Synopsis

Tax today

November/December 2020

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

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

Editor: Al-Marie Chaffey

SARS Watch: Linda Mathatho

Unbundling Transactions: Latest Amendments

Introduction

Following its introduction by the Minister of Finance on 28 October 2020, the Taxation Laws Amendment Bill, 2020 ('the TLAB'), was passed by the National Assembly on 17 November. One of the significant amendments proposed by the TLAB is to section 46 of the Income Tax Act, which deals with the tax treatment of unbundling transactions.

A proposed amendment to section 46 was initially published by the National Treasury for public comment on 31 July as part of the Draft Taxation Laws Amendment Bill, 2020 ('the DTLAB'). Following the receipt of public comments on the DTLAB, the proposed amendment was substantially revised to take these comments into account, and these revisions are reflected in the TLAB.

Broadly speaking, an unbundling transaction involves the distribution by one company (referred to as the unbundling company) of all of the equity shares held by it in another company (referred to as the unbundled company) to the shareholders in the unbundling company.

Generally, in the absence of section 46, an unbundling transaction would give rise to a number of tax consequences. Firstly, the distribution by the unbundling company of the shares in the unbundled company constitutes a disposal of those shares (which, for CGT purposes, would generally be taxable in the hands of the unbundling company). Secondly, the distribution is a dividend declared by the unbundling company, which would otherwise trigger dividends tax for the unbundling company. Finally, the transfer of the shares in the unbundled company is subject to securities transfer tax.

In short, in the absence of any tax relief, the tax implications of an unbundling transaction would simply make most unbundling transactions too expensive to conclude. The problem is compounded when the unbundling company does not have a sufficient level of cash or liquid assets with which to settle the resulting tax liabilities.

The importance of unbundling transactions in the South African economy

There are many commercial benefits of unbundling transactions. These largely revolve around the unlocking of value for shareholders, the deconcentration of ownership and the enhancement of focused growth strategies. Unbundlings allow for the separation of different investment profiles, which may have different funding needs or expectations from investors with respect, for example, to dividend yields. From a competition perspective, unbundling transactions may improve competitiveness in an economy by diversifying ownership in a sector.

Given the above, it is clear that unbundling transactions are of fundamental importance not only in ensuring the existence of efficient and well-functioning markets, but also to the economy as a whole.

The purpose of section 46

The purpose of section 46 is to effectively make an unbundling transaction tax neutral. Generally, the tax consequences that would have resulted from an unbundling transaction are deferred until such time as the shareholders in the unbundling company subsequently dispose of the shares they acquire as a result of the unbundling or the unbundled company disposes of its assets.

Protection of the South African tax base

In order to protect the South African tax base, section 46 contains a number of rules that limit the circumstances under which the relief it affords will apply. It is easy to see that the tax base may be eroded where, for example, a shareholder in the unbundling company will not be subject to tax when it subsequently disposes of the shares that it has acquired pursuant to the unbundling transaction. This is particularly the case if the shareholder in question holds a significant shareholding in the unbundling company and is, as a result, able to drive the transaction.

Accordingly, prior to the amendments proposed by the TLAB, one of the limiting rules in section 46 was that the relief would not apply if, immediately after the distribution, 20% or more of the shares in the unbundled company are held by what is referred to as a 'disqualified person' (whether alone or together with any other disqualified person who is a 'connected person' in relation to that disqualified person). Generally, a 'disqualified person' is any person who will not be subject to tax on a subsequent disposal of the unbundled shares (such as, for example, non-South African residents, retirement funds, government and public benefit organisations).

One of the purposes of this rule was to limit the relief in circumstances where a tax-exempt shareholder has significant influence over the unbundling company and can therefore secure a tax benefit that effectively erodes the South African tax base.

The amendments to section 46 as proposed by the DTLAB

As per the Draft Explanatory Memorandum released together with the DTLAB, Government appeared to be concerned with a perceived increase in the use of unbundling transactions to erode the South African tax base, particularly where the distribution of the unbundled shares is made to non-South African residents. The concern was that significant base erosion can take place where 20% or more of the shares in the unbundled company are held by non-residents who are not connected persons in relation to each other. There could, for example, be eight non-South African resident shareholders (who are not connected persons in relation to each other), each holding 10% of the shares in the unbundled company. In this scenario, Government argued, the current limiting rule is inadequate to protect the South African tax base.

