23M to such amounts. This is especially crucial for those taxpayers who must submit returns prior to the full details of the Proposed Amendment becoming available or the Proposed Amendment coming into effect.

Critical points to consider:

"Clarificatory" amendment

Taxpayers should keep in mind that the Proposed Amendment is likely to be positioned by National Treasury (and SARS) as a "clarification". This type of amendment seeks to clarify how an existing law ought to have been interpreted or applied by taxpayers by addressing any uncertainties, unintended consequences or anomalies arising from the interpretation of the relevant law. A "clarificatory" amendment should be distinguished from one that seeks to substantively change the law. Due to the nature of the former, it is very often made effective retrospectively.

Interpretation of statutes

Taxpayers should follow the purposive approach in interpreting section 23M, as this may be adopted by the courts in resolving any dispute between the taxpayer and SARS on this issue. The purposive approach requires consideration of 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. The purposive approach aims to avoid any absurd outcomes that a literal interpretation might produce.

What is clear is that on a literal reading of the current wording of section 23M, the possibility of forex losses being limited by this section is precluded under most circumstances. This is because there would rarely be an instance in which there is an accrual of a corresponding forex gain for the foreign creditor.

Taxpayers will therefore have to determine whether this position is a sensible one or one that undermines the apparent purpose of broadening the definition of interest in section 23M, particularly to include forex differences. We strongly encourage the affected taxpayers to consult with their advisors on this issue.

Key takeaway

The proposed amendment to section 23M aims to clarify that the interest limitation rules may apply to limit the deductibility of forex losses incurred by a debtor even when there is no corresponding accrual of a forex gain for the creditor. Taxpayers who have incurred forex losses on debts with creditors in a controlling relationship are urged to carefully consider the application of section 23M to such amounts in light of this proposed amendment, and to consult with their tax advisors.

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Can two instruments become one under section 24J?

In a recent Tax Court judgment, further complexities of section 24J were brought to light, particularly in scenarios where financing arrangements involve the payment of fees to an entity other than the lender. This article delves into the uncertainties that arise when determining whether such arrangements give rise to one or two 'instruments' for the purposes of section 24J, and the implications thereof for the deductibility of fees in the hands of the borrower. By examining the facts of the Taxpayer Trust vs CSARS case, we explore the potential for contractual 'sameness' and its impact on the application of section 24J in these circumstances.

Introduction

Paragraph (a) of the definition of 'interest' in section 24J stipulates that interest includes, amongst others, 'the gross amount of any interest or similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement'.

In a recent tax court judgment in the case of *Taxpayer Trust vs CSARS*[1] ('IT 76795'), the Tax Court considered whether raising fees fall within the meaning of the phrase 'similar finance charges' as included in the definition of 'interest' in section 24J(1).

1 *(IT 76795) [2025] ZATC 1 (13 January 2025).*

The purpose of this article is not to analyse or conclude on whether raising fees fall within the scope of 'similar finance charges'. To our minds, in the appropriate circumstances, such qualification is irrelevant in assessing whether such charges fall to be deducted under section 24J(2).

Rather, this article seeks to highlight a potential area of uncertainty in the context of financing arrangements where fees or other amounts are payable by the borrower to an entity other than the lender. While this uncertainty was not raised in the case in point, the facts of IT 76795 make for an interesting case study on this question.

A brief summary of the facts

The taxpayer purchased two properties which were financed by means of two loans obtained from another party ('the Lender'). Over the course of the next few years, further loans were advanced by the Lender to the taxpayer which were used, amongst other things, for refinancing the properties, effecting alterations and improvements thereto, and acquiring a further property. The loans advanced by the Lender were in some instances arranged by another entity which acted as a facility agent (the 'Facility Agent') and which charged raising fees in respect of the loans equal to 2% of the capital raised in each instance. It therefore appears that, in these instances, the Lender and the Facility Agent were different entities.

The taxpayer argued that the raising fees were deductible as 'interest or similar finance charges' as envisaged in section 24(1), and in the alternative that the raising fees were deductible under section 11(a). SARS argued that the raising fees were not 'interest or similar finance charges' as defined in section 24J but were, in the alternative, capital in nature, and hence not deductible.

The Tax Court's finding

The Tax Court ultimately held that the raising fees in question qualified as 'similar finance charges' and consequently that these amounts constituted interest as defined in section 24J(1) and were accordingly deductible under section 24J.[2]

2 In this regard it must be noted that Tax Court cases are not binding on any other taxpayer and are merely of persuasive value. We note in passing that the Tax Court's finding stands in contrast to SARS' view as expressed in its recent Draft Interpretation Note on the Meaning of Similar Finance Charges, where SARS expresses the view that a raising fee is generally not a 'similar finance charge' and would therefore not constitute 'interest' as defined under section 24J(1)(a).

