Synopsis

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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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South Africa's new Advance Pricing Agreement programme: What taxpayers need to know

Introduction

South Africa is introducing a formal advance-pricing agreement ('APA') programme, a significant development that could fundamentally change how multinational groups manage transfer pricing ('TP') certainty in South Africa. For tax managers at South African subsidiaries of multinational groups, this presents both an opportunity and a decision point that warrants early attention.

An APA is essentially a binding agreement between a taxpayer and the revenue authority that determines in advance how the TP will be determined for specific intercompany transactions over a set period. Accordingly, rather than waiting for SARS to audit a taxpayer's TP policy and potentially dispute it years later, an APA allows the taxpayer to agree the methodology upfront – providing more certainty and significantly reducing the risk of double taxation.

This article provides a high-level overview of South Africa's new APA framework as it stands at the moment and highlights the key considerations for taxpayers evaluating whether this programme may be relevant to their business.

Why your business needs an APA

For multinational groups with significant intercompany transactions involving South Africa, TP has long been a source of uncertainty and potential dispute.

An APA addresses this by providing:

- **Certainty:** Pre-agreed pricing methodology reduces the risk of SARS challenging the taxpayer during audits on the pricing methodology that the taxpayer has applied.

- **Double taxation protection:** A double tax agreement ('DTA') APA (involving South Africa and other countries) ensures that the tax authorities (of the parties to the DTA) accept the same methodology, preventing the same profits from being taxed more than once.
- **Resource efficiency:** Avoids lengthy disputes that consume significant management time and advisory costs.
- **Investment confidence:** Provides greater reliability of forecast figures (based on the agreed TP methodology) for strategic planning and investment decisions.

Types of APAs

South African legislation provides for two types of APAs:

APA type	What it means	Practical implications
Unilateral APA	An agreement with SARS only (no involvement of a foreign tax authority).	Provides more certainty only in South Africa. Does not protect against other countries taking a different view, so double taxation risk remains.
DTA APA[1]	An agreement between SARS and the tax authority of another country (for example, where a group company is based) with whom South Africa has a DTA.	Provides more certainty in both countries and reduces double taxation risk. This is SARS' preferred approach and will be the focus of its pilot programme.

1 Technically, DTA APAs could also be split further into two types, viz., bilateral APAs (between two states, i.e., SA and another treaty country), and multilateral APAs (between multiple treaty partners of which SA would be one).

Current status and timeline

In continuing its commitment to advancing the tax certainty agenda, the OECD Forum on Tax Administration (of which South Africa is a member) published the Bilateral Advance Pricing Arrangement Manual ('BAPAM') in September 2022, which is intended as a guide for streamlining the APA process. The BAPAM offers guidance to tax administrations and taxpayers on the operation of bilateral APAs ('BAPAs'), identifying 29 best practices.

Aligning with these international standards and the OECD[2]/G20 Base Erosion and Profit Shifting ('BEPS') Action 14 on More Effective Dispute Resolution Mechanisms, SARS has developed a statutory APA framework. This followed after extensive public consultation, initiated by a 2020 discussion paper, which culminated in the eventual legislation being enacted in 2023. The APA regime complements South Africa's existing advance tax rulings system,[3] which expressly does not cater for TP matters.

Together with the enabling provisions in domestic law, the legal basis for DTA APAs also stems from tax treaty provisions on the Mutual Agreement Procedure. The first sentence of Article 25(3) of the OECD Model Tax Convention[4] empowers competent authorities to seek the resolution of *"any difficulties or doubts arising as to the interpretation or application of the Convention"*.

2 Organisation for Economic Co-operation and Development.
3 In Chapter 7 of SA's Tax Administration Act (Act 28 of 2011, as amended).
4 OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing, Paris, https://doi.org/10.1787/g2g972ee-en.

Although the South African legislative framework for APAs is already in place,[5] APAs are not yet operational.

SARS has indicated that:

- The pilot programme is expected to launch in mid-2026,[6] focusing initially on BAPAs only (in the APA legislation, this is referred to as DTA APAs);
- It is actively building internal capacity, including recruiting specialist personnel and establishing a dedicated APA unit; and
- Detailed operational guidance and fee structures will be published via a Public Notice[7] before the programme commences.

5 The SA statutory provisions were enacted through section 10 of the 2023 Tax Administration Laws Amendment Act (No. 18 of 2023), which inserted sections 76A to 76P, contained in Part IA, into South Africa's Income Tax Act (No. 58 of 1962) ('the Act'). These provisions establish the statutory foundation for SA's APA regime, setting out the core legal architecture governing APA applications and the purpose, eligibility, procedural steps, critical assumptions, validity periods, renewals, revisions, withdrawals, and cancellations relating thereto.
6 Based on comments contained in an Eyewitness News article.
7 Section 76P of the Act indicates that operational "procedures and guidelines" may be specified by the SARS Commissioner in a Public Notice.

The APA process: what to expect

The APA process involves several stages. While detailed procedural guidance is still to be published, the key steps are:

1. **Pre-application consultation:** A mandatory meeting with SARS to discuss the proposed transactions, relevant parties, and whether an APA is suitable. For DTA APAs, SARS will also consult with the foreign tax authority concerned.
2. **Formal application:** If SARS confirms suitability for the APA programme, the taxpayer submits a detailed application covering the transactions, proposed pricing methodology, and supporting analysis.
3. **SARS processing:** SARS reviews the application, engages with the foreign tax authority (for DTA APAs), and prepares a preliminary agreement. SARS must provide progress updates every 90 days.
4. **Final agreement:** Once terms are agreed (including with the foreign tax authority for DTA APAs), SARS issues a preliminary agreement for the taxpayer's acceptance or rejection.
5. **Compliance:** Taxpayers are required to submit annual compliance reports to demonstrate that the terms and conditions of the APA have been adhered to. Failure to comply with the terms and conditions of the APA could result in the APA being terminated.