In order to address this perceived threat to the South African tax base, the amendments to section 46 proposed by the DTLAB removed the reference to 'connected persons' in the limiting rule. The effect of this proposal was that the relief afforded by section 46 would not apply if more than 20% of the shares in the unbundled company are, immediately after the distribution, in aggregate held by disqualified persons, irrespective of the level of shareholding of each of these disqualified persons, and irrespective of whether or not they are connected persons.

The effect of the amendment proposed by the DTLAB

South African-listed groups generally have diverse shareholdings, with a significant portion comprising non-resident investors (private and institutional) and other disqualified persons. As of 2016, some 37% of the market capitalisation of the JSE was held by foreigners and another 24% was held by retirement funds. The 20% threshold would therefore almost always be satisfied for listed companies if the aggregate interest of these disqualified persons is taken into account. Accordingly, the result of the amendment proposed by the DTLAB would have been that very few, if any, unbundlings by listed companies would qualify for tax relief.

Had the amendment as proposed by the DTLAB ultimately been promulgated, this would have had a disastrous effect, not only on unbundling transactions themselves, but on South African capital markets and potentially the economy as a whole.

Public comments on the amendment as proposed by the DTLAB

Needless to say, the amendment to section 46 proposed in the DTLAB elicited a great deal of public comment.

Aside from the disastrous impact that the proposed amendment would have had, there are many reasons why, commentators argued, it was ill-considered and inappropriate.

Effect of broad definition of 'disqualified person'

The concern of Government, as articulated in the Draft Explanatory Memorandum, appeared to be with non-residents that hold 20% or more of the shares in the unbundled company. However, the category of 'disqualified persons' is broader than only non-residents. It also includes the government, PBOs, recreational clubs, rehabilitation companies and trusts, retirement funds, medical schemes and various government entities. The effect of the proposed amendment was that the shareholdings of *all* disqualified persons in the unbundled company would need to be counted to determine whether the 20% threshold is breached. If it is, then no relief would apply to the unbundling transaction in its entirety.

Applying the rule to non-residents only was acknowledged by commentators as not being a viable solution, on the basis that this would result in a breach of the non-discrimination provisions of South Africa's double taxation agreements with other countries. However, including

all disqualified persons in such an aggregate rule, regardless of the size of their shareholdings, would have had significant implications. One option suggested by commentators was to narrow the definition of disqualified person, on the basis that, from a policy perspective, there is good reason to exclude certain of these, particularly retirement funds since such funds are not truly exempt from tax (amounts withdrawn from retirement funds are subject to tax on withdrawal and the system of taxation applicable to retirement funds is more akin to a deferral, with both contributions and returns accumulating tax-free but then being subject to tax on withdrawal).

Practical considerations

It was implicit in the proposal that a company would need to be able to identify and determine the tax status of every beneficial owner of shares in the unbundling company (and the unbundled company) at the time of the distribution in order to determine whether an unbundling transaction would qualify for relief from tax. Conducting the analysis required to measure the proposed aggregate 20% threshold would, commentators argued, be an impossible task for any listed company. For one, the shareholding in a listed company generally changes on a regular (often daily) basis. Moreover, it is impossible for a listed company to know who all its shareholders are (let alone their tax status) on any given day, given that the shareholdings are usually held through intermediaries.

Is there really an erosion of the South African tax base?

The argument that unbundling transactions erode the tax base is easily countered when one considers the primary objective of most unbundling transactions: the unlocking of value. This may be illustrated by way of a simple example.

Assume that a listed company (Listco) has a market capitalisation of R10bn and wishes to unbundle and separately list its 100% shareholding in one of its subsidiaries (Subco). Subco has a value of R2bn and a nominal base cost for CGT purposes. A non-resident holds 10% of Listco.