We have argued in previous Synopsis editions[3] that, in our view, the qualification of raising fees as 'interest' as defined is irrelevant in assessing whether such charges fall to be deducted under section 24J(2). While we do not repeat the detailed reasons for this view for purposes of this article, we simply summarise the key aspects of our position on this point as follows:

- Section 24J(2) does not state that an amount must first constitute interest, as defined, before such amount falls to be deducted. Instead, it states that if a person is an issuer in relation to an instrument, such person is then deemed to have incurred an amount of interest.
- In effect, the amount of interest which falls to be deducted under section 24J(2) is a *deemed amount* and not the amount of interest, as defined, actually incurred by the taxpayer.
- Looking at the guidance on the meaning of the word 'deemed' in the context of section 24J(2), one can conclude that the wording of section 24J suggests that it is not the interest, as defined, incurred by the taxpayer which is to be deducted. Rather, it is the amount that section 24J(2) deems the taxpayer to have incurred which is to be deducted, provided the relevant requirements are met.
- It is clear, to our minds, when the provisions of section 24J(2) are read in context in light of the provisions of the section as a whole and the Explanatory Memorandum attendant upon its coming into existence, that the accrual amount is the amount to be deducted and not the amount of interest as defined. If it were the amount of interest as defined which was to be deducted, the section (i.e., the language) would have simply said so. The wording of section 24J(2) read in context with the apparent purpose at which section 24J is directed is clear and bears no ambiguity.
- In our view, the sole purpose of the definition of interest under section 24J is to ascertain whether there is an 'instrument', which is one of the prerequisites for section 24J(2) to apply. This does not mean that all the amounts payable in terms of a loan agreement must qualify as interest. As long as one of the amounts payable meets the definition of interest, there will be an instrument. In other words, as long as an amount is payable or receivable in terms of the instrument, it is included in determining the yield-to-maturity regardless of whether such amount constitutes interest as defined.

Given that we respectfully disagree with the Tax Court's view expressed by implication in the case that, in order for raising fees to be deducted under section 24J(2), such fees must first qualify as interest as defined, we do not consider for purposes of this article the Tax Court's detailed reasons as to why the raising fees in question were held to constitute interest as defined. Instead, this article aims to focus on a different aspect of the case, detailed further below, which was not at issue before the court.

One and the same instrument or two separate instruments?

As previously mentioned, it appears from the facts of IT 76795 that, in some instances, the loan funding was advanced by the Lender, while the raising fees were paid to the Facility Agent, being a separate entity from the Lender.

A holder (loosely, the lender) is defined in section 24J(1) as, in relation to an income instrument, any person who has become entitled to any interest or amount receivable in terms of such income instrument. Given the conclusion by the Tax Court that the raising fees constitute interest as defined, there will be two holders, being the Lender and the Facility Agent.

In this regard, it should be noted that section 24J(7) expressly contemplates the possibility of two separate holders in relation to an income instrument. Section 24J(7)(a) states as follows:

> 'Where there is more than one holder **in relation to an income instrument** and any accrual amount in relation to an accrual period with regard to any one of the holders in relation to **such income instrument** is to be determined, such accrual amount shall be so determined without taking into account any consideration or any amount or amounts paid or payable or received or receivable by any other holder in terms of **such income instrument**.' (Our emphasis)

While the sub-section contemplates two separate holders, it is apparent from the wording emphasised above that what is also contemplated is a *single* income instrument. In other words, the subsection does not extend to the situation where more than one income instrument is at play.

An instrument is defined in section 24J(1) to include 'any interest-bearing arrangement or debt'. It is clear that the interest-bearing loan between the taxpayer and the Lender constituted an interest-bearing debt and falls within the definition of an instrument. With regard to the relationship between the taxpayer and the Facility Agent, there was no

3 *See, for example, our January 2025 Synopsis article, which critiqued SARS' Draft Interpretation Note on Similar Finance Charges.*

debt in place between the two parties, which presupposes that if there were a separate agreement between the taxpayer and the Facility Agent, the crisp question would be whether such agreement would constitute an interest-bearing arrangement on its own. The word 'arrangement' is defined neither in section 24J(1) nor in section 1 of the Act. The Cambridge Dictionary defines the word 'arrangement' as 'an agreement between two people or groups about how something happens or will happen'.[4] Section 80L defines the term as 'any transaction, operation, scheme, agreement or understanding (whether enforceable or not), including all steps therein or parts thereof…' Inasmuch as the definition in section 80L only applies to a part of the Act which does not include section 24J, the definition offers guidance as to the meaning to be accorded to the term. It is apparent from both section 80L and the Cambridge Dictionary that the term has a broad meaning and that the arrangement between the taxpayer and the Facility Agent will, in all likelihood, constitute an arrangement and furthermore, based on the findings of the Tax Court that the raising fees constitute interest as defined, it is likely that the agreement between the Facility Agent and the taxpayer will constitute an instrument on its own.

