Synopsis

Tax today

May 2022

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

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

Editor: Al-Marie Chaffey

SARS Watch: Linda Mathatho

SA investment tax incentives

Hopeless blunt instruments or is there maybe still some fairy dust to be found in the investment tax incentive bin?

The South African Vision

On various occasions, the leaders of the country have shared their vision of attracting foreign investment to stimulate economic activity and ultimately better the lives of all South Africans.

The Finance Minister mentioned in his Budget 2022 message[1] that

"[W]e are implementing measures and policies aimed at securing long-term economic growth by creating the conditions necessary to attract investment, enhancing the capacity of the state to stimulate economic activity, and ensuring that public money is spent in a productive and responsible manner." [Our underlining]

At the 2022 Investment Conference[2] the President stated that[3]

"Despite the impact of the pandemic, by the time of the third South Africa Investment Conference in 2020, the country had raised a total of R774 billion in investment commitments."

"The investments that have been realised since our first conference have created job opportunities, increased localisation and expanded local value chains."

"They have brought skills, technology and know-how into our economy. Whether it is a young person employed in a data centre, a worker at an auto plant, or a small business supplier to a renewable energy plant, these investments are changing people's lives." [Our underlining]

The Current Reality

The stark reality is, however, that South Africa needs (much) more (foreign) investment (among other things), as the disheartening media headlines read:

"Nearly half of SA's working age population is unemployed, probably hungry and likely angry."[4]

and

"National Development Plan [NDP] nowhere near achieving 18-year mandate"[5]

The aim of the NDP[6] is to eliminate poverty and reduce inequality by 2030. This plan was developed over a number of years — the draft plan was released in November 2011 followed by the launch of the National Development Plan 2030 in August 2012.[7] Government followed up with a renewed call to action in August 2017.

In 2012, when the NDP was launched, it was anticipated that the unemployment rate would reduce from 27% (2011) to 14% (by 2022) and 6% (by 2030). The plan also included a reduction in the proportion of people living below the lower bound poverty line from 39% of the population to zero in 2030.

The President, who served as Deputy Chairperson of the first National Planning Commission (NPC) in 2012, appointed the third NPC in December 2021[8] and tasked them with providing "thought leadership, evidence-based advice, foresight and futuristic planning, as well as sustainable solutions that inspire and guide the national development trajectory".[9]

It will clearly be no small feat for the third NPC to achieve these ambitions as the harsh reality is that the unemployment rate currently stands at 35.3% and almost half of SA's adult population live below the breadline.

1 http://www.treasury.gov.za/documents/national%20budget/2022/guides/2022%20Peoples%20Guide%20English.pd

2 The South African Investment Conference is part of an initiative by president Cyril Ramaphosa to raise R1.2 trillion in new investment over five years.

3 https://businesstech.co.za/news/government/571090/ramaphosa-gets-boost-to-r1-2-trillion-investment-drive/#:~:text=2%20trillion%20investment%20drive,-Staff%20Writer24&text=The%20African%20Development%20Bank%20has,years%2C%20says%20president%20Akinwumi%20Adesina

4 https://www.moneyweb.co.za/news/economy/unemployment-becoming-a-national-disaster/. Published 30 March 202

5 https://www.moneyweb.co.za/news/south-africa/national-development-plan-nowhere-near-achieving-18-year-mandate/ 12 April 2022.

6 https://www.gov.za/issues/national-development-plan-2030

7 https://www.gov.za/sites/default/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf; https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf

8 https://www.gov.za/speeches/presidency-welcomes-appointed-members-third-national-planning-commission-15-dec-2021-0000

9 https://www.gov.za/speeches/presidency-welcomes-appointed-members-third-national-planning-commission-15-dec-2021-0000

Bridging the divide – is tax policy the silver bullet?

The short answer is no, unfortunately tax policy is not the silver bullet one might have wished for. Rather, the main consideration for investors is a good investment climate, as stressed by the OECD's Policy Framework for Investment:

