

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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Exports of goods: Risk of non-compliance



In this article, we explore the basic VAT principles applicable to the export of goods and the implications of not complying with these principles.

Background

In the global environment we operate in, exports of goods (and services) have become an important aspect of many VAT vendors' enterprises.

According to *VAT in South Africa*,¹ most of the supplies which are zero-rated relate to the exportation of goods or services which is aimed at promoting exports and enhancing competitiveness in the international marketplace.

¹ <https://www.mylexisnexis.co.za/Index.aspx?permalink=emlvcGMvdGYkLTEkNyRMaWJyYXJ5J5JGRwYXR0JExpYnJhcnk>.

The South African VAT system is designed to incorporate the destination-based principle. This principle effectively seeks to impose VAT on the supply of goods or services consumed in South Africa (SA) whilst making provision for goods or services consumed outside SA to be supplied free of VAT and effectively only taxed in the country where consumption takes place. To achieve this, the South African VAT Act makes provision for the export of goods or services to be subject to VAT at the rate of 0%.

In line with the destination-based principle, VAT is levied on the importation of goods into SA. The imposition of VAT on the importation of goods into SA ensures that consumption of the goods in SA is taxed.

The importance of levying VAT at the zero rate on the supply of goods to be exported is that SA exports remain competitive

internationally. If VAT were to be charged at the prevailing rate of 15% by a SA vendor on exported goods, such VAT would not be deductible by the customer in its country which directly impacts the cost of the goods sold.

The correct application of a destination-based VAT system ensures that there are no competitive advantages or disadvantages for both the export and import markets.

The levying of VAT at the zero rate does however pose a significant risk to the SA VAT system. In order to mitigate this risk, there are rules that are imposed and must be adhered to in order to levy VAT at the zero rate. Additionally, in line with VAT being a transactional tax, the obtaining and retaining of documentation is paramount to support the zero rate.

Law

The VAT Act defines the term “exported” in section 1(1) as follows:

“in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement

- a. consigned or delivered by the vendor to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner; or...

- d. removed from the Republic by the recipient or recipient's agent for conveyance to an export country in accordance with any regulation made by the Minister in terms of this Act;”

For the purposes of this article, we will concentrate on paragraphs (a) and (d) of the definition of “exported”.

Section 11(1)(a) provides for the zero-rating of goods exported as follows:

“Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—

- a. the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and—
 - (i) the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of ‘exported’ in section 1; or
 - (ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of the regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1: Provided that...”

Section 11(3) requires a vendor to obtain and retain the documentary proof, as is acceptable to the Commissioner, to substantiate its entitlement to apply VAT at the zero rate.

Discussion

From the abovementioned principles, it is clear that goods sold for export may be levied with VAT at the zero-rate subject to compliance with the applicable requirements.

Based on the above, for VAT purposes, there are therefore two main types of exports commonly referred to as direct and indirect exports.

Direct exports

Direct exports fall under paragraph (a) of the definition of 'exported' and section 11(1)(a)(i). This type of export requires the vendor supplying the goods to consign or deliver the goods to an address in an export country. This type of export equally applies to all modes of transport, i.e. road, rail, sea and air.

In other words, the vendor supplying the goods must be in control of and responsible for the export of the goods from SA and deliver it outside SA.

This sounds fairly straightforward but there are hidden requirements, including the documentary requirements, which are set out in detail by SARS in Interpretation Note No. 30 dated 5 May 2014 (IN 30).

Consign or deliver

In accordance with IN 30 the supplying vendor must:

- consign or deliver the movable goods to the recipient at an address in an export country;

- export the movable goods via a designated commercial port within the prescribed time period; and
- obtain and retain documentary proof as is acceptable to the Commissioner.

The phrase "consigned or delivered" means the delivery of movable goods by a cartage contractor contracted by the vendor to deliver the movable goods on the vendor's behalf to the recipient at an address in an export country, where the cartage contractor:

- is engaged by and contractually liable to the vendor to effect delivery of the movable goods; and
- invoices the vendor and the vendor is liable for the full cost relating to such delivery.

