Synopsis

Tax today

November 2023

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

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

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Mining the numbers: The gross sales adjustment demystified

Mineral Royalty Tax

Introduction

The Mineral and Petroleum Resources Royalty Act, 28 of 2008 ("**Royalty Act**") plays a crucial part in the intricate tax landscape of South Africa's mineral industry. The Royalty Act introduced an *ad valorem*[1] mineral royalty regime. In other words, the mineral royalty tax base is determined by the value[2] of the non-renewable resources transferred, loosely representing Gross Sales. The royalty payable is based on the Gross Sales[3] multiplied by a variable rate that is driven not only by the value of a class of mineral (i.e. unrefined vs refined minerals), but also by the profitability of the mining operations.

Section 6 and section 6A of the Royalty Act, guiding the Gross Sales determination of extractors, emerge as pivotal points where fiscal policy and the resource extractive industry intersect. These particular provisions hold significance for the nation's economic wellbeing and its ability to harness the benefits of its rich mineral endowment. In a time where fiscal responsibility, sustainable revenue generation and equitable wealth distribution are paramount concerns, understanding the intricacies of these provisions is not just an academic exercise, but a crucial step towards ensuring the responsible stewardship of South Africa's mineral wealth. This article explores the role of sections 6 and 6A of the Royalty Act and how these sections align with fiscal policy's intention in shaping the financial benefit of the nation's non-renewable mineral resources.

Background

South Africa's mineral-rich lands have long been a source of economic vitality and global interest. The mineral extraction industry, a cornerstone of the nation's economy, is subject to a complex web of regulations and taxation policies.

The introduction of the Royalty Act, and by extension, the mineral royalty regime, was driven by a dual purpose aimed at balancing fiscal responsibility and economic growth of the extractive industry. Firstly, it sought to ensure that the South African government, as the custodian of the nation's non-renewable mineral resources, received its fair share of revenue from the exploitation of the country's non-renewable mineral resources. By imposing the variable percentage-based ad *valorem* royalties on the extraction of non-renewable resources, the Royalty Act aimed to secure a stable source of income for the government, which could in turn be used to fund public services, infrastructure development and other crucial social initiatives. This revenue generation was (and still is) particularly important in a nation with a history of socio-economic disparities, where the equitable distribution of mineral wealth was (and still is) a priority.

Secondly, the Royalty Act was designed to incentivise mining companies to invest in beneficiation activities within South Africa. Unlike some other countries that impose additional taxes on value-added beneficiation processes, South Africa does not tax beneficiation directly. Instead, the Royalty Act encouraged beneficiation indirectly by taxing the minerals as close to the point of extraction, but in its first saleable condition. By not taxing beneficiation directly, mining companies would be more likely to invest in local beneficiation to increase the value of the minerals they extract without paying additional mineral royalty taxes. This resulted in the establishment of the stipulated conditions outlined in Schedule 1 and Schedule 2 of the Royalty Act, which effectively fixes a specific condition (or a range of conditions where applicable) for each mineral resource. In addition, South Africa's mineral royalty tax system is notably distinct due to its variable rates which correlate with the profitability dynamics of mining companies' operations. This unique feature is particularly advantageous for mining companies, as the applicable royalty rate adjusts in tandem with the mining cycle. Specifically, during the developmental or ramp-up stages of a mine, royalty rates

1 Based on the value of sales or production
2 The value should represent an arm's length price
3 As defined in section 6 of the Royalty Act

are set at a lower level (based on the lower profit margins achieved during these periods), providing some financial relief to extractors. Conversely, when mining ventures enter a profit cycle, the mineral royalty tax rate is set at higher levels, aligning with the enhanced profitability of these operations. South Africa's mineral royalty tax framework therefore adapts to the mining cycle and serves as a pragmatic approach that balances the needs of both industry and government.

In essence, the Royalty Act sought to strike a balance between revenue collection and fostering local economic development without stifling the mining industry's potential for growth and investment.

Among the many intricacies of this legislation, one contentious issue that has stirred debate is the question of notional Gross Sales condition adjustments. One of these is whether an upwards gross sales adjustment is required to the unrefined minerals as listed in Schedule 2 to the Royalty Act.

Gross sales: to adjust or not to adjust

To grasp the significance of the upwards gross sales condition adjustment it is essential to first understand the broader context of section 6 and section 6A. As previously stated, the Royalty Act seeks to firstly determine the value of minerals and secondly a mineral royalty tax rate. The former value, being Gross Sales (as defined), will be multiplied by the mineral royalty tax rate which will in turn equate to the mineral royalty tax liability. Section 6 read with section 6A contains the provisions relating to the determination of Gross Sales, i.e. the value of the non-renewable mineral resources. It also introduces the concept of condition specified (as contained in Schedule 1 and Schedule 2 to the Royalty Act). Section 6A seeks to further clarify the application of the concept of condition specified (i.e. determining the royalty base) in respect of unrefined mineral resources as contained in Schedule 2 to the Royalty Act.