However, based on the facts of *IT 76795*, the question that arises is whether the loan agreement and the agreement in terms of which the raising fees were payable constitute two separate instruments for the purposes of section 24J. If so, this would raise a number of questions as to how to treat the instrument in terms of which the raising fees are payable for purposes of applying section 24J for both the taxpayer and the Facility Agent.

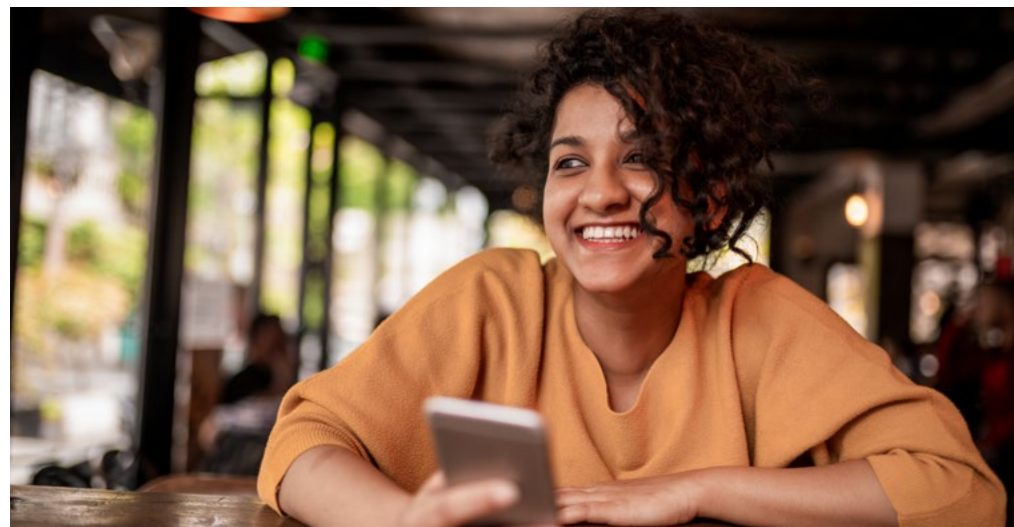
For example, how would the yield-to-maturity in respect of this instrument be calculated? The yield-to-maturity, being a key component in calculating the accrual amount, is defined in section 24J(1) as the rate of compound interest per accrual period at which the present value of all amounts payable or receivable in terms of an instrument during the term of the instrument equals the initial amount. To the extent that the instrument comprises solely the payment of the raising fees, and not any debt or underlying loan, it would arguably be impractical to calculate the instrument's yield-to-maturity.

In light of this uncertainty, we consider below whether the two agreements in question could possibly constitute (or be read as constituting) one and the same 'instrument' for purposes of section 24J. In the hands of the taxpayer, this is relevant, because if the raising fees are payable in terms of the same instrument with the Lender, it becomes practicable to calculate the yield to maturity to determine the accrual amount to be deducted under section 24J(2).

Appropriating the concept of contractual 'sameness'

The Clicks case

The Constitutional Court ('CC') in *Clicks Retailers (Pty) Ltd v Commissioner for the South African Revenue Service*[5] was tasked with determining whether Clicks was entitled to a section 24C allowance relating to its obligations in terms of its well-known Clubcard loyalty programme against sales revenue it earned from its customers.



In this regard, Clicks sought to demonstrate that the factual and legal links between the Clubcard contract and the sale contract were such that the two contracts were 'inextricably linked'. It argued that the contracts operated together, that the conclusion of the Clubcard contract did not itself generate any real obligations and that the obligation to award points was only triggered and given content when a qualifying purchase was made.

The CC found that the two contracts were inextricably linked to a certain extent, in that:

- The obligations under the Clubcard contract were triggered by the sale contracts;
- Clicks' obligation to finance expenditure when Clubcard points were redeemed was determined with reference to the sale contracts; and
- there was a significant factual overlap and nexus between the contracts.