Figure 1: Overview of the South African APA process

Pre-application phase	• Prospective applicant requests pre-application consultation • SARS arranges pre-application meeting • The discussions cover: parties involved, transactions in scope, methodology, fees, etc. • SARS notifies applicant they may submit the APA application
Application Phase	• Applicant submits APA application in prescribed form • For OTA APAs: SARS consults with foreign competent authority • SARS processes application • SARS prepares preliminary APA
Finalisation Phase	• For OTA APAs: foreign competent authority agreement • Preliminary agreement sent to the applicant for acceptance • Applicant signs and returns agreement • SARS officials (including competent authority) sign agreement • APA comes into effect
Complicance Phase	• Annual compliance reports submitted • Ongoing monitoring and record retention • Extension or renewal (if applicable)

APA duration

An APA covers a defined period. Sections 76K and 76M of the Act allow for:

Period	Duration	What this means
Future years (prospective)	Up to 5 years	The main APA period, commencing on the day after the end of the year of assessment in which the APA application is received by SARS
Past years (rollback)	Up to 3 years	The APA can be applied to previous years, if requested. Note: A rollback must not reduce the taxpayer's taxable income for those years.[8]
Extension	Up to 3 years	The taxpayer can request an extension when the initial period ends.

Ongoing compliance obligations

Once an APA is in place, there are ongoing compliance obligations:

Obligation	What's required
Annual compliance report	Prepare an annual compliance report for the relevant year of assessment, in the form and manner to be prescribed by SARS (by the income tax return deadline), demonstrating and confirming compliance with the terms and conditions of the APA.
Report changes	Notify SARS of any material changes from the original application.
Transaction details	Provide details of covered transactions undertaken during the year.

8 Section 76K(6) of the Act provides that an APA rollback must not result in a cumulative decrease in taxable income or an increase in assessed loss for the years of assessment.

An APA can be terminated by either party. SARS can terminate an APA if the taxpayer fails to comply with the terms and conditions (including the critical assumptions), if relevant legislation or tax treaties change, or if there is fraud or material misrepresentation.

Fees and costs

SARS will charge fees for the APA process. While specific amounts are yet to be published, we provide comments below on the possible fee structures that could potentially be adopted, based on international practice/experience.

Fee type	Description	Possible fee structure (based on international practice/experience)
Pre-application fee	Fee for the initial mandatory application consultation meeting with SARS	Flat fee
Application fee	Fee payable when submitting the formal application	Flat fee
Processing/ Cost recovery fee	Ongoing fees as SARS processes the taxpayer's application	Based on time spent
Maintenance/ Extension fees	Fees for maintaining and extending an existing APA	Flat fee

In addition to SARS' fees, the taxpayer should consider the internal resources and external advisory costs required to prepare a robust APA application. While this represents an investment, it should be weighed against the potential costs of future audits, disputes, and double taxation that an APA can help mitigate.

Key takeaway

The pilot programme, expected to launch in mid-2026, presents a valuable opportunity for early participants to engage with SARS while the programme is still in its formative stages. Taxpayers should assess if they should prepare early and engage proactively to benefit from the APA programme.

Now is therefore the time to consider whether the APA programme could be relevant to the business. Here are the key considerations:

1. **Assess the TP risk profile:** Identify which intercompany transactions are material and where there may be uncertainty or potential for disputes with SARS.
2. **Evaluate the business case:** Weigh the potential benefits (certainty, double taxation protection, reduced audit risk) against the costs and resources required.
3. **Engage with the larger group:** Discuss with the parent company and/or other relevant or affected group entities whether an APA may be beneficial. For DTA APAs, coordination with the foreign jurisdiction is essential.
4. **Review the documentation:** Ensure that the current documentation (TP and other) is robust and can support an APA application if you should decide to proceed.
5. **Monitor SARS announcements:** Watch out for public notice(s) from SARS for further guidance.
6. **Seek specialist advice:** Engage TP specialists who can help evaluate whether an APA is appropriate in the circumstances and guide you through the process.

For further information on South Africa's APA programme or to discuss whether an APA may be appropriate for your business, please contact the PwC South Africa TP team.

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Can the taxman change his mind? Not on appeal, declares the SCA in the *CSARS v Erasmus* case

Introduction

A taxpayer cannot be expected to defend against a moving target. The court in *The Commissioner for the South African Revenue Service v Erasmus*[1] confirmed that the case to be met is the one stated in the assessment, not a shadow that changes shape on appeal.

This article analyses a landmark judgment by the Supreme Court of Appeal ('SCA') that champions the taxpayer's right to certainty in disputes with the revenue authority. The judgment scrutinises an attempt by the Commissioner for the South African Revenue Service ('the Commissioner') to fundamentally change, at the appeal stage, his reasons for applying the General Anti-Avoidance Rule ('GAAR'), as well as his determination of the tax consequences of the avoidance arrangement in question, which sought to impose R183.5 million in dividends tax and a R137.6 million understatement penalty and interest on the taxpayer. By declaring the Commissioner's actions an unlawful 'irregular step', the SCA affirmed that procedural fairness is not a technicality but a core component of dispute resolution, ensuring that taxpayers are not left defending against a constantly shifting case. In the context of the GAAR, the Commissioner must 'get it right', so to speak, when it comes to identifying the arrangement to which the GAAR applies and determining the tax consequences thereof. Specifically, the Commissioner, acting under rule 31, may not change the factual grounds of a GAAR assessment and, consequently, the proposed GAAR remedy.

1 (864/2024) [2026] ZASCA 22. The judgment was handed down on 5 March 2026 by Keightley JA, with Mocumie, Unterhalter JJA, and Bloem and Nuku AJJA concurring, and is reportable.

