Synopsis

Tax today

May 2026

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: **Adelheid Reyneke**
Khanyisa Ngobeni

Casting the GAAR net too wide? The Constitutional Court's unprecedented expansion of tax avoidance liability in the *Absa Bank* judgment

Introduction

The General Anti-Avoidance Rule ('GAAR') in South African tax law entered a new era on 22 April 2026, when the Constitutional Court handed down its judgment in *Absa Bank Limited and Another v Commissioner for the South African Revenue Service* ('Absa case').[1] This is the first occasion on which the Constitutional Court – and, indeed, any court – has been called upon to interpret the substantive provisions of the 'new' GAAR as enacted by the 2006 amendments to sections 80A to 80L of the Income Tax Act 58 of 1962 as amended ('the Act'). The 2006 amendments repealed the former section 103(1) and introduced a substantially revised anti-avoidance framework, prompted by SARS's view that the existing provisions were not an effective deterrent to counter aggressive and increasingly sophisticated avoidance schemes. The significance of the judgment cannot be overstated: it addresses fundamental questions about who may be considered a 'party' to an impermissible avoidance arrangement, whether a taxpayer must personally have obtained a 'tax benefit' in order to be subjected to a GAAR assessment, and the proper approach to the 'sole or main purpose' requirement.

The judgment was delivered by Majiedt J (with Mlambo DCJ, Kollapen J, Mathopo J, Mhlantla J, Musi AJ, Savage AJ, Theron J, and Tshiqi J concurring), with Rogers J delivering a dissenting judgment. The appeal was dismissed with costs, including the costs of two counsel. The case concerns the lawfulness of additional tax assessments issued by SARS for the 2014 to 2018 financial years under the Act and the Tax Administration Act 28 of 2011 as amended ('TAA').

This article provides a comprehensive analysis of the judgment and its reasoning, its potentially far-reaching implications, and the open questions it raises for tax practitioners in South Africa.

1 [2026] ZACC 15.

Factual background

Between 2011 and 2015, Absa Bank Limited ('Absa') and its wholly owned subsidiary, United Towers (Pty) Limited ('United Towers'), entered into four preference share subscription agreements with PSIC Finance 3 (RF) (Pty) Limited ('PSIC3') to the value of approximately R1.9 billion. Absa received tax-exempt dividends on these preference shares. The Macquarie Group ('Macquarie') introduced these transactions to Absa, which concluded related agreements with entities within the Macquarie group.

The investments were secured through back-to-back preference share arrangements with PSIC Finance 4 (RF) (Pty) Limited ('PSIC4'), although, according to Absa, it believed those arrangements to be with Macquarie Securities South Africa Limited ('MSSA'). The agreements included a right on Absa's part to put the preference shares to Macquarie in certain circumstances, and an obligation by Macquarie (through Macquarie Group Limited ('MGL')) to make up any shortfall in Absa's anticipated returns, including any shortfall arising if the dividends were taxed contrary to expectation (the 'gross-up guarantee').

Absa and United Towers claimed that, unbeknown to them, the funds flowed beyond PSIC3 into PSIC4 and the Delta 1 Finance Trust ('D1 Trust'), and ultimately back to MSSA. The D1 Trust lent funds to MSSA through interest-bearing notes as part of a complex funding arrangement designed by Macquarie. The D1 Trust received interest payments from MSSA on these notes, which it then used to acquire Brazilian government bond interest through the purchase of US dollar-denominated Brazilian government bonds through buy-/sell-back transactions with a bank. This bond interest was distributed to PSIC4 as non-taxable income under the South Africa-Brazil double tax agreement[2] and section 25B of the Act, and was ultimately distributed as dividends up the chain to Absa.

In total, 13 entities participated in the scheme, which SARS characterised as a predetermined arrangement. The purpose, according to SARS, was to swap a taxable income stream paid by MSSA to the D1 Trust for a tax-free income stream paid by the D1 Trust to PSIC4 and PSIC3 and, ultimately, to Absa.

On 18 May 2018, SARS issued audit notifications to Absa and United Towers. Following the audit, SARS issued notices in terms of section 80J of the Act, relying on the GAAR provisions on the basis that the main purpose of the arrangements was to obtain a tax benefit. In October 2019, SARS assessed Absa and United Towers for additional taxation, re-characterising the tax-exempt dividend income received by Absa as taxable interest income

We summarise the legal proceedings below.

The High Court

Absa launched a review in the High Court together with a request for a direction under section 105 of the TAA, arguing that the assessments were flawed due to two legal errors: first, that Absa could not be said to have been a party to the arrangement, as it was unaware of the full structure; and, second, that Absa did not obtain a 'tax benefit' from the arrangement.

Absa argued that it could not be a party to an avoidance arrangement because it lacked knowledge of the broader scheme; that the matter raised pure questions of law justifying direct High Court intervention under section 105 of the TAA; and that the GAAR assessments were legally flawed because SARS accepted their factual position and no impermissible arrangement could exist on those facts.

SARS argued that the dispute involved factual issues, not purely legal ones; that the proper forum was the tax dispute process (objection and appeal), not judicial review; and that the GAAR could apply because the taxpayers participated in the arrangement and derived benefits.

The High Court ruled in favour of Absa,[3] setting aside both the refusal to withdraw the section 80J notices and the additional assessments. It found that the dispute was a pure question of law, that the taxpayers were not parties due to lack of knowledge, and that the assessments were invalid in law.

The Supreme Court of Appeal

SARS appealed the High Court decision. The core issue on appeal was whether the High Court had jurisdiction to review the assessments and the section 80J process.

Absa argued that the High Court correctly exercised jurisdiction, because the dispute turned on questions of law only; that they were not parties to an avoidance arrangement due to lack of knowledge; and that the assessments were legally defective.

2 Under article 11(4)(b).

3 *Absa Bank Limited v Commissioner for the South African Revenue Service* 2021 (3) SA 513 (GP).

SARS argued that the High Court lacked jurisdiction, because tax disputes must follow TAA dispute-resolution procedures; and that the issues were factual (not purely legal): whether there was a tax benefit, whether Absa participated, and what the purpose of the arrangement was.

The Supreme Court of Appeal upheld SARS's appeal.[4] On the section 80J notice review, the Court held that the notices were not independently reviewable and had become academic once assessments were issued. On the assessment review, the Court found that the dispute involved material factual disputes (purpose, participation, tax benefit) and was, therefore, not purely legal; the High Court had no jurisdiction, and the taxpayers had to use the Tax Court process. The Supreme Court of Appeal confined its judgment to jurisdictional questions. On the tax benefit question, it held that whether Absa obtained a tax benefit was a question of fact. On the party question, it ruled that whether Absa was a party involved disputed facts rather than law.

The Constitutional Court:

Procedural history

Before turning to the substantive analysis, it is important to note the unusual procedural history of this case. In an earlier set of proceedings (the 'Five Tax Cases'[5]), the Constitutional Court granted leave to appeal, excused pre-emption, and confirmed the High Court's jurisdiction under section 105, finding that the Supreme Court of Appeal had erred in characterising the issues as factual. Having confirmed jurisdiction, the Constitutional Court was then called upon to determine the substantive merits of the review.

The peculiarity is this: the Constitutional Court was, in effect, dealing with questions of fact and merits as a court of first instance. The High Court had dealt primarily with procedural and jurisdictional questions, and the Supreme Court of Appeal had confined itself to the jurisdictional issue. No court below had properly ventilated the facts on the merits. The Constitutional Court itself acknowledged that it was deciding the matter through a procedure 'akin to an exception' – that is, on the basis that SARS's averments as presented must be accepted as correct. The matter was argued on the papers, without oral evidence or witnesses.

This is a noteworthy and peculiar feature of the case, and questions arise around the extent to which this peculiarity fed into the findings of the majority judgment of the Constitutional Court. The highest court in the land was, in effect, determining complex factual and legal questions arising from a multi-billion rand structured finance arrangement without the benefit of a fully ventilated factual record. The Court acknowledged this constraint, noting that 'what we have here thus far is only an assessment by SARS' and that 'SARS may still, in its rule 31 statement of case, make averments controverting those presently advanced by the applicants, should further relevant facts become available'. The significance of this procedural context should not be underestimated when assessing the precedential weight of the Court's findings on the merits.

Arguments before the Court

The applicants' arguments

The applicants emphasised that the Constitutional Court had already held, in the Five Tax Cases, that the Supreme Court of Appeal misdirected itself in holding that the two alleged errors involved disputed facts. They argued that SARS could no longer make submissions that the review involved factual disputes, as that point was *res judicata.* The validity of the impugned assessments was to be judged by reference to the factual matrix on which they were expressly based, as conceived by SARS and set out in the letter of assessment.

On the party issue, the applicants contended that SARS wrongly concluded that they were parties to the arrangement as defined in section 80L of the Act, despite no evidence that Absa was aware of the full arrangement, particularly the steps involving PSIC4, the D1 Trust, and the Brazilian bonds. As a matter of law, it was not possible for them to be a 'party' to an alleged impermissible

4 *Commissioner for the South African Revenue Service v Absa Bank Limited* [2023] ZASCA 125; 2024 (1) SA 361 (SCA); 86 SATC 195.

5 *United Manganese of Kalahari (Pty) Ltd v Commissioner of the South African Revenue Service and four other cases* [2025] ZACC 2; 2025 (5) BCLR 530 (CC).

avoidance arrangement when they had no knowledge of the parts of the arrangement by which the tax benefit was achieved. The assessment letter acknowledges that Absa's internal documents make no reference at all to PSIC4 or the D1 Trust or to any of the transactions undertaken by them, and appear to show that Absa understood the transactions as back-to-back preference share investments into MSSA (via PSIC3) to fund MSSA's broker operations.