Time period to export goods and obtain documentation

Time period to export goods and obtain documentation

As a general rule, goods must be exported from SA within 90 days from when the time of supply occurs.

The applicable documentation must thereafter be obtained by the vendor to support the zero-rate within 90 days from when the goods were required to be exported. Both these rules are, however, subject to certain exceptions or extensions.

IN 30 does provide for exceptions in specific circumstances but does not provide for all exceptions.

The exceptions that are not specified are however covered under a general discretion afforded to SARS. For example, where the delay in exporting the goods within the general time period is due to circumstances beyond the vendor's control, an extension can be granted subject to SARS approval. Application for such extension must, however, be made to SARS before expiry of the general time period.

Where the relevant documents cannot be obtained within 90 days, certain automatic extensions are available in terms of IN 30 including:

- extended payment terms (this can be subject to showing certain bank/reserve bank approval);
- foreign exchange restrictions;
- exemption approved not to repatriate any funds; or
- the amount is written off.

Misalignment

There are however shortcomings in IN 30. For example, selling goods sourced from a foreign country to a non-resident customer (i.e. goods move directly from one export country to another and never pass through SA) is permitted to be levied with VAT at the zero rate. However, the documentary requirements to support this zero rating are misaligned. SARS still requires the vendor in these circumstances to be in possession of SA customs documentation which will never exist for this type of a transaction.

To prevent any unwanted queries or assessments from SARS auditors for these



types of transactions, it is preferable to request a VAT ruling from SARS to allow for a deviation from the standard IN 30 documentary requirements.

General

Lastly, it is important to note that the levying of VAT at the zero rate under a direct export is not an election but rather a requirement. There is no election afforded to the vendor as to whether it wants to zero-rate or not. The vendor must zero-rate the supply and ensure compliance with the prescribed requirements. Therefore, any non-compliance could result in an increased risk to the vendor.

Indirect exports

An indirect export exists where the recipient of the supply, which is referred to as a 'qualifying purchaser', is responsible to collect the goods from SA and export it to the export country.

This does not necessarily mean that the qualifying purchaser must physically come to SA to fetch the goods, but rather that the qualifying purchaser has the responsibility for the shipment of the goods from SA and must therefore contract with someone (freight forwarder) to do this on its behalf.

The detailed requirements of indirect exports are set out and dealt with in Regulation R.316 of 2 May 2014 (the Regulation).

It is, however, important to note that indirect exports are divided into three parts.

Part One

The vendor is obliged to charge and account for VAT at 15% where the qualifying purchaser takes delivery of the goods in SA. The qualifying purchaser is thereafter entitled to apply for a refund of such VAT from the VAT Refund Administrator. The qualifying purchaser must provide the required documentary proof.

Part Two A

In the second part, provision is made to allow the vendor to elect to levy VAT at the zero rate. This is only applicable to the export of goods via air or sea transport and through a designated harbour or airport.

Part Two B

In the third part, the vendor can elect to apply the zero-rate to the export of goods via road or rail. However, due to the increased risk this type of export brings, additional requirements are imposed on the vendor.

Similar to IN 30, the Regulation also contains very specific export and documentation rules. The time rules are the same for both types of exports and the implications are similar.

The Regulation also has limited exceptions to the time period to export the goods and obtain the required documentation.

The impact

Failure to export the goods within the prescribed time periods, or the extended time periods approved by SARS, will result

in the vendor being liable to pay the VAT on the exported goods. As a result, the vendor is required to make an adjustment of output tax and to account for the VAT to SARS in the tax period during which the time period expires. This output tax adjustment becomes a cost to the vendor and is not recoverable from SARS. That is, no further adjustment is allowed if the vendor can prove that the goods were in fact exported to reverse the output tax accounted for at the 90-day mark.

