Synopsis

Tax today

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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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The audit process – recent case law and the taxpayer's perspective

The recent case of *Carte Blanche Marketing CC and Others v Commissioner for the South African Revenue Service* (26244/2015) [2020] ZAGPJHC 202 (31 August 2020) provided clarity on, inter alia, when a decision taken by the South African Revenue Service ('**SARS**') is ripe for review in the High Court in the context of the information gathering provisions of the Tax Administration Act No. 28 of 2011 ('**TAA**'). Selected aspects of the Carte Blanche case are discussed herein.

The applicants ('**the Taxpayers**') were selected for an audit in terms of section 40 of the TAA by SARS to allegedly verify their compliance with the tax acts. The Taxpayers sought the review and setting aside of this decision.

A brief background to the matter is as follows. On 4 August 2014 the Taxpayers were formally notified that they had been selected for an audit in terms of section 40 of the TAA. In terms of these letters the Taxpayers were called upon to make available certain records in order to enable the audit team at SARS to conduct an audit. The three notices stated that the decision to conduct the audit was based on a risk assessment. The Taxpayers did not provide the Commissioner with any documentation to prove their compliance, thus the audits progressed, and consideration was given to the documentation in the Commissioner's possession only. In the letters dated 18 February 2015, the Commissioner informed the Taxpayers of the findings in respect of the first and second applicants, the basis thereof and that the Commissioner intended to issue additional assessments for alleged underpayment of the income tax. Pursuant to those letters the present application was instituted on 14 April 2015.

Notable aspects of the Taxpayers' case are as follows:

- The Taxpayers maintained that their tax affairs had always been in order. In support thereof they relied on the fact that they had never been subjected to any audit and that tax clearance certificates had in the past been issued to them by SARS.
- They contended from the outset that SARS committed itself to a 'risk assessment basis', being the relevant consideration upon which it decided to subject the Taxpayers to an audit. The lawfulness of the decision therefore depends, *inter alia*, on SARS having in fact established the existence of an income tax risk pertaining to the Taxpayers.
- The Taxpayers sought the review and setting aside of SARS's decision to select the Taxpayers for an audit in terms of section 40 of the TAA on the basis that it was unlawful a) as it was taken for an ulterior purpose, b) it was taken for a reason not authorised by the empowering legislation (i.e. the TAA), c) it was irrational and d) it was taken in bad faith.

Notable aspects of SARS's case are as follows:

- According to SARS, the risk identified stemmed from a Customs investigation into the Taxpayers' activities and the litigation in that regard over a period of just less than ten years. SARS also expanded its audit to the alleged discrepancy in turnover between the (first and second) Taxpayers' VAT returns when compared to their income tax returns.
- SARS opposed the application on the basis that a) a decision in terms of section 40 of the TAA did not constitute reviewable administrative action, b) even if it was, the decision in issue was lawful and should not be set aside.

The review proceedings proceeded on the basis that it was brought as a legality review. In other words, the court considered whether the decision was reviewable under the principle of legality.

As a starting point, the court had to consider what powers the empowering provision (i.e. section 40) gives the Commissioner. The purpose of the TAA is '*to ensure the effective and efficient collection of tax*' as contemplated in section 2 of the TAA.

The TAA is to be read against the background of the South African Revenue Service Act, No. 34 of 1997 ('**SARS Act**'), in particular sections 3 and 4 thereof. Section 3 states that SARS's objectives are the efficient and effective collection of revenue as well as control over the import, export, manufacture, movement, storage or use of certain goods. Section 4 of the SARS Act prescribes that in order to meet its objective of efficient and effective tax collection the Commissioner '*must … secure the efficient and effective, and widest possible, enforcement*' of, among other things, the Income Tax Act, No. 58 of 1962 ('**Income Tax Act**'). The Commissioner is therefore not only empowered to use the available mechanisms to collect all taxes payable to the fiscus, it is legally enjoined to do so.