On the tax benefit issue, the applicants submitted that the alleged 'tax benefit' identified by SARS occurred at the level of the D1 Trust and PSIC4. What they had received was a mere financial or economic benefit, unlike other entities which may have received a tax benefit. Relying on *King*,[6] *Hicklin*[7] and *Sasol Oil*,[8] the applicants argued that a 'tax benefit' must be interpreted as the avoidance of the assessed **taxpayer's own anticipated liability**, applying a 'but-for' test to determine if the arrangement allowed the taxpayer to escape tax it would otherwise have incurred. There was no averment in the letter of assessment to sustain an argument that, if Absa had not made the preference share investment, it would have made an interest-bearing loan to MSSA.

SARS's arguments

In relation to the impermissible avoidance arrangement, SARS's case was that a total of 13 entities participated in the scheme and that it was a predetermined arrangement. According to SARS, the purpose of the scheme was to swap a taxable income stream paid by MSSA to the D1 Trust for a tax-free income stream paid by the D1 Trust to PSIC4 and PSIC3 and, ultimately, to Absa. SARS submitted that, but for this swap, PSIC4 would have had to pay tax on the interest it received from the D1 Trust. As a result of the swap, the interest received from the D1 Trust was tax-free, enhancing the dividend stream from PSIC4 to PSIC3 and then to Absa.

SARS invoked section 80G of the Act, submitting that the scheme was presumed to have been entered into for the sole or main purpose of obtaining a tax benefit. SARS contended that Absa was a party to the arrangement as envisaged in section 80L, in that it 'took part' and 'participated' in the scheme through investing and deriving enhanced income. SARS further argued that, but for the artificial structuring of the transactions, Absa's investment returns would have been taxable interest. Instead, through the arrangements, Absa received inflated tax-exempt dividends. SARS contended that Absa's counterfactual test was misconceived: the proper comparison is not with 'no transaction' but with the transaction stripped of its avoidance features.

The majority judgment

Whether ABSA was a 'party' to an 'arrangement'

The majority, per Majiedt J, adopted a broad, purposive construction of the term 'party' under section 80L. Section 80L defines 'party' as any person who 'participates or takes part in an arrangement'. The majority held that there are two ways of interpreting section 80L: a narrow reading, as advanced by Absa and endorsed by the minority, which equates 'participation' with volition and intention; and a broader construction resting on a purposive interpretation. The majority subscribed to the latter interpretation.

The majority reasoned that to limit 'party' to those with full knowledge 'would frustrate the purpose of the provisions and would recreate the very loopholes the GAAR was enacted to close'. On the broader approach, the enquiry is objective: 'whether the taxpayer's conduct forms part of the chain of transactions constituting the arrangement, not whether the taxpayer knew how each downstream step operated'. Majiedt J held that '[p]articipation does not require omniscience, but it does require a conscious step into the structure from which the avoidance benefit flows'.

The majority emphasised the statutory language – 'participates or takes part' – as strongly admitting of a purposive construction, and noted the deliberate duplication of synonyms to underscore the Legislature's focus on involvement, not mental state. The inclusion of the word 'indirectly' in the GAAR framework 'militates against the narrower reading, as it confirms an intention to capture derivative or facilitative participation'.
A further compelling reason advanced by the majority for a wide construction was the use of the word 'any' in the

6 *Commissioner for Inland Revenue v I H B King; Commissioner for Inland Revenue v A H King* 1947 (2) SA 196 (A).
7 *Hicklin v Secretary for Inland Revenue* 1980 (1) SA 481 (A).
8 *Sasol Oil Proprietary Limited v Commissioner for the South African Revenue Service* [2019] 1 All SA 106 (SCA).

phrase 'any party'. Citing *Kham v Electoral Commission*[9], the Court noted that 'any' is 'extremely broad' and is, 'upon the face of it, a word of wide and unqualified generality' which 'may be restricted by the subject-matter or the context, but prima facie it is unlimited'. On the facts, Absa's capital injection was pivotal: it provided the funding, participated in the returns, and received substantially all of the tax benefits generated. Without its capital investment, the downstream tax-avoidance transactions would not have been possible.

The majority cautioned against accepting the applicants' contentions, as doing so 'would create a dangerous precedent that allows investors to profit from tax avoidance simply by remaining ignorant, even wilfully so, of the schemes into which their funds are channelled'. The majority concluded: 'there can be little doubt that Absa was a party as envisaged in the provision'.

In addressing the minority's analogy of X giving Y a lift to a place without knowing that Y intends to murder someone there, the majority held that the analogy was 'inapt' because '[i]t imports criminal law culpability into a statutory anti-avoidance regime. Liability for murder turns on *mens rea*; GAAR participation does not'. The majority emphasised that '[t]he GAAR is not concerned with moral fault, but with structural causation' – the question is whether a taxpayer's acts form part of a composite scheme yielding a tax effect that Parliament disfavours.

The majority further criticised the minority's reliance on comparative jurisprudence from the pre-GAAR era, noting that the *Newton*[10] decision (1958) was decided during an era-specific UK doctrine before the existence of modern GAARs, and that treating Newton as definitional of 'arrangement' under a post-2006 South African GAAR was 'anachronistic'. Modern Canadian and Australian authorities that reject knowledge-based participation, the majority held, were more suited to the present system.

Whether ABSA derived a 'tax benefit'

The majority held that section 80B(1) empowers SARS to determine the tax consequences for 'any party'. The deliberate breadth of this phrase 'evidences legislative intent for a wide remedial reach'. Had Parliament intended to restrict liability to the party 'obtaining a tax benefit', the majority reasoned, it would have repeated the phrase from section 80G. Even if Absa did not receive a tax benefit, it would have been covered by this wide remedial reach. But, the majority held, Absa **did in fact** receive a tax benefit.

The majority applied a 'stripped of its avoidance features' test. In this assessment, a transaction must be viewed as if the artificial elements serving no genuine commercial purpose were removed. On this view, 'Absa's receipt of tax-exempt preference dividends was functionally equivalent to earning taxable interest (the dividend form merely masking what was, in substance, a loan yield)'. The majority held that '[t]his re-characterisation confirms that Absa derived a tax benefit within the meaning of section 80A, as the exemption flowed solely from structural manipulation rather than commercial reality'.

The majority further held that the correct 'but-for' test 'requires assessing whether, but for the tax avoidant features and dressing up of the transaction, a tax liability would have occurred. Enquiring whether a tax benefit occurred but for the transaction itself, as Absa has argued, is the incorrect test'. On this test, 'Absa plainly obtained a tax benefit'.

The majority addressed the minority's counterfactual (removing only the Brazilian interest swap), holding that this was inapt: 'the GAAR removes all avoidance-oriented features, not only the one step that SARS emphasised. Under the correct counterfactual, the structure reduces to what is economically a loan, and Absa's yield correspondingly takes the form of taxable interest.' The majority concluded that the existence of a gross-up guarantee 'does not sever the causal link between the downstream tax benefit and Absa's tax position', as the guarantee was 'part of the same composite arrangement that neutralised risk, fixed Absa's yield and ensured that Absa would receive a tax-exempt return regardless of the fiscal consequences elsewhere in the structure'.

In response to the minority's argument that the conduit entities (PSIC4 and the D1 Trust) should have been taxed instead, the majority held that it 'would be insensible to expect SARS to do so, because the conduits simply received the tax benefit in order to pass it on to its ultimate destination, Absa'. The majority further held that the minority's proposed alternative – taxing the empty shells and their connected group – risked 'leaving the upstream funder's outcome untouched even where the economic

9 [2015] ZACC 37; 2016 (2) BCLR 157 (CC); 2016 (2) SA 338 (CC) at para 39.

10 *Newton v Commission of Taxation of Commonwealth of Australia* [1958] 2 All ER 759 (PC) ('Newton').

return is tax-shaped'. A proper assessment of a scheme to test it against the GAAR provisions must, the majority held, 'avoid a scenario where an untenable outcome is produced in multi-layered schemes, with some of the actors downstream possibly being in a position to deny liability, leaving the GAAR with very little effect'.

The sole or main purpose requirement

The majority dealt with the sole or main purpose requirement under section 80G, finding that it entails an *objective* enquiry. The majority stated that section 80G requires the party obtaining a tax benefit to 'prove that, reasonably considered in the light of relevant facts and circumstances, obtaining a tax benefit was not the sole or main purpose of the avoidance arrangement'.
This wording, according to the majority, 'is indicative of an objective test, as the focus is not on the taxpayer's stated intent or purpose, but on the reasonable prevailing facts and circumstances. That is a fundamental change from section 103(1) which the courts by and large, particularly the Supreme Court of Appeal in *Conhage*,[11] interpreted to relate to the taxpayer's subjective purpose'.

There can consequently 'be no doubt that the present instance is the type of impermissible avoidance arrangement that falls under the GAAR provisions'.
The applicants did not appear to contest that what had happened downstream constituted an impermissible avoidance arrangement.

The majority noted the role of the presumption in section 80G: it addresses the evidentiary burden, not the scope of liability. The 'party obtaining a tax benefit' merely identifies who bears the onus of rebuttal.

Sections 80A, 80B and 80G, the majority held, must follow a coherent sequence: section 80A defines impermissible tax avoidance, section 80B describes the consequences of such avoidance, and section 80G governs proof.

One must guard against a reading that would fragment the statutory scheme and create internal inconsistency. Nothing in the text limits section 80B's remedial scope to the beneficiaries of the tax benefit. The majority criticised the minority's reading of section 80G(1) as conflating the allocation of a tax burden with the scope of liability, adding that section 80G creates a presumption about purpose, not about who can be assessed.

On the question of comparative international law, the majority drew support from the Canadian decision in *Copthorne Holdings Ltd v Canada*[12], in which the Supreme Court of Canada held that the Canadian GAAR must be applied to the series of transactions as a whole, and that even steps not individually abusive may constitute avoidance when viewed in broader sequence. That Court stressed that the test is objective: 'whether the taxpayer's participation formed part of a series that produced a tax benefit, not whether the taxpayer subjectively appreciated the mechanics of the scheme'. The majority also referred to Australian jurisprudence under Part IVA of the Income Tax Assessment Act 1936, noting the 2013 amendments enacted to counter the 'do nothing' defence and the recent decisions in *FCT v Guardian AIT Pty Ltd*[13] *and Minerva Financial Group Pty Ltd*[14] as illustrations that Part IVA 'imposes liability wherever participation forms part of a scheme that, viewed objectively, yields an avoidance result'. The majority held that this comparative analysis undermined the minority's assertion that the approach adopted in the judgment was 'unprecedented internationally'.