Absent the unbundling relief afforded by section 46, the distribution of the shares in Subco would attract CGT and dividends tax. However, when one considers the tax base from the perspective of the individual companies and shareholders, there is no erosion of the tax base at all, assuming the non-resident is not driving the transaction with the objective of disposing of its interest in Subco in the short run.

From the perspective of the non-resident shareholder in Listco, it had an investment in Listco that was worth R1bn before the unbundling. After the unbundling, it now has a shareholding in Listco that is worth R800m and a shareholding in Subco that is worth R200m. In aggregate, its investment in the combined Listco and Subco is still worth R1bn. It has simply swapped its indirect investment in Subco for a direct investment. No value has been transferred to the non-resident shareholder. Before the unbundling, its investment with a value of R1bn fell outside the tax net. After the unbundling this is still the case. From the perspective of Listco and Subco there is also no erosion of the tax base. Their assets remain wholly within the tax net to the extent of the combined net asset value of R10bn. The only thing that has changed is that a hypothetical disposal of the shares in Subco now partially falls outside of the tax net, whereas a disposal of these shares by Listco would have been wholly within the tax net.

Shares held in unbundled company (as opposed to being held in the unbundling company)

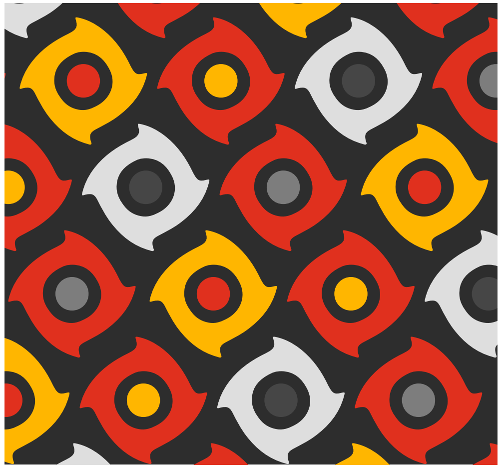
Another concern expressed by commentators was that (as is the case prior to the proposed amendment to section 46) the test for shareholding is flawed.

In terms of the relevant rule, unbundling relief will not apply where, immediately after the distribution of the shares in the unbundled company, 20% or more of those shares are held by disqualified persons. This would include shares that may not have been held by the unbundling company (and in respect of which no relief is sought). This problem is illustrated by way of the following example. Assume the unbundling company holds 60% of the shares in the unbundled company, and other shareholders (who are not otherwise involved in the unbundling transaction at all) hold the remaining 40% of the shares in that company. Where the unbundling company distributes its 60% shareholding in the unbundled company to its shareholders, the shareholding of the other shareholders in the unbundled company could affect whether or not the unbundling company qualifies for unbundling relief.

Accordingly, it was argued by commentators that, in determining whether unbundling relief applies, no regard should be had to any shares that are not held by the unbundling company in the unbundled company and that are not distributed under the unbundling transaction.

Effective date

The effective date of the proposed amendment to section 46 in the DTLAB was 31 July 2020 (i.e. the date on which the DTLAB was published for public comment). Commentators argued that this had an effect on unbundling transactions that were, at 31 July, already underway. Accordingly, and in light of the fact that unbundling transactions often take many months to finalise, it was argued by commentators that this date should be reconsidered.



Revised proposal as per the TLAB

As is reflected in the TLAB (introduced in Parliament on 28 October and passed by the National Assembly on 17 November), Government has, to a certain extent, acknowledged some of the concerns expressed during the course of the public comment process, and the revised proposed amendment in the TLAB is a significant improvement on the original proposal.

In terms of the revised proposal, a 'pro-rata' rule will apply instead of the 'all-or-nothing' rule. In this regard, tax deferral under section 46 will not apply in respect of any equity share that is distributed by an unbundling company to any shareholder that:

- is a disqualified person; and
- holds at least 5% of the equity shares in the unbundling company immediately before that unbundling transaction.

Moreover, as is evident from the above, in determining whether unbundling relief applies, no regard will be had to any shares that are not held by the unbundling company and that are not distributed under the unbundling transaction.