All the tax acts function by means of self-assessment systems which cause the Commissioner not to be in possession of the information and documentation that would prove or disprove compliance with the said Acts. In order to enable the Commissioner to verify compliance it is therefore essential that:

- the taxpayer be statutorily obliged to keep the records that would prove its compliance with the relevant Act and to make them available when called upon to do so; and
- the Commissioner be provided with extensive powers to obtain the evidence that would enable him to properly administer and enforce the relevant legislation.

These duties and powers are currently regulated by the TAA. In particular, section 40 of the TAA provides for the selection for inspection, verification or audit and states that SARS may select a person for inspection, verification or audit on the basis of any consideration relevant for the proper administration of a tax act, including on a random or a risk assessment basis. The wording, context and purpose of section 40 suggests that provided that the intended audit is to be undertaken for the proper administration of a tax act, there is no limitation to the considerations on which a decision to select a taxpayer is to be founded.

The court then had to consider what was sought and for what purpose.

All three applicants received notifications from SARS dated 4 August 2014 ('audit notifications'). The documents requested by SARS are normally the kind that would prove the correctness of the VAT and income tax returns filed by a taxpayer and are those that a compliant taxpayer should have in its possession. On the face of it, the court commented that it seemed like every enquiry directed was relevant for the administration of a tax act i.e. the Income Tax Act. Objectively adjudged, it seems that no value could be served and no purpose (to SARS) could be achieved, save to prove or disprove the correctness of the taxpayers' VAT and income tax returns.

The court stated that the decision taken in terms of section 40 of the TAA and the subsequent making of the assessments against the first two Taxpayers were separate decisions. Counsel for the Taxpayers accepted that the decision was not one which falls within the definition of administrative action as defined in the Promotion of Administrative Justice Act, No. 3 of 2000 ('**PAJA**'), because the decision to select a taxpayer for an audit does not adversely affect the taxpayer's rights and does not have a direct external legal effect – or certainly in this instance.[1]

The initiation of an investigation does not constitute a decision which is capable of review. In this regard, the matter was not yet ripe for review as it was incomplete.

1 Viking Pony Africa Pumps v Hidro-Tech Systems 2011 (1) SA 327 (cc) at para [38], Gamede v Public Protector, 2016 (1) SA 491 GP, Corpclo 2290 CC t/a U-Care v Registrar of Banks (755/11) [2012] ZASCA 156 (2 November 2012), Bhugwan v JSE Limited 2010 (3) SA 335 (GSJ) at 340 D-I and Wingate-Pearce v SARS 2019 (6) SA 196 (GSJ).

The ripeness argument dovetails with the subsidiarity principle. The principle of subsidiarity requires that a party rely on the lower norm that regulates or should regulate the subject matter in issue. In *Mazibuko v City of Johannesburg 2010 (4) SA 1 (CC)* O'Regan J explained at paragraph 73 that:

> *'where legislation has been enacted to give effect to a right, a litigant should rely on that legislation in order to give effect to the right or alternatively challenge the legislation as being inconsistent with the Constitution.'*

In this application, the court stated that the lower norm is the section 42 procedure of the TAA or the sections 116 or 117 (establishment of the Tax Court and jurisdiction of the Tax Court) processes of the TAA. These sections of the TAA give effect to the constitutional rights the Taxpayers wish to protect with this application. The court found that the Taxpayers deliberately chose not to utilise '*the lower norm*' and directly approached this court. In doing so they have breached the subsidiarity principle. Absent a challenge to the constitutional validity of the Chapter 9 appeal process on the basis that it 'falls short of constitutional standards' the court cannot entertain the application. To do so would impliedly impugn the validity of the Chapter 9 appeal process, without there having been a properly mounted constitutional attack.

The court concluded, *inter alia*, that:

- the timing of this application on the facts of this case was wrong; and
- it could not find on the evidence placed before this court that the decision taken by SARS was taken for a purpose other than for the administration of a tax act as contemplated in section 3(2) of the TAA.
- on the question of whether the decision was lawful, the decision was not capable of forming the subject of a legality review within the factual matrix of this case.

The application was therefore dismissed with costs, including the costs of two counsel.