The minority judgment

Rogers J delivered a dissenting judgment, disagreeing with the majority on both the party issue and the tax benefit issue.

The 'party' issue: knowledge as a prerequisite

Rogers J held that 'it cannot sensibly be said that someone was a "party" to something, or participated in it, or took part in it, if the person did not know that the thing existed or was to be done'. He used the analogy: 'If X gives Y a lift to a place without knowing that Y intends to murder someone there, X is not a "party" to the murder – X cannot be said to have "participated" or "taken part" in the murder.'

Rogers J emphasised that to be a 'party' to an arrangement requires that the taxpayer should know about it and intend for it to take place. This does not mean that the taxpayer need have knowledge of the tax consequences which might render the arrangement 'impermissible', but the taxpayer must know of the

11 *Commissioner for Inland Revenue v Conhage (Pty) Ltd* (formerly Tycon (Pty) Ltd) [1999] ZASCA 64; 1999 (4) SA 1149 (SCA).

12 *Copthorne Holdings Ltd v Canada* 2011 SCC 63; [2011] 3 SCR 721.

13 *Commissioner of Taxation v Guardian AIT Pty Ltd*, ATF Australian Investment Trust [2023] FCAFC 3; (2023) 115 ATR 316 (Guardian).

14 *Minerva Financial Group Pty Ltd v Commissioner of Taxation* [2024] FCAFC 28; (2024) 302 FCR 52 ('Minerva').

steps comprising the arrangement. He noted that wilful blindness (a species of *dolus eventualis*) could in principle suffice, but the assessment letter did not allege wilful blindness or allege facts from which such an inference could be drawn.

On the facts, Absa was a party to step (a) – the subscription for shares in PSIC3 – and the related commercial protections, but did not know of steps (b) to (j) that occurred downstream. SARS assessed on the basis that Absa could be regarded as a party even though it did not know of them. In Rogers J's view, 'that is an error of law. The resultant injustice of the legal error is that SARS has sought to tax a party, Absa, in respect of impermissible transactions of which it had no knowledge.'

Rogers J drew support from comparative jurisprudence, including the *New Zealand BNZ* case[15] and the Privy Council decision in *Peterson*,[16] observing that the majority's holding – that a GAAR assessment may be issued against a person who was unaware of the impermissible tax avoidance and obtained an economic advantage but not a tax benefit – 'is unprecedented internationally'. Rogers J noted that, on his reading of the GAAR provisions in Australia, New Zealand, Canada, and the United Kingdom, the remedial powers in the case of tax avoidance are confined to cancelling the tax benefit in the hands of the person that obtained it.

15 *Commissioner of Inland Revenue v BNZ Investments Ltd* [2001] NZCA 184; [2002] 1 NZLR 450.

16 *Peterson v Commissioner of Inland Revenue* [2005] NZPC 1; [2005] UKPC 5; [2006] 3 NZLR 433.

The tax benefit issue: economic advantage vs tax benefit

Rogers J dealt with the tax benefit issue on the supposition that, contrary to his finding on the party issue, Absa was a party. He held that Absa did not obtain a tax benefit: 'Absa did not avoid any tax. It made a preference share investment. In terms of the ITA, the investment yielded exempt dividends.'

He applied a counterfactual approach: 'The plausible counterfactual is self-evident… simply [take] away the Brazilian swap. Everything else can stand without step (g).' In the absence of the Brazilian interest swap, the interest which the D1 Trust earned from MSSA would have been taxable in PSIC4's hands. The parties that avoided a liability for tax were the D1 Trust and PSIC4.Critically, Rogers J drew a distinction between a tax benefit and an economic advantage:

> 'One may nevertheless assume that some portion of the tax benefit obtained by the D1 Trust and PSIC4 resulted in an economic benefit to PSIC3 and thus to Absa. However, one should not confuse tax benefits and economic advantages. It often happens that others benefit economically from a taxpayer's avoidance of tax, and that is so whether the avoidance is permissible or impermissible. A listed company with many shareholders may be able to declare higher dividends because it has arranged its affairs in a tax-efficient way. A tax-efficient employer may be able to pay its staff higher salaries. The GAAR is concerned with tax benefits, not economic advantages.'

Rogers J further noted that 'Absa's position was, quite simply, unrelated to the tax treatment of other elements of the arrangement. Contrary to what the first judgment states, removing the Brazilian swap does not convert Absa's return on its preference shares from exempt dividends to taxable interest'. He emphasised the gross-up guarantee from MGL: Absa's economic benefit from the arrangement did not depend on the D1 Trust and PSIC4 getting a tax benefit.

On the question of whether section 80B permitted SARS to tax a party that did not obtain the tax benefit, Rogers J held that the purpose of the remedial power is to target the tax benefit by ensuring that the party which obtained it cannot keep it. He accepted that an arrangement may yield tax benefits to multiple parties but held that what the Commissioner 'may not permissibly do' is 'allow the tax benefit to stand in the hands of the party that got it and instead tax another party which did not'. This conclusion was, in his view, 'clinched by the formulation of section 80G(1)', which refers to 'the party obtaining a tax benefit'

– necessarily conveying that the party SARS is entitled to tax is the party that received the tax benefit.

Rogers J concluded that his approach did not impair SARS's legitimate powers: SARS was able to tax the D1 Trust and PSIC4, the parties that obtained the tax benefit. Moreover, in terms of section 80B(1)(*c*), the Commissioner's remedial powers include the power to deem persons who are 'connected persons' in relation to each other 'to be one, and the same person'. Rogers J held that in this way, SARS could in all likelihood have reached other entities of substance within the Macquarie group, such as MSSA and MGL. Given the definition of 'arrangement' in section 80L, Rogers J noted, nothing stopped SARS from identifying steps (b) to (j) – or a subset thereof – as the relevant 'arrangement' for purposes of the GAAR, thereby imposing liability on the Macquarie entities.

Key takeaways, critical commentary, and open questions

The Court's approach to statutory interpretation: departure from *Endumeni*?

The settled approach to statutory interpretation in South African law was comprehensively restated by the Supreme Court of Appeal in *Natal Joint Municipal Pension Fund v Endumeni Municipality*.[17] In that judgment, Wallis JA held that:

> '[t]he inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document. Interpretation is 'the process of attributing meaning to the words used in a document… having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.'

The process is objective, and consideration must be given to the language used in the light of the ordinary rules of grammar and syntax, the context in which the provision appears, the apparent purpose to which it is directed, and the material known to those responsible for its production.

This approach to interpretation was succinctly articulated by the Constitutional Court in *University of Johannesburg v Auckland Park Theological Seminary and Another,* as follows:

> 'This approach to interpretation requires that "from the outset one considers the context and the language together, with neither predominating over the other". In Chisuse, although speaking in the context of statutory interpretation, this Court held that this "now settled" approach to interpretation, is a "unitary" exercise. This means that interpretation is to be approached holistically: simultaneously considering the text, context and purpose.'

17 *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).

The Constitutional Court in *Auckland Park* further emphasised that the approach in *Endumeni* 'updated' the previous position, which was that context could only be resorted to if there was ambiguity or lack of clarity in the text. After *Endumeni*, context and purpose must be taken into account as a matter of course. However, the critical point is that this unitary approach requires that the text, context, and purpose be considered **together** – it does not permit an interpreter to bypass the language and proceed directly to purposive considerations.

A question arises as to whether the majority judgment in the *Absa* case followed this approach. Whilst the *Endumeni* framework as clarified in *Auckland Park* requires an interpreter to consider text, context, and purpose together in a unitary exercise – with neither predominating over the other – the majority judgment's analysis of 'party' under section 80L appears to proceed swiftly to purposive considerations, the mischief targeted by the GAAR, and the stated legislative objectives in the SARS Discussion Papers and Revised Proposals. Critically, it is not clear that the majority gave adequate regard to the actual language of the provision itself before moving to a purposive construction. On a proper application of the unitary approach, the ordinary meaning of the words 'participates or takes part' should arguably have been considered alongside – not after, and not to the exclusion of – the contextual and purposive considerations.

The minority judgment, by contrast, proceeds from what it regards as the axiomatic linguistic meaning of 'participates' and 'takes part' – that one cannot participate in something of which one is unaware – and regards this as 'an axiomatic proposition as hardly to call for substantiating analysis'. While the majority dismisses this as 'overly literal', the open question remains: did the majority's highly purposive approach comply with the unitary methodology as articulated by the Constitutional Court in *Auckland Park*? On one view, the majority proceeded directly to context and purpose without first properly engaging with the statutory text as part of a holistic, simultaneous enquiry. This is a question that future courts and commentators may need to grapple with.

Did Absa truly derive a 'tax benefit'? The majority vs minority approaches

The question of whether Absa derived a 'tax benefit' in the statutory sense is perhaps the most contentious aspect of the judgment. The majority concluded that, stripped of its avoidance features, Absa's receipt of tax-exempt preference dividends was 'functionally equivalent to earning taxable interest'. The minority, by contrast, held that Absa did not obtain a tax benefit and drew a distinction between a 'tax benefit' and an 'economic advantage'.

It is submitted that the minority's approach is arguably the more pragmatic and commercially realistic one. Even assuming that Absa was a party to the arrangement, the following criticisms of the majority's reasoning on the tax benefit point warrant careful consideration:

1. The majority's reasoning appears to proceed on the basis that, in the absence of the interest rate swap entered into by the Macquarie entities, Absa would either have received a taxable interest income stream, or would have received a lower quantum of preference dividend. This reasoning, with respect, fails in our view to take proper account of the nature and commercial reality of a preference share investment. It is commonplace in the South African market for banks and other institutional investors to invest in preference share vehicles at a standard agreed coupon return. The preference dividend received by Absa was always going to be a preference dividend – not an interest stream – regardless of the internal mechanics of the Macquarie entities' tax structuring. The form of Absa's investment (preference shares) and the form of its return (dividends) were established at the point of investment and were not contingent on the downstream arrangements of which Absa (on the accepted facts) had no knowledge.