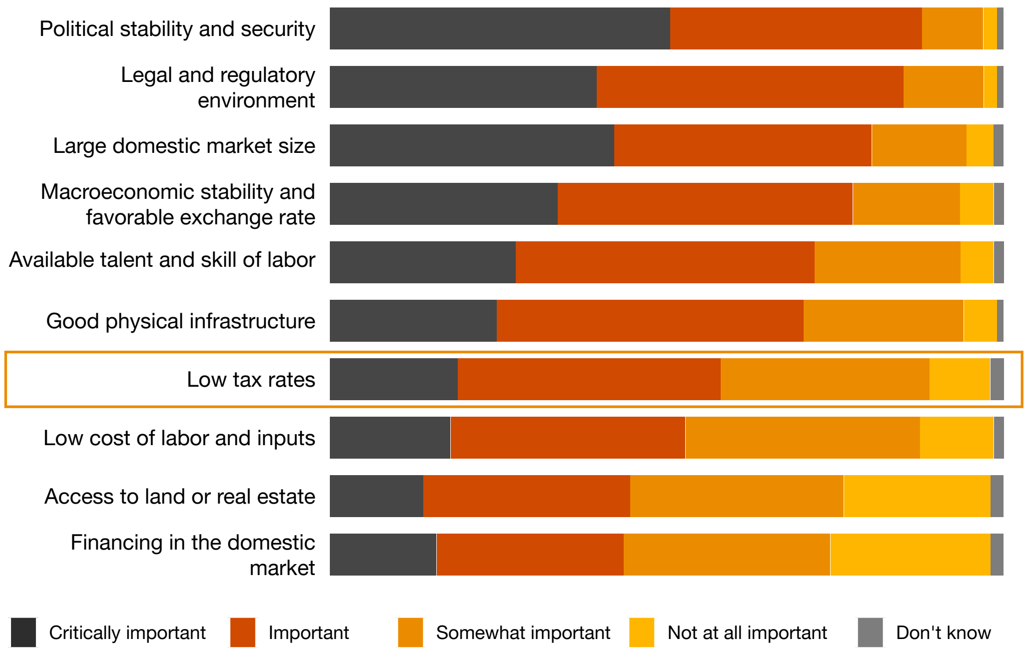
"A good investment climate is one which provides opportunities for all investors: public and private, large and small, and foreign and domestic. The heterogeneity of investors, the diversity of factors which drive investment decisions and the multiple policy objectives pursued by governments all call for a whole-of-government perspective so as to increase policy coherence. This policy coherence applies to each component of the investment climate, whether encouraging foreign investment, promoting linkages and technology spillovers, raising the quality of the workforce, improving infrastructure or any other area." [Our underlining]

Further, the OECD identified 12 different policy areas that affect investment, i.e. investment policy, investment promotion and facilitation, competition, taxation, trade, corporate governance, finance, infrastructure, developing human resources, policies to promote responsible business conduct and investment in support of green growth, and lastly broader issues of public governance.[10]

10 2015 Pocket Edition Policy Framework for Investment

Tax is therefore only one of the factors to be considered and a recent World Bank study (refer to the graph below) found that when making investment location decisions, investors' main considerations are in fact political stability and security, together with a stable legal and regulatory environment. Incentives offered by local governments are second-order considerations which will only have bearing on the decision-making process if the investor is wavering between similar locations.[11]

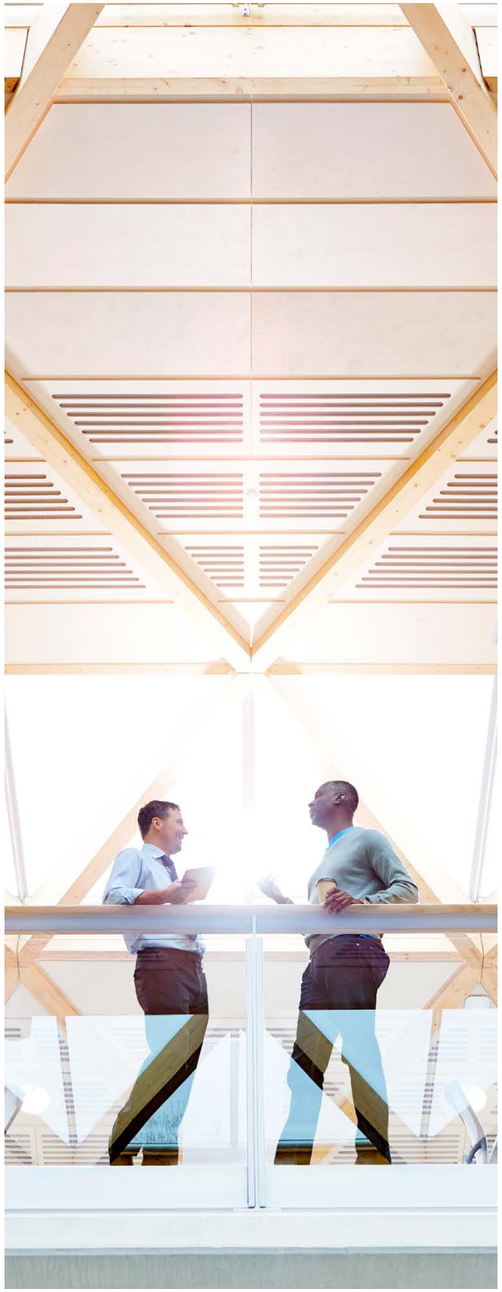
Importance of country characteristics



Most importantly, an SA-specific World Bank study[12] found that the country's tax system was not among the major problems facing investors in SA. The primary growth inhibitors were rather the non-tax issues related to the business environment (e.g. reliability of electricity supply, labour relations and policy uncertainty). Unfortunately, as at the date of this publication, these factors have worsened rather than improved since the World Bank study was performed.