The purpose and Legislature's intent in introducing the concept of a condition specified in the Royalty Act, was two-fold. Firstly, the Schedule 1 and Schedule 2 conditions specified are intended to act as minimum bases. These minimum bases ensure that extractors do not structure their affairs so as to undermine the royalty (i.e. by adding little or no value to the mineral from its mine mouth condition so as to artificially reduce the gross sales value below general industry practices).

Secondly, it also prevents the royalty from acting as a hidden penalty for the beneficiation of mineral resources. The Schedule 1 and Schedule 2 conditions specified effectively also act as a ceiling upon which the royalty can be applied (so that additional value by way of further beneficiation does not increase the Gross Sales base for the royalty).

So why the debate?

Schedule 2 to the Royalty Act and by default section 6A cater for unrefined mineral resources with two types of conditions specified. The first being unrefined mineral resources with a fixed condition specified and secondly unrefined minerals with a range of conditions specified (the so-called "range minerals"). Sections 6A(1) and 6A(1A) aim to address and clarify the determination of Gross Sales for unrefined mineral resources with a fixed condition and range minerals respectively. At the heart of the debate lies the question as to whether the "Gross Sales value" of unrefined mineral resources requires an upward adjustment where the minerals are transferred **below** the condition specified.

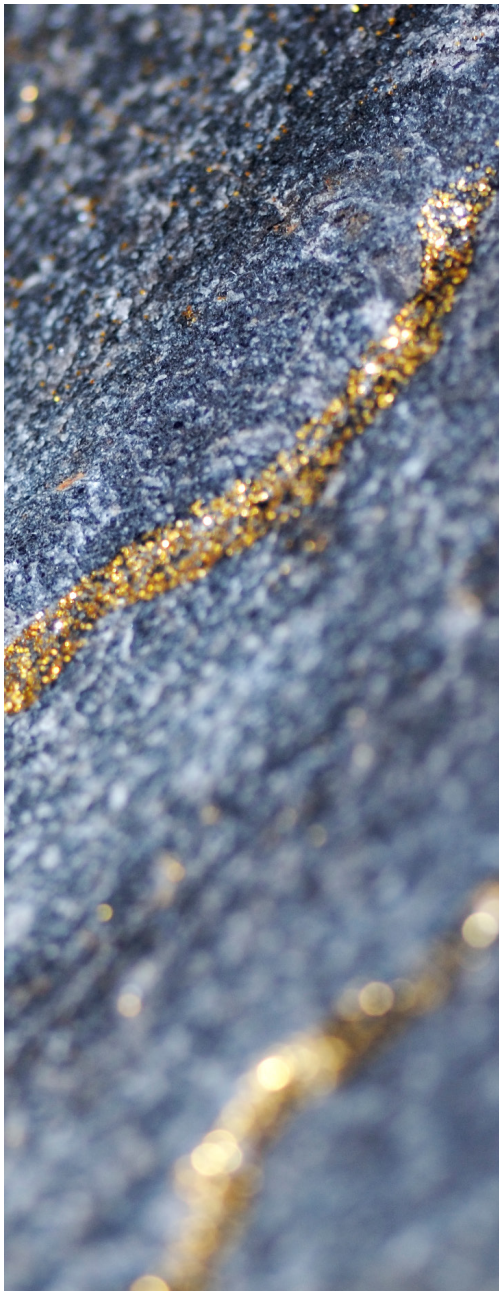
Section 6A(1) of the Royalty Act was inserted by section 134(1) of Act No. 7 of 2010 and is deemed to have come into operation on 1 March 2010 and is applicable in respect of a mineral resource transferred on or after that date. Subsection 1(a) of section 6A deals with the transfer of a mineral resource where that mineral resource is transferred below the condition specified and originally read as follows:

> "(1) If any unrefined mineral resource –
>
> a. is transferred below the minimum condition specified in Schedule 2 for that mineral resource, the mineral resource **must be treated as having been brought to** the minimum condition specified for that mineral resource; or…" (emphasis added)

The explanatory memorandum[4] accompanying the above change reasons that the change aims to clarify the uncertainty on how Schedule 2 to the Royalty Act should be applied. The explanatory memorandum included the below statement in respect of the proposal:

> "In respect of the minimum level test, mineral resources transferred below the minimum level are

4 Explanatory Memorandum on the Taxation Laws Amendment Bill, 2010.



> **notionally deemed to be transferred at the minimum level**". (Our emphasis)

Section 6A(1A) was inserted by section 185(1)(b) of Act No. 31 of 2013 with effect from 1 March 2014 and is applicable in respect of any mineral resources transferred on or after that date. The explanatory memorandum[5] accompanying the change notes that the inclusion of subsection 1A was to clear any uncertainty associated with the range minerals. In this respect the explanatory memorandum stated that:

> "If the transfer occurs in a condition below the specified condition, **the value is grossed-up to the minimum condition**. The minimum condition ensures that taxpayers do not transfer mineral resources without undergoing any meaningful transformation of those minerals to undermine the royalty charge." (emphasis added)