2. Given the guarantee provided by MGL to Absa, it is not borne out by the facts of the case that Absa would have received a different amount by way of preference dividends in the absence of the interest rate swap or the tax benefit obtained by the Macquarie entities. The gross-up guarantee contractually entitled Absa to the full dividend amount, regardless of the tax treatment of entities downstream. Absa may well have been guaranteed the same preference share dividend return, irrespective of the Brazilian swap. The facts as presented do not, in our view, support the inference that the quantum of Absa's return was directly dependent on the tax benefit in Macquarie's hands; on the contrary, the guarantee insulated Absa from precisely this risk.

3. It is, in our view, incorrect to say that Absa would have received a taxable interest income stream. Absa invested in a preference share and was always going to receive a preference share dividend. The characterisation of Absa's return as a disguised interest stream is not supported by the facts. The majority's reasoning on this point appears to conflate the economic substance of the downstream arrangements (which may indeed have been interest-like) with the legal and commercial substance of Absa's own investment (which was a preference share subscription yielding dividends). The distinction between a 'tax benefit' and an 'economic advantage', as articulated by Rogers J, is the more compelling analysis on the accepted facts, in our view.

The broadening of the GAAR and the erosion of the choice principle

The overarching concern is that this judgment significantly broadens the scope of the GAAR as it was previously understood under South African case law. The long-established choice principle, affirmed in cases such as *Commissioner of Inland Revenue v Duke of Westminster*,[18] *Hicklin v Secretary for Inland Revenue*,[19] and *Commissioner for Inland Revenue v Conhage*,[20] holds that a taxpayer is entitled to arrange his affairs in a tax-efficient manner, and that there is nothing illegal in minimising one's tax obligations, provided one does so within the parameters permitted by law.

The *Absa* judgment arguably makes substantial inroads into this principle. The majority's holding – that a taxpayer may be assessed under the GAAR even where it was unaware of the impermissible avoidance features and did not personally obtain a tax benefit in the strict statutory sense – represents a significant expansion of the GAAR's reach. As the minority observed, this appears to be 'unprecedented internationally'. The majority acknowledged the 'cognisable risk of overreach by attaching liability to any participant in a transaction later characterised as impermissible, even where the taxpayer's involvement was commercially ordinary', but stated that this would be dealt with 'on a case-by-case basis'.

The judgment is highly purposive and far-reaching. It raises serious questions for tax practitioners and their clients: what does this mean for everyday

18 (1936) AC 1 at 8.
19 1980 (1) SA 481 (A).
20 [1999] ZASCA 64; 1999 (4) SA 1149 (SCA).

commercial investments in preference shares and similar arrangements? Is any investor who participates in a structured finance arrangement – without knowledge of the downstream mechanics – potentially exposed to a GAAR assessment if those mechanics are subsequently characterised as impermissible?

There is also a rule of law dimension to consider. SARS itself recognised in its Discussion Paper preceding the enactment of the new GAAR that there exists an 'uneasy tension' between a GAAR and the basic notion of the rule of law. A GAAR permits the tax revenue collector to depart from the legal consequences enacted by Parliament and tax legislation, raising fundamental questions regarding certainty and predictability. The majority's broad, purposive construction – particularly their willingness to assess a taxpayer who was unaware of the impermissible avoidance features – arguably heightens this tension. If taxpayers cannot reliably determine whether their commercially ordinary investments may expose them to GAAR assessments based on downstream arrangements of which they have no knowledge, the principle of legal certainty in the tax system is, in our view, undermined.

It is important to note, as it acknowledged itself, that the Court was constrained to the papers, and not all the facts were known or ventilated. The Constitutional Court proceeded on SARS's version of events, and this does not mean that every preference share investment will fall foul of the GAAR, as each case will need to be assessed on its own facts. But the principles laid down in this judgment, if applied broadly, have the potential to introduce significant uncertainty into the South African commercial market.

What is beyond doubt is that the *Absa* case marks a watershed moment in South African tax law, and its full implications remain to be seen. Importantly, this judgment is not the 'end of the road' for Absa in this matter, as the matter may need to be referred to the Tax Court for assessment of the remaining elements of the GAAR.

Conclusion

The judgment in the *Absa* case is a landmark for South African tax jurisprudence. It establishes that participation in an impermissible avoidance arrangement does not require knowledge of all its constituent steps; that a tax benefit may be attributed to a party even where strict avoidance occurred downstream; and that the purpose test under section 80G is an objective enquiry. The minority judgment articulates a compelling alternative approach, however; one that is arguably more faithful to the statutory text, more commercially realistic, and more consistent with the international comparative position.

For tax practitioners, the message is clear: the GAAR's net has been cast wider than many had anticipated. Careful consideration must now be given to the implications of participating in any commercial arrangement, even where the taxpayer's own conduct is commercially ordinary. The erosion of certainty and the choice principle is a matter of genuine concern, and the tension between the majority and minority approaches will likely shape GAAR jurisprudence for years to come. Taxpayers are advised to consult their advisers accordingly.

Contacts:

Stephen Boakye
Director
+27 (0) 79 949 4590

Tali Ben-David
Senior Manager
+27 (0) 72 760 3525

Tax governance and transparency in the King V era: key insights for South African listed companies

The tax profession is entering a new era. Where the role was once defined by technical expertise and interpretation of law, it now demands strategic advice, meaningful stakeholder dialogue, and sound judgment. Ethics in tax have shifted from avoiding the downside to showcasing how a company's tax strategy mirrors its values, supports its communities, and earns enduring social legitimacy. Today, professional responsibility means treating tax as a signal of integrity and purpose.

South Africa is poised to lead this transformation, with a rich governance history and a value system that acknowledges relationships and interconnectedness. The King V Report on Corporate Governance for South Africa, 2025 ('King V'), released by the Institute of Directors South Africa ('IoDSA') on 31 October 2025, supersedes previous versions and applies to financial years starting on or after 1 January 2026, with early adoption encouraged. King V advocates a shift from aspirational vision to practical accountability, calling for a stakeholder-inclusive, systems-value mindset: long-term success hinges on the health of the socio-ecological systems which the organisation depends on, and success is measured by shared value and meaningful stakeholder outcomes.

Tax governance: a direct implication

Tax isn't just a cash outflow; it's a signal of an organisation's commitment to its economic, social, and environmental ecosystems. A company's tax strategy is a visible indicator of corporate integrity and an increasingly important driver of stakeholder trust.

Tax transparency: a strategic imperative

A decade of tax transparency research in South Africa has shown that companies that clearly communicate their tax story demonstrate :

	good governance, and
	a commitment to sustainable development.

They recognise that tax transparency is inextricably linked to ethical business practices and stakeholder trust. Sustainability is a powerful driver of transformation, resilience, and growth. Leaders who embrace this shift aren't just future-proofing their business; they are unlocking value.

This evolving sustainability landscape is prompting companies to focus on what is material and measurable. Tax transparency is a critical part of this shift. When integrated into broader strategy, it can help businesses anticipate fiscal change, manage risk, and support long-term resilience.

To be effective, tax strategy should be linked to core business priorities such as innovation, operational efficiency, and talent development. Not every sustainable tax initiative will deliver an immediate bottom-line return, and not every stakeholder will be persuaded by an approach that prioritises long-term resilience over short-term profit. But ignoring the strategic role of tax carries its own risks.

Double materiality assessments should consider both external impacts, such as contributions to public services, and internal implications for business models. To succeed, organisations must be transparent when silence is easier, remain committed to a principled tax strategy when consensus on its value wavers, and act even when the global political tide turns against sustainable policy.

The role of local governance guidance

South African companies that effectively provide tax transparency have demonstrated a strong reliance on local guidance, particularly the King IV Report on Corporate Governance for South Africa (now replaced by King V) and the JSE Sustainability Disclosure Guidelines. While locally grounded, this guidance complements global frameworks such as the Global Reporting Initiative ('GRI'), helping companies demonstrate robust governance to both local and international investors.

King V's focus on risk governance and integrity supports a stronger licence to operate, especially in a volatile environment. Local guidance is seen as practical and relevant, making it easier for South African companies to implement, assure, and integrate across annual reports, sustainability disclosures, and integrated reports — resulting in a more mature governance framework and greater investor confidence.

Globally, the shift from voluntary to mandatory tax disclosure is gaining momentum. Initiatives like Public Country-by-Country Reporting ('pCbCR') and the EU's Corporate Sustainability Reporting Directive ('CSRD') are now starting to take effect. While progress is being made, tax still tends to be underrepresented in sustainability reporting. That gap represents both a risk and an opportunity.

Investors increasingly recognise responsible tax practices as important when evaluating companies, signalling growing expectations for tax to be treated as a sustainability topic. Total tax contribution ('TTC') can serve as a foundation for meeting those expectations. Companies that embed tax early in sustainability reporting are better positioned to build credibility, trust, and resilience against regulatory gaps and investor scrutiny.

The four governance outcomes of King V: a compass for robust tax governance

King V marks a clear shift toward outcomes-based governance evaluation, focusing on real, measurable results and not lists of rules. Corporate governance should generate value within the organisation's economic, social, and environmental context, arising from four core outcomes.

Good governance is outcomes-based: it's judged by its consequences, not just by implementing recommended practices. The focus is on value, trust, and managing risk. What matters is evidence — case studies, data, and feedback — and not just policies on paper. Reporting should connect actions to outcomes, highlighting both the gaps and the fixes, embedding a culture and strategy that genuinely improves how the organisation operates and how it's perceived.

Outcome 1: Is your tax culture built on integrity — or just compliance?

Ethical culture is the foundation of effective tax governance. It shapes how organisations achieve performance and value creation, ensure conformance and prudent control, and earn legitimacy with stakeholders.

A strong ethical culture ensures tax decisions are made with integrity, aligning with what society considers fair. It's not just about following the law — it's about being transparent even when you don't have to be. Senior leaders and the board set clear expectations about tax risks, disclosures, and engagement with tax authorities.