Similarly, if the documentation required is not obtained within the prescribed time periods (or any extensions provided), the vendor must make an adjustment and account for the VAT. The vendor is, however, allowed to effectively reverse this adjustment if the vendor receives the documents within five years. It should be noted, however, that such adjustments are required in terms of the SARS IN but not provided for in the VAT Act, and in our view, this is an area open to challenge by taxpayers.

As a standard rule, as part of the verifications or audits conducted by SARS, SARS will request all relevant supporting schedules for the VAT return and may request the vendor to submit supporting documents for sample transactions.

Should the vendor not have the prescribed documents readily available to submit to SARS, this may lead to an assessment by SARS resulting not only in the VAT being levied (i.e. the zero-rate being assessed as standard rated supplies) but also an immediate 10% penalty and interest being imposed with the option to impose a further understatement penalty of up to 200%.

Once SARS raises assessments, the vendor will have to follow the formal dispute process including objecting to the assessment which may possibly lead to an appeal and alternative dispute resolution proceedings. All of these processes might become costly to the vendor.



Is change needed?

VAT, from a design perspective, should not be levied on the supply of goods exported from SA and definitely not as a punitive measure because the vendor is not in possession of all the documentary proof, or the goods were exported outside the prescribed period.

SARS through its Customs division is responsible for the exportation of goods from SA to other export countries and, through this, SARS is able to identify goods that are exported. On this basis and accepting that SARS has effective control over exports, SARS should consider alternative recourse for vendors to levy VAT at the rate of 0% without requesting extensive documentary evidence or having to prove that the goods were exported. The focus should rather be on requesting vendors to obtain documentary evidence that will allow SARS to verify the export of the goods on its Customs system that administers the export of goods.

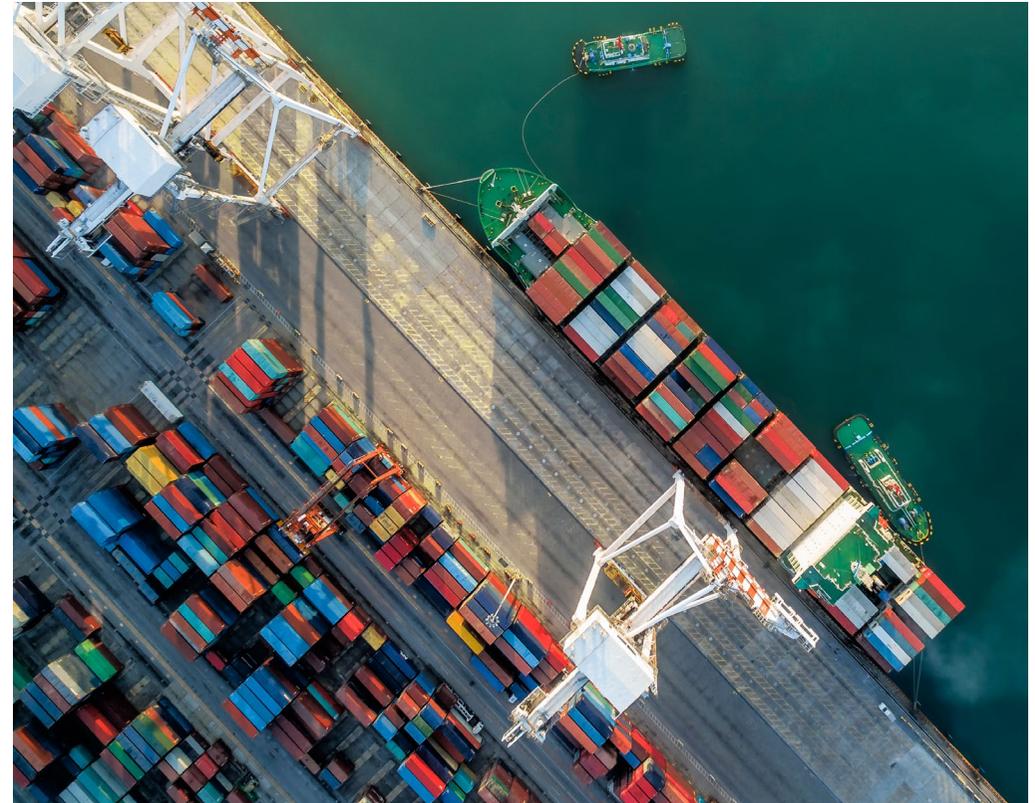
As this information is readily available, it would not significantly impact SARS from an operational perspective and, from what we understand, SARS already uses the Customs system to verify the VAT deducted on goods imported into SA.