11 https://thedocs.worldbank.org/en/doc/af946a92c3b992e1bcc8a49ff49cd474-0430012021/related/Tax-Incentives-Webinar-ppt-May-27-2021-PDF.pd

12 South Africa Country-level fiscal policy notes. Sector Study of Effective Tax Burden & Effectiveness of Investment Incentives in South Africa – Part 1. June 2015. Paragraph 4, page 9. Davis Tax Committee: Review of South Africa's Corporate Income Tax System: March 2018, at page 42.



Does tax policy then still have a role to play in SA's quest for investment?

International best practice

The research indicates that countries that have been successful in designing tax policy attractive to investment, have generally adopted a whole-of-government approach to ensure consistency between the country's tax policy, its broader national and sub-national development objectives and its overall investment attraction strategy.[13]

Assuming that the aforementioned consistency exists, the question is whether the benefits of offering tax incentives[14] to (foreign) investors outweigh the potential costs of disrupting good revenue system principles, i.e. levying taxes that are simple, fair and efficient.

As tax incentives inherently risk complicating the tax system, creating horizontal inequities, and distorting production efficiency, the economic rationale for implementing these incentives must always be evaluated against clear goals, having regard to their ability to meet these goals in ways that are both effective and efficient.

These incentives should also be evaluated against alternative policies, both tax and non-tax, that could potentially achieve the same objectives. A cost/benefit analysis (pre- and during the life of the incentive) should be performed to ensure that the (social/economic) benefits from the programme will (and continue to) outweigh the costs thereof.

For purposes of this article, we focus on SA's tax policy to attract investment and do not consider the consistency between SA's tax policy and the broader objectives and strategy (and the actual implementation versus mere statements and iterations of good intentions/plans). Suffice to say that, given the major business concerns highlighted in the foregoing paragraphs, for Government to adopt any tax reforms in isolation (in the hope of attracting foreign investment) will be a futile exercise, as tax instruments should only be regarded as complementary measures.

Recommendations following an initial review of the corporate tax incentives

The Davis Tax Committee (DTC) considered the effectiveness of corporate tax incentives with reference to various research reports[15] and noted that for developing countries, the effects of tax on investment are generally smaller while the following potential disadvantages may also occur:

- tax incentives may distort resource allocation leading to suboptimal investment decisions which are harmful to long term economic growth;
- distortions can result in competitive disadvantages for non-incentivised investments;
- diversion of labour and capital to the incentivised firms in response to discriminatory tax treatment can distort the allocation of resources and can damage economic growth;
- the tax foregone as a result of granting tax incentives can narrow a country's tax base;
- resources are required to ensure that businesses comply with the requirements of granting tax incentives. Where administrative capacity is limited, scarce resources might be diverted away from core aspects of a country's tax administration so as to administer tax incentives, which undermines other efforts to mobilise revenues;
- domestic investors may be discouraged where foreign investors obtain a competitive advantage over small and medium enterprises that operate at domestic level as a result of the tax incentive — this may also lead to undesirable tax abusive behaviour;
- generally, there is an inadequate cost/benefit analysis to support government decision making.

The DTC[16] referred to the World Bank's review of SA's (overall) tax incentives suite where it concluded (in the 2016 Report) that the effectiveness of tax incentives is mixed and that the lower cost of capital (resulting from the tax incentives) translates into higher investment for specific sectors only, i.e. agriculture, construction, manufacturing, trade and services. Further, the World Bank found that there was no evidence that tax incentives encouraged investment in the mining, real estate, transport and utilities sectors. The results of additional research performed in later years on specific tax incentives indicated that:

- the section 11D Research and Development incentive may be a

13 Supra note 8, page 27.
14 Defined as 'any tax provision granted to a qualified investment project that represents a favourable deviation from the provisions applicable to investment projects in general'. The G-20 Development Working Group by the IMF, OECD UN and World Bank "Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment" (2015), at page 7.

15 Davis Tax Committee: Review of South Africa's Corporate Income Tax System: March 2018, at page 49.

16 On page 51.

successful tax incentive;

- tax incentives aimed at increased property investments (e.g. Urban Development Zones) have a positive impact on investment in all sectors except mining; and
- tax incentives aimed at Small Business Corporations (e.g. graduated corporate tax rates and specific SBC investments) have some impact, but only for certain sectors.