When values are clear, teams make better decisions, especially when navigating grey areas. They know how to assess, document, and evaluate uncertain tax positions. A culture of honesty leads to clearer disclosures, more accurate reporting, and proactive communication with stakeholders. Trust is built through behaviour that is consistent, credible, and visible over time.

A clear and publicly disclosed tax strategy reinforces this trust by demonstrating how ethical principles are incorporated in the organisation's approach to tax. Board oversight of the tax strategy strengthens the tone from the top, while integrity-driven stakeholder engagement further enhances creditability. Leading companies are transparent on how they engage with stakeholders on tax matters, detailing the types of stakeholders involved and how their views are gathered, assessed, and reflected in decision-making. Anonymous reporting channels also play an important role by exposing hidden risks early, turning potential crises into trust-building moments.

A culture that embodies ethical values and disciplined practices in tax lays a foundation for strong governance and genuine transparency. When tax decisions are guided accordingly, the benefits are lasting: reduced tax risk, stronger compliance, and greater stakeholder trust. Without proper governance, however, blind spots emerge. Tax is seen as a pure cost, reputational risks increase, and the credibility of broader sustainability commitments is undermined.

Outcome 2: Is tax driving value — or just managing cost?

Performance and value creation focus on generating sustained value within the organisation's economic, social, and environmental context in a sustainable manner through its approach to tax and contributions. The central question is: are we using tax strategically to create value responsibly?

A performance-driven approach to tax balances efficiency with accountability, delivering outcomes that support both business growth and societal good while managing risk. Transparency shows how the tax strategy creates measurable impact. Working closely with strategy, risk, and sustainability teams — under board and risk-committee oversight — helps ensure that tax positions align with governance, environmental,

and social commitments. Adapting tax approaches to societal needs builds trust and strengthens legitimacy.

Companies must integrate tax discussions comprehensively within their ESG frameworks, reasserting tax's role in value creation. Those reporting in accordance with the GRI Standards must ensure they report adequately against GRI 207, as tax intersects with every dimension of value creation: cash flow, investment, innovation, people, stakeholder trust, and environmental impact. Mapping tax contributions across the six capitals makes the story more transparent, credible, and aligned with societal needs.

Tax policies should actively support sustainable investments, with companies capturing legitimate opportunities like green energy credits or training subsidies with rigorous documentation. Companies should build compliance into risk planning by anticipating environmental taxes or carbon pricing. Businesses need to invest with intent, putting real focus on tax credits and incentives to drive growth and resilience.

Businesses that pair efficiency with transparency don't just achieve outcomes for shareholders — they create sustainable value for everyone. This means embedding tax strategies and controls that reflect ESG goals: aligning incentives, ensuring airtight documentation and transfer pricing substance, and making the most of legitimate ESG tax breaks.

Outcome 3: Can you prove you're doing the right things right?

Conformance and prudent control sit at the heart of effective tax governance. The question this outcome asks is simple but demanding: are you doing the right things right by following all rules and proving it transparently?

It's about adhering to the spirit and intent of applicable tax laws and meeting global standards with precision. Transparency means showing exactly how compliance works in practice, with effective internal controls and clear accountability mechanisms that shape investor and regulator confidence.

Tax must also be elevated within sustainability frameworks and fully embedded in double materiality assessments. Carbon, waste, and pollution taxes influence strategy and capital allocation, accelerating investment in green technology. At the same time, tax runs deep through the social and governance pillars by funding public services, reflecting fiscal policy choices, and signalling corporate responsibility. Weak tax governance is increasingly seen as a red flag, but when done right, it builds public trust and strengthens a company's licence to operate.

Companies should clearly articulate how tax is embedded across the organisation through a formal tax governance framework that covers policies, key principles, risk management, reporting, and clearly defined roles and controls. A commitment to comply with both the spirit and the letter of the law is a distinguishing feature of leading practice. Businesses that lead with robust compliance frameworks build stability in uncertain times and turn tax governance into a strategic asset.

Outcome 4: Does your tax story earn the trust it claims?

Legitimacy in tax governance is earned through responsible corporate citizenship and meaningful stakeholder engagement. It's not enough to make public promises — organisations need to back them up with robust, credible data.

This means showing exactly where profits are made and taxes paid. No vague statements. Just clear, credible information that proves tax contributions match the values a company claims to stand for.

TTC and CbCR reporting are central to turning tax data into a trusted narrative. Having a consolidated TTC dataset builds readiness for emerging reporting requirements such as pCbCR and CSRD, even where full disclosure is planned for a later stage. Every business model creates a distinct tax footprint — from payroll taxes to irrecoverable VAT — and TTC helps contextualise those contributions beyond corporate income tax alone, turning raw data into a compelling story of positive societal contribution.

Companies that show firm governance over their tax data, backed by clear, transparent narrative, will be better positioned to navigate an evolving regulatory

landscape. pCbCR is not a box-ticking exercise; it is a public benchmark of corporate trust. By publishing clear, auditable tax breakdowns, businesses move beyond compliance into credibility, strengthening their social licence to operate.

The path forward: from vision to action

King V's four governance outcomes offer South African companies a clear plan to transform tax from a compliance task into a strategic asset. Organisations that successfully combine ethical culture, value creation, prudent control, and stakeholder legitimacy into their tax approach will lead the new governance landscape.

The change is already happening. Companies that act now by embedding tax transparency into their sustainability frameworks, aligning tax strategies with ESG commitments, and building strong governance structures will seize first-mover advantages while competitors rush to catch up.

Ready for implementation? Details matter

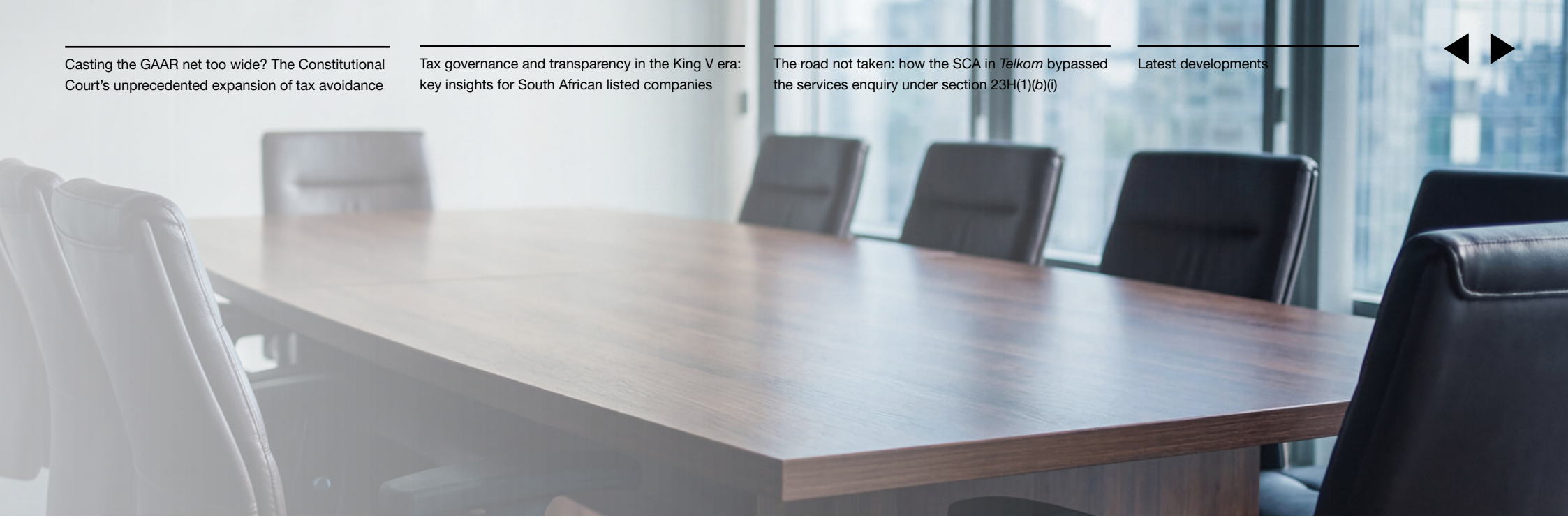
Understanding King V's principles is one thing; putting them into practice in the tax landscape is another. How should boards structure their oversight of tax strategy and risk? What metrics demonstrate genuine outcomes rather than just activity? Which stakeholder engagement approaches build lasting trust rather than mere compliance?

Our next article moves beyond theory to provide the practical guidance that boards and tax executives need right now to turn theory into a competitive edge.

Contacts:

Carla Perry
Associate Director
+27 (0) 78 735 9393

We gratefully acknowledge the contribution of Ine-Lize Terblanche to this article.



The road not taken: how the SCA in *Telkom* bypassed the services enquiry under section 23H(1)(*b*)(i), and whether it remains open six years on

Introduction

More than six years have passed since the Supreme Court of Appeal ('SCA') delivered its judgment in *Telkom SA SOC Limited v The Commissioner for the South African Revenue Service*[1], and the decision on the section 23H cash incentive bonus issue continues to influence the tax landscape. The ruling that Telkom's incentive bonuses, paid to an agent for the connection of new subscribers, had to be spread over the 24-month contract period was significant not only for its immediate consequences but also for the interpretive methodology followed by the SCA in delivering the judgment. In the intervening years, the decision has shaped how SARS approaches the deductibility of commission-type expenditure, and taxpayers across a range of industries have been compelled to reassess the timing of deductions in respect of similar agency or intermediary arrangements.

1 [2020] ZASCA 19 (25 March 2020).Telkom case

At the time of the judgment, this publication posed the question: "Did the SCA get this right?" The analysis in the May 2020 Synopsis concluded that the principles of interpretation adopted in the judgment were not faithfully applied to the section 23H issue, and that the SCA's decision relied on an incomplete version of section 23H which effectively obscured, rather than clarified, the legislative intention. Six years later, with the benefit of practical experience in applying the precedent, the concerns raised in the original analysis have only become more pronounced.