The revised proposal is a much welcome improvement on the original proposal. From a practical perspective, it will no longer be necessary to identify and determine the tax status of every beneficial owner of shares in the unbundling and unbundled companies at the time of the unbundling distribution. In addition, the revised proposal undoubtedly results in a more equitable outcome. This is on the basis that shares distributed to persons that are not disqualified persons will benefit from tax deferral, which will only be disallowed to disqualified persons who hold more than 5% of the shares in the unbundling company. In this regard, it was acknowledged by National Treasury that the 'all-or-nothing' rule, which would have disallowed tax deferral in its entirety in the circumstances in which it applied, would have been too punitive.

Regarding the effective date of the proposed amendment, the TLAB has changed this date from 31 July 2020 to the date of introduction in Parliament of the TLAB (i.e. 28 October 2020). Although commentators requested a later effective date National Treasury was unwilling to accommodate this request on the basis that the revised proposed amendment is 'softer' than the original proposal. Moreover, National Treasury argued, the possibility that the revised proposal would be adopted was communicated during the course of the public consultation process, which should have provided sufficient time for taxpayers to plan accordingly.

Outstanding concerns

Although the revised proposal is a welcome improvement on the original proposal, there are still some concerns.

One example of these concerns relates to the overly broad definition of 'disqualified person'. In this regard, National Treasury stated, in the Draft Response Document on the DTLAB, that:

> 'To exclude pension funds or any other category of persons from the definition of "disqualified persons" would not be desirable as there is no policy change in ensuring that the corporate reorganisation rules continue to operate as tax deferral provisions and not exemptions (as would be the case if tax deferral is allowed for transfers to persons outside of the South African tax net)'.

The above statement ignores the fact that retirement funds are not truly 'outside of the South African tax net' – amounts withdrawn from retirement funds are subject to tax on withdrawal – and simply ignores the submission that there is therefore good reason, from a policy perspective, to exclude them from the definition of 'disqualified person'. Some listed companies do have retirement funds that hold more than 5% of the shares in the company. The Government Employees Pension Fund is a notable example in this regard and was the reason why the 20% threshold was introduced in the first place.

As a general matter, there is concern relating to the undue emphasis placed by National Treasury on the fiscal effect of granting a tax deferral in the context of an unbundling transaction. As discussed above, unbundling transactions are fundamentally important in the South African economy (and, in fact, in any economy).

In this context, the concern of Government with the erosion of the tax base as a result of tax deferrals arising from unbundling transactions is, it is submitted, misplaced. Tax relief for unbundling transactions should not be seen as an 'incentive' or as a 'special dispensation'. Instead, the appropriate enquiry should be as to whether the tax regime facilitates or hinders unbundling transactions.

The amendment to section 46 proposed by the TLAB, although an improvement from the proposal in the DTLAB is, unfortunately, still likely to act as a hindrance to unbundling transactions.

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

Greg Smith
Senior Manager: National Tax Technical
+27 (0) 11 797 4522

Employment tax COVID-19 chronicles: Employer-provided benefits – let's get creative

Over the past few editions, we've written about various COVID-19 related employees' tax issues that have become topical in 2020, especially in the wake of lockdowns and travel restrictions. In the August edition of Synopsis, we discussed the ins and outs of employee home office expenditure claims. In September, we delved into the dark side of expatriate tax and the potential unintended double taxation arising as a result of COVID-19 travel restrictions. In our final instalment of the employment tax chronicles, we discuss structuring of employee benefits during difficult times and the related tax implications.

Costs related to working from home

Disaster Relief tax legislation provided relief in various areas of our tax and related legislation. No specific relief was provided in respect of allowances or expenditure for work-from-home arrangements due to the pandemic. In other words, there are no special COVID specific provisions that relate to any costs associated with working from home (e.g. acquiring computer equipment or office furniture to set up a home office). Therefore, the existing tax provisions need to apply to these types of expenses and situations.