This case is an important one as it, *inter alia*, provides clarity on when a decision is ripe for review in the High Court. It also brings a much-needed focus on the information-gathering provisions of the TAA, which are key provisions for taxpayers to be cognisant of once they have been selected for audit, inspection or verification.

This year PwC's third annual Taxing Times 2020 Survey provided key insights in respect of taxpayers' practical experiences, perceptions and needs with regard to five crucial areas that were tested, one of which was the audit process (including the debt management process).[2]

Some positive developments as well as areas of improvement on the part of SARS in respect of the audit process were noted.

- On a positive note:
  - 96% of the respondents stated that SARS allows an extension to submit a response to a section 46 request for relevant material.
  - 52% of the respondents say that the section 46 requests from SARS for relevant material usually meet the criteria as set out in the TAA 'most of the time'.
  - 49% of the respondents state that it typically takes SARS one to three months to complete a verification audit (not an investigative audit).

- On a more concerning note:
  - 48% of the respondents believe that SARS is likely to verify/audit their company post submission of CIT return on an annual basis.
  - 20% of the respondents indicated that the turnaround time to finalise an investigative audit is longer than 18 months.
  - 66% of the respondents reveal that SARS's letter of assessment / audit findings is identical to SARS's letter of audit findings.
  - 58% of the respondents stated that SARS 'sometimes' complies with section 42 i.e. progress reports as part of the audit process, with 22% saying 'never'.
  - 51% of the respondents have called for SARS to improve facilities to communicate with SARS directly (excluding call centre and e-filing), while 55% call for SARS to improve the technical skills of staff.

The aforementioned results are important as they (much like the *Carte Blanche case*) ventilate taxpayers' perceptions in respect of key aspects relating to the audit process and will be used to support constructive engagements with SARS about how it can improve public trust, efficiency, and confidence in the tax administration system as well as improve its stakeholder engagement. These are among SARS's key strategic objectives and are important drivers not only to rebuild the organisation, but also to ensure the effective and efficient collection of taxes.

2 PwC's Taxing Times 2020 Survey targeted those persons in charge of tax functions across various industries. The survey ran between May and July 2020 and was sent out to a number of taxpayers either via email or anonymous link. A total of 184 people participated which included 37 people participating via the anonymous link. A total of 107 corporate participants completed the survey in full.

Key takeaways:

The decision taken in terms of section 40 of the TAA and the subsequent making of the assessments are separate decisions. The taking of the decision to select a taxpayer for audit does not necessarily lead to the making of an assessment. Similarly, the making of an assessment does not require the prior selection to subject the taxpayer to audit. The decision to select the taxpayer for audit is not one which falls within the definition of administrative action as defined in PAJA. This is so because the decision to select a taxpayer for an audit does not adversely affect the taxpayer's rights and does not necessarily have a direct external legal effect.

Section 42 of the TAA performs the function of section 3(2) of PAJA – i.e. it affords a taxpayer in receipt of the audit notifications, reasonable opportunities to make representations, and once that procedure is exhausted, the decision would potentially have reached the required degree of ripeness capable of forming the subject of a review.

While the case is a win for SARS, it is clear that, in practice, SARS does have some work to do to restore taxpayers' faith and confidence in the tax system. In the upcoming years, SARS will need to improve its technology / e-filing system, upskill staff and have due regard for taxpayers' rights during the audit process.

On the other hand, taxpayers must be proactive, retain all the relevant documents in accordance with the recordkeeping provisions in the TAA and approach audits in the spirit of cooperation. This could be the difference between protracted expensive litigation and the resolution of an audit/dispute in an efficient, timely and cost-effective manner.

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Objecting to an assessment: the devil is in the detail

When a taxpayer objects to an assessment, great care should be exercised to ensure that every issue that is contested is included in the objection. Failure to do so places a taxpayer at risk of unnecessary loss if an issue might have been successfully contested but for its omission from the notice of objection.

The Gauteng North High Court recently considered an appeal brought by SARS against a decision of the Tax Court in which an appeal by a taxpayer had been allowed and an application to include an additional ground of appeal to obtain remission of interest levied on the assessment had been permitted and upheld.