This article revisits the May 2020 analysis with the benefit of hindsight and a more practical understanding of the implications for taxpayers. In particular, it explores the SCA's failure to consider whether the cash incentive bonus was paid 'in respect of … services' under section 23H(1)(*b*)(i), and the judicial consequences of proceeding directly to 'any other benefit' under section 23H(1)(*b*)(ii).

Critically, it also examines whether the service element argument remains open for future litigation or whether the weight of binding judicial precedent has foreclosed this argument entirely.

The *Telkom* case

Telkom paid cash incentive bonuses totaling approximately R179 million to Velociti[2] for the connection of initial subscriber contracts in respect of special tariff plans with a 24-month subscription period. The Commissioner allowed only R42 million as a deduction in Telkom's 2012 year of assessment and disallowed approximately R137 million, on the basis that the expenditure had to be spread over the 24-month contract period in terms of section 23H(1)(*b*)(ii) of the Act[3].

Telkom's appeal was upheld by the Tax Court, where it was concluded that the benefit attached to the bonus incentive was the conclusion of the contract with the customer, and that because Velociti had rendered all the services it was obliged to perform in the year of assessment in question, there was no basis for SARS to defer the deduction.

The SCA, however, reversed the decision of the Tax Court by holding that the period to which the expenditure 'relates' must be the period during which the benefit is enjoyed, and that the true benefit to Telkom lay in the subscription fees received over the term of the contract and not the mere acceptance and connection of a new subscriber. In reaching this conclusion, the SCA accepted the Commissioner's submission that Telkom did not incur the incentive bonus expenditure solely to establish a new connection with a customer, but rather that the benefit lay in having a customer who pays subscription fees over the fixed term of the contract.

The grammatical structure of section 23H: a roadmap ignored?

Broadly speaking, and in the absence of the exceptions in the *proviso*, section 23H is an anti-avoidance provision designed to spread out the deduction of expenditure actually incurred in instances where that expenditure relates to goods or services to be supplied or benefits to be enjoyed beyond the year of assessment in which that expenditure is incurred.

Section 23H(1), to the extent that it is relevant to this reflection, provides that:

> 'Where any person has during any year of assessment actually incurred any expenditure …—
>
> a. which is allowable as a deduction in terms of the provisions of section 11(*a*) …; and
>
> b. in respect of—
>
> i. goods or services, all of which will not be supplied or rendered to such person, during such year of assessment; or
>
> ii. any other benefit, the period to which the expenditure relates extends beyond such year of assessment,
>
> the amount of the expenditure in respect of which a deduction shall be allowable in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of—
>
> i. …;
>
> ii. services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered or, where the period during which such services will be rendered is not determinable, such period during which the services are likely to be rendered; or
>
> iii. any other benefit to which the such expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will enjoy such benefit bears to the total number of months during which such person will enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed.'

In contrast, the portions of section 23H that were extracted and considered relevant by Swain JA in the delivery of his judgment in the *Telkom* case read as follows:

> 'Where any person has during any year of assessment actually incurred any expenditure (other than expenditure incurred in respect of the acquisition of any trading stock)–
>
> a. which is allowable as a deduction in terms of the provisions of section 11 (*a*). . .; and
>
> b. in respect of –
>
> ii. *any other benefit*, the period to which the expenditure relates extends beyond such year of assessment,

2 Velociti Proprietary Limited.

3 Income Tax Act 58, of 1962 as amended.

the amount of the expenditure which shall be allowable as a deduction in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of –

> iii. **any other benefit** to which such expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will enjoy such benefit bears to the total number of months during which such person will enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed:…'

A careful comparison of the full extract of section 23H(1) to the part which was considered relevant by the SCA reveals that the parts of the section dealing with prepaid expenditure relating to services rendered over a period extending beyond a particular year of assessment were entirely disregarded. The court thus only concerned itself with whether there was any other benefit derived by Telkom from the payment of the bonus incentives. By implication, whether Velociti had rendered all the services to Telkom was considered irrelevant to the overall outcome of the case. This is a significant omission, because section 23H(1)(*b*)(i) expressly deals with expenditure incurred in respect of services, and the spreading mechanism in the lower portion of the section similarly provides a distinct formula for services to be rendered. By bypassing this enquiry, the SCA effectively treated the services limb of section 23H as if it did not exist.

It can be argued that the use of the word *'or'* between subparagraphs (i) and (ii) in section 23H(1)(*b*) is indicative of a choice between alternatives, and, if so, it creates an enquiry which is sequential in nature. In that case, the structural logic of the section is such that the first question must be whether the expenditure was incurred in respect of goods or services. Only if the expenditure does not relate to goods or services does the enquiry proceed to establish whether it was incurred in respect of **'any other benefit'**. This sequential reading is consistent with established principles of statutory construction, which require that specific provisions be considered before general or residual provisions are invoked.

Another notable concern arising from an analysis of the structure of this provision is the use of the phrase 'any other' in subparagraph (*b*)(ii) when referring to benefits derived from expenditure incurred. According to Merriam-Webster[4], the phrase 'any other' is used to refer to a person or thing that is not particular or specific but is not the one named or referred to. It can therefore be argued that the grammatical nature of the phrase creates a residual, supplementary, or 'catch-all' category of prepayments that do not fit the profile of the performance of services or the delivery of goods. In other words, the legislature appears to have contemplated a hierarchy: expenditure in respect of goods or services must first be considered under subparagraph (*b*)(i), and only expenditure that falls outside those categories should be assessed under the 'any other benefit' residual in subparagraph (*b*)(ii). The SCA's approach, which proceeded directly to the residual category without first considering of the services question, arguably inverted this hierarchy.

4 https://www.merriam-webster.com/dictionary/any other [accessed on 28 May 2026].

Interpretive principles in South Africa

The general rule in South Africa is that statutes must apply equally, and their interpretation must not vary from one factual pattern to the next. Swain JA acknowledged this by drawing on *Natal Joint Municipal Pension Fund v Endumeni Municipality*[5], where he confirmed that the interpretation of legislation is a 'unitary but not uniform' exercise which should always be grounded in the language used, the context, and the purpose of the provision. It is worth noting that Swain JA himself endorsed the position that it is 'impermissible to apply a particular meaning to legislation, depending upon the factual situation, in which it is sought to be applied', a principle drawn from the submissions of the Commissioner in the same case.

The application of these principles to the section 23H issue in the *Telkom* case invites scrutiny. The previous Synopsis article illustrated this point with a hypothetical comparison: an employer paying full-time salaries and

5 2012 (4) SA 593 (SCA).

performance bonuses to staff for negotiating long-term rental agreements would not be expected to defer the deduction of those salaries over the rental term. However, based on the logic of the SCA's decision in the *Telkom* case, a business conducting the same activity through third-party agents on commission would be required to do so, because the facts are materially similar to those of Telkom. The only difference lies in the manner of engagement (i.e., the use of third-party agents as opposed to direct employment). The fact that one would arrive at a different conclusion in these two instances indicates a deviation from the consistency required in the interpretation of legislation, contrary to what was acknowledged in the judgment.

In addition, the omission of subparagraph (*b*)(i) is difficult to reconcile with the fundamental rule of statutory interpretation that statutes 'should be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant'.[6] It raises the question of whether subparagraph (*b*)(i) was, by being overlooked, rendered superfluous, void, or insignificant in the application of section 23H to this particular set of facts. If one accepts that the legislature intended subparagraph (*b*)(i) to serve a distinct function within the section, the failure to consider it in circumstances where services were plainly at issue is not merely an academic concern but a matter that goes to the correctness of the interpretive outcome.

6 A longstanding principle of statutory interpretation is that every word in a legislative provision must be given meaning. Words in an enactment should not be treated as tautologous or superfluous (National Credit Regulator v Opperman and others [2013] JOL 29746 (CC)). In Wellworths Bazaars Ltd v Chandler's Ltd and Another 1947 (2) SA 37 (A) at 43, the court emphasised that one should be slow to conclude that words in a statute are tautologous or superfluous.

Implications and the way forward: the weight of binding judicial precedent

In accordance with the rule of *stare decisis*, the practical consequences of the *Telkom* decision remain significant as it is binding on all lower courts. It therefore opens the path for SARS to investigate and defer the deduction of expenditure incurred by all taxpayers that pay commissions to agents for the introduction of customers. At the same time, the recipient agent is fully taxed on the commission in the year of receipt, creating a mismatch between the timing of inclusion and the timing of deduction.

What makes this consequence particularly critical is the inflexible nature of the *stare decisis* doctrine in South African law. In *Camps Bay Ratepayers' and Residents' Association v Harrison*[7], the Constitutional Court stated that *stare decisis* 'is not simply a matter of respect for courts of higher authority but a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.' The doctrine demands 'certainty, predictability, reliability, equality, uniformity, convenience' and it binds lower courts from any form of deviation from decisions made by a higher court. As Daffue J stated in *Mekgoe v The State*[8], lower courts are bound by judgments of the SCA, irrespective of what they believe the correct legal position should be.

Consequently, if the SCA's decision in *Telkom* was reached on the basis of an edited or obscured version of the statutory provision in question, one that omitted subparagraph (*b*)(i) and thereby ignored the enquiry into whether the expenditure was incurred in respect of services, then taxpayers and lower courts are bound by a precedent that did not consider the full text of the law. This means that lower courts cannot arguably revisit the omission, even where the facts before them squarely raise the question of whether the expenditure was incurred in respect of services. SARS is also entitled to rely on the judgment as authority for deferring deductions. Arguably, the only recourse available to a taxpayer in these circumstances is to return to the SCA with materially different facts, or to seek legislative amendment to clarify the grammatical structure of section 23H.

7 2011 (4) SA 42 (CC).

8 Free State Division, 20 March 2015.

The road not taken: was the expenditure incurred in respect of services?

This is the question the SCA did not ask, even though it is the question that the grammatical structure of the provision requires to be asked first. The Tax Court found that Velociti had rendered all the services it was contracted to perform, being the introduction and connection of qualifying subscribers. On this basis, the Tax Court concluded that the full amount of the incentive bonus was paid in respect of those services and was therefore fully deductible in the 2012 year of assessment. This is because, under subparagraph (*b*)(i), the question would have been whether all the services had been supplied or rendered during that year of assessment – which, on the facts, they had been.