In respect of home office expenditure, there are two options for structuring any benefits provided to employees:

1. Employer-provided assets

If an employer provides an employee with an asset to use for private or domestic purposes, a taxable benefit arises.
The amount or value of the benefit is calculated by deducting any consideration paid by the employee to the employer, as well as any costs incurred by the employee in respect of the repair or maintenance of the asset, from the value of the private or domestic use.

No value is placed on the private or domestic use of a telephone or computer equipment which the employee uses mainly for the purposes of the employer's business. The word 'mainly' has been interpreted by the courts to mean more than 50%. If more than 50% of the total use of the asset is for business purposes, no value is placed on the private or domestic use of that asset and it is therefore not taxable. The use of the asset will be assessed by SARS on a case-by-case basis. It is therefore important that the correct safeguards and procedures are put in place to ensure items are mainly used for business purposes.

2. Privately-owned assets

Employees who incur business-related expenses if they use a privately-owned laptop for business purposes may be compensated by the employer by means of a reimbursement or an allowance.

Reimbursement

A reimbursement of business-related expenditure occurs when an employee has incurred and paid for these expenses on behalf of an employer without having had the benefit of an allowance or an advance, and is subsequently reimbursed for the exact expenditure by the employer after having proved and accounted for it. If expenditure is incurred as instructed by the employer, proof of expenditure is provided and the ownership of the asset vests in the employer, the reimbursement will be excluded from taxable income under section 8(1)(a)(ii) of the Income Tax Act 58 of 1962 ('Act').

Again, from a practical perspective, systems should be in place to ensure that reimbursement of actual expenditure takes place and that the expense is incurred by the employee. If this is not the case, there may be a taxable benefit. An example of this is where the employee purchases a monitor and keyboard for home office use and provides proof of purchase to the employer. The employer then reimburses the employee and both agree that the employer owns the items and the employee will return the equipment to the employer on resignation or cessation of use.

Allowance

An employer may provide an employee with an allowance to incur business-related expenditure such as home data use. An allowance must be included in the taxable income of the employee under section 8(1)(a)(i) of the Act, unless the employee is able to prove exact business-related use. For example, if an allowance of R1000 is provided by the employer to the employee for home data use, this amount will be included in the taxable income of the employee. The alternative is to structure this allowance as reimbursive as set out above. In this case, the employee must incur the cost of a WiFi contract and reclaim the cost incurred from the employer, providing adequate proof. The actual expenditure incurred will then be repaid to the employee.

Some employers pay a predetermined reimbursement to employees based on expected business usage or expense on a regular basis. This is not a reimbursement in the true sense and will be viewed as an allowance, as payments are not linked to actual expenditure incurred and proven.

Gifts

As everyone tightens their belts in anticipation of the 2020 festive season, employers may consider providing gifts in kind to employees, where bonuses or the customary 13th cheques are not feasible.

Currently, gifts are taxed under paragraph 2(a) of the Seventh Schedule of the Act as an asset, commodity, goods or property of any nature provided by the employer to the employee at no cost or a cost which is less than the market value of that item. South Africa has no *de minimis* or minimum floor value below which employer-provided gifts are tax free. As such, all small token gifts, such as gift vouchers (aside from certain exceptions related to on-site meal vouchers, meals supplied by the employer for parties etc and whilst entertaining clients) are taxable.

PwC has made a submission to treasury asking that a minimum tax-free threshold for employer gifts is introduced similar to other countries in the world. At this stage, however, these gifts will still be taxable, regardless of their value.

Leave

Some employers have opted to provide special leave arrangements in the wake of COVID-19 and the accompanying disruption. In some cases, employees were requested to take formal annual leave to help alleviate the contingent liability on company's balance sheet. This leave would be considered paid and fully taxable as with any ordinary leave.

In other instances, unpaid leave was advised. Unpaid leave is not prescribed by law, but may be granted at the option of the employer. Unpaid leave is time off during which no basic salary is paid, but your position is retained. In some instances, the employee will opt to freeze contributions to their pension or provident fund, but other benefits such as group life insurance and medical aid may not be frozen and will be covered by the employer and reclaimed from the employee. This may be a taxable fringe benefit depending on how it is structured. If unpaid leave is granted, the value of the reduction in pay is calculated based on the average number of working days per period.