Having regard to these results, the DTC proposed (in March 2018) that National Treasury (NT) and SARS should perform a detailed review of each tax incentive to consider:

- the justification for each incentive;
- whether the incentive achieves its objective or not; and
- the cost/benefit of retaining the incentive versus an overall reduction in the corporate tax rate based on the reduced cost if the incentive is eliminated.

The DTC further suggested that NT and SARS should also consider following the example of many other countries that are removing their targeted tax incentives and replacing them with an overall reduction of the corporate income tax (CIT) rate or a tax rate reduction associated with other tax handles.

Although many other countries have been reducing their CIT rates over the past 15 years, SA's corporate tax rate (of 27%) remains above the OECD's average of 23%. This has been to SA's detriment. Many countries with strong investment and trading ties with SA have significantly lower rates, which makes SA's corporate tax system relatively uncompetitive, and it provides a strong incentive for tax avoidance.

Enter the CIT system restructure

This resulted in the Budget 2020 announcement of the corporate income tax system restructure over the medium term in a revenue neutral manner, by broadening the tax base and reducing the tax rate (i.e. providing a general tax incentive to all corporate taxpayers).

The Budget stated that the base broadening will involve minimising tax incentives and introducing new interest deduction and assessed loss limitations.

Following this announcement –

- Budget 2021 abolished the Venture Capital incentive.
- NT has commenced with a review of the various tax incentives.
- NT issued a discussion document and online survey on Research and Development (R&D) for public comment in December 2021 and held a public workshop to discuss the feedback received on 7 April 2022. The document recognised the significant importance of an R&D incentive for SA (i.e. the net positive societal benefits outweighing the cost of providing the incentive). We were supportive of the proposed policy design as detailed and (mostly) of the specific proposals contained in the discussion document.
- Budget 2022 announced the following:
  - The corporate tax rate will be reduced to 27%, effective from 1 April 2022.
  - Expiring incentives that have not widened social or economic benefits will not be renewed. Government continues to assess existing incentives to enhance transparency and efficiency. Those found to be effective and which create the intended benefits will be retained and, where necessary, redesigned to improve performance.
  - The R&D incentive will be extended in its current form until 31 December 2023.
  - Expiry of the following corporate tax incentives:
    - ☐ Section 12DA (rolling stock) on 28 February 2022
    - ☐ Section 12F (airport and port assets) on 28 February 2022
    - ☐ Section 12O (films) which lapsed on 31 December 2021
    - ☐ Section 13sept (sale of low-cost residential units through an interest-free loan) on 28 February 2022
  - Extending the energy-efficiency savings tax incentive from 1 January 2023 to 31 December 2025.
  - A review of depreciation and investment allowances to take place during 2022/23, followed by the release of a discussion document.

Conclusion

The CIT reform approach adopted by NT is in line with international best practice and we support the general principle of a reduction in the corporate income tax rate on a tax neutral basis through base-broadening measures in order to support economic growth and investment.

That being said, greater clarity is required on Treasury's stated intention to further reduce the corporate income tax rate on a revenue neutral basis as the tax base is broadened.

Accordingly, PwC made submissions to Parliament suggesting that Government should indicate a targeted tax rate and the timelines to achieve the target rate, similar to what the United Kingdom did when it reduced its CIT rate over a number of years. This is important because of the long lead times involved in giving effect to investment decisions and it provides investors with greater clarity on policy direction to take into account in making those decisions.

Adelheid Reyneke
Senior Manager
+27 (0) 83 557 2526

Kyle Mandy
Partner/Director: National Tax Technical
+27 (0) 11 797 4977

Zero-rating of VAT on the supply of gold

In this case, the Court considered the zero rating provision contained in the VAT Act relating to the supply of gold to the SA Reserve Bank, SA Mint and banks.

It was held that gold which had previously been refined and subsequently undergone any manufacturing process before being refined or manufactured in the listed forms envisaged in section 11(1)(f), cannot be zero rated.

In the case of Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service (313/202120] [2022] ZAGPPHC 325 (19 May 2022), the High Court held that where gold is supplied under section 11(1)(f) of the VAT Act, the supply cannot be zero rated if such gold underwent a refinement or manufacturing process prior to it being refined or manufactured into gold bars, ingots and the like.

Facts

Lueven Metals (Pty) Ltd ("the applicant") sourced gold from coins, second-hand jewellery and similar sources which it then supplied to a qualifying entity (that is, the South African Reserve Bank (SA Reserve Bank), the South African Mint Company (Pty) Ltd (SA Mint) or any bank registered under the Banks Act, No. 94 of 1990 after refinement thereof).