Section 6A(1A)(a) states that:

> "(1A) If any unrefined mineral resource with a range is transferred—
>
> a. in a condition below the minimum of the range of conditions specified in Schedule 2 for that mineral resource, the mineral resource **must be treated as having been brought to** the minimum of the range of conditions specified for that mineral resource…" (emphasis added)

The debate centres around the interpretation of the phrase "*must be treated as having been brought to*" as used in section 6A(1) and section 6A(1A) of the Royalty Act. Without being defined in section 6A or elsewhere in the Royalty Act "*treated as*" is regarded to be synonymous with "*deemed as*". Absent the context that gave rise to the inclusion of subsection 1 and 1A, "treated as" or "deemed as" provides a clear and precise indication of how something is to be considered or regarded within a specific context — it leaves little room for ambiguity or misunderstanding, ensuring that the intended interpretation is accurately conveyed. The phrase "treated as" could be regarded as the deliberate intent of the law to assign a particular status or condition to a subject. This aligns with the judgement in S v Rosenthal[6] where it was, inter alia, stated that:

> "... when it is said that a thing is to be deemed to be something, it is not meant to say that it is that which it is to be deemed to be. It is rather an admission that it is not that which it is deemed to be, and that notwithstanding it is not that particular thing, nevertheless, for the purposes of the Act it is deemed to be that thing."

With the above in mind, the contention persists that no Gross Sales adjustment is warranted, given that the lower grade product, for which the extractor is compensated at a specific value, is considered to meet the prescribed minimum condition specified (i.e. the lower grade product should be treated as having been brought to the minimum condition). Therefore, the resulting sales proceeds should unequivocally be recognised as Gross Sales.

However, in the realm of legal interpretation, context emerges as the bedrock of understanding, and nowhere is this more evident than the *Endumeni*[7] court case. It goes without saying that the case underscores the paramount significance of considering the broader contextual landscape and it illuminates how a nuanced comprehension can fundamentally shape legal outcomes.

The words used in section 6A(1)(a) and section 6A(1A)(a) should be read and interpreted holistically in the context of the Royalty Act and the Royalty Act's apparent purpose. Should it be interpreted that no upward Gross Sales condition adjustment is required, various sections in the Royalty Act (specifically in respect of determining the profitability of a mine) would be rendered superfluous. Moreover, the explanatory memoranda (referred to above) clearly stated the intention of the Legislature. Therefore, it can be logically deduced that where the transfer of minerals occurs at a condition below the specified range, the Gross Sales value should be determined as if the product's condition was at the condition specified and at the bottom point (lower end) specified for the range minerals (i.e. the value will be notionally adjusted upwards).

What does this mean practically?

The notional upwards gross sales adjustment introduces administrative and practical complexities and compliance challenges for both mining companies and SARS. External factors like fluctuating commodity prices, market volatility and currency exchange rates can impact the adjusted notional value, potentially leading to underestimations or overestimations and therefore the process of determining the adjustment can be subjective and contentious. Where lower grade products are transferred, the notional upliftment in Gross Sales could be significant and lead to much higher royalties payable. This may inadvertently create a very fictitious environment for the extractor. The meagre returns generated from these lower grade products, coupled with elevated royalty expense, have the potential to impact the commercial viability of these transactions.

5 Explanatory Memorandum on the Taxation Laws Amendment Bill, 2013 dated 24 October 2013.

6 S v Rosenthal 1980 (1) SA 65 (A)

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

Key takeaways

Striking the right balance between incentivizing beneficiation, ensuring fair revenue collection and maintaining an attractive investment climate remains a complex challenge. Extractors of lower grade products are faced with administrative, practical and commercial challenges associated with the increased mineral royalty liability determination.

The South African government, mining industry stakeholders and tax professionals continue to engage in dialogue and evaluation of the provisions of the Royalty Act. As the country seeks to maximise the benefits from its mineral resources while fostering a conducive investment environment, an administrative and practical resolution will be a crucial milestone in shaping the future of the mining sector. Ultimately, finding a solution that accommodates the interests of all parties, specifically lower grade mineral extractors (in many cases junior miners), will be essential for South Africa's continued growth and development in this vital industry.

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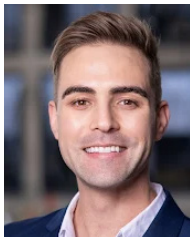