For example, in the case of a monthly paid employee who works 5 days a week, their salary would be divided by 21.67 to calculate the amount that would be deducted for every day of unpaid leave. The factor of 21.67 is calculated as follows:

21.67 = 52 weeks x 5 days per week/12 months

It is important to note that these calculations are usually performed on an annual basis. The fact that an employee has taken unpaid leave (regardless of the type) has no effect on their tax period. This means that the tax period continues until the end of the tax year, unless the employee resigns before then. At the end of the tax period, when the final employees' tax calculation is performed, the employee will likely have paid too much employees' tax due to the unpaid leave absence and this may reflect, on assessment, as a credit due to them by SARS.

As both UIF and SDL are calculated on an employee's remuneration, these amounts are commensurately reduced where remuneration is reduced under unpaid leave.

Summary

In these exceptional times the employer should ensure that any temporary changes in benefits, allowances or pay are correctly planned for and that accurate tax treatment is applied to avoid potential future issues in the event of a SARS audit.

Gavin Duffy
+27 (0) 11 7974271

Danielle Botha
+27 (0) 11 797 5624

SARS letters of demand: what to do upon receipt thereof?

In recent times the South African Revenue Service ('SARS') has been clamping down on those taxpayers who have outstanding tax debts due. The impact of COVID-19 on tax revenues in 2021 resulted in tax revenue forecasts having been revised downwards by R312bn from the 2020 Budget forecast. This was attributed to both the sluggish economy and the effects of the COVID-19 lockdown. With a disrupted year of business activities and the negative impact on revenue collections, taxpayers now more than ever, need to be vigilant, proactive and organised when it comes to understanding their tax affairs and dealing with SARS. One such revenue collection mechanism increasingly used by SARS is the issuance of letters of demand to taxpayers. Such outstanding tax debts do not need to be new/recent tax debts but can span over a period of years.

The receipt by taxpayers of letters of demand for payment often creates undue stress and panic, which can result in a slow reply to SARS. It is therefore important, as a starting point, for taxpayers to know their remedies. The diagram below contains some key points that taxpayers should take note of upon receipt of a letter of demand from SARS.

Whether the individual/entity which the letter of demand is addressed to is in fact the taxpayer. In addition, it is important to check the date of the letter of demand.

Whether the amount of the tax debt allegedly due to SARS is correct. To make this determination, taxpayers must check the amount on the letter of demand against the amount of their statement of account.

whether there is a business day time limit within which to take the next step. SARS usually gives the taxpayer 5 to 10 business days to take the next step.

Consider the next step/ remedies

It is crucial for taxpayers to understand which of the following remedies are available to them to mitigate or suspend collection steps by SARS or third-party appointments by SARS in satisfaction of the taxpayers' tax debt or even judgment taken against the taxpayer.

1. Payment of the full tax debt:

a. Taxpayers can elect to pay the full amount due to SARS in satisfaction of the outstanding tax debt in terms of section 169 of the Tax Administration Act, No 28 of 2011 ('TAA').

b. This is the appropriate remedy where the taxpayer has sufficient resources to pay the outstanding tax debts and will ensure that no collection steps are taken by SARS.

2. Instalment payment plan:

a. Taxpayers can apply for an instalment payment arrangement with SARS in terms of section 167 read with section 168 of the TAA.

b. This is the appropriate remedy where the taxpayer can demonstrate a short-term cash flow problem and is unable to settle the tax debt in one payment. In addition, the payment plan must facilitate the collection of the debt and ideally be presented to SARS at the highest possible instalment over the least amount of time.

3. Suspension of payment:

a. Taxpayers can apply for the suspension of payment of a (disputed) tax debt in terms of section 164(3) of the TAA.

b. This is the appropriate remedy where the taxpayer intends to submit or has already submitted a formal dispute and does not have sufficient resources to pay the assessments raised by SARS.