Telkom adopted a narrower approach concerned with whether the bonus incentives were solely incurred in respect of the services rendered by Velociti, arguing that once the customer was accepted and connected, no further benefits were expected to flow from that arrangement. Furthermore, Telkom was of the view that the benefits derived from the monthly subscription fees were linked to a separate monthly commission arrangement, and that the bonus incentive paid for the initial connection had no bearing on those benefits. This distinction between the once-off incentive bonus and the ongoing commission was central to Telkom's case, as it sought to demonstrate that the expenditure and the alleged benefit were attributable to different contractual obligations.

SARS, however, adopted a wider interpretation of the phrase 'in respect of', in terms of which the key enquiry was to establish when and how the benefit in respect of which the expenditure was incurred was enjoyed. In this regard, SARS asserted that the true benefit of the expenditure lies in having a customer who pays monthly subscription fees over a period of 24 months. In other words, SARS implied that it was possible for expenditure to be incurred for multiple reasons: firstly, for a service, and secondly, for a separate benefit, even though the timing of performance and the period of enjoyment are different. In such cases, the wider interpretation followed by SARS was to look beyond the immediate service rendered and to establish the true or ultimate benefit of that expenditure. As the Commissioner submitted, and the SCA accepted, Telkom did not enjoy any benefit immediately upon the conclusion of a new contract; it had nothing to show for it until such time as the connection turned into fee income.

It was therefore clear from their respective arguments that Telkom and SARS had fundamentally different interpretations of the phrase 'in respect of'. Had the SCA followed the same rationale as the Tax Court, namely, that the expenditure was indeed incurred in respect of services, Telkom's argument would have been successful. The question that remains unanswered, and which six years of hindsight has not resolved, is whether the SCA was correct to bypass the services enquiry altogether, or whether the proper application of section 23H required the court to first determine whether the expenditure fell within subparagraph (*b*)(i) before proceeding to the residual category in subparagraph (*b*)(ii).

The notable irony in this case is that Swain JA confirmed in several paragraphs the continued application of the *contra fiscum* rule in South African law by stating that

> 'It is submitted that the *contra fiscum* rule still applies in South African law and that it would be incorrect to conclude that the *contra fiscum* rule has no application in the context of an interpretation of a fiscal provision, anti-avoidance or otherwise… However, to the extent that following analysis, a purposive approach ultimately yields two constructions which are both equally plausible, it is submitted that the *contra fiscum* rule should apply and the court should ultimately conclude in favour of the taxpayer'.

However, in the section 23H dispute there were clearly two competing interpretations of the words 'in respect of' before the SCA: the taxpayer advanced a narrower interpretation, which was accepted by the Tax Court, while SARS advanced a wider interpretation, which was accepted by the SCA. A careful reading of these arguments indicates that they were both plausible and arguably required application of the *contra fiscum* rule by ruling in favour of Telkom. The reason why the SCA did not apply the rule in these circumstances is difficult to

reconcile with the principles it endorsed earlier in the same judgment. The fact that two courts, the Tax Court and the SCA, reached opposite conclusions on the same set of facts is itself indicative of the kind of irresoluble ambiguity that the *contra fiscum* rule would resolve.

This notwithstanding, it is submitted that the SCA's decision not to engage substantively with the services element was arguably neither incidental nor an oversight, but rather flowed logically from the true test it identified as determinative of the dispute. The SCA expressly held that the Tax Court erred in treating as relevant the fact that Velociti had rendered all the services which it was obligated to perform in terms of the agreement with Telkom, because this had no bearing upon the central question, being when and how Telkom would enjoy the benefit of the contract. The court's approach suggests that the proper inquiry is not what services the dealer rendered or whether those services were fully performed within the year of assessment, but rather what *Telkom was truly and contractually paying for when it incurred the cash incentive bonus expenditure*. In this regard, the SCA found that Telkom did not incur the incentive bonus expenditure solely to establish a new connection with a customer (being the services fully rendered by Velociti); rather, the benefit lay in having a customer who paid subscription fees over the fixed term of the contract. The court was, in substance, looking behind the smokescreen and the 'dressing' of the transaction, that is, the characterisation of the payment as being for a once-off connection service, and instead asking what the true benefit was for which the expenditure was contractually incurred. It is for this reason, arguably, that the SCA did not find it necessary to consider the services element, since, on the facts, Telkom was not paying for services in the manner suggested by the Tax Court's analysis. The true benefit was the stream of monthly subscriber fees enjoyed over a 24-month period, and it was the enjoyment of that benefit, not the rendering of services, that determined the period to which the expenditure related.

Conclusion

The binding nature of the SCA's decision carries significant consequences for taxpayers and lower courts, as they are locked into a judicial precedent that did not engage with the full text of the legislation in question. The only feasible remedies appear to be a return to the SCA with materially different facts or the legislative amendment of section 23H. Six years on, neither of these remedies has materialised, and the precedent continues to operate unchallenged.

Can it still be argued that the service element was not properly ventilated before the SCA? The answer is nuanced. On the one hand, the *stare decisis* doctrine prevents lower courts from departing from the SCA's decision, regardless of their view on whether the services question was adequately addressed. On the other hand, the SCA's judgment did not expressly rule that section 23H(1)(*b*)(i) was inapplicable to the facts; rather, it simply did not consider the provision, given that it was not, in its view, what Telkom actually paid. There is a meaningful distinction between a court considering and rejecting an argument, and a court not considering the argument at all. In the latter case, it may be open to a future litigant to present the services question as a matter that was not arguably decided, a point on which the precedent is arguably silent rather than dispositive.

Such an approach would, however, require careful framing. A taxpayer seeking to rely on section 23H(1)(*b*)(i) would need to demonstrate that the expenditure in question was *truly* incurred in respect of services, and that all such services were rendered within the relevant year of assessment. That said, the taxpayer would also need to persuade the court that the services enquiry is a logical prior step to the benefits enquiry. This is so because, arguably, any form of service may come with some benefit, even if that benefit is residual or minute; it does not necessarily follow that the existence of a downstream benefit displaces the need to consider whether the expenditure was, in its immediate and direct character, *truly* incurred for services rendered. The taxpayer would need to demonstrate that the SCA's judgment in *Telkom* does not preclude the court from undertaking such an analysis. The SCA's reasoning in *Telkom* was directed at

the particular facts before it, where the connection of a subscriber was inseparable from the ongoing subscription revenue, and it remains open to a taxpayer to argue that, in an appropriate case, the court ought first to determine whether what was paid for *truly* constituted services, before proceeding to ask over what period any resultant benefit was enjoyed. Whether the SCA would entertain such an argument remains uncertain, but the grammatical structure of the provision provides a principled basis for doing so.

Whether the issue will return to the SCA remains to be seen. In the meantime, taxpayers are urged to carefully scrutinise commission, subscription, and agency agreements, as well as any expenditure that might be regarded as producing a future benefit. Where the expenditure is genuinely incurred in respect of services that are fully rendered within the year of assessment, taxpayers should ensure that the contractual arrangements clearly distinguish between the service component and any ancillary benefit, so as to preserve the argument that the expenditure falls within section 23H(1)(*b*)(i) rather than the residual 'any other benefit' category. Six years after the *Telkom* decision, the road not taken remains open, but only for those willing to travel it. Taxpayers are advised to consult their tax advisers in this regard.

Contacts:

Stephen Boakye
Director
+27 (0) 79 949 4590

Tshephiso Malema
Manager
+27 (0) 11 797 4000

Latest developments

Latest developments 26 March 2026 – 25 April 2026

PwC thought leadership

Various weekly	PwC thought leadership	Global Tax Talk: a PwC on-demand video series that quickly and concisely brings you the global tax policy news you need to know in a format that you can access on the go. Every Monday, the Global Tax Policy Leader, Will Morris, provides a 60-second roundup of key perspectives to prepare for the upcoming week. PwC releases news briefings and short interviews with PwC subject matter specialists and global leaders around the world on the issues they see affecting the business community.
22 May 2026	PwC thought leadership	Global Tax Policy Alert: OECD attempts to address global minimum tax compliance concerns in advance of filing and exchange deadlines

Interpretation and rulings

28 April 2026	VAT Ruling 020 (Consideration)	This ruling addresses the VAT treatment of deposits paid by guests and subsequently forfeited upon cancellation of a booking.
28 April 2026	VAT Ruling 021 (VAT treatment of donor funds)	This ruling clarifies the VAT consequences of discretionary grant funding received from a registered Sector Education and Training Authority ('SETA').
28 April 2026	Draft Interpretation Note – Deduction in respect of production of battery-electric and hydrogen-powered vehicles	This Note provides guidance on the interpretation and application of section 12V, which provides for a deduction by a person that is a motor vehicle manufacturer of the cost of any building, new and unused machinery, plant, implement, utensil or article or improvement to any building, machinery, plant, implement, utensil or article used mainly in the production of battery-electric or hydrogen-powered vehicles in South Africa. Comments were due to SARS by Thursday, 28 May 2026.
14 May 2026	Binding Private Ruling 428 – Delayed contribution equity investment structure	This ruling determines the income tax implications of a share subscription, based on a delayed contribution equity investment structure ('DCEIS'), and the deductibility of expenditure under section 11D.

Customs and excise

27 March 2026	Interpretation Note 122 (Issue 2)	Interpretation Note 122 (Issue 2) – Public Benefit Activity: Bid to host, or hosting of, any international event under paragraph 11(b) in Part I of the Ninth Schedule to the Income Tax Act, 1962, is available. Issue 1 of IN 122 (dated 18 August 2022) has been archived and effectively replaced by Issue 2.
30 March 2026	Draft Interpretation Note – Income Tax Exemption: Bargaining Councils	This Note provides clarity on the approval of registered bargaining councils as institutions, boards, or bodies under section 10(1)(*cA*)(i). Comments are due by Friday, 8 May 2026.
31 March 2026	Interpretation Note 78 (Issue 2)	SARS Interpretation Note 78 (Issue 2) – Allowance for Future Expenditure on Contracts in terms of section 24C of the Income Tax, 1962, is available. Issue 1 of IN 78 (dated 29 July 2014) has been archived and effectively replaced by Issue 2.