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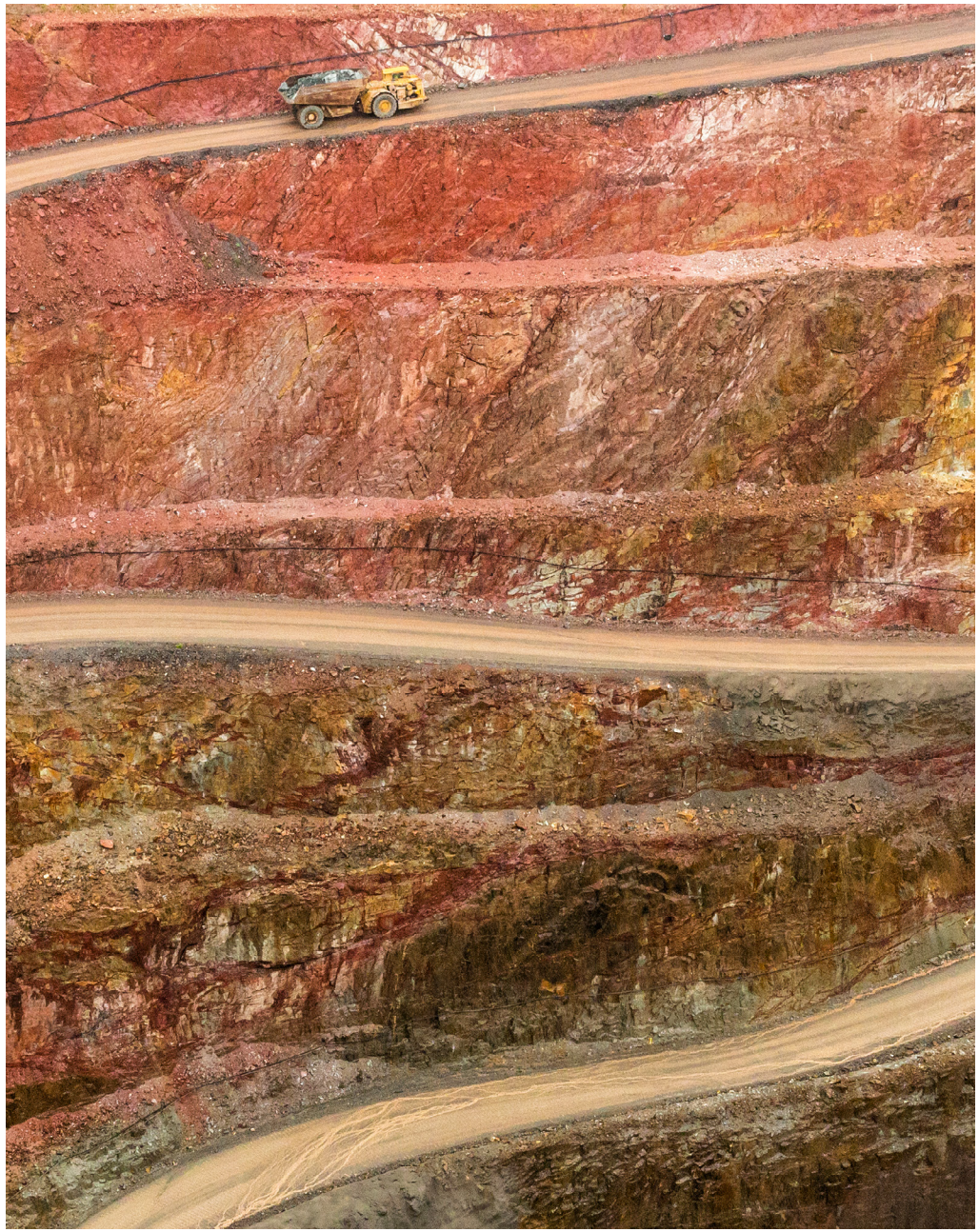

Section 24I(10A): A challenge for taxpayers in respect of debts not reported for financial reporting purposes — what are your options?

Section 24I governs, *inter alia*, the income tax treatment of foreign exchange ('forex') gains and losses arising from 'exchange items'. An exchange item includes a debt denominated in a foreign currency.

It is noteworthy to mention that the application of section 24I is limited to certain taxpayers provided for under section 24I(2), which we do not repeat here for the sake of brevity. Furthermore, one needs to appreciate that the application of section 24I is broad; however, for the purposes of this article, we only deal with the application of section 24I(10A).

Section 24I(10A) is a provision that defers the inclusion of forex gains in or the deduction of forex losses (as the case may be) from the income of the taxpayer. It is thus important that we briefly deal with the inclusion and deduction rules before we turn to the application of 24I(10A).

Insofar as is relevant, section 24I(3) provides that '[i]n determining the taxable income of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person—(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10A)'.

In simple terms, any forex gains or losses (exchange difference) arising from the translation of foreign currency denominated debts must be included in/deducted from the income of a taxpayer.

This is however subject to the provisions of section 24I(10A) which states, insofar as may be relevant, that '...no exchange difference arising during any year of assessment in respect of an exchange item contemplated in paragraph (b) of the definition of "exchange item" shall be included in or deducted from the income of a person in terms of this section—

(i) if, at the end of that year of assessment—

(aa) that person and the other party to the contractual provisions of that exchange item—(A) form part of the same group of companies; or (B) are connected persons in relation to each other; and

(bb) no forward exchange contract and no foreign currency option contract has been entered into by that person to serve as a hedge in respect of that exchange item; and

(ii) that exchange item—(aa) or **any portion thereof does not represent for that person a current asset or a current liability for the purposes of financial reporting pursuant to IFRS**; and (bb) is not directly or indirectly funded by any debt owed to any person that—(A) does not form part of the same group of companies as; or (B) is not a connected person in relation to, that person or the other party to the contractual provisions of that exchange item.' (Our emphasis)

Provided that the requirements of section 24I(10A) are met, the inclusion or deduction, as the case may be, of the forex gains or losses is deferred until section 24I(10A) no longer applies or the underlying foreign currency denominated debt is realised.