Facts

The facts in *Commissioner for the South African Revenue Service v The Executor of the Estate Late Lot Maduke Ndlovu* [2020] ZAGPPHC (12 October 2020) related to the disposal of shares acquired on exercise of employee share options which were disposed of while the taxpayer was a director of Nedbank. The Administrator of the share scheme disposed of the shares on the taxpayer's behalf in three tranches and accounted to him by paying over the net gain of R7 121 744. No taxes were withheld from the amounts paid to the taxpayer.

The Administrator provided the taxpayer with three IT3(a) certificates, in respect of payments for work of services from which no PAYE had been withheld. The reason for no taxes having been withheld was stated in the certificates as '*Code 4: non-taxable earnings.*'

In 2010, the taxpayer asked the Administrator whether the amount of R7 121 744 was taxable, to which a written response was received stating that '*the earnings arising from the options exercised were non-taxable*'.

Thus informed, the taxpayer submitted his return of income for the 2007 year of assessment. He did not declare the gain as income or a capital gain and he failed to record in the return that he had received an amount that he considered non-taxable.

SARS conducted an audit of the 2007 return of income and raised an additional assessment including the amount of R7 121 744 in taxable income and levied income tax, penalties and interest.

The taxpayer objected to the additional assessment, stating that the amount of R7 121 744 was not taxable as income or as a capital gain and that the additional tax should be remitted in full. SARS reduced the penalty from 200% to 100% but otherwise disallowed the objection.

Following disallowance of the objection and a failed alternative dispute resolution hearing, the taxpayer conceded that the amount of R7 121 744 was taxable as income but lodged an appeal in the Tax Court against the remainder of the disallowed amounts.

Prior to the hearing of the appeal, SARS reduced the penalty from 100% to 10%. The appeal nevertheless proceeded, with the taxpayer seeking remission of the penalty in full. At the hearing of the appeal, the taxpayer raised the issue of remission of the interest chargeable for late payment of the tax for the first time. Despite SARS's argument that this would introduce a new ground of objection, the Tax Court allowed the application to include the interest as an appeal issue. Judgment was given in favour of the taxpayer and the penalty and interest were remitted in full.

SARS did not accept the Tax Court decision and brought the issue before the High Court on appeal.

The issues

The principal issue was whether SARS had been entitled to raise a penalty if the taxpayer had no intention to evade the payment of tax. The second issue was whether the Tax Court had been correct in remitting the penalty and the final issue was whether the Tax Court had been correct in allowing a new ground of appeal in respect of the interest that had been levied.

The matter was decided under the provisions of the Income Tax Act, as it then applied. In essence, if a taxpayer omitted

an amount from a return or claimed an amount as a deduction to which he was not entitled, SARS was required to levy a penalty of 200% of the tax chargeable in respect of the taxpayer's default. The Commissioner was entitled to remit the amount of any such penalty in whole or in part:

> 'Provided that, unless he is of the opinion that there were extenuating circumstances, he shall not so remit if he is satisfied that any act or omission of the taxpayer … was done with the intent to evade taxation.'

Pretorius J noted at Paragraph [21] that the right of SARS to impose the penalty did not require an examination of the taxpayer's intent:

> 'The only requirements in terms of the provisions of the Act is that a taxpayer had omitted from his return an amount of income which should have been included. There is no indication in this provision that it had to be done intentionally – not declaring income will suffice.'

The manner in which SARS had applied the Commissioner's discretion to remit the penalty is documented at paragraph [26]:

> 'In this instance SARS … did not come to the conclusion that the [taxpayer] had the intention to evade the tax. SARS found extenuating circumstances and first remitted the additional tax from the prescribed 200% to 100%, and then reduced it further to 10%. The [taxpayer] relied on the fact that his employer had to deduct the appropriate tax and he did not intend evading the payment of tax. [SARS] had already taken this into account as an extenuating circumstance when further remitting it from 100% to 10%. The provision is very clear that had the [taxpayer] had the intention to evade the payment of tax, no remission would have been granted.'