Facts of the case

The underlying transactions

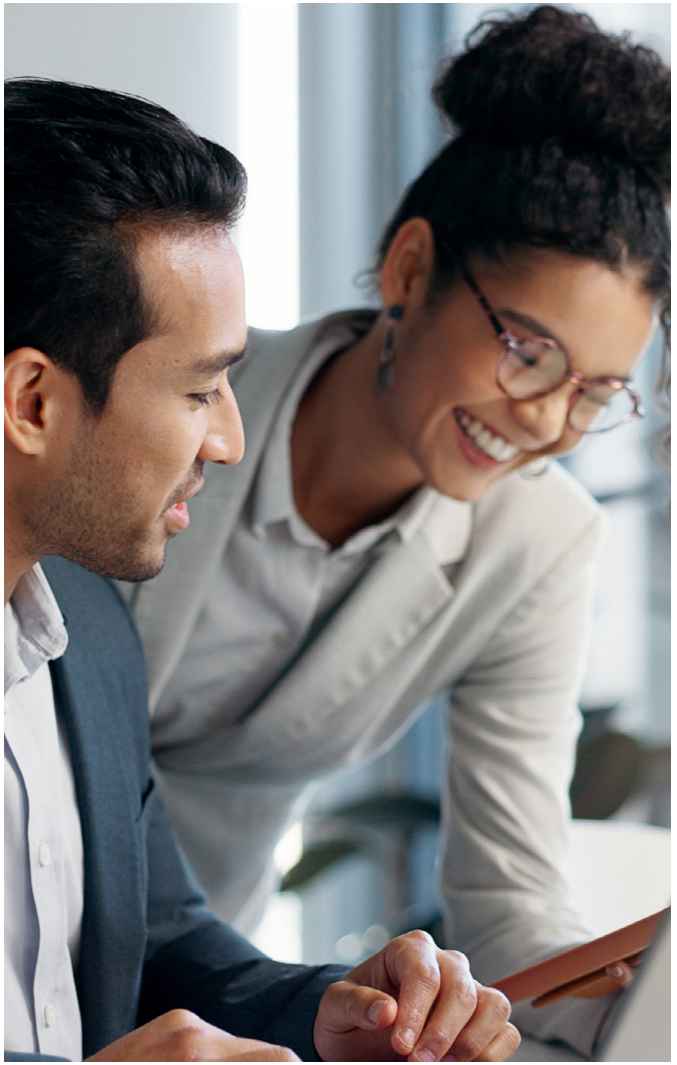
The Commissioner issued a punitive GAAR assessment against the taxpayer, Mr Erasmus, comprising R183.5 million in dividends tax and an understatement penalty of R137.6 million, plus interest, on the basis that the taxpayer had engaged in an impermissible avoidance arrangement. The disputed assessment related to dividends totalling in excess of R1.2 billion, paid to the taxpayer by Treemo (Pty) Ltd ('Treemo') on 27 March 2017. The taxpayer had declared the dividends for purposes of his 2016 year of assessment but claimed that any tax payable was offset by a significant balance of secondary tax on companies credits ('STC credits') acquired by Treemo in terms of the then-applicable section 64J of the Income Tax Act 58 of 1962 as amended ('the Act').

The transactions at the heart of the matter spanned the period from approximately October 2014 to March 2015 and involved a complex web of entities, including the taxpayer, Treemo, Newshelf 1093 (Pty) Ltd ('Newshelf'), and the Black River View Trust (previously known as the PJ Erasmus Family Trust) ('the Trust')), of which the taxpayer was a discretionary beneficiary and creditor. The first phase of transactions comprised the acquisition of shares by Treemo in several entities that held substantial STC credits, resulting in the transfer of those credits to Treemo, referred to in the section 80J notice as the 'dividend strip' transactions.

In October 2024, the Trust acquired shares in Treemo, partly funded by a loan from the taxpayer. On 12 December 2014, the taxpayer and Treemo concluded a sale and subscription agreement whereby the taxpayer sold his shares in Pepkor to Treemo for R510 million in exchange for class B shares in Treemo, and also sold his class C shares in Newshelf for R750 million, similarly settled by the issue of class B shares in Treemo (the Newshelf share transfer). On the same date the taxpayer ceded to Treemo his rights and obligations in terms of a put and call option linked to the Newshelf share transfer. In February and March 2015, Newshelf repurchased the shares previously transferred to it from Treemo (and from Klee Investments (Pty) Ltd, an entity connected to the taxpayer) with cash proceeds of approximately R1.6 billion recorded in Treemo's financial statements. On 25 March 2015, the directors of Treemo approved cash distributions of R1.2 billion to the taxpayer and a further amount to the Trust, paid on 27 March 2015, four days before the STC credits would have 'expired' for tax purposes.

The Commissioner's initial case

The Commissioner's initial case, detailed in the section 80J notice issued on 30 July 2020, was that the funds for the dividend payment to the taxpayer were derived from the Newshelf repurchase transaction and that this constituted an avoidance arrangement. The Commissioner's view was that the 'dividend strip' phase of the arrangement was aimed at ultimately shielding the taxpayer and the Trust from dividends tax liability. The proposed remedy was to disregard all transactions and entities other than the Newshelf repurchase and the flow of the repurchase dividend to the taxpayer and the Trust, thereby rendering them liable for dividends tax at a rate of 15 per cent.



The taxpayer's objection

The taxpayer exercised his right under section 80J(2) of the Act to respond to the notice on 28 September 2020, providing a materially different account of the source of the funds. He explained that the Newshelf repurchase had taken place within the broader context of the acquisition by Steinhoff International Holdings Limited of an approximately 92 per cent interest in Pepkor ('the Steinhoff/Pepkor transaction'), which required the taxpayer and Treemo to exchange their Pepkor shares for Steinhoff shares. Critically, the taxpayer explained that, contrary to the analysis in the section 80J notice, the proceeds of the Newshelf repurchase had not flowed to the taxpayer via the dividends declared by Treemo. Rather, the dividend was funded from the share subscription proceeds received by Treemo from the Trust. Notwithstanding the taxpayer's detailed rebuttal and having requested and received additional information, including details of a call option agreement between the taxpayer and the Trust concluded on 25 March 2015 (the Trust call option agreement), the Commissioner remained unpersuaded. The Commissioner 'reiterated' the analysis set out in the section 80J notice and issued the GAAR assessment, maintaining that it was the proceeds from the Newshelf repurchase that had funded the dividends. The taxpayer's objection to the assessment was disallowed, leading to his appeal being lodged on 20 March 2023.

The critical reversal: the rule 31 statement

This is where the pivotal moment in the litigation arises. The Commissioner filed his rule 31 statement on 28 July 2023 and, in a dramatic about-turn, expressly modified his reasons for applying the GAAR from those set out in the section 80J notice. He now accepted the taxpayer's explanation regarding the source of the funds, namely that they derived from the Trust's subscription for new class A shares in Treemo, but alleged that this alternative transaction, together with the Trust call option agreement, constituted a 'circular flow of funds' which was itself the impermissible avoidance arrangement.

In practical terms, the new case described in the rule 31 statement involved the following sequence of events taking place between 25 and 27 March 2015:

- the Trust call option agreement giving the taxpayer the option to acquire 955 class A shares in Treemo for R1.39 billion;
- the approval of distributions totalling R1.4 billion by Treemo, funded from the Trust's subscription for new shares;
- the Trust's subscription for those shares on 26 March for R1.39 billion;
- the Trust's subscription for those shares on 26 March for R1.39 billion; the payment of distributions by Treemo on 27 March;
- the taxpayer's simultaneous use of most of his distribution proceeds to pay the R1.39 billion call option premium to the Trust; and
- the Trust's simultaneous use of those funds to pay the subscription consideration back to Treemo.