One of the requirements of section 24I(10A), which sometimes presents a challenge, is that 'any portion thereof [of the foreign currency denominated debt] does not represent for that person a current asset or a current liability for the purposes of financial reporting pursuant to IFRS'. This classification refers to how the foreign

currency denominated debt is disclosed for financial reporting pursuant to IFRS[1]. An issue arises when the exchange item (i.e. the foreign currency denominated debt) is not recognised for financial reporting pursuant to IFRS. We illustrate this with an example as follows.

In 2020, Company A, which is incorporated and tax-resident in South Africa, provided an interest-bearing loan of USD 2 million to Company B, which is incorporated and tax-resident in Singapore. Section 24I(10A) applied to the USD 2 million loan on the basis that: (i) Company A and Company B are connected persons in relation to each other; (ii) neither a forward exchange contract nor foreign currency option contract was entered into to serve as a hedge in respect of the USD 2 million loan; (iii) the USD 2 million loan was classified as a non-current asset for the purposes of financial reporting pursuant to IFRS; and (iv) the USD 2 million loan was not externally funded. In 2022, the USD 2 million was written off for financial reporting purposes, but was not regarded as bad for income tax purposes.

This presents a difficulty in the application of section 24I(10A) with regard to the requirement on the classification of the debt for financial reporting purposes, since the debt in this instance is not reflected in the financial statements[2].

In *Natal Joint Municipal Pension Fund v Endumeni Municipality*[3], Wallis JA set out the approach to interpretation:

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, **having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence**. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; **the apparent purpose to which it is directed** and the material known to those responsible for its production. **Where more than one meaning is possible each possibility must be weighed in the light of all these factors**. The process is objective not subjective. **A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document**' (Our emphasis)

One could argue that section 24I(10A), which is written in the negative, would still apply in this instance, since the USD 2 million debt does not represent a current asset or a current liability for the taxpayer for the purposes of financial reporting pursuant to IFRS, on the basis that the debt is not even recognised in the financial statements in the first place. That is, there is no requirement that it must be recognised as a long-term liability/asset, or even recognised as an asset/liability to start with — just as long as

1 The International Financial Reporting Standards.

2 It is noteworthy to mention that there might be instances in which the actual write-off might —depending on the specific facts and circumstances— constitute a 'realisation' but in this article, we consider the more common scenario where the debt will not be seen to have been 'realised' (as defined in s24I(1)) as a result of the write-off.

3 [2012] 2 All SA 262 (SCA).

it is not recognised as a current asset/liability. However, this may not be in line with the 2012 Explanatory Memorandum that accompanied the introduction of that requirement, which noted the following:

'However, the group/connected person relief **does not apply to [s]hort-terms loans that constitute current assets and current liabilities**…Current assets and liabilities fall outside the relief because the nature of these short-term items means that taxation does not give rise to liquidity concerns.

In addition, the 2014 Explanatory Memorandum, which introduced a slight change to this requirement, noted the following:

'The proposed insertion of the words "or any portion thereof" at the beginning of subparagraph (ii) of section 24I(10A)(a) is to clarify that section 24I(10A) **will apply to the entire loan, provided that a portion of the loan is classified as a long term loan**.' (Our emphasis)

The 2012 Explanatory Memorandum and the 2014 Explanatory Memorandum seem to indicate that the test is whether the entire loan or a portion thereof is a long term loan and, if so, section 24I(10A) will apply if the other requirements are met.

Therefore, if the loan is not recognised and disclosed for financial reporting purposes, one could perhaps use the IFRS rules to assess whether the loan or a portion thereof would have been classified as a long term loan if it had been disclosed for financial reporting purposes pursuant to IFRS, for the purpose of applying the requirements of section 24I(10A). This is a plausible solution, as it gives effect to the apparent purpose of the requirement in question, which is to defer forex gains and losses on long term intercompany loans if the other requirements are met.

The takeaway

Applying section 24I(10A) when the debt is not recognised for financial reporting purposes may pose a challenge. We have made an Annexure C submission with our recommendations on this and hope that National Treasury will propose amendments to address the issue. Until then, we recommend that taxpayers seek advice if this issue applies to their specific facts and circumstances.