It therefore follows that the current IN 30 and Regulation place an undue administrative burden on vendors in requiring them to obtain and retain documentation that is already in SARS' possession.

SARS needs to reconsider the documentation required to support the zero rating and focus on only documents that are not in its possession. Furthermore, in light of the current modernisation programme undertaken by SARS in both the VAT and Customs space, there is a case that no further documentation should be required as SARS should be in a position to verify exports via its Customs system.

The takeaway

It is clear that the current export environment and documentary requirements must be re-evaluated to ensure that they are modernised and implemented to abide by the destination principle as much as possible. In a rapidly changing environment that vendors operate in, it is crucial for all areas of VAT, including exports, to evolve in line with the modernisation drive.



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Dispute proceedings from a tall vantage point

The Tax Court case of *The Tall* (“the applicant”) v the Commissioner for the South African Revenue Service (“SARS”) (SARSTC-IT-24870-IT-25162-IT-25166-ADM-2023-ZATC-JHB-6-July-2023) dealt with, *inter alia*, what constitutes permissible grounds of appeal in terms of rule 10(3) and rule 32(3) of the rules promulgated in terms of section 103 of the Tax Administration Act, No. 28 of 2011 (“the TAA”).

Before delineating the details of the case, it is important to understand the salient legislation from which the crux of contention emanated.

Rule 10(3)¹ of the rules promulgated in terms of section 103 of the TAA (“the rules”), provides that –

“The taxpayer may appeal on a new ground not raised in the notice of objection under rule 7 unless it constitutes a new objection against a part or amount of the disputed assessment not objected to under rule 7.”

¹ Rule 10(3) of the rules in its current form, post the amendment to the rules which came into effect on 10 March 2023.

Rule 32(3)² of the rules stipulates that –

“The appellant may include in the statement a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to under rule 7.”

The matter and issue in dispute is whether the applicant was entitled to rely on the consolidated grounds of appeal for the 2013 to 2015 years of assessment, to the extent that the grounds of appeal were applicable to the 2012 year of assessment.

Background to the matter and issue in dispute

On 6 March 2018, SARS issued a letter of finalisation of audit findings for the 2012 to 2015 years of assessment. Additional assessments were accordingly issued for the 2012 to 2015 years of assessment.

The applicant lodged two objections: one for the 2012 year of assessment and another objection for the 2013 to 2015 years of assessment.

In the first objection, the applicant contested the levying of a penalty in the 2012 year of assessment, and SARS’ decision to re-open the 2012 year of

² Rule 32(3) of the rules in its current form, post the amendment to the rules which came into effect on 10 March 2023.

assessment pursuant to the lapsing of the three year prescription period stipulated in section 99(1)(a) of the TAA.

In the second objection, the applicant disputed capital gains amounts in the additional assessments raised by SARS for the 2013 to 2015 years of assessment (which was not a matter of contention in the court case).

The applicant’s objections were both disallowed by SARS. Subsequently, the applicant’s appeal proceedings ensued.

In its statement of grounds of appeal, the applicant addressed the matters of contention raised in its initial objections with respect to prescription and the penalty for the 2012 year of assessment and the capital gains amounts for the 2013 to the 2015 years of assessment. However, the applicant supplemented its grounds of appeal with the addition of a dispute in respect of the capital amount for the 2012 year of assessment, which was not previously disputed in the initial grounds of objection.