As to whether the remaining 10% penalty should be remitted because of a lack of intention to evade tax, the Court held that the taxpayer had been a director of a major bank and ought to have satisfied himself whether tax was payable and not passively relied on the assertions of the Administrator. Furthermore, Pretorius J found at paragraph [29]:

> 'It is significant that the taxpayer refrained from declaring this as a non- taxable receipt in his 2007 tax return. No further reasons were submitted for a further remittance to 0%, alternatively to 1%. It is expected of a taxpayer, in the [taxpayer's] situation, to set out valid reasons for a further remittance where [SARS] had already found extenuating circumstances by first remitting the amount from the prescribed 200% to 100% and then to 10%.'

Further remission of the 10% penalty was denied.

Turning then to the third issue, the issues on appeal are determined based on the rules promulgated under s103 of the Tax Administration Act ('the Rules') for the conduct of disputes. In paragraphs [34] and [35], Pretorius J stated, first, the provisions of Rule 7(2), which requires a taxpayer who lodges an appeal to specify which of the grounds of assessment are disputed, and then Rule 10(2) and (3). In the latter regard, he stated (paragraph [35]):

> 'In terms of Rule 10(2)(c)(i) a notice of appeal has to specify in detail the grounds of objection appealed against. Rule 10(3) provides that a taxpayer may not appeal on any ground that constitutes a new objection against a part or amount of disputed assessment not objected to under Rule 7.'

Judicial authority that confirmed this principle was cited at paragraph [36]:

> 'In *HR Computek (Pty) Ltd v Commissioner South Africa Revenue Services* 2012 JDR 2281 (SCA) the Supreme Court of Appeal held that a taxpayer is precluded from raising a new ground of objection at the appeal stage before the Tax Court.'

Further support for the Court's decision came in paragraph [37]:

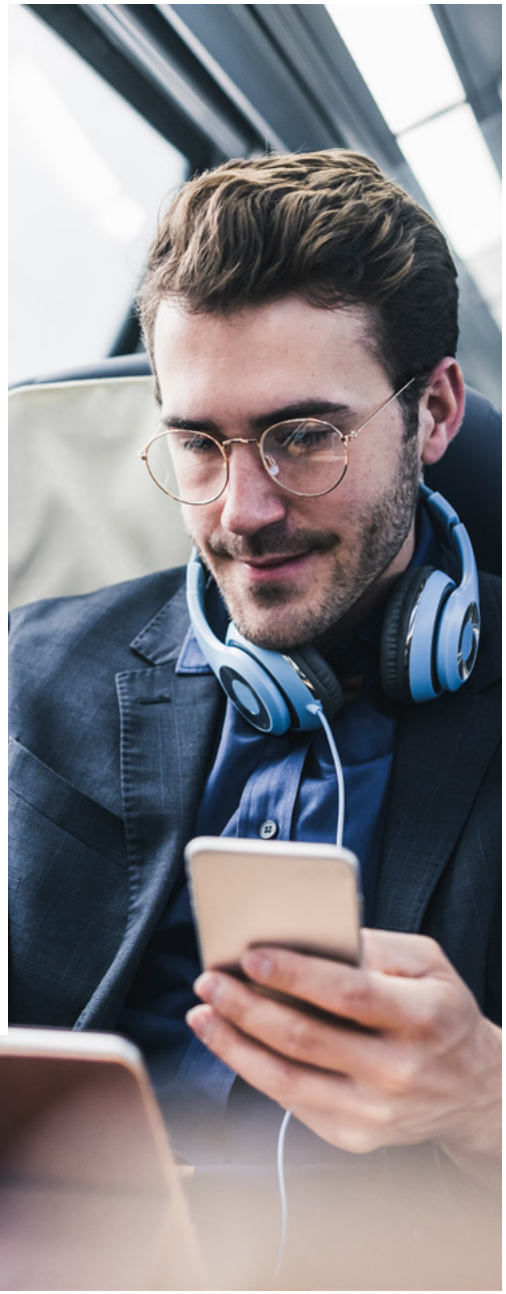
> 'This Court takes note of the dictum in *Matla Coal Ltd v Commissioner of Inland Revenue* 1987(1) SA 108 (A) where the Court, inter alia, held that a Court should not be unduly rigid in its approach when deciding whether to allow a new ground of objection only at the appeal stage. The circumstances of each case should be taken into consideration, when the Court considers the facts of the case.