Nevertheless, the CC found that the two contracts in question did not satisfy the requirement of 'sameness'. In addressing the requirements of 'sameness', the CC held that:[6]

> 'Whatever the outer limits of the concept of sameness in this context may be, **at a minimum both the earning of income and the obligation to finance future expenditure must depend on the existence of both contracts. If either contract can be entered into and exist without the other, they can hardly achieve sameness.**' (Our emphasis)

4 *https://dictionary.cambridge.org/dictionary/english/arrangement [Accessed on 31 March 2025].*
5 *2021 (4) SA 390 (CC).*
6 *At para 46.*

On the facts, the CC found that the obligation to incur future expenditure was sourced in the Clubcard contract and did not depend on the existence of a sale contract, while the sale contract did not owe its existence to the Clubcard contract. It also found that there were many other respects in which the contracts functioned independently. The court concluded as follows: [7]

> 'These links do not render either contract **dependent on the other for its existence**, nor is their effect that income can only accrue to Clicks **if both contracts are in place**. The contract under which income accrues (the contract of sale) and the contract under which the obligation to finance future expenditure arises (the Clubcard contract) are simply **too independent of each other** to meet the requirement of contractual sameness. Whilst they may operate together within the context of the loyalty programme and in that sense are inextricably linked or connected, this link is not sufficient to render the contracts the same for the purposes of section 24C. The contracts therefore fall short of the sameness that is required by section 24C.' (Our emphasis)

The finding in the *Clicks* judgment served to 'put meat on the bones'[8] of the CC's earlier judgment in the case of *Big G Restaurants (Pty) Ltd v Commissioner, South African Revenue Service*[9], which also dealt with section 24C. In that case, the CC held that the sameness requirement did not imply that there must, for example, in the case of a written contract, be one piece of paper stipulating for the earning of income and the imposition of future expenditure, and that two or more contracts may be so inextricably linked that they may satisfy this requirement.

Application to the facts of IT 76795

While *IT 76795*, of course, presents a very different factual matrix from the *Clicks* and *Big G* cases (which both involved section 24C of the Act), it is submitted that the CC's guidance on the principles relevant to determining contractual 'sameness' could similarly be relevant in the context of other sections of the Act, such as section 24J, where the application of the section depends on whether two or more agreements can be considered to be one agreement for purposes of that section.

The relevant questions, as laid down by the CC, for ascertaining whether contractual sameness may apply to two or more agreements may be summarised as follows:

- Does the earning of income or the obligation to incur expenditure, as applicable, depend on the existence of both contracts?
- Can either contract be entered into and exist without the other?
- Can the contracts function independently in other material respects?

Applying the above questions to the facts of *IT 76795*, it is clear to us that the loan agreement between the taxpayer and the Lender functions as the principal contract, which stands independently and contains the main obligations of the Lender to provide funds and the taxpayer to repay the loan. In our view, the agreement between the taxpayer and the Facility Agent in respect of the raising fees functions as an accessory contract, as it is dependent on the loan agreement, i.e., its existence and enforceability are contingent upon the loan agreement. Furthermore, the quantum of the raising fee is inextricably linked to the quantum of the capital advanced under the loan agreement, the former being equal to 2% of the latter. Furthermore, it appears from the facts of the case that the drawing down of the loans was conditional upon the payment of the raising fees.

At first glance, the above is supportive of an argument in favour of the two agreements meeting the requirement of contractual sameness, as (i) the drawing down of the funds under the loan agreement is dependent on the payment of raising fees under the agreement with the Facility Agent, (ii) the quantum of the raising fee is dependent on the quantum of the loan, (iii) there will be no raising fees if there is no loan, and (iv) the agreement with the Facility Agent cannot, in substance, function without the loan agreement.

7 *See para 49.*
8 *See para 25.*
9 *[2020] ZACC 16.*

This reasoning further appears to be supported by the Tax Court in IT 76795, albeit not in the context of ascertaining contractual sameness, where the Tax Court found that:

> '[T]he drawing down of the loans **was conditional upon the payment of the raising fees…The payment of the raising fees is part and parcel of the compensation for the loan. Without the payment of the raising fees there would be no loan**, and the taxpayer would not have had the benefit of the money…
> The raising fees are indeed a consideration for the arrangement of the loan... This underlines the close proximity or association between the raising fees and the loans...' [10] (Our emphasis)

This seems to further suggest that there can be no raising fees payable without the loan.

This conclusion would, however, have to be tested on a case-by-case basis with reference to the terms and conditions of both agreements, which were not referenced in the Tax Court's judgment.

The takeaway

To the extent that the two agreements in *IT 76795* could meet the requirement for contractual sameness, such that they can be viewed as part and parcel of a single agreement or 'instrument' for purposes of section 24J, all amounts payable in terms of the instrument (including the raising fees) would in our view be deductible under section 24J(2), regardless of whether such amounts meet the definition of 'interest' in section 24J(1).

The case does, however, raise a modicum of uncertainty in the context of applying section 24J to an arrangement involving two or more instruments. If the various agreements cannot be viewed as one and the same instrument, then it is unclear how one would calculate the yield-to-maturity (being a key component in calculating the accrual amount) in respect of the instrument(s) that do(es) not constitute the principal loan agreement.

Lenders should be mindful of the above when structuring financing arrangements where fees or other amounts are payable by the borrower to an entity other than the lender. We recommend that lenders consult their tax advisors to determine how best to appropriately structure around these uncertainties.