The applicant asserted that its objection based on prescription was an objection to the whole of the 2012 assessment which did not preclude any part of the assessment, nor was it limited to any amount embodied in the assessment.





According to the applicant, the ground/ basis for disputing the capital amount in the 2012 year of assessment was prescription. Therefore, the applicant postulated that the objection to the prescription of the 2012 year of assessment palpably constituted an objection to a capital amount for the 2012 year of assessment as well (i.e. that by objecting to the prescription, it effectively objected to the whole of the 2012 assessment).

Furthermore, the applicant contended that it was entitled to rely, in respect of its 2012 year of assessment, on the grounds of appeal pleaded in its rule 32 statement filed in the underlying appeal proceedings for the consolidated 2013 to 2015 years of assessment, to the extent that the grounds were applicable to the 2012 year of assessment.

On the contrary, SARS expostulated that at a factual level, it was common cause that the applicant did not object to the capital amount in the 2012 year of assessment.

The decision of the Tax Court

In reaching its decision, the Tax Court referred to the below preceding judgments:

- *Matla Coal v Commissioner for Inland Revenue*³ read with *Commissioner for SARS (“CSARS”) v Brummeria Renaissance (Pty) Ltd & others*,⁴ where the rationale for the principle of limiting the grounds of appeal to the grounds

³ *Matla Coal Ltd v Commissioner for Inland Revenue* 1987 (1) SA 108 (A).

⁴ *CSARS v Brummeria Renaissance (Pty) Ltd & others* 2007 (6) SA 601 (SCA).

stated in the notice of objection was set out at paragraph 12 as follows -

“..it is obviously in the public interest that the Commissioner should collect tax that is payable by a taxpayer. But it is also in the public interest that disputes should come to an end...”

- ITC 1912,⁵ where the court with respect to the question of an appeal against a part or an amount which had not been objected to, stated that (paragraph 13 of the judgement):

“...What is prohibited is for a taxpayer to appeal against a portion of assessment in respect of which no objection was ever raised. For example, if an objection was raised to the penalties imposed but not the VAT portion of the assessment, an appellant is not permitted, through the guise of an appeal, effectively to raise a subsequent objection to the VAT portion. This is essentially what occurred in the *Computeck* case, tied on by SARS...”

- *First South Africa Holdings*,⁶ which set out the definition of an assessment at paragraph 16 as follows -

“An assessment is not merely a mathematical computation of the globular amount, but a determination of one or more items or amounts.”

- *CSARS v Airports Company for South Africa*,⁷ in which it was established that an assessment becomes final where no objection has been made. The principle stemmed from the backbone of section 100(1)(b) of the TAA which reads as follows -

“(1) An assessment or a decision referred to in section 104(2) is final if, in relation to the assessment or decision -

...

(b) no objection has been made,...”

⁵ ITC 1912 80 SATC 417.

⁶ *First South Africa Holdings* 73 SATC, 221 SCA.

⁷ *CSARS v Airports Company for South Africa* (Case no 785/2021) [2022] ZASCA 132 (7 October 2022).

In light of the above, the Tax Court pronounced:

- At paragraph 14, that the applicant did not object to the capital amount in the 2012 year of assessment and could not remotely rely on the grounds of objection raised in the 2013 to 2015 years of assessment against the capital amounts, to constitute grounds of objection to the capital amount in the 2012 year of assessment. Essentially, the applicant is not allowed to appeal against an amount or part of the assessment, in respect of which no objection had been raised.
- At paragraph 16, that an objection to a whole assessment is not permissible. The applicant ought to have objected to a specific item(s) or amount(s).
- At paragraphs 17 and 18, that relief sought by the applicant with respect to placing reliance on the grounds of objection raised in the 2013 to 2015 years of assessments with respect to the capital amounts as grounds of objection to the capital amount in the 2012 year of assessment was precluded by section 100 of the TAA. This was by virtue of the fact that an assessment becomes final where no objection has been made (i.e. no objection had been made against the 2012 year of assessment; therefore, the assessment was final).