In *CSARS v Brummeria Renaissance (Pty) Ltd and Others* 2007 (6) SA 601 (SCA) at para 26 held:

> '… But it is also in the public interest that disputes should come to an end – *interest reipublicae ut sit finis litium* and it would be unfair to an honest taxpayer if the Commissioner were to be allowed to continue to change the basis upon which the taxpayer were assessed until the Commissioner got it right – memories fade; witnesses become unavailable; documents are lost.'

The converse should apply, that it is in the public interest that a taxpayer cannot be allowed to continue changing the grounds of his objection and appeal.

After due consideration of the circumstances, the Court could find no circumstances to justify allowing the introduction of a fresh ground of appeal and found that the taxpayer was liable to the payment of interest as assessed.



The takeaway

There is a distinct possibility that the taxpayer would have been able to obtain a remission of the interest if the grounds of objection had been full and explicit.

Although the standard for remission of interest is much higher than that for remission of penalties, extenuating circumstances had been found in relation to the penalty and it is possible that these circumstances would have been sufficient to justify a remission of interest.

The salutary lesson to all persons who may become embroiled in a dispute with SARS is that they should identify every reason for an assessment by SARS that they dispute and set forth the basis on which they are disputing each of those reasons.

We would like to acknowledge Ian Wilson's contribution to this article.

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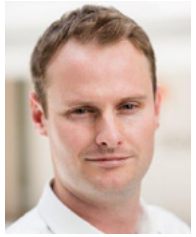

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SARS Watch

SARS Watch 1 October 2020 – 31 October 2020

Legislation		
29 October 2020	Draft amendments were published for 'exemption of ship stores' from the payment of duty.	Amendments were made to rules under section 24 and 120 'Exemption of ship stores' and to Part 1 of Schedule No. 4 'Rebate item 413.00'. The due date for public comments is 20 November 2020
28 October 2020	The Minister of Finance introduced the taxation Bills in the National Assembly.	The following Bills were introduced: Taxation Laws Amendment Bill [B27-2020] Tax Administration Laws Amendment Bill [B28-2020]. Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26-2020]
23 October 2020	This Notice serves to inform of the Minister of Finance's intention to introduce the Tax Administration Laws Amendment Bill, 2002 in the National assembly on 28 October 2020.	Notice 1106 published in Government Gazette 43830 on 23 October 2020.
16 October 2020	Amendment to rules under section 59A, 60 and 120, references to 'days', where referring to the grace period allowed for compliance when updating registration or licensing information was amended to 'calendar days'.	Regulation R1098 published in Government Gazette 43811 with a date of 16 October 2020 save for paragraph(a)(ii) of item 1 and paragraph (*a*)(ii) of item 2 which are regarded to have come into effect on 24 April 2020.
16 October 2020	Amendment to Section D to Part 1 of Schedule No. 6 by the deletion of refund item 621.16/104.21.03/02.01 in order to exclude denatured ethyl alcohol as a VMS does not receive, manufacture or use denatured ethyl alcohol.	Tariff amendment notice R1097 published in Government Gazette 43811 with an implementation date of 16 October 2020.
13 October 2020	Presentation on Draft Response Document on the 2020 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2020 Draft Taxation Laws Amendment Bill, 2020 Draft Tax Administration Laws Amendment Bill.	National Treasury and SARS presented to Parliament's Standing Committee on Finance a Draft Response Document on the DTLAB on 13 October 2020.
12 October 2020	Draft technical amendments to Part 1 of Schedule 1 in chapters 44, 72 and 94.	Comments must be submitted to SARS by Monday, 9 November 2020.
9 October 2020	Regulations for purposes of paragraph (a) of the definition of 'international tax standard' in section 1 of the Tax Administration Act, 2011.	Regulation R1070 published in Government Gazette No. 43781 with an effective date of 21 June 2021.
9 October 2020	Amendment of Paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991 (Act No. 89 of 1991) in terms of Section 74(3)(a) to insert item 406.00 in consequence of the insertion of rebate item 406.04 in Schedule No. 4 of the Customs and Excise Act, 1964 (Act No. 91 of 1964).	Value-added tax notice R1069 published in Government Gazette No. 43781 with an implementation date of 9 October 2020.
9 October 2020	Amendment to Part 1 of Schedule No. 4 by the insertion of rebate item 406.04/00.00/01.00 in order to provide for a rebate of duty on goods imported for official use by an institution or organisation that has an agreement with the Republic of South Africa.	Tariff amendment notice R1068 published in Government Gazette No. 43781 with an implementation date of 9 October 2020.
Case law		
According to judgment date		
14 October 2020	CSARS v Zikhulise Cleaning and Maintenance and Transport Service (14886/16) [2020]; Mpisane v Zikhulise Cleaning and Maintenance and Transport CC and another (18101/16) [2017] ZAGPPHC.	Whether a final winding-up order should be granted, taking into account the provisions of section 177(3) of the Tax Administration Act, and section 346 of the Companies Act.
12 October 2020	Bennett and Another v The State (SS40/2006) [2020] ZAGPJHC	Whether Judge Splig should recuse himself from presiding over the criminal trial of Gary Porrit and Sue Bennett.
12 October 2020	CSARS v Executor of Estate Late Ndlovu (A395/2016) [2020] ZAGPPHC.	Whether the Tax Court had been correct in reducing the 10% penalty imposed under section 76(1)(b) to nil on the basis that taxpayer had no intention to evade tax.