Importantly, the Commissioner also amended the proposed remedy under section 80B, seeking to disregard the transactions involving the Trust's subscription for shares in Treemo and the related call option agreement, rather than the Newshelf repurchase, though the amount of dividends tax sought to be recovered remained at R183.5 million.

The Commissioner expressly asserted that in making these modifications, he had acted in terms of section 80J(4) of the Act and rule 31(3) of the Tax Court Rules. It is the Commissioner's reliance on these provisions that lay at the heart of the irregular step application and the appeal. The Commissioner's explanation for this reversal was that he had been sceptical of the taxpayer's account because no evidence had been provided that the Trust had the funds to acquire the Treemo shares. It was only when the taxpayer annexed a Treemo bank statement dated 27 March 2015 to his replying affidavit in the judicial review proceedings, showing the receipt of cash from the Trust in the amount of R1.39 billion, and drew the Commissioner's attention to note 5 in Treemo's audited financial statements, that the Commissioner's scepticism dissipated.review proceedings, showing the receipt of cash from the Trust in the amount of R1.39 billion, and drew the Commissioner's attention to note 5 in Treemo's audited financial statements, that the Commissioner's scepticism dissipated.

The legal framework

The GAAR provisions

Section 80A of the Act prescribes the features of an 'impermissible avoidance arrangement', and section 80B provides the Commissioner with various powers to determine the tax consequences, including disregarding, combining, or re-characterising steps in the arrangement, or treating the arrangement as if it had not been entered into. Of central importance to this case is section 80J, which sets out the notice procedure that the Commissioner must follow before determining any GAAR liability. Under section 80J(1), the Commissioner must, prior to determining any liability under section 80B, give the party notice that he believes the GAAR provisions may apply, setting out his reasons. Section 80J(2) affords the taxpayer 60 days to submit reasons why the GAAR should not be applied. Section 80J(3) then requires the Commissioner, within 180 days of receiving those reasons, to either request additional information, withdraw the notice, or determine the taxpayer's liability.

The provision most heavily contested in this case was section 80J(4), which provides that:

> 'If at any stage after giving notice to the party in terms of subsection (1), additional information comes to the knowledge of the Commissioner, he or she may revise or modify his or her reasons for applying this Part or, if the notice has been withdrawn, give notice in terms of subsection (1).'

Rule 31 of the Tax Court Rules

Rule 31(3) of the Tax Court Rules (promulgated under section 103 of the Tax Administration Act 28 of 2011) permits SARS, in its statement of grounds of assessment opposing a taxpayer's appeal, to include a new ground of assessment or basis for the partial allowance or disallowance of the objection, *unless* it 'constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment'.

The issue

The central legal issue before the SCA was whether section 80J(4) of the Act, or alternatively rule 31(3) of the Tax Court Rules, empowered the Commissioner to fundamentally alter the factual basis of a GAAR assessment, i.e., his reasons for applying the GAAR, in his rule 31 statement, after that assessment had been finalised and was the subject of an appeal.

Arguments of the respective parties before the SCA

The Commissioner's arguments

The Commissioner contended, first, that section 80J(4) should be interpreted as a broad empowering provision, with the words 'at any stage' signifying that he could modify his reasons for applying the GAAR post-assessment, up until a contested GAAR assessment had been finally determined by him, the Tax Court, or a court on appeal. In support, the Commissioner argued that the changes effected in the rule 31 statement did not constitute a prohibited novation under rule 31(3), as the core legal basis (the GAAR), the parties, and the tax liability all remained unchanged; the modifications were confined to the source of funding for the dividends and no more.

The Commissioner further argued, in oral submissions before the SCA, that even if section 80J(4) could not be relied upon as a source of power post-assessment, rule 31(3) nonetheless operated as an independent source of power to effect the modifications, and that neither of the prohibitions in rule 31(3), namely novation or revised assessment, applied in the circumstances. Regarding the 'revised assessment' limb, the Commissioner relied on the definition of 'assessment' in the Tax Administration Act as 'the amount of tax liability or refund', arguing that because the changes had no effect on the quantum of dividends tax, understatement penalty, and interest raised in the original assessment, no revised assessment was required.

The taxpayer's arguments

Counsel for the taxpayer argued that the Commissioner's dramatic shift in reasoning was an unlawful irregular step for three distinct reasons.

1. First, on a proper interpretation of section 80J(4), any modification required the Commissioner to issue a new, modified, or amended section 80J(1) notice, and it was not open to the Commissioner to effect a modification or amendment after a tax assessment had been raised under section 80B.
2. Second, section 80J(4) only permits modifications where 'additional information' comes to the knowledge of the Commissioner, and the information relied upon in the rule 31 statement was already known to the Commissioner prior to the issue of the GAAR assessment, precluding reliance on that provision in any event.
3. Finally, the modification and amendment amounted to a novation of the whole of the factual or legal basis of the disputed assessment and, alternatively, required the issue of a revised assessment, both of which were expressly prohibited by rule 31(3). These were the core submissions advanced by the taxpayer in the irregular step application in the Tax Court, and which subsequently formed the basis of the appeal before the SCA.

The Court's decision

The SCA sided decisively with the taxpayer, dismissing the Commissioner's appeal with costs, including the costs of two counsel. The Court's reasoning was built on two interconnected findings.

First finding: section 80J(4) is time-bound to the pre-assessment phase

The Court found that the drafting and purpose of section 80J clearly link the power to modify reasons in subsection (4) to the initial notice given in subsection (1). Keightley JA reasoned that section 80J(4) uses very similar language to section 80J(1), both referring to the Commissioner's 'reasons' for applying the GAAR, indicating that the power to modify extends only to the reasons given in the section 80J(1) notice and not to those on which the Commissioner may rely at subsequent stages of the assessment or dispute resolution process. Once a GAAR assessment is raised, the section 80J(1) notice is 'overtaken', and no purpose could be served by giving the Commissioner the power to modify it. The Court therefore concluded that the section 80J(4) power is time-bound and is only available to the Commissioner before he makes a determination under section 80B.