In terms of the facts of the judgment, the applicant is not a mine and does not produce gold ore which is then extracted from the surrounding material and refined and manufactured into gold, in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution ("the listed forms").

Instead, the applicant is a purchaser and trader in second-hand gold which has already previously been refined (in whatever form) and manufactured into gold coins (not blanks) and jewellery pieces of various nature and purity etc.

The applicant then takes the gold containing material acquired from various sources and processes it by in-house melting, refining and casting it into lesser purity bars.

Thereafter, these bars are taken to a refinery (in this case Rand Refinery) where the gold was refined for a second or even third time and manufactured into one of the listed forms and sold and supplied to either of the qualifying entities.

The issue in dispute concerned gold bars supplied by the applicant to a Bank that contained purity of 99,5% and on which was levied at a VAT rate of 0%.

The law

Section 11(1)(f) of the VAT Act states that:

> " Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where –
>
> …
>
> the supply is to the South African Reserve Bank, the South African Mint Company (Pty) Ltd or any bank registered under the Banks Act, 94 of 1990, of gold in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution, <u>which has not undergone any manufacturing process other than the refining thereof or the manufacture or production</u> of such bars, blank coins, ingots, buttons, wire, plate, granules or solution" (our emphasis).

It is only in these very particular instances that a vendor may zero rate its supply of the listed forms of gold products.

Applicant's argument

The applicant contended that since section 11(1)(f) was specific in that it allowed the zero rating of VAT only when supplied to a closed list of recipients, that gold of the highest purity must be supplied, i.e. gold at a purity of no less than 95%.

It further argued that in its interpretation, the word "gold" only refers to the gold once it is sold to the closed list of recipients, irrespective of where it came from (i.e. supplied product and not the source product), i.e. that focus should not be placed on the acquisition of the gold.

The applicant requested that a declaratory order be issued that the word "gold" in section 11(1)(f) of the VAT Act, refers to, and only applies to, gold (in any of the unwrought forms permitted in the subsection) refined to the grade of purity required for acquisition by SA Reserve Bank, SA Mint or by any registered bank.

The applicant argued that the phrase -

> "which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of it in section 11(1)(f) of the VAT Act"

refers to any manufacturing process carried out by the vendor supplying gold to the SA Reserve Bank, SA Mint or a bank, and does not refer to any process to which the gold may have been subjected to historically, prior to being refined to the grade of purity required for acquisition by the SA Reserve Bank, SA Mint or a bank.

The applicant submitted that the word "refining" is not to be interpreted to a limited extent, but should include the concept of "re-refining."

SARS' argument

The Commissioner for the South African Revenue Service ("Commissioner" / "SARS"), was of the opinion that the gold supplied by the applicant in this manner did not qualify to be zero rated under section 11(1)(f) as one of the criteria was that the gold supplied should not have undergone a refining or manufacturing process other than the refining, manufacturing or production of the gold in a listed form.

Therefore, as the gold supplied by the applicant had undergone a prior refining and manufacturing process, that is before the refining and manufacture for purposes of supplying it to the qualifying entities, the supply could not be zero rated under the VAT Act.

The judgment

The court considered the route that the gold took prior to it being supplied to the Bank. In this regard, it was first mined, then refined, and underwent a manufacturing or production process where it became jewellery, coins or scrap gold.

The applicant then acquired the gold and refined it further into lesser-purity gold bars. The bars were then delivered to Rand Refinery where it underwent further refining and was manufactured into bars of pure gold, before it was sold to the Bank.

The court noted that the process entailed an initial "refining" and subsequent "manufacturing or production" process before being refined and manufactured by Rand Refinery for a second time.

In summarising section 11(1)(f), the Court stated that when gold is sold to SA Reserve Bank, SA Mint or the banks, in whatever purity they may require, that the gold should not have previously undergone a refinement or manufacturing process prior to it being refined or manufactured into gold bars, ingots and the like. If the volume of gold originated from gold that was previously refined, that supply cannot be zero rated when supplied to the qualifying entities.

The court highlighted an important principle of interpretation as follows:

> "The fact that the interpretational process commences with the wording and ordinary grammatical meaning of the words used in the statute under examination, has been confirmed in Cool Ideas 1186 CC v Hubbard and another 2014 (4) SA 474 (CC) in the following fashion: 'A fundamental tenet of statutory interpretation is that the words in the statute must be given their ordinary meaning, unless to do so would result in an absurdity.'"

The court stated that when one applies a simple reading of the words used in the subsection, there are effectively three requirements to be met in order to zero rate the supply of the gold which are:

- the sale must be to one of the qualifying purchasers;
- the gold must be in one of the listed forms; and
- the gold must not have undergone a process other than that of the refining, manufacturing or production of one of the listed forms for example bars, ingots etc.