Key takeaways

Dispute provisions in terms of the TAA and the rules are intricate. Careful consideration must be applied when determining how a dispute is conducted, as failure to follow stipulated dispute provisions may prohibit taxpayers from availing of relief or remedies that they could be entitled to. The relief or remedies may entail the claiming of deductions and allowances against taxable income, the exclusion of non-taxable amounts from taxable income and more.

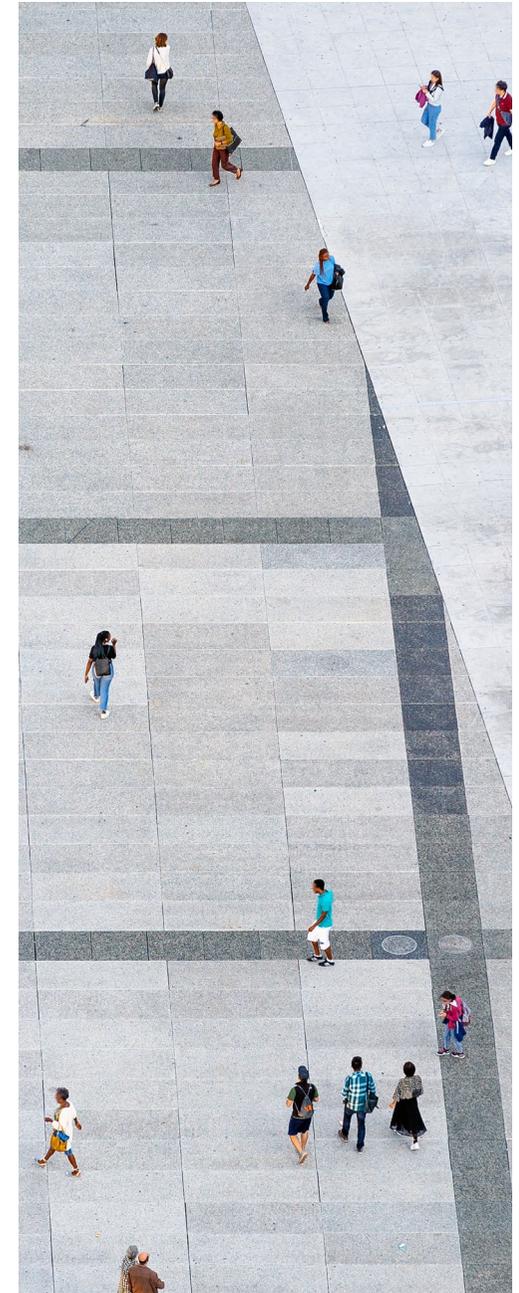
For the above reasons, seeking professional advice prior to commencing the dispute process may prove to be an indispensable investment for taxpayers.



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SARS Watch

SARS Watch 1 September 2023 – 30 September 2023

Legislation

11 Sept 23	<p>Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003</p> <p>Table B – A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months</p>	Average exchange rates updated up to August 2023.
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Customs and excise