4. Compromise of debt:

a. Taxpayers can apply for the compromise their (undisputed) tax debt in terms of section 200 of the TAA.

b. This is an appropriate remedy where the proposal will provide a higher return to the fiscus than liquidation, sequestration, or other collection measures and if the compromise is consistent with considerations of good management of the tax system and administrative efficiency.

5. Settlement of the dispute:

a. Taxpayers can apply for the settlement of a (disputed) tax debt in terms of section 146 of the TAA.

b. This is an appropriate remedy if it is, inter alia, to the best advantage of the state to settle the dispute in whole or part on the basis of fairness and equity to the taxpayer and SARS.

Key takeaways:

- Upon receipt of a letter of demand from SARS, taxpayers must check that all factual details on the letter of demand are correct, that it is addressed to the correct person, the date of the issuance of the letter and the timeframe within which the next step must be taken.
- Since time is of the essence in respect of this revenue collection mechanism, taxpayers should not ignore these demands and it is advisable that they seek the assistance of their tax advisers to mitigate collection steps on the part of SARS, judgment taken against the taxpayer by SARS or the appointment of third parties by SARS in satisfaction of the tax debt owed by the taxpayer.
- Each of these debt collection mechanisms is governed by a specific technical legislative process.
- The good news is that there are remedies available to taxpayers who find themselves in receipt of a letter of demand, and the circumstances of each taxpayer will inform the appropriate remedy to be utilised by the taxpayer.

Elle-Sarah Rossato
Lead: Tax Controversy and Dispute Resolution
+27 (0) 11 797 4938

Jadyne Devnarain
Senior Manager: Tax Controversy and Dispute Resolution
+27 (0) 11 797 4282

SARS Watch

SARS Watch 1 November 2020 – 30 November 2020

Legislation		
27 November 2020	Amendment to rules under section 120 – Providing for 24- hour operations at Lebombo, Oshoek and Kopfontein border posts with effect from 1 December 2020 (DAR204)	Notice R1265 published in Government Gazette No. 43935 with an implementation date of 1 December 2020.
23 November 2020	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to reduce the rate of customs duty on wheat and wheaten flour from 83,21c/kg and 124,81c/kg to 54,42c/kg and 81,63c/kg respectively, in terms of the existing variable tariff formula – Minute 07/2020	Comments must be submitted to SARS by Friday, 4 December 2020.
20 November 2020	Draft amendments to rules under sections 49 – Insertion of rules in respect of the Economic Partnership Agreement between the Southern African Customs Union Member States and Mozambique, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part	The revised draft documents were published on Friday, 27 November 2020 and comments must be submitted to SARS by Friday, 4 December 2020.
20 November 2020	Public notice 1236 published in terms of section 25(7) of the Tax Administration Act, 2011, extending the deadline to file Country-by-Country Report returns by persons as specified in the notice	Notice 1236 published in Government Gazette No. 43913 with an implementation date of 20 November 2020.
17 November 20200	Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26B—2020]	The National Assembly passed the Bill, as amended by the Standing Committee on Finance, on 17 November 2020.
17 November 2020	Taxation Laws Amendment Bill [B27B—2020]	The National Assembly passed the Bill, as amended by the Standing Committee on Finance, on 17 November 2020.
13 November 2020	Imposition of Provisional Payment in the form of Safeguard duty against the increased imports of bolts with hexagon heads of iron or steel: Preliminary investigation – ITAC Report 636	Tariff amendment notice R1222 published in Government Gazette 43901 with an implementation date of 13 November 2020.
11 November 2020	Discussion paper – Advance Pricing Agreements	Comments must be submitted to SARS by Friday, 18 December 2020.
Case law		
In accordance to date of judgment		
20 November 2020	City Power (SOC) Limited v CSARS (1147/2019) [2020] ZASCA 150	Appellant's accruals and receipts not exempted from normal tax under section 10(1)(a) and (b) of the Income Tax Act 58 of 1962.
20 November 2020	Mat Chem CC v CSARS (7139/2019) [2020] ZAKZPHC 71	Whether the determination made by SARS by remitting the amount imposed under section 88(2) could be overturned.
30 October 2020	Van der Merwe v CSARS (A322/2019) [2020] ZAWCHC 140	Whether the rulings or orders made by the Tax Court in respect of the application for condonation and the striking out are appealable, whether the granting of the condonation to SARS was, on the facts, justified, and whether the failure to have the striking out application properly ventilated vitiated the proceedings.
Rulings		
25 November 2020	BPR 356: Preference share – hybrid equity instrument and third-party backed share	This ruling determines whether the preference shares issued by the applicant are hybrid equity instruments or third-party backed shares.
25 November 2020	BPR 355: Accrual of pension payments to a resident from a foreign pension fund	This ruling determines the tax consequences of the accrual of pension payments to a resident from a foreign pension fund in respect of services rendered both in South Africa (SA) and outside SA.