It was further mentioned that the section should be interpreted in the context of the Act as a whole and the purpose of the VAT Act is to raise revenue for the fiscus.

SARS raised the purpose of section 11(1)(f) in its arguments as follows:

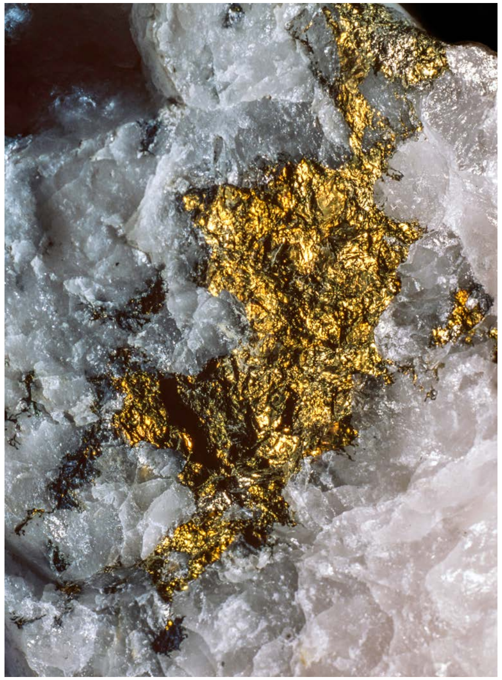
> "was promulgated ... with the specific intention to provide the mining industry with a favourable tax regime. This favourable tax regime was intended to promote and enhance the economic viability of gold mining in South Africa, to extend the lifespan of the mines, including marginal mines, within thecontext of this highly capital intensive industry. The mining industry plays a vital role in the South African Economy, being a major employer and a significant contributor to the Gross Domestic Product."

The taxpayer obviously disagreed and also submitted that the SARS position was unsupported.

With regard to this, the court effectively held that the policy considerations will be taken into account as part of the context within which the section must be interpreted. The court mentioned that the:

> "interpretive model heralded in by Natal Joint Municipal Pension Fund have cast the net much wider and more purposive than a mere attempt at deducing the 'intention of the legislature' as prescribed in earlier cases."

In other words, a purposive interpretation must be followed and the other aspects, like the legislature's intention, should be considered only as part of the context within which a section or law is interpreted.



The court further also made use of the ordinary meaning of certain words to determine the correct interpretation of the section. Specifically, the court considered what the pronoun "which" that introduces the third requirement for the zero-rating means by referring to its dictionary meaning. The court stated that the:

> "antecedent is the gold to be sold and that the words following 'which' therefore not only refers to that gold but qualifies or restricts its refining, manufacturing or production processes."

Ultimately, the court found in favour of SARS and that the interpretation of section 11(1)(f) by the applicant is incorrect. In other words, as the gold had in fact undergone a previous refining or manufacturing process, it is therefore excluded from the zero-rating envisaged in section 11(1)(f).

The impact and takeaway

In principle, we agree with the outcome reached by the Court. This case focuses on the manner of interpreting a section of the VAT Act to determine the correct application thereof.

The key takeaway from this judgment is the importance of applying proper rules of interpretation when determining the meaning of a section contained in the VAT Act and the extent to which it applies.

This judgment therefore raises a very important principle in highlighting that all the words used in a section must be considered, however, within the context that it is written as well as the broader context of the VAT Act. It also brings forward the reality and importance thereof that an interpretation given to any section with reference to the words used, should not lead to an absurd result. In our view, this means that the interpretation given should be commercially sensible and align to the overall objective of the VAT Act.

In this judgment the court further illustrated that all the words used in a section must be given meaning and afforded their due weight; that is, the words are generally not used unnecessarily and cannot merely be disposed of as you wish.

The last argument raised by the applicant was that SARS had allowed second-hand and impure gold to be re-refined and re-manufactured and supplied at the zero rate to the qualifying recipients before. The taxpayer relied on the below in support of this argument:

> "There is authority that in any marginal question of statutory interpretation, evidence that it has been interpreted in a consistent way for a substantial period of time by those responsible for the administration of the legislation is admissible and may be relevant to the balance in favour of that interpretation." [Commissioner, South African Revenue Services v Bosch and another 2015 (2) SA 174 (SCA)].

The court, however, dismissed this argument as the principle was overturned in a later Constitutional Court judgment where it was found that

> "custom in the interpretation of ambiguous legislation is a principle originating in the context of legislative supremacy where statutory interpretation was aimed at ascertaining the intention of the legislature. This principle ignores any explicit mention of a further fundamental contextual charge, that from a legislative supremacy to a constitutional democracy. Why should a unilateral practice on the part of the executive arm of Government play a role in the determination of the reasonable meaning to be given to a statutory provision?"