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10 At para 42 and 44.

SARS Watch:

SARS Watch 26 February 2025 – 25 March 2025

Legislation		
12 March 2025	2025 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill	Comments are due to National Treasury and SARS by Monday, 31 March 2025.
12 March 2025	Revenue Laws Amendment Bill	Bill introduced in the National Assembly on 12 March 2025.
10 March 2025	Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003. 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.	These tables have been updated to include the average exchange rates up to February 2025.
Interpretation		
25 March 2025	Draft Interpretation Note – Taxation of amounts received by or accrued to missionaries	Comments are due to SARS by Friday, 23 May 2025.
25 March 2025	Interpretation Note 59 (Issue 3) – Tax treatment of the receipt or accrual of government grants	This Note deals with the tax consequences of the receipt or accrual of government grants, the exemptions from normal tax applicable to government grants and anti-double-dipping rules applicable to expenditure funded by such grants.
25 March 2025	Interpretation Note 45 (Issue 4) – Deduction of security expenditure	This Note provides guidance on the deductibility of security expenditure incurred by a taxpayer for income tax purposes. It also considers the fringe benefits tax implications for employees when their employers fund such expenditure.
Customs and excise		
25 March 2025	Updated Facilities Code List	Bidfreight Port Operations (Pty) Ltd has relocated from Durban to Port Elizabeth harbour.
20 March 2025	Intention of the SARS Commissioner to formally withdraw all concessions	The Commissioner of SARS is aware that certain taxpayers are continuing to use certain concessions that have been granted in the past by Customs and Excise Offices. These practices have been reviewed in the past and it is now the intention of the SARS Commissioner to formally withdraw all concessions which certain taxpayers are relying on.
19 March 2025	Invoice details on customs declarations	Following a period of engagement, development and testing with industry and technical service providers, SARS requests that trade now include invoice data in all electronic customs declarations submitted to SARS. As of 1 April 2025, customs declarations not containing invoice data will have an increased probability of being selected for documentary inspection or audit, and of such declarants being requested to upload invoices as supporting documentation.

14 March 2025	Notice R.5978 – Imposition of provisional payment in relation to anti-dumping duties against the increased imports of other screws fully threaded with hexagon heads and other bolts with hexagon heads excluding bolt ends, screw studs and screw studding, classifiable under tariff subheadings 7318.15.39 and 7318.15.43 respectively, originating in or imported from the People's Republic of China (ITAC Report No. 745).	Published in Government Gazette No. 52263 with an implementation date of 14 March 2025 up to and including 13 September 2025.
12 March 2025	Taxation Proposals	Taxation Proposals as tabled by the Minister of Finance in his Budget Review 2024 at 14:32.
11 March 2025	Notice R.5974 – Amendment to rules under sections 58A and 120 – Anti-forestalling measures in respect of anticipated increases in excise duties (DAR260)	Published in Government Gazette No. 52255 with retrospective effect from 19 February 2025.
7 March 2025	Updated Prohibited and Restricted Imports and Exports list	The following tariff headings require export permits: • 7403.12, • 7403.13, • 7403.19, • 7403.21, • 7403.22, • 7403.29.
28 February 2025	Draft amendments to rules under sections 58A and 120 – Anti-forestalling	Comments were due to SARS by Friday, 7 March 2025.
26 February 2025	Updated Prohibited and Restricted Imports and Exports list	Updated to include that tariff headings 8422.90 and 8471.49.90 do not require a Letter of Authority for NRCS.

Case law

In accordance with the date of judgment

17 March 2025	Aveng Mining Shafts and Underground v Commissioner for the South African Revenue Service (1192/2023) [2025] ZASCA 20	The issue in this appeal is whether s 17(2)(a)(i)(bb) of the Value-Added Tax Act allowed Aveng Mining Shafts and Underground, a division of Aveng (Africa) (Pty) Ltd (Aveng), to deduct certain input tax in respect of entertainment expenses from its output tax for the period 06/2012 to 08/2016.
13 March 2025	Bitskit (Pty) Ltd v Commissioner for the South African Revenue Services (6156/2023) [2025] ZAFSHC 71	Application in terms of Uniform Rule 53 for the review and setting aside of certain decisions made by SARS officials to seize a cargo of cigarettes where the Applicant contends it had bought the cigarettes from the manufacturer 'duty paid'.
12 March 2025	Greyvensteyn and Other v Commissioner of South African Revenue Service and Others (B2495/2023) [2025] ZAGPPHC 128	The taxpayer challenges the constitutionality of three provisions of the Tax Administration Act 28 of 2011 ('the TAA'), namely sections 180, 184(2), and 186(3). SARS refers to sections 180 and 184(2) of the TAA as the 'personal liability provisions' and to section 186 of the Act as the 'repatriation provision'.
5 March 2025	Sishen Iron Ore Company (Pty) Ltd v CSARS (550/2023) [2025] ZASCA 16	This appeal considers whether various items of expenditure incurred by the taxpayer in respect of the relocation of certain infrastructure within the mining area and legal costs are deductible from its taxable income. To the extent that the expenditure was not deductible, the question arises whether interest on the unpaid tax in respect of the disallowed expenditure became payable and, if so, whether SARS should have directed that such interest should not be paid.