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SARS Watch

SARS Watch 1 November 2023 – 30 November 2023

Legislation		
10 November 2023	Amendment to Third Party Notice to Submit Returns for periods commencing on or after 1 March 2023, as published in Government Gazette No. 48867 dated 30 June 2023.	Notice 4051 published in Government Gazette No. 49646. The date for submission of returns by certain trusts is amended by this notice and these returns must be submitted by 30 September of each year.
3 November 2023	Invitation to submit Technical Annexure C Tax Proposal for the 2024 Budget	Proposals were due to National Treasury and SARS by Friday, 24 November 2023.
2 November 2023	Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2023	Memorandum provides background on, and reasons for, proposed changes contained in the Tax Administration Laws Amendment Bill.
1 November 2023	Revenue Laws Amendment Bill (No 39 of 2023)	The Revenue Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 1 November 2023.
1 November 2023	Tax Administration Laws Amendment Bill (No 37 of 2023)	The Tax Administration Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 1 November 2023.
1 November 2023	Taxation Laws Amendment Bill (No 36 of 2023)	The Taxation Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 1 November 2023.
1 November 2023	Rates and Monetary Amounts and Amendment of Revenue Laws Bill (No 35 of 2023)	The Rates and Monetary Amounts and Amendment of Revenue Laws Bill was introduced in the National Assembly by the Minister of Finance on 1 November 2023.
Binding rulings		
29 November 2023	Binding General Ruling 67 – Income Tax Exemption of a Grant Received under the Clothing, Textiles, Footwear and Leather Growth Programme	This BGR determines the income tax treatment of a government grant received under the Clothing, Textiles, Footwear, and Leather Growth Programme (“CTFLGP”) that replaced the Clothing and Textiles Competitiveness Programme (“CTCP”).
27 November 2023	Binding General Ruling 66 – Value-Added Tax Implications of Overpayments on the Importation of Goods	This BGR clarifies the value-added tax (“VAT”) consequences for a clearing agent and a principal in the event of an overpayment of VAT on the importation of goods due to an erroneous Customs Clearance Declaration (“CCD”) made by the clearing agent on behalf of the principal.
27 November 2023	Binding General Ruling 16 (Issue 3) – Standard Turnover-based Method of Apportionment	This BGR prescribes the method to be used in determining the ratio contemplated in section 17(1) of the Value-Added Tax Act, 89 of 1991 (“VAT Act”).
21 November 2023	Manage eAccounts on eFiling – External Guide	All relevant eFiling processes have been revised in their entireties to reflect current system functionalities. This document provides guidance on the management of eAccounts on eFiling.
17 November 2023	Binding Private Ruling 398 – Disposal of shares pursuant to a property development arrangement	This ruling determines the tax consequences of a disposal of ordinary shares in a property company, and the redemption of newly issued capitalisation preference shares in that company at a later stage.

15 November 2023	Binding Private Ruling 397 – Income tax and securities transfer tax consequences resulting from an amalgamation transaction	This ruling determines the income tax and securities transfer tax consequences resulting from an amalgamation transaction entered into between a holding company and its subsidiary.
14 November 2023	Binding Private Ruling 396 – Settlement of shareholder's loans	This ruling determines the tax consequences for the Applicant of a proposed settlement of a shareholder's debt via set-off against the subscription price for the issue of additional shares to the shareholder.
10 November 2023	Binding Private Ruling 395 – Termination of a venture capital company	This ruling determines the tax consequences of the termination of a venture capital company.
10 November 2023	Binding Class Ruling 087 – Consequences for shareholders upon termination of a venture capital company	This ruling determines the tax consequences for shareholders of a venture capital company upon termination of the company's corporate existence.
Customs and excise		
28 November 2023	Advance Payment Notification ("APN") number changes with effect from 1 December 2023	Since 3 December 2021, it has been mandatory for all importers to apply for an APN number from SARS for each advance import payment with a value of R50 000,00 and above, and where the balance of payment category code is 101. With effect from 1 December 2023, authorised dealers are obligated to record, validate and report the APN provided by a trader/importer to the South African Reserve Bank when such payment is concluded.
24 November 2023	Notice R.4110 – Amendment to rules under sections 77H and 120 – Internal appeals (DAR252)	Published in Government Gazette No. 49759 with an implementation date of 24 November 2023.
17 November 2023	Notice R.4098 – Amendment to Part 1 of Schedule No. 1, by insertion of Additional Note 3 to Chapter 70 as well as tariff subheadings 7020.00.10 and 7020.00.90, in order to increase the rate of customs duty on shower enclosures from free of duty to 15% – ITAC Report 693	Published in Government Gazette No. 49734 with an implementation date of 17 November 2023.
17 November 2023	Notice R.4089 – Amendment to Part 1 of Schedule No. 1, by the deletion and insertion of various subheadings under Chapter 48, in order to increase the rate of customs duty on thermal paper rolls of a width not exceeding 150mm from free of duty to 5% – ITAC Report 711	Published in Government Gazette No. 49721 with an implementation date of 17 November 2023.
14 November 2023	Draft Amendments to the DA 177 – Environmental Levy Account for Carbon Dioxide Emission Levy	The proposed amendment to the form inserts fields for the overpayment and underpayment of levy which is governed by section 77(a)(i) of the Customs and Excise Act, 91 of 1964 ("Customs Act"). These fields are necessary to effect the adjustments resulting from errors on previous accounts on the current account. Comments were due on Monday, 27 November 2023.
13 November 2023	South African Traveller Management System	Customs has implemented the South African Traveller Management System ("SATMS") only at airports as the first phase of the project. The second phase, which has been finalised, includes the implementation of the SATMS at sea and land ports.
Case law		
In accordance with the date of judgment		
8 November 2023	Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service (728/2022) [2023] ZASCA 144	This is an appeal against a judgment of the Gauteng Division of the High Court dismissing an application for declaratory relief pertaining to s11(1)(f) of the VAT Act.