Taking the above into account, the court concluded that the fact that SARS previously possibly allowed the zero-rating, does not bind the court, or restrict the interpretative exercise undertaken in the current matter.

The question that was not considered and was not the subject of the debate is how to levy VAT on the supply of gold made by/through a refiner to a qualifying entity, where the gold comprises both refined and re-refined gold. In our view, the provisions of section 8(15) will apply and require a split between the various components to respectively levy VAT at the standard and zero-rate.

This judgment clearly casts doubt over all supplies of gold previously zero rated and requires an examination of these types of supplies. This creates a tax exposure as previously zero rated supplies will now be subject to 15% VAT.

Joandri Fourie
Manager
+27 (0) 82 660 6321

SARS Watch

SARS Watch 1 May 2022 – 31 May 2022

Legislation		
24 May 2022	Table 3 – Rates at Which Interest-free or Low Interest Loans are Subject to Income Tax	The interest rate will increase to 5,75% from 1 June 2022.
18 May 2022	Table 1 – Interest rates on outstanding taxes and interest rates payable on certain refunds of tax	The interest rate will increase to 7,75% from 1 July 2022.
18 May 2022	Table 2 – Interest rates payable on credit amounts	The interest rate will increase to 3,75% from 1 July 2022.
17 May 2022	Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI) Synthesised Texts	Cameroon and Thailand have been added to the list of treaty partners that ratified the MLI.
Customs and excise		
20 May 2022	Amendment to Part 2 of Schedule No. 5, by the insertion of refund item 522.02/22.00/01.04 and Note 7, to provide for a refund item for certain alcoholic beverages that have undergone post-manufacturing deterioration (Expired Stock)	Notice R.2093 published in Government Gazette No. 46380 with retrospective effect from 15 March 2019.
13 May 2022	Impositioning of provisional payment in relation to anti-dumping duties against the alleged dumping of spades and shovels of a maximum blade width of more than 150mm but not exceeding 200mm originating in or imported from the People's Republic of China and the alleged dumping of spades and shovels of a maximum blade width of more than 200mm but not exceeding 320mm, picks, other rates (excluding those with not more than 8 prongs) and other forks, with a prong length exceeding 150mm originating in or imported from the Republic of India – ITAC Report 691	Notice R.2081 published in Government Gazette No. 46358 imposed up to and including 12 November 2022.
13 May 2022	Draft amendment to rule 59A.01A – Submission of applications for registration and updating of registration details	Comments must be submitted to SARS by Friday, 27 May 2022.
13 May 2022	Draft amendment to SAD 500 – Customs declaration form	Comments must be submitted to SARS by Friday, 27 May 2022.
12 May 2022	Draft amendment to Part 1 of Schedule No. 1 – Insertion of Additional Notes 5 and 6 to Chapter 87	Comments must be submitted to SARS by Sunday, 12 June 2022.
11 May 2022	Draft Amendment to the Rules under section 120 – Kosi Bay	Comments must be submitted to SARS by Wednesday, 25 May 2022.
Case law		
In accordance to date of judgment		
19 May 2022	Lueven Metals (Pty) Ltd v CSARS (31356/2021) [2022] ZAGPPHC 325	Zero-rating of VAT on the supply of gold.
8 Apr 2022	SARSTC 24578 (ADM) [2022] ZATC JHB	Whether capital expenditures incurred were correctly deducted.
10 May 2022	Lutchman N.O. and Others v African Global Holdings (Pty) Ltd and Others; African Global Holdings (Pty) Ltd and Others v Lutchman N.O. and Others (1088/2020 and 1135/2020) [2022] ZASCA 66	Business rescue appeal.
25 Feb 2022	IT 45842 (ADM) [2022] ZATC Cape Town	Delays by SARS in engaging with the dispute resolution process set out in the TAA, resulting in the late submission of its rule 31 statement of grounds of assessment and opposing appeal, was grounds for a final bar to SARS pursuing the dispute.
9 Feb 2022	IT 14213 (ADM) [2022] ZATC Johannesburg	Whether the interest sought to be deducted by the appellant was incurred whilst carrying on a trade and incurred in the production of income.