Customs and excise

5 May 2026	Tariff amendments	Publication details for tariff amendments notices R7426 and R7427, as published in Government Gazettes 54608 and 54609 of 5 May 2026, have been made available.
6 May 2026	Tariff amendments	Publication details for correction notice R7435, as published in Government Gazette 54623 of 6 May 2026, have been made available.
8 May 2026	Tariff amendments	Publication details of rule amendment notice R7430 in Government Gazette 54613 of 8 May 2026, issued under sections 47B and 120, relating to air passenger tax (DAR269), have been made available.
8 May 2026	Draft documents for public comment	Comments on draft amendment of rules under section 120 – Advance foreign exchange payment were due to SARS by Wednesday, 20 May 2026.
15 May 2026	Tariff amendments	Publication details for tariff amendment notices R7472, R7473, R7474, R7475, R7476, R7477, R7478, R7479, and R7480, as published in Government Gazette 54678 of 15 May 2026, have been made available.
15 May 2026	Draft documents for public comment	The following documents were published for comment: • Draft amendment to rules under sections 54F and 120 – Repeal of the electricity levy. • Draft amendments to schedules: – Part 3B of Schedule No. 1, to provide for the deletion of the electricity generation levy following its repeal. – Part 4 of Schedule No. 6, to provide for a refund of the environmental levy paid on electricity generated in the Republic. Comments were due to SARS by Friday, 29 May 2026.
22 May 2026	Tariff amendments	Publication details for tariff amendments notices R7491 and R7492, as published in Government Gazette 54717 of 22 May 2026, have been made available.
22 May 2026	Rules amendment notice	Publication of rules amendment notice R7493 in Government Gazette 54717 of 22 May 2026, issued under sections 64D and 120, relating to licensing of remover of goods in bond (DAR270).

SARS guides

21 May 2026	Guide to the Voluntary Disclosure Programme (Issue 2)	SARS has released the second issue of the Guide to the Voluntary Disclosure Programme. This guide provides general guidance on the voluntary disclosure programme under Chapter 16 of the Tax Administration Act 28 of 2011 (TA Act). While this guide reflects SARS's interpretation of the law, taxpayers who take a different view may use the normal avenues for resolving such differences.

Notices

30 April 2026	Notice to submit returns for the 2026 year of assessment	SARS has issued notice 7422 in terms of section 25 read with section 66(1) of the Income Tax Act, 1962, for the submission of income tax returns for the 2026 year of assessment and the period within which the returns must be submitted. The persons that must submit income tax returns as well as the dates for submission of the returns are specified in the notice.
1 May 2026	Notices in respect of the APA programme	Draft documents for public comment – Income Tax Act, 1962: SARS released the following notices for public comment: • Draft notice in terms of section 76C of the Act, prescribing the persons eligible to apply to the Commissioner for a double taxation agreement (DTA), i.e., a bilateral, advance pricing agreement (APA) • Draft notice in terms of section 76D of the Act, prescribing the fees payable by an applicant in an application for a DTA APA • Draft notice in terms of section 76I(b) of the Act, prescribing the additional requirements that may lead to the rejection of an application for a DTA APA • Draft notice in terms of section 76J(1) of the Act, specifying the requirements for processing an application for a DTA APA • Draft notice in terms of section 76J(3) of the Act, prescribing the information to be contained in a preliminary DTA APA • Draft notice in terms of section 76P of the Act, specifying the procedures and guidelines for the implementation and operation of the DTA APA system Comments were due to SARS by Friday, 29 May 2026.

Case law

In accordance with the date of judgment

7 May 2026	*Ocean Ark Shipping Ltd and Another v CSARS* (2025/209746) [2026] ZAWCHC 201 (24 April 2026)	Whether the applicants had established, under the applicable provisions of the Customs and Excise Act 91 of 1964, a prima facie right to interim relief, including whether the Commissioner's enforcement actions were proportionate and whether a revised guarantee constituted adequate security.
12 May 2026	*The Commissioner for the South African Revenue Service v Poulter* (1110/2024) [2026] ZASCA 68 (12 May 2026)	Whether, under ss 12 and 125 of the Tax Administration Act 28 of 2011, read with rule 44(7) of the Tax Court Rules and s25 of the Legal Practice Act 28 of 2014, a taxpayer's representative in the Tax Court must be a legal practitioner, or whether a non-legal practitioner may appear on behalf of a taxpayer.
18 May 2026	*SARSTC IT* 24852 (IT) ZATC JHB (14 April 2026)	Whether the appellant was entitled to deduct an amount as a loss under section 11(a) of the Income Tax Act 58 of 1962 in its 2015 year of assessment. Whether the respondent was correct in imposing a 10% understatement penalty and whether the interest levied under section 89quat of the Income Tax Act could be waived.
18 May 2026	*SARSTC IT* 77151 (ADM) ZATC JHB (10 April 2026)	Whether the respondent met the jurisdictional requirements under ss 92 and 99 of the Tax Administration Act 28 of 2011 to issue additional assessments and reopen assessments for the 2013 to 2016 years of assessment, including whether such powers had prescribed, and whether the appellant's cost of sales was inflated by alleged 'kickbacks' and thus not deductible under s 11(a) of the Income Tax Act 58 of 1962. Whether s23(o) applied, and whether the disallowance of the interest deduction for the 2015 year of assessment was justified.
25 May 2026	*CSARS v Bullion Star (Pty) Ltd* (894/2024) [2026] ZASCA 76 (22 May 2026)	Whether an ex parte warrant obtained by the Commissioner under the Tax Administration Act 28 of 2011 was overbroad and thus unlawful, and whether the High Court on reconsideration properly exercised its discretion in setting aside that warrant, including whether there was a basis for appellate interference with that discretion.
25 May 2026	*Aviwe Ntandazo Ndyamara NO and Others v CSARS* (51569/2020) [2026] ZAGPPHC (25 May 2026)	Whether VAT payments made by the taxpayer constituted dispositions not made for value within the meaning of s26 of the Insolvency Act, and were therefore recoverable by the liquidators from the Commissioner.

Other publications

28 April 2026	SARB	Tax white paper and key updates supporting the Jibar transition: The Market Practitioners Group (MPG) has published a white paper on the tax implications of the Jibar transition. This paper is intended to help market participants evaluate the potential tax consequences that may arise from various methods of transitioning Jibar-linked contracts to ZARONIA. As previously announced by the SARB, Jibar will be discontinued on 31 December 2026. The SARB and MPG have identified ZARONIA as the preferred reference rate to replace Jibar. Importantly, the MPG plans to use the white paper as a basis for discussions with relevant authorities regarding the possibility of issuing formal tax guidance. Market participants were invited to submit comments on the white paper to the MPG Secretariat by Thursday, 21 May 2026.
28 April 2026	OECD	Taxing Wages 2026: The OECD released the Progressivity of Labour Taxation in OECD Countries report. The annual publication provides details of taxes paid on wages in OECD countries. This year's edition focuses on the progressivity of the average tax wage across different earnings intervals and household types. Using data up to 2025, it also examines personal income taxes and social security contributions paid by employees, social security contributions and payroll taxes paid by employers, and cash benefits received by workers.
28 April 2026	OECD	Taxing Wages 2026: The OECD released the Progressivity of Labour Taxation in OECD Countries report. The annual publication provides details of taxes paid on wages in OECD countries. This year's edition focuses on the progressivity of the average tax wage across different earnings intervals and household types. Using data up to 2025, it also examines personal income taxes and social security contributions paid by employees, social security contributions and payroll taxes paid by employers, and cash benefits received by workers.
28 April 2026	OECD	OECD Practical Guide to Investment Tax Incentives: The new OECD report provides policymakers with hands-on tools to improve value for money from investment tax incentives, particularly in developing and emerging economies. It offers concrete advice across the policy lifecycle, supporting policymakers and practitioners in making informed choices, balancing trade-offs, and prioritising reforms.
29 April 2026	OECD	The Global Minimum Tax Implementation Toolkit: The OECD published a new implementation toolkit designed to assist tax administrations in applying the Global Minimum Tax in a consistent and coordinated manner. This toolkit serves as a roadmap for tax administrations and tax policy officials by setting out a series of implementation steps, each elaborated through complementary modules. It provides guidelines on best practices to tax administrations and tax policy officials on establishing efficient processes for implementing of the global minimum tax while reducing administrative and compliance burdens.

29 April 2026	OECD	The OECD has released a series of peer review reports prepared by the Global Forum on Transparency and Exchange of Information for Tax Purposes. These reports assess jurisdictions' implementation of the international standard on transparency and exchange of information on request, based on comprehensive in-depth evaluations conducted by the Global Forum. The newly available reports cover the following jurisdictions: • Belize • Cambodia • El Salvador • Gabon • Guinea • Monteserrat • Niue
29 April 2026	OECD	Artificial intelligence in tax administration, from early innovation to modern transformation: The OECD published a blog post exploring the evolution of technology in tax administration, tracing developments from early mechanical innovations such as Pascal's calculator to modern artificial intelligence. The blog highlights how emerging tools, particularly machine learning, are transforming tax administration by improving the efficiency and accuracy of data processing in an increasingly complex global economy.
22 May 2026	ATAF	ATAF has released its 2025 Annual Report, highlighting its growing impact on domestic revenue mobilisation across Africa. The report reflects a year of significant progress across ATAF's strategic priorities, including capacity building, technical assistance, research, digital transformation, international tax cooperation, and institutional strengthening.

At PwC, we help clients build trust and reinvent so they can turn complexity into competitive advantage. We're a tech-forward, people-empowered network with more than 364,000 people in 136 countries and 137 territories. Across audit and assurance, tax and legal, deals and consulting, we help clients build, accelerate, and sustain momentum. Find out more at www.pwc.com.

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.