25 November 2020	BCR 076: Cancellation of units in foreign collective investment schemes pursuant to their corporate re-domiciliation	This ruling determines the capital gains tax implications arising out of the exchange of units issued by an undertaking for collective investment schemes in transferrable securities in country A for units issued by an undertaking for collective investment schemes in transferrable securities in country B as part of the process of redomiciling the applicant's investment business from country A to country B.
11 November 2020	BCR 075: Settlement of post-retirement medical aid and retirement gratuity benefits	This ruling determines the tax consequences for the employers and the qualifying employees due to their relinquishment of post-retirement medical aid benefits and gratuity benefits.
Interpretation Notes		
18 November 2020	IN 97 (Issue 2): Taxation of REITs and controlled companies	This Note provides guidance on the interpretation and application of section 25BB, which deals with the taxation of REITs and controlled companies.
18 November 2020	IN 90 (Issue 2): Year of assessment of a company – Accounts accepted to a date other than the last day of a company's financial year	This Note provides guidance on the application of section 66(13C) and the discretionary power vested in the Commissioner to accept financial accounts of a company for a period ending on a day that differs from the last day of the company's financial year.
18 November 2020	IN 19 (Issue 5): Year of assessment of natural persons and trusts – Accounts accepted to a date other than the last day of February	This Note provides guidance on the application of section 66(13A) and the discretionary power vested in the Commissioner to grant permission to a person other than a company, for example, a natural person or trust, to submit accounts for a period that differs from the year of assessment ending on the last day of February.
Guides and forms		
24 November 2020	Valuation of Exports Policy	The Policy has been updated with the charges and expenses that must be included when determining the FOB value of exported goods.
06 November 2020	Guide for Employers in respect of the Unemployment Insurance Fund	Guide includes new registration requirements from the UI Commissioner.
05 November 2020	Comprehensive Guide to Capital Gains Tax (Issue 9)	The purpose of this guide is to assist the public and SARS's personnel in gaining a more in-depth understanding of capital gains tax (CGT).
04 November 2020	Clarification Notes for AEOI (FATCA and CRS)	The purpose of this document is to clarify the application of certain data fields and to effect minor changes required.
Other publications		
25 November 2020	Tax Alert – African Continental Free Trade Agreement	The new effective date for trade in terms of the AfCFTA is 1 January 2021, which will be the commencement date of the operational phase of the AfCFTA.
23 November 2020	OECD: Secretary-General Tax Report to G20 Leaders (Saudi Arabia)	This report contains two parts. Part I reports on the activities and achievements in the OECD's international tax agenda. Part II reports on the activities and achievements of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
17 November 2020	OECD: Advancing Gender Balance in the Workforce: A Collective Responsibility	This report, developed by the OECD Forum on Tax Administration's Gender Balance Network, sets out a range of policies and practices undertaken by tax administrations and their national governments to advance gender balance in the workforce.
12 November 2020	OECD: Revenue Statistics in Africa 2020	The publication Revenue Statistics in Africa is jointly undertaken by the OECD Centre for Tax Policy and Administration and the OECD Development Centre, the African Union Commission (AUC) and the African Tax Administration Forum (ATAF) with the financial support of the governments of Ireland, Japan, Luxembourg, Norway, Sweden and the United Kingdom.