The Court drew support from the Tax Court judgment in *Taxpayer EJP v Commissioner for the South African Revenue Service*[2], where it was held that:

> '[O]nce a GAAR assessment has been raised, SARS cannot invoke the provisions of section 80J(4) (whose operation is limited to the pre-assessment / audit phase) to justify revisions or modifications to the reasons for exercising the GAAR power. … Section 80J(4) cannot justify introducing a new GAAR assessment through a rule 31 statement…'

Notably, the Court also drew comfort from the Constitutional Court's *obiter dictum* in *United Manganese of Kalahari (Pty) Ltd v Commissioner of the South African Revenue Service and four other cases*[3] *('United Manganese')*, where the Constitutional Court expressed the view, albeit without needing to decide the issue definitively, that the argument that section 80J(4) operates only in the pre-assessment phase 'is not without merit', and that section 80J(4) *'appears to accommodate the case of a change of reasons before the GAAR assessment is issued'*. The SCA endorsed both the Tax Court's approach in *ITC* 76704 and the Constitutional Court's *obiter* remarks. It followed that the Commissioner could not lawfully rely on section 80J(4) to justify the modifications and revisions recorded in his rule 31 statement.

2 *ITC* 76704 [2024] ZATC 22; 87 SATC 331.
3 [2025] ZACC 2; 2026 (2) SA 227 (CC).

The Court further noted that because section 80J(4) was unavailable to the Commissioner as a matter of law, it was unnecessary to consider the further question of whether the Treemo bank statement annexed to the taxpayer's replying affidavit in the review constituted 'new information' as required under section 80J(4).

Second finding: rule 31(3) cannot operate as an independent source of power in these circumstances

The Court then turned to whether rule 31(3) could operate as an independent source of authority for the modifications and rejected the Commissioner's argument on two grounds.

First, the Court held that the lawful exercise of the GAAR assessment power is a 'necessary precondition' for the lawful exercise of the Commissioner's rule 31(3) power. As the Constitutional Court had noted in *United Manganese*, when dealing with GAAR assessments, the letter of assessment has a heightened significance, because the GAAR permits the Commissioner, through the exercise of his administrative power, to impose a tax burden on a taxpayer despite the taxpayer having acted in a way that was otherwise permissible within the substantive terms of the Act. There are two essential components of the Commissioner's GAAR assessment powers: the reasons outlined in the section 80J(1) notice (which explain why the arrangement meets the necessary preconditions for the application of the GAAR), and the remedy proposed in the notice and adopted under section 80B(1). In the present case, the Commissioner had modified both components, i.e., the reasons for applying the GAAR and the remedy, in his rule 31 statement. This amounted to a new exercise of the GAAR assessment power without the requisite prior legal steps having been followed, which was not permitted under the GAAR provisions and could not be authorised by rule 31(3).

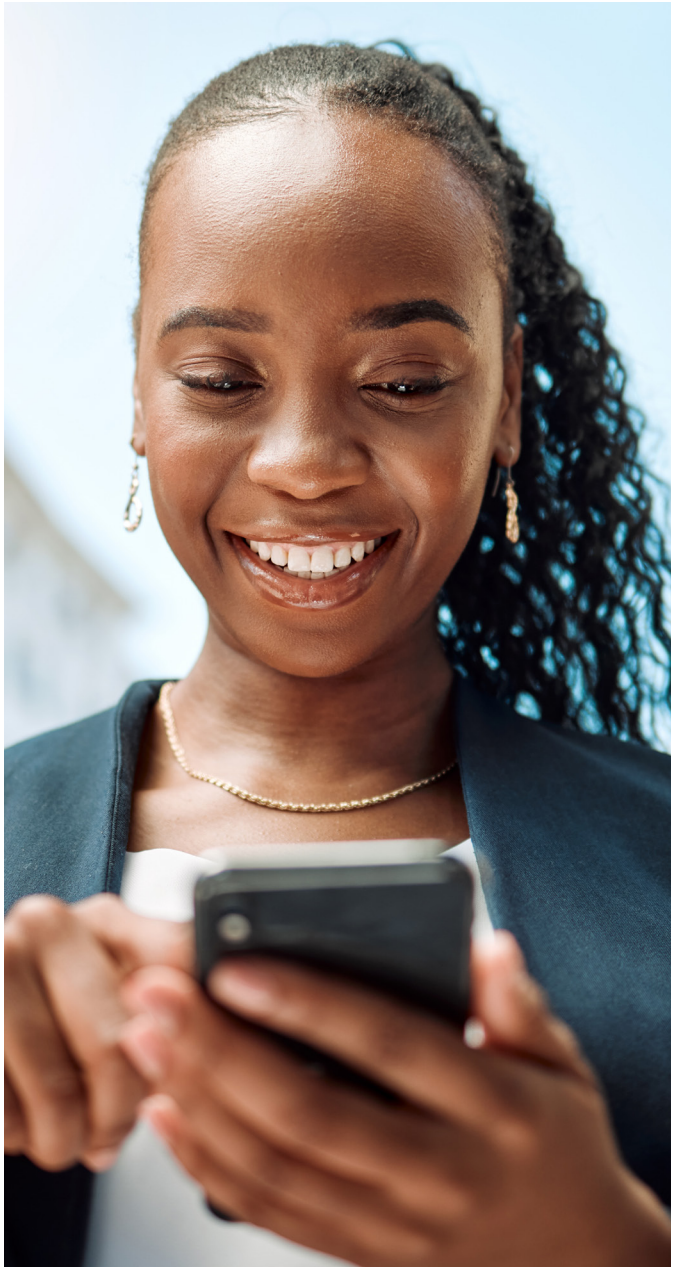
Second, even if rule 31(3) were in principle available, the Court found that the nature of the modifications on the facts of the case in question was such that they necessitated the 'issue of a revised assessment' – specifically, a revised section 80B(1) determination – and were therefore proscribed by the express terms of rule 31(3) in any event.

Broader implications and strategic considerations for tax practice

This judgment is a crucial victory for procedural fairness in tax law, and its implications extend beyond the immediate facts of the case. It provides practitioners and their clients with guidance in relation to the Commissioner's exercise of his powers under section 80J.

First, the judgment confirms the heightened significance of a GAAR assessment notice and letter

Taxpayers are entitled to treat the section 80J notice, and the subsequent assessment, as the definitive statement of the Commissioner's case under the GAAR. The Commissioner is bound by the reasons articulated therein, both as to the identification of the steps constituting the impermissible arrangement and as to the proposed remedy. Any attempt by SARS at the appeal stage to expand, modify, or substitute the original reasons for applying the GAAR and/or the remedy should be impermissible.