5 March 2025	Commissioner for the South African Revenue Service v ASPASA NPC and Others (Leave to Appeal) (2023-099811) [2025] ZAGPPHC 223	The applicant seeks leave to appeal the judgment and order delivered on 6 December 2024 on the basis that there are reasonable prospects that another Court would come to a different conclusion and that there are compelling reasons why the appeal should be heard. The crux relates to the correct legal interpretation of the word “bulk” as used in Schedule 2 of the Mineral and Petroleum Resources Royalty Act, 28 of 2008 in relation to aggregates.
14 February 2025	Woods Warehousing (Pty) Ltd v Commissioner for the South African Revenue Services and Others (2022/026798) [2025] ZAGPPHC 162	The taxpayer brings the present application for review in terms of Rule 53 of the Uniform Rules, inter alia, to review and set aside four letters of demand. The amounts demanded, according to SARS, represent the value of missing goods for duty purposes or the export value of the goods, plus any further unpaid duties.
13 February 2025	Naude v Commissioner for the South African Revenue Service and Another (51712/2017) [2025] ZAGPPHC 152	The taxpayer seeks an order setting aside SARS’ tariff determination. SARS resolved not to allow a refund of the fuel levy and Road Accident Fund levy ("the fuel levy") leviable on distillate fuel and/or on diesel purchases in accordance with the provisions of section 75(1A) of the Customs and Excise Act, 91 of 1964 and Rebate Item 670.04 of Schedule 6, Part 3 to the Act.
31 January 2025	FTTX and Energy Warehouse (Pty) Ltd v Commissioner for the South African Revenue Service (2022/5522) [2025] ZAGPPHC 140	This is an application in terms of section 47(9)(e) of the Customs and Excise Act, 91 of 1964 against a tariff determination (CTN 55/2020, dated 5 July 2020) of an article of plastic in the tariff heading (“TH”) 3926.90 of Part 1 of Schedule No. 1 to the Act. The applicant contends that the product should be classified as a connector for optic fibre, cable and bundles contemplated in TH8536.70, alternatively as a part thereof as contemplated in TH8538.90 of Part 1 of Schedule 1 of the Act.
Guides and forms		
25 March 2025	Rebate Stores	This guide outlines the legislative requirements regarding rebate stores as stipulated in the Customs and Excise Act, 1964.
25 March 2025	Customs and Excise Storage Warehouses (OS)	This guide outlines the legislative requirements under the Customs and Excise Act, 1964 regarding the storage of dutiable imported goods in customs and excise storage warehouses (OS).
25 March 2025	Special Customs and Excise Storage Warehouses (SOS)	This guide outlines the legislative requirements set forth in the Customs and Excise Act, 1964, regarding the storage of imported goods in special customs and excise storage warehouses (SOS).
25 March 2025	Tax Exemption Guide for Institutions, Boards, or Bodies (Issue 2)	This guide provides general guidance on the exemption from income tax of qualifying institutions, boards, or bodies under section 10(1)(cA)(i) of the Income Tax Act 58 of 1962.
25 March 2025	Customs and Excise Registration Documentary Requirements – External Annexure	The documentary requirements annexure did not provide an alternative for the Customs and Excise clients who are unable to provide mandatory supporting documentation. The definitions and acronym table have been updated to clarify the relevant alternative as well as other various amendments.
24 March 2025	Tax practitioner guide on the use of the SARS MobiApp – External Guide	To support tax practitioners in managing their clients’ tax matters, a comprehensive guide on using SARS' MobiApp has been developed.
18 March 2025	ABC of Capital Gains Tax for Individuals (Issue 13)	This guide provides a simple introduction to capital gains tax (CGT) at its most basic level and contains insufficient detail to accurately determine CGT under most practical situations. It should accordingly not be used as a legal reference.
18 March 2025	ABC of Capital Gains Tax for Companies (Issue 11)	This guide provides a basic introduction to CGT for companies and should not be used as a legal reference.