6 May 2022	Sasima Investment Holdings (Pty) Ltd v CSARS (59288/2021) [2022] ZAGPPHC	Applicant seeking interim relief that a truck registered in and on its way to Botswana be released from SARS's custody pending review of decision to detain it.
3 May 2022	Sookoo and Others v CSARS and Another (49048/21) [2022] ZAGPPHC 285	Whether application is urgent with disputes relating to a complex investigation in circumstances where the audit investigation into an elaborate scheme of tax evasion is not yet complete.
12 Apr 2022	Structured Mezzanine Investments (Pty) Ltd and Another v CSARS (1824/2021) [2022] ZAECGHC	The court dismissed the application that the matter be heard in camera and that the court file be sealed to the public.
10 May 2022	SARSTC VAT 1826 (ADM) [2022] ZATC JHB	Whether the respondent has shown good cause for its default to timeously file the statement and whether the court should condone the late filing of the respondent's statement in terms of Tax Court Rule 31.
Interpretation Notes		
17 May 2022	IN 120 – Prohibition of Deductions in respect of Certain Intellectual Property	This Note provides guidance on the interpretation and application of section 23I which relates to the prohibition of deductions in respect of tainted intellectual property.
12 May 2022	IN 119 – Deductions in Respect of Improvements to Land or Buildings not Owned by a Taxpayer	This Note provides guidance on the interpretation and application of the section 12N, which facilitates allowances under specified sections of the Act *for improvements made to land or buildings not owned by a taxpayer but over which the taxpayer holds a right of use or occupation.*
12 May 2022	IN 102 (Issue 2) – Classification of Risk Policy	This Note provides guidance on the interpretation and application of the definition of "risk policy" in section 29A(1).
12 May 2022	IN 59 (Issue 2) – 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.*
12 May 2022	IN 58 (Issue 3) – The Brummeria Case and the Right to Use Loan Capital Interest Free	This Note outlines the treatment of receipts or accruals in a form other than money for purposes of the definition of "gross income" in section 1(1) as a result of the SCA judgment in the Brummeria case.
Rulings		
24 May 2022	BPR 374 – Determination of Group of Companies	This ruling determines the manner in which the definition of a 'group of companies' should be applied.
24 May 2022	BPR 373 – STT Treatment of the Proposed Transfer of Listed Shares to the Applicant in order to Hedge its Exposure under Over-the-Counter Derivative Transactions	This ruling determines whether the transfer of the beneficial interest in listed shares, to the applicant to hedge its exposures under intra-group over-the-counter derivative transactions entered into directly with the foreign broker, will be exempt from securities transfer tax ("STT").
24 May 2022	BCR 079 – Cancellation of Share Exchange	This ruling determines the tax consequences for former investors in one investment, who exchanged their participating shares for participating shares in another, who now wish to cancel the original share exchange and to be restored to the position they would have been in, had the share exchange not happened.
12 May 2022	BGR30 (Issue 2) – Allocation of Direct and Indirect Expenses within and between an Insurer's Funds	This ruling determines the allocation of direct and indirect operating expenses within and between the funds that are required to be established by insurers under section 29A and the subsequent deductibility of such operating expenses, and the deductibility of expenses against transfers under section 29A(7).
12 May 2022	BGR 8 (Issue 3) – Application of the Principles Enunciated by the Brummeria Case	This ruling prescribes in which year of assessment the right to use an interest-free loan should be included in the taxpayer's gross income as well as the method to calculate the value of such right.
10 May 2022	BPR 372 – Withholding tax on foreign royalties	This ruling considers whether lease payments for the use of equipment will *constitute royalties in terms of a tax treaty between South Africa and another country, and whether the withholding taxes to be levied will meet the requirements of section 6quat(1A).*
9 May 2022	BPR 371 – Public benefit activities carried on for the benefit of the general public	This ruling determines whether activities carried on by a public benefit organisation will comply with the requirements of the definition of a "public benefit organisation".

Guides and forms		
12 May 2022	Comprehensive Guide to Dividends Tax (Issue 5)	The purpose of this guide is to assist users in gaining a more in-depth understanding of dividends tax.
Other Publications		
31 May 2022	Tax Alert: 2022 Tax Filing Season	This alert discusses the notice to appear in the Government Gazette on 3 June 2022, to notify taxpayers to submit income tax returns for the 2022 year of assessment, as well as the periods within which the returns must be furnished.
27 May 2022	Tax challenges of digitalisation: OECD invites public input on tax certainty aspects of Amount A under Pillar One	Comments must be submitted to the OECD by Monday, 10 June 2022.
25 May 2022	Tax challenges arising from digitalisation: Public comments received on the regulated financial services exclusion under Amount A of Pillar One	The OECD published the public comments received on the Regulated Financial Services Exclusion under Amount A of Pillar One to assist members in further refining and finalising the relevant rules.
24 May 2022	Labour taxation rebounding as global economy recovers from COVID-19 pandemic	The report points to an increase in the tax wedge in a majority of OECD countries during 2021, as many countries withdrew or scaled back measures introduced to support households during the pandemic.
6 May 2022	Tax challenges of digitalisation: OECD invites public input on the regulated financial services exclusion under Amount A of Pillar One	Comments must be submitted to the OECD by Friday 20 May 2022.