Second, this case powerfully illustrates the importance of providing a comprehensive, accurate, and evidence-based response to the initial section 80J notice

The taxpayer's detailed rebuttal of the Commissioner's initial theory, firmly disputing that the Newshelf repurchase proceeds funded the dividend, was instrumental in exposing the flaws in the Commissioner's case. In a very real sense, the taxpayer's section 80J(2) response 'boxed the Commissioner in': the Commissioner was forced to abandon his original case, yet the law prevented him from substituting a new one at the appeal stage. Practitioners should therefore regard the section 80J(2) response as one of the most strategically important documents in any GAAR dispute.

Third, tax advisors must remain vigilant and compare the Commissioner's rule 31 statement against the final assessment with a fine-toothed comb

Any attempt to introduce new steps, change the characterisation of the arrangement, or alter the proposed remedy is a potential irregular step that can, and should, be challenged. The present case confirms that even modifications to the *source of funding* for the transaction in issue, if they go to the core of the GAAR assessment, could be treated as going beyond what is permitted, depending always on the specific facts of the case in question.

Fourth, the judgment resolves an important question about the relationship between section 80J(4) and rule 31(3)

The SCA rejected the Commissioner's attempt to use rule 31(3) as an independent 'backdoor' to legitimise modifications that could not be effected under section 80J(4). The lawful exercise of the GAAR assessment power is a necessary precondition for any reliance on rule 31(3), such that the two provisions cannot be divorced from one another in GAAR cases. This has practical significance for SARS, because it means that any attempt to modify a GAAR assessment after the assessment has been issued must comply with the full GAAR process from the beginning, including issuing a fresh section 80J(1) notice and following the prescribed procedural steps, rather than simply amending the rule 31 statement.

Fifth, the judgment highlights the limits of the definition of 'assessment' for purposes of the 'revised assessment' prohibition in rule 31(3)

The Commissioner's argument that no 'revised assessment' was required because the quantum of tax liability was unchanged was firmly rejected. It is the *substance* of the remedy adopted under section 80B(1), not the amount of tax calculated, that determines whether a revised assessment is necessitated. This distinction is likely to be of considerable importance in future cases.

Conclusion

In conclusion, the judgment firmly establishes that while the Commissioner has broad powers to combat tax avoidance, those powers are not unlimited. They are circumscribed by the procedural framework laid down by the legislature, a framework designed to ensure fairness, certainty, and a balanced playing field for all parties. The section 80J process is not merely administrative form-filling: it is the source and limit of the Commissioner's authority to raise a GAAR assessment. Once that process has culminated in a formal assessment, the Commissioner is bound by the case he has made. He may not, through the mechanism of a rule 31 statement, substitute an entirely new basis for applying the GAAR if the original one proves untenable on appeal.

For taxpayers and their advisers, the message is equally clear: procedural rights in GAAR disputes constitute meaningful safeguards and warrant careful attention.

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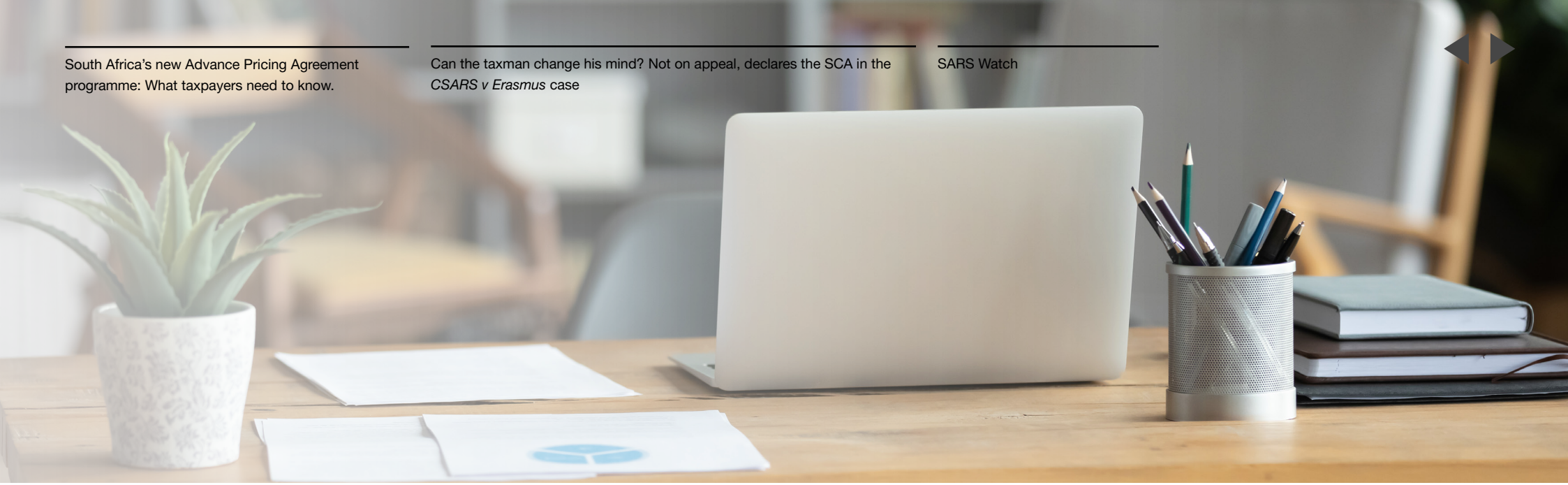

SARS WATCH

SARS Watch 26 February 2026 – 25 March 2026

Legislation

27 February 2026	Income Tax Notices 2026	Income Tax Notices 7174, 7175, and 7182, as published in Government Gazette 54218, with a commencement date of 1 March 2026, have been made available. These notices relate to amendments to: • determination of the daily amount in respect of meals and incidental costs for purposes of section *8*(1)*(a)*(ii) (daily allowance); • determination of the daily amount in respect of meals and incidental costs for purposes of section *8*(1)*(c)*(ii) (overnight allowance); and • fixing the rate per kilometer in respect of motor vehicles – section *8*(1)*(b)*(ii) and (iii).