18 March 2025	Tax Exemption Guide for Public Benefit Organisations (PBO) in South Africa (Issue 7)	This guide provides general guidance on the approval by the Commissioner of an organisation as a PBO under section 30 of the Income Tax Act 58 of 1962 (the Act), partial taxation of PBOs under section 10(1)(cN) of the Act and approval by the Commissioner of a PBO under section 18A(1)(a)(i) of the Act to issue section 18A receipts potentially entitling donor taxpayers to an income tax deduction for bona fide donations actually paid or transferred during a year of assessment.
18 March 2025	Declaration of Sealable Goods	This guide provides information on the legislative requirements under the Customs and Excise Act, 1964 relating to the declaration of sealable goods on board a ship arriving in the Republic.
13 March 2025	Frequently Asked Questions (FAQs): Increase in the VAT Rate from 1 May 2025	In the Minister's Budget Speech on 12 March 2025, two increases in the standard rate of VAT were announced. The first rate increase of 0.5% applies from 1 May 2025, and the second rate increase of 0.5% will apply from 1 April 2026. The FAQs in this document have been compiled on the basis of questions that vendors and the public at large are likely to have about the implications of the rate increase. However, unless otherwise indicated, this document only illustrates the impact of the first rate increase effective from 1 May 2025. More guidance on the second rate increase will be communicated in due course. Note: These FAQs are issued based on the Minister's Budget announcements on 12 March 2025 and subject to Parliament's legislative process.
12 March 2025	Guides: • Guide for Employers in respect of Tax Deduction Tables • Guide for Employers in respect of Fringe Benefits • Guide for Employers in respect of Allowances • Guide for Employers in respect of Employees' Tax for 2026 *Annexures:* • Weekly tax deduction tables • Fortnightly tax deduction tables • Monthly tax deduction tables • Yearly tax deduction tables • Rate per Kilometre Schedule	The Minister of Finance announced that the personal income tax brackets and medical tax credits will remain unchanged. Employees' tax (PAYE) deduction tables, effective from 1 March 2025, are nevertheless prescribed in accordance with paragraphs 9(1) and 9(2) of the Fourth Schedule to the Income Tax Act. These guides and annexures on employees' tax have been published to assist employers in meeting their tax obligations.
7 March 2025	Donations Tax declaration form (IT144)	After making a donation, a donor needs to complete and submit a Donations Tax declaration form (IT144) to SARS. It has been noted that taxpayers are experiencing challenges when completing the current IT144 form. SARS has published a PDF version of the form to be used until enhancements have been made.
Other Publications		
20 March 2025	OECD: Corporate income tax, investment, and the Net-Zero Transition	This paper presents a conceptual framework outlining key channels through which CIT influences clean investment decisions and broader factors that mediate this relationship. It also identifies policy implications and potential policy options to enhance the alignment of CIT with climate policy objectives.
19 March 2025	OECD: OECD Investment Tax Incentives Database 2024 update	The 2024 update of the OECD Investment Tax Incentives Database provides insights into corporate income tax (CIT) incentives for investment in 70 economies, mostly emerging and developing. The database highlights trends on the design, targeting and granting of CIT incentives, notably in terms of instrument-specific design features and eligibility conditions, and whether they support sustainable development objectives. It also provides insights into the evolution of CIT incentives over the 2022–24 period.