11 September 2020	CSARS and Joint Liquidators of Greenbridge Group (Pty) Ltd (in Provisional Liquidation) v Van Zyl (16604/2019) [2020] ZAWCHC 109.	Whether exceptional circumstances existed or whether respondent's interlocutory application was a delaying mechanism.
13 December 2019	Zikhulise Auto Recoveries (Pty) Ltd and Others v Zikhulise Auto Restorers (Pty) Ltd and Others (SARS intervening) (36492/2018) [2019] ZAGPJHC 531	Whether the applicants' application to be placed into business rescue met the requirements for business rescue.
18 November 2019	Brits v CSARS and Another (70549-2015) [2019] ZAGPPHC 987.	Whether applicant had exhausted internal remedies under section 7(2) of the Promotion of Administrative Justice Act, 2000.
2 November 2017	CSARS v Zikhulise Cleaning Maintenance and Transport CC; Mpisane v Zikhulise Cleaning Maintenance and Transport CC and Another (14886/2016; 18101/2016) [2017] ZAGPPHC 1248.	Whether SARS application, as major creditor of Zikhulise Cleaning Maintenance and Transport, to place Zikhulise Cleaning Maintenance and Transport into provisional liquidation was justified.
2 November 2017	Zikhulise Cleaning Maintenance and Transport CC v CSARS (34564/2016) [2017] ZAGPPHC 1247.	Whether an application for business rescue could succeed where the taxpayer was denied a tax clearance certificate due to its outstanding indebtedness.
17 November 2015	CSARS v Sunflower Distributors CC and others (66077/2015) [2015] ZAGPPHC.	Whether respondent's claim of VAT input tax in respect of its gold jewellery purchases was fraudulent as contended by appellant.
23 September 2015	Ackermans Limited v CSARS (16408-2013) [2015] ZAGPHC 684.	The court had to determine whether the respondent had unreasonably delayed issuing additional assessments in contravention of the Constitution.
Guides and forms		
26 October 2020	Guide to the Tax Directive functionality on eFiling.	The tax directive functionality on eFiling has been enhanced to allow individuals and tax practitioners to apply for a tax directive on behalf of their clients. The tax directives applications that individuals and tax practitioners may request on behalf of clients are: IRP3(b) – Employees tax to be deducted at a fixed percentage IRP3(c) – Employees tax to be deducted at a fixed amount IRP3(f) – Doubtful Debts 11(j)(1)(2) IRP3(q) – Foreign Tax Credit under paragraph 10 of the 4th Schedule of the Income Tax Act.
21 October 2020	Guide on the Taxation of Professional Sports Clubs and Players (Issues).	The aim of this guide is to explain the South African tax consequences for professional sports clubs and sports players in South Africa.
10 October 2020	Updated Guides relating to Tax Directives: 1. Guide to Complete the Tax Directive Application Form 2. Completion for Guide to IRP3a and IRP3s Form 3. Guide to Complete Submit and Cancel a Recognition of Transfer.	The guides have been updated to reflect new email addresses.
9 October 2020	Guide to Bulk and Additional Payments on eFiling.	This document serves as a guide to assist eFiling users to use the Bulk and Additional Payment function on eFiling.
9 October 2020	Excise policy on the Health Promotion Levy on Sugary Beverages.	Provision has been made for the Promotion of Administrative Justice Act under paragraph 2.5. and the 'Process for reprocessing, destruction or abandonment' under paragraph 2.8.
9 October 2020	Customs external policy on Administration of Trade Agreements.	The policy comes into effect on Monday, 12 October 2020.
9 October 2020	Customs external policy on International Mail.	The policy comes into effect on Monday, 12 October 2012.
Other publications		
31 October 2020	Third-Party Data Submissions.	A final reminder that third-party data bi-annual submissions for the period 1 March 2020 – 31 August 2020, were due on 31 October 2020.
29 October 2020	Tax Alert – Expiry of withholding tax declarations and undertakings	Interest, royalty and dividend withholding tax declarations and undertakings that are older than five years expired on 1 October.
29 October 2020	Customs Registration, Licensing and Accreditation	SARS published a 'Frequently Asked Questions' document relating to Customs Registration, Licensing and Accreditation.
26 October 2020	Customs Procedure Codes	The Customs Procedure Codes, which are required for all commercial Customs clearances in South Africa, have been updated.