6 March 2026	Crypto-Asset Reporting Framework (CARF)	On 1 March 2026, South Africa implemented the CARF, which is a global standard developed by the OECD to strengthen tax transparency in the crypto asset environment. The CARF requires crypto asset service providers to report certain crypto asset transaction information to SARS. This data may also be exchanged with other participating jurisdictions to support international tax compliance. The framework closes a critical transparency gap created by the rapid growth of crypto assets, bringing crypto activity in line with existing international tax reporting standards. Individual taxpayers do not report directly under the CARF and must continue declaring crypto asset transactions through their normal income tax returns. For service providers, the CARF provides clarity, consistency, and a level playing field. For the tax system, it strengthens fairness, early risk detection, and voluntary compliance.
16 March 2026	PAYE Employer Reconciliation BRS for 2026/2027	The PAYE Employer Reconciliation BRS for 2026 / 2027 has been updated with the following changes: • 2026 budget speech changes related to long-service awards and compensation in respect of death during employment • New source code for travel reimbursement related to the previous tax year
Interpretation		
19 March 2026	Draft Interpretation Note – The meaning of "holds a qualifying interest" in a company as required under paragraph (a) of the definition of 'asset-for-share transaction'	Comments are due by Thursday, 30 April 2026.
24 March 2026	Draft Interpretation Note – Income Tax Exemption: Bargaining Councils	Comments are due by Wednesday, 8 May 2026.
Customs and excise		
27 February 2026	Updated Facilities Code List	The facility codes used in Box 30 of the Goods Declaration have been updated to include details of the de-grouping depot for Linex Air Services (Pty) Ltd, located at Oliver Reginald Tambo International Airport (ORTIA). This addition enables Customs to transmit electronic messages communicating the status of consignments to these facilities.
4 March 2026	Updated list of prohibited and restricted imports and exports	The list of prohibited and restricted imports and exports has been updated with details on tariff headings that require an ITAC import permit.

11 March 2026	Draft amendments to rules under section 64D – licensing of remover of goods in bond	Comments were due by Friday, 27 March 2026.
13 March 2026	Tariff amendments	Publication details of tariff amendment Notice R7129, as published in Government Gazette No. 54318 of 13 March, have been made available.
19 March 2026	Tariff amendments	Publication details of tariff amendments Notice R7243 and Notice R7244, as published in Government Gazette No. 54351 of 19 March 2026, have been made available.
19 March 2026	Draft amendments to rules under sections 40(3)*(a)*(i)(C), 41(4)(b) and 120	Rules have been inserted under sections 40 and 41, relating to the manner in which bills of entry may be adjusted where customs value declared is affected by transfer pricing adjustments. Comments were due by Friday, 3 April 2026.
19 March 2026	Draft amendments to rules under sections 18A, 64D, and 120	Draft amendments have been published on entry for export by road of specified goods from a customs and excise warehouse, and on exemptions from the requirement that such goods be removed by a licenced remover of goods in bond. Comments are due by Friday, 10 April 2026.
20 March 2026	Updated Facilities Code List	The facility codes used in Box 30 of the Goods Declaration have been updated to include details of the new depot for AGL Terminals located in Cape Town. This addition enables Customs to transmit electronic messages communicating the status of consignments to these facilities.

Case law

27 February 2026	*CSARS v Mining Pressure Systems (Pty) Ltd* (565/2023)	Whether seamless carbon steel pipes imported from China and manufactured to the API 5L specification were correctly classified, for customs-duty purposes under the Customs and Excise Act 91 of 1964, as 'line pipe of a kind used for oil or gas pipelines' under tariff heading 7304.19.90 (attracting duty), rather than as other seamless pipes under 7304.39.35 (duty-free), and whether tariff classification must be determined by the objective characteristics and suitability of the goods at importation rather than their intended or actual use.
5 March 2026	*The Commissioner for the South African Revenue Service v Erasmus* (864/2024) [2026] ZASCA 22	Whether SARS is entitled, in a rule 31 statement filed under the Tax Administration Act, to modify or substantively reformulate the factual and legal basis of a general anti-avoidance rule (GAAR) assessment after the assessment has been issued, whether such amendment is authorised by section 80J(4) of the Income Tax Act or rule 31(3), and whether the inclusion of a new GAAR basis in a rule 31 statement constitutes an irregular step liable to be set aside under Uniform Rule 30.

5 March 2026	*Democratic Alliance v Minister of Finance and Others* (2025-045530) [2026] ZAWCHC	Whether section 7(4) of the Value-Added Tax Act 89 of 1991, which empowers the Minister of Finance to alter the VAT rate by budget announcement, constitutes an impermissible delegation of legislative power to the executive, whether the provision lacks adequate statutory limits and mechanisms of parliamentary control, and whether it is therefore inconsistent with the Constitution and invalid.
6 March 2026	*SARSTC IT* 77034 (IT) [2025] ZATC JHB (13 January 2026)	Whether the taxpayer was entitled to condonation for the late filing of an application to strike out portions of SARS' rule 31 statement; whether the impugned averments were properly characterised as scandalous, vexatious or irrelevant; and whether SARS was entitled to plead wilful default to avoid the statutory time bar in relation to additional assessments arising from a transfer-pricing adjustment.
6 March 2026	*SARSTC VAT* 32679 (VAT) [2025] ZATC CPT (18 December 2025)	Date of VAT liability – Whether the appellant should be regarded as a registered VAT vendor with effect from 1 February 2018 or 28 June 2018 for purposes of calculating its VAT liability, whether SARS correctly relied on a VAT 'reactivation letter' to determine the earlier liability date, and whether the appellant was liable for the additional VAT, interest and late-payment penalties arising from that determination.
12 March 2025	*SARSTC VAT* 12167 (VAT) [2026] ZATC JHB (12 March 2026)	Whether SARS was entitled to condonation for the late filing of its rule 31 statement of grounds of assessment and opposing appeal under the Tax Administration Act and the Tax Court Rules, whether the four-year delay following the termination of ADR proceedings was adequately explained, and whether the taxpayer was entitled to invoke rule 56 proceedings on the basis of SARS' late compliance in the pending VAT appeal.
13 March 2026	*BASF South Africa (Pty) Ltd v Commissioner for the South African Revenue Service* (A2024 024644) [2026] ZAGPJHC 275 (13 March 2026)	Whether SARS may, under rule 31(3) of the Tax Court Rules, amend its grounds of assessment so as to introduce materially new transfer pricing grounds and benchmarking studies not forming part of the original additional assessment, and whether the Tax Court was correct in refusing the taxpayer leave to amend its rule 32 grounds of appeal in response to those new grounds.
18 March 2025	*SARSTC* 2023/47 (ADM) [2025] ZATC JHB (9 December 2025)	Whether the taxpayer's appeal should be stayed pending the determination of a SARS-designated test case in terms of section 106(6) of the Tax Administration Act, whether the appeal raised distinct factual or legal issues justifying the taxpayer's participation in the test case under rule 12(3), and whether any potential prejudice to the taxpayer outweighed the efficient resolution of numerous similar disputes relating to alleged improper employment tax incentive claims.
18 March 2026	*SARSTC IT* 25180 (ADM) [2025] ZATC JHB (9 December 2025)	Whether condonation should be granted for the late filing of the taxpayer's expert witness notice and expert summary, and whether, for purposes of section 19 of the Income Tax Act, the reduction of the taxpayer's debt to the Bank Plc occurred during the 2014 year of assessment or the 2015 year of assessment.