18 March 2025	SARS: Appointment of a Corporate Entity as a trustee of a Trust and/or executor in a Deceased Estate	SARS outlines the conditions that must be met as follows: 1. Submission of the Power of Attorney (POA), Signed Board Resolution and Affidavit clearly indicating that the succeeding representative will represent the Corporate Entity as trustee or executor. 2. An undertaking that the amended LoA or LoE will be submitted to SARS on receipt thereof from the MoHC.
18 March 2025	Tax Alert: Tax amendments – Electronically supplied *services*	The scope of electronic services has undergone significant changes since its introduction, impacting the VAT registration obligations of foreign electronic services suppliers ("ESS"). The latest amended ESS regulations were published in *Government Gazette* No. 52293 of 14 March 2025. The latest regulations add a further exclusion to the definition of "electronic services" relating to business-to-business ("B2B") supplies. This Alert summarises the proposed changes and their potential impact.
18 March 2025	OECD: Global Forum on Transparency and Exchange of Information for Tax Purposes: • Armenia 2025 (Second Round, Combined Review) • British Virgin Islands 2025 (Second Round, Supplementary Report) • Burkina Faso 2025 (Second Round, Phase 1) • Côte d'Ivoire 2025 (Second Round, Combined Review) • Djibouti 2025 (Second Round, Phase 1)	These peer review reports analyse the implementation of the standard of transparency and exchange of information on request in the listed jurisdictions, as part of the second round of reviews conducted by the Global Forum on Transparency and Exchange of Information for Tax Purposes since 2016.
17 March 2025	Tax Policy Alert: The EU Foreign Subsidies Regulation – first experiences	The Foreign Subsidies Regulation (FSR) entered into force on 12 July 2023. The FSR is a new EU instrument that empowers the European Commission to review and investigate financial contributions from non-EU countries that may include distortive subsidies. It is intended to protect the EU's internal market from subsidised products and services, akin to EU State Aid rules which govern state aid from EU Member States.
14 March 2025	Tax Policy Alert: EU Member States reach political agreement on simplified filing process for Pillar Two (DAC9)	EU Member States reached a political agreement during their 11 March ECOFIN meeting on DAC9 – the Directive on administrative cooperation in taxation. DAC9 was introduced in October 2024 (see prior PwC Tax Policy Alert) to facilitate the exchange of Pillar Two top-up tax information between Member States and allow MNCs to only have to file one top-up tax information return, at the central level, for the entire group. The proposal also transposes the OECD's July 2023 GloBE Information Return (GIR) into EU law by making it the Top-up Tax Information Return (TTIR) as already contemplated by Article 44 of the EU minimum tax Directive.
14 March 2025	Tax Alert: Budget 2025 – VAT rate increase	As part of the Budget proposals, the VAT rate is to be increased by 0.5% to 15.5% with effect from 1 May 2025, and further increased by 0.5% to 16% effective from 1 April 2026. This Alert provides more details.
14 March 2025	Tax Alert: Budget 2025 – Responsible growth for a sustainable future	The Finance Minister delivered his Budget Speech on 12 March 2025 and the Budget Review document (Budget 2025) containing several tax policy proposals was published at this time. This Alert provides more details on some of these proposals.
13 March 2025	SARS Media release: SARS accepts the Revenue Estimate Set for the 2024/25 Fiscal Year	The Commissioner for SARS remains confident in accepting the revised revenue estimate presented by the Minister of Finance in his Budget Speech.
13 March 2025	SARB: Exchange Control Circular No. 2/2025	Further exchange control reforms were announced in Annexure E – Financial Sector Update of the Budget Review. Interested parties are invited to submit comments on the draft Circulars, in the prescribed format as per Annexure C, to SARB-Excon Circulars by Wednesday, 30 April 2025.

12 March 2025	Tax Policy Alert: Trump's Executive Orders on non-reciprocal trade and discriminatory or extraterritorial measures	President Trump has issued several Executive Orders (EOs) targeting digital services taxes and other measures seen as unfair to US businesses. The EOs call for a review of countries' tax and trade practices and suggest possible actions like withdrawing from a 1984 tax treaty with China and reviewing US involvement in international organisations. They build on Trump's initial focus on the OECD's 'Global Tax Deal' and the 'America First Trade Policy' (see prior PwC Tax Policy Alert). Reports on the reviews are expected in April 2025.
4 March 2025	OECD: Inclusive Framework on BEPS shows progress in making dispute resolution more effective	The OECD released the latest BEPS Action 14 Mutual Agreement Procedure (MAP) peer review results, highlighting continued progress in making dispute resolution more effective, under the BEPS package, pursuant to which jurisdictions have committed to implementing the minimum standard for treaty-related disputes.
4 March 2025	OECD: Making Dispute Resolution More Effective – Simplified Peer Reviews for: • Burkina Faso (Stage 1) • Dominica (Stage 1) • Grenada (Stage 1) • Iceland (Stage 1) • Montenegro (Stage 1) • Peru (Stage 1) • Saint Lucia (Stage 1) • Samoa (Stage 1) • Senegal (Stage 1)	Under BEPS Action 14, OECD/G20 Inclusive Framework members committed to implementing a minimum standard to strengthen the effectiveness and efficiency of the MAP, which helps resolve disputes over tax treaty interpretations. The minimum standard is monitored through a peer review process, initially conducted in two stages for 82 jurisdictions. These reports reflect the outcome of Stage 1 of the simplified peer review of the implementation of the BEPS Action 14 Minimum Standard by these jurisdictions.
28 February 2025	SARS Media release: Trade Statistics for January 2025	South Africa recorded a preliminary trade balance deficit of R16.4 billion in January 2025. This deficit was attributable to exports of R149.0 billion and imports of R165.4 billion. The media release provides more details.
27 February 2025	Tax Policy Alert: EU Commission releases 'Omnibus' simplification and competitiveness package	On 26 February 2025, the European Commission released a new package of proposals to simplify European Union (EU) rules, boost competitiveness, and unlock additional investment capacity. The package brings together competitiveness, climate and simplification goals with the aim to attract and boost investment in the EU. While the package includes limited tax measures, the reporting and other changes are relevant for tax functions. This Alert provides more details on the proposals.
27 February 2025	National Treasury: G20 Finance Ministers and Central Bank Governors (FMCBG) Meeting - Final Chair Summary	Summary of the first G20 Finance Ministers and Central Bank Governors meeting (FMCBG) that took place on 26 and 27 February 2025 in Cape Town under South Africa's Presidency.

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