10 October 2023	JT International Manufacturing South Africa (Pty) Ltd v CSARS (29690/14) [2023] ZAGPPHC	Whether the provisions of rebate item 460.24, read with rule 19A are peremptory, particularly insofar as timeous compliance with the provisions of the rule is concerned; and whether the Commissioner has a discretion under section 75(10)(a) of the Customs Act to exempt the applicant from compliance with the conditions prescribed by the rule.
5 October 2023	Mbali Coal (Pty) Ltd v CSARS (81950-2019) [2023] ZAGPPHC 1792	Whether the mining activities in respect of which the applicant claimed a diesel refund were all qualifying activities; and whether the applicant provided the Commissioner with necessary and sufficient records to substantiate its calculation of the diesel refund claimed.
30 August 2023	SAMU v Commissioner for the South African Revenue Service (VAT 1788) [2023] ZATC 14	Whether SAMU was entitled to deduct VAT incurred on meals and accommodation provided to its employees as input tax, and whether SARS was entitled to impose an understatement penalty of 10%.
24 August 2023	Fast (Pty) Ltd v Commissioner for the South African Revenue Service (IT 14305) [2023] ZATC 13	This case deals with two interlocutory applications. The first application is brought by the Commissioner to amend his rule 31 (of the Tax Court Rules) statement that he filed in response to the appeal lodged against his assessment of FAST's tax liability for the 2011 year. The second is an application by FAST to amend its rule 32 statement of grounds of appeal in respect of the 2011 year of assessment.
14 August 2023	Arcelormittal South Africa Limited v CSARS (2021/26916) [2023] ZAGPJHC	Whether the applicant, in terms of the relevant rebate item 670.04 read with Note 6, Schedule 6/Part 3 of the Customs Act, was entitled to claim refunds on diesel purchased by it to power locomotives traveling on rails in its steel manufacturing plant.

Guides and forms

30 November 2023	Special Shops for Diplomats	This guide has been prepared to provide an overview of the key legislative requirements under the Customs Act applicable to special shops for diplomats.
28 November 2023	How to activate the post-sequestration number to submit income tax returns	This outlines the steps that should be followed to activate the post-sequestration number on eFiling to enable the submission of income tax returns for the period after sequestration.
27 November 2023	Manage taxpayer record retention authorisation – External Policy	The purpose of this policy is to provide clarity to taxpayers regarding: • Their obligations to apply for authorisation to retain records in a form other than in terms of section 30(1)(a) and (b) of the Tax Administration Act (TAA) read with the Government Notice 787 of 1 October 2012: Electronic form of record keeping in terms of section 30(1)(b) of TAA (Government Gazette No. 35733) (Public Notice), including the obligation to apply to retain electronic records in a location outside of South Africa in accordance with Rule 4 of the Public Notice. • How to apply for the above-mentioned authorisation.

This policy only applies to taxes administered in terms of TAA.

20 November 2023	FAQ Enhanced Renewable Energy Incentive for Businesses	This note sets out the basic features and requirements for the temporarily enhanced renewable energy tax incentive proposed to be inserted as section 12BA in the Income Tax Act 58 of 1962 ("ITA"). The incentive is an enhancement of the existing renewable energy tax incentive found in section 12B of the ITA.
17 November 2023	Valuation of Exports – External Policy	The policy assists taxpayers in determining the value of goods exported from South Africa to any country of destination as stipulated in Section 72 of the Customs Act. It applies to taxpayers responsible for completing the export value of goods on the CCD.

13 November 2023	South African Traveller Management System – External Guide	The SATMS guide has been updated to include the application of the SATMS at sea and land ports as part of the second phase implementation of the SATMS.
10 November 2023	How to complete the Income Tax Return for Companies (ITR14)	This guide is designed to assist with the completion of the ITR14 return as accurately and honestly as possible.
1 November 2023	Tax Guide for Small Businesses (2022/2023)	This guide is a general guide dealing with the taxation of small businesses such as sole proprietors, partnerships and companies not part of large groups. Some of the considerations in this guide could, however, be applicable to any type of taxpayer. The aim is to consider the typical taxation issues of an average business trading in South Africa.
1 November 2023	Taxation in South Africa 2023	This is a general guide providing a high-level overview of the most significant tax legislation administered in South Africa by the Commissioner for the South African Revenue Service ("SARS").