Guides and forms

16 March 2026	Global Minimum Tax (GMT) Registration, Subscription and Notification Guide	Made available on Monday, 16 March 2026.

Other publications

26 February 2026	ATAF	ATAF and Finland deepen strategic cooperation to strengthen African tax administrations, focusing on: • technical capacity building, • digital transformation, • compliance risk management, and • analytics.
27 February 2026	SARS media release: Trade Statistics for January 2026	South Africa recorded a preliminary trade balance surplus of R9.3 billion in January 2026. This surplus was attributable to exports of R155.8 billion and imports of R146.5 billion, inclusive of trade with Botswana, Eswatini, Lesotho, and Namibia (BELN).
3 March 2026	SARS Tax Exempt Institutions and Tax Practitioners newsletter	Tax practitioners are introduced to the new online application system for income tax exempt institutions, which was made available from 2 March 2026 on eFiling and at all SARS branch offices nationally.
3 March 2026	OECD: Concluding Statement of the Tax and Development Conference in Tokyo, Japan	The concluding statement summarises discussions at the Platform for Collaboration on Tax (PCT) Tax and Development Conference held in Tokyo, emphasising the critical role of modern, fair, and reliable tax systems in strengthening domestic revenue mobilisation and supporting sustainable development. It highlights persistent challenges in achieving adequate tax-to-GDP ratios, the importance of country-led and demand-driven reforms, and the need for enhanced digitalisation, compliance, data use, and regional cooperation. The OECD statement also reaffirms the commitment of the PCT partners to coordinated, tailored, and sustained international support, particularly for fragile and capacity-constrained countries.
4 March 2026	ATAF	ATAF Executive Secretary visits Gambia Revenue Authority to strengthen partnership.
5 March 2026	SARS frequently asked questions	The following frequently asked questions have been published: • SARS FAQs on Common Reporting Standard • SARS FAQs on Crypto-Asset Reporting Framework Regulations
5 March 2026	Implementation of J.P. Morgan Bank on eFiling	SARS has added J.P. Morgan Bank to the eFiling list of banks, enabling taxpayers who bank with J.P. Morgan to make tax payments via eFiling using the Credit Push Payment option.
06 March 2026	SARB	Draft Exchange Control circulars for public comment following 2026 Budget announcements: These circulars primarily address increased new limits for cross-border payments and investments by individuals in South Africa, as well as the streamlining of certain administrative processes. Specifically, Exchange Control Circular No. 3/2026 has been published, with comments having been due by 17 March 2026.

10 March 2026	Tax Practitioner Connect newsletter	This issue provides guidance on tax practitioner deregistration procedures and dispute reviews under the Tax Administration Act, alongside important updates to the Income Tax Act. It includes revised tables of interest rates on taxes and refunds, and resources such as Interpretation Note 143 for political party income tax exemption and the Turnover Tax Guide for micro businesses.
10 March 2026	Tax Alert: SARB scrapping interest rate caps	The scrapping by the South African Reserve Bank ('SARB') of the caps on interest rates on inbound borrowings throws into sharper relief the need for cross-border loans from related parties to be tested against the arm's-length principle.
15 March 2026	ATAF: ATAF releases technical note on EU carbon border adjustment mechanism and implications for African exports.	ATAF, in partnership with the University of Pretoria, has released a new technical note analysing the European Union Carbon Border Adjustment Mechanism (CBAM) and its potential implications for African exports. The publication provides ATAF member countries with practical insights on how emerging climate-related trade measures may affect export competitiveness, tax policy, and industrial transformation across the continent.
15 March 2026	ATAF: ATAF contributes African perspectives at the Future of Tax Symposium	ATAF Executive Secretary Ms Mary Baine and ATAF Specialist for Applied Research and Statistics Mr Ronald Waiswa participated in the Future of Tax Symposium, hosted in Vienna, Austria, by the Institute of Austrian and International Tax Law through its Global Tax Centre. The two-day symposium brought together leading policymakers, researchers, and tax administration experts to examine how tax systems must evolve in an increasingly complex global environment. Discussions at the symposium explored a wide range of themes shaping the future of taxation, including direct and indirect taxes, personal income and wealth taxation, environmental taxes, the role of technology and data in tax administration, competitiveness, and the future of multilateral tax cooperation.
16 March 2026	Global Minimum Tax registration opens on SARS eFiling	SARS launched the Global Minimum Tax (GMT) on its eFiling system with effect from 16 March 2026, as part of South Africa's implementation of the Global Anti-Base Erosion (GloBE) framework. From the launch date, affected taxpayers have been able to subscribe to and administer Global Minimum Tax obligations via SARS eFiling, in accordance with the existing governance and access controls applicable to legal entities on the system.
17 March 2026	SARS Media Release	SARS steps up efforts to disrupt the illicit economy and draws a clear line against corruption and non-compliance with tax and customs laws.
17 March 2026	OECD keynote address to the EU Tax Symposium: The continuing value of multilateral tax co-operation – what next for OECD tax work?	The address emphasises the OECD's continued leadership in multilateral tax co-operation, highlighting the importance of consensus-based international tax standards to safeguard tax bases, support fiscal sustainability, and promote growth.

23 March 2026	ATAF: ATAF and AfDB deepen high-impact partnership on domestic resource mobilisation	As African economies grapple with rising debt burdens, shrinking external aid, and intensifying pressure to fund their own development, two continental institutions are doubling down on a strategy that many now see as unavoidable: financing Africa from within. At the centre of that effort is a deepening partnership between the ATAF and the African Development Bank Group (AfDB). On Thursday, 19 March 2026, the ATAF hosted a high-level AfDB delegation led by Director Abdoulaye Coulibaly at its Pretoria headquarters, in a meeting that underscored both the urgency and the growing impact of their collaboration.
23 March 2026	SARS: Announcement of the preliminary revenue collection results for the 2025/26 financial year	SARS Commissioner Mr Edward Kieswetter will announce the preliminary revenue collection figures for the 2025/26 financial year on Wednesday, 1 April 2026.

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