22 October 2020	Tax Alert – Covid 19 and the exemptions for foreign remuneration: proposed relief in light of travel restrictions	The Draft Response Document presented to Parliament includes a proposal that for years of assessment ending in the 12-month period ending on 28 February 2021, the number of days required for a South African resident to be outside South Africa in order to qualify for the foreign remuneration exemption be reduced from 183 days to 117 days.
19 October 2020	Tax Alert – Unbundling transactions: Revised proposals presented in Parliament	This alert gives a brief overview of the revised proposed amendments to section 46 of the Income Tax Act, 1962, presented by National Treasury and SARS to Parliament's Standing Committee on Finance in the Draft Response Document on the DTLAB.
16 October 2020	Media Release: SARS welcomes High Court judgment on taxpayer obligations	The High Court confirmed the obligation of individual taxpayers to be vigilant about the contents of their income tax returns.
16 October 2020	Media Release: SARS welcomes High Court judgment on right to liquidate a taxpayer	SARS has the right to liquidate a taxpayer to recover debt where an assessment is under appeal.
15 October 2020	Tax Alert: Postponement of mining legislative change	This alert gives a brief overview of the proposed amendments related to the treatment of allowable mining capital expenditure ('capex') and the ring-fencing of capex per mine as contained in section 15 and 36 of the Income Tax Act, 1962 ('the Act').
14 October 2020	OECD: Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint	The Blueprint for Pillar Two of the project, which would introduce a global minimum tax that would help countries around the world address remaining issues linked to base erosion and profit shifting by MNEs.
14 October 2020	OECD: Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint	The Blueprint for Pillar One of the projects, which would establish new rules on where tax should be paid ('nexus' rules) and a fundamentally new way of sharing taxing rights between countries.
12 October 2020	OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (Saudi Arabia) – October 2020	The report provides the latest progress on other G20 deliverables: notably on tax transparency with the 2019 AEOI figures, implementation of the BEPS standards and capacity building for developing countries.

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