Other Publications

29 November 2023	OECD: Tax and Development Case Study: Combating tax evasion, avoidance, and illicit financial flows to mobilise domestic resources in West Africa	A regional response to the contemporary challenges of West Africa for sustainable domestic resource mobilisation.
27 November 2023	OECD: Fuel taxes less resilient than emission permit prices amid high inflation	Effective Carbon Rates 2023: Pricing Greenhouse Gas Emissions through Taxes and Emissions Trading report presents data on taxes and tradeable permits for carbon emissions in 72 countries.
23 November 2023	ATAF: ATAF applauds UN adoption of the International Tax Cooperation convention	The vote held at the UN adopted a resolution ("Resolution A/C.2/78/L.18/Rev.1") that will begin the process of creating a greater role for UN involvement in international tax co-operation matters.
22 November 2023	OECD: Statement by the Secretary General on International Tax Cooperation	Statement on the OECD's efforts to stabilise the international tax system, support developing countries and achievement of consensus-based solutions to address tax evasion and avoidance.
22 November 2023	OECD Media Advisory: Revenue Statistics 2023	OECD to release Revenue Statistics 2023 on Wednesday, 6 December 2023.
21 November 2023	OECD Media Advisory: Global Forum annual meeting	Annual plenary meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum discuss developments in the fight against offshore tax evasion. Recordings are available on the OECD website.
20 November 2023	OECD: Multinational enterprises continue reporting low-taxed profit, even in jurisdictions with high corporate tax rates, underlining need for global tax reform	New OECD analysis shows that jurisdictions with high tax rates account for more than half of the low-taxed profits reported globally by multinational enterprises. Read the Corporate Tax Statistics report and Effective Tax Rates of MNEs: New evidence on global low-taxed profit working paper for more insights.
16 November 2023	OECD: Azerbaijan signs landmark agreement to strengthen its tax treaties	Azerbaijan signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("BEPS MLI").
15 November 2023	OECD: OECD invites public input on proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources	This public discussion draft includes proposals for changes to the Commentary on Article 5 of the OECD Model Tax Convention which deals with the definition of "permanent establishment".
14 November 2023	OECD: Kuwait joins the Inclusive Framework on BEPS and participates in the agreement to address the tax challenges arising from the digitalisation of the economy	Kuwait has joined the international efforts against tax avoidance by joining the OECD/G20 Inclusive Framework on BEPS. It commits to participate in the Two-Pillar Solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.

14 November 2023	OECD: OECD releases information and statistics on Mutual Agreement Procedures	The 2022 Mutual Agreement Procedures (MAP) Statistics, the 2022 MAP Awards and the 2023 Consolidated Information on MAP were released during the fifth OECD Tax Certainty Day.
14 November 2023	OECD: OECD Tax Certainty Day 2023	This event provided an opportunity for tax policy makers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move towards further improvements in both dispute prevention and dispute resolution.
13 November 2023	Tax Alert: SARS issuing transfer pricing information-requests on cross-border loans	SARS has started issuing information-request letters in relation to cross-border intercompany loans which are potentially subject to SA's transfer pricing rules. Taxpayers should therefore ensure that the necessary documentation and evidence are in place to support the arm's length nature of such loans. This Alert provides more details.
11 November 2023	OECD: OECD and IGF invite comments on a draft toolkit to support developing countries in addressing base erosion and profit shifting risks when pricing minerals	As part of the ongoing work of the OECD/IGF partnership on BEPS in the mining programme, the OECD is seeking public comments on an additional toolkit that is designed to support developing countries in addressing the transfer pricing challenges faced when pricing minerals. Comments are due by Friday, 2 February 2024.
10 November 2023	OECD: OECD Secretary-General Mathias Cormann welcomes pledge by 48 countries to implement global tax transparency standard for crypto-assets by 2027	OECD Secretary-General Mathias Cormann welcomed the announcement that 48 countries and jurisdictions intend to implement the OECD's global tax transparency framework for the reporting and exchange of information with respect to crypto-assets by 2027.
10 November 2023	SARS Media release: Collective engagement to implement the Crypto-Asset Reporting Framework	South Africa made a joint statement alongside other jurisdictions to welcome the new international standard on automatic exchange of information between tax authorities developed by the OECD – the Crypto-Asset Reporting Framework ("CARF").
10 November 2023	OECD: The Philippines joins the Inclusive Framework on BEPS and participates in the agreement to address the tax challenges arising from the digitalisation of the economy	The Philippines has joined the international efforts against tax avoidance by joining the OECD/G20 Inclusive Framework on BEPS. It commits to participate in the Two-Pillar Solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate.
1 November 2023	SARS Media release: SARS welcomes the MTBPS Revenue Announcement	The South African Revenue Service (SARS) welcomes the Medium Term Budget Policy Statement (MTBPS) tabled in Parliament today by the Minister of Finance, Mr Enoch Godongwana, which revised the 2023 February Budget net tax revenue estimate from R1 787.5 billion to R1 730.4 billion.