29 Sept 23	Registration for Diesel Refund for Foodstuff Manufacturers	The registration for the Diesel Refunds for Foodstuff Manufacturers Scheme (DRFMS) opened in the evening of 29 September 2023. Completed applications must be submitted digitally using the SARS Online Query System (SOQS).
29 Sept 23	<p>Notice R.3918 – Amendment to Part 2 of Schedule No. 4, by the insertion of rebate item 460.04/1704.90/01.06, to create a temporary rebate facility for the importation of white chocolate, in immediate packaging of a content of 25 kg or more, for use in the manufacture of chocolate containing cocoa, in blocks, slabs or bars and other chocolate – ITAC Report 684</p>	Published in Government Gazette No. 49378 with implementation date of 29 September 2023.
	<p>Notice R.3917 – Amendment to Part 1 of Schedule No. 3, by the amendment of certain existing rebate items under rebate 311.42 and 320.02 as well as the creation of rebate provisions on woven fabrics and other fabrics classifiable in tariff subheadings 55.13, 55.14, 5903.20, 5212.1, 5212.2, 53.09, 5512.1, 55.16, 5903.10.90 and 5903.90.90, for the manufacture of goods classifiable in tariff subheadings 63.02, 63.03, 63.04 and 94.04 – ITAC Report 672</p>	Published in Government Gazette No. 49378 with implementation date of 29 September 2023.
	<p>Notice R.3916 – Amendment to Part 1 of Schedule No. 1, by the substitution of various subheadings under tariff headings 72.19 and 72.20, in order to increase the general rate of customs duty on stainless steel flat products from 5% to 10% – ITAC Report 644</p>	Published in Government Gazette No. 49378 with implementation date of 29 September 2023.
22 Sept 23	Registration to the Diesel Refund for Food Manufacturers Scheme	The submission date for electronic registration to the Diesel Refund for Food Manufacturers Scheme has been extended from 26 September 2023 to 29 September 2023.
22 Sept 23	<p>Notice R.3909 – Amendment to Part 1 of Schedule No. 1, by the insertion of tariff subheadings 8207.13.27 and 8207.19.15 as well as the substitution of tariff subheadings 8207.13.25 and 8207.19.10, in order to increase the rate of customs duty on certain drilling or earth boring tools, including certain parts thereof, from free of duty and 15%, respectively to 20% – ITAC Report 708</p>	Published in Government Gazette No. 49328 with implementation date of 22 September 2023.

22 Sept 23	Notice R.3908 – Amendment to Part 2 of Schedule No. 4, by the substitution of rebate item 460.03/0207.14.9/01.07, in order to increase the annual quota for frozen bone-in cuts of the species Gallus Domesticus originating in or imported from the United States of America from 71 632 tonnes to 71 963 tonnes – ITAC Minute M04/2023	Published in Government Gazette No. 49328 with retrospective effect from 1 April 2023.
22 Sept 23	Notice R.3907 – Amendment to Schedule No. 5, by the substitution of Notes 8, 11, 12 and 13 to provide for specific drawbacks and refunds of customs duties paid on imported fuel levy goods upon the subsequent export or removal thereof to Botswana, Eswatini, Lesotho and Namibia (BELN)	Published in Government Gazette No. 49328 with implementation date of 22 September 2023.
22 Sept 23	Notice R.3906 – Amendment to Part 2 of Schedule No. 4, by the insertion of rebate item 460.15/7312.10.40/01.08, in order to create a rebate provision for the importation of steel cord of a kind used in the manufacture of steel cord-reinforced conveyor belting, classifiable in tariff subheading 7312.10.40 – ITAC Report 701	Published in Government Gazette No. 49328 with implementation date of 22 September 2023.
22 Sept 23	Notice R.3905 – Amendment to Part 1 of Schedule No. 2, by the deletion of item 206.04/3207.40/02.06, in order to terminate the anti-dumping duty on glass frit originating in or imported from Brazil – Minute 14/2022	Published in Government Gazette No. 49328 with retrospective effect from 14 June 2023.
22 Sept 23	Notice R.3904 – Amendment to Part 4 of Schedule No. 5, by the substitution of Note 1, the insertion of Notes 3, 4 and 5 as well as the insertion of refund items 541.00 and 541.00/00.00/01.00 to provide for specific drawbacks and refunds of customs duties paid on imported fuel levy goods upon the subsequent export or removal thereof to Botswana, Eswatini, Lesotho and Namibia (BELN)	Published in Government Gazette No. 49328 with implementation date of 22 September 2023.
22 Sept 23	Notice R.3903 – Amendment to Part 2 of Schedule No. 5, by the substitution of Note 5(a), the insertion of Note 8 as well as the insertion of refund items 522.07 and 522.07/00.00/01.00 to provide for specific drawbacks and refunds of customs duties paid on imported fuel levy goods upon the subsequent export or removal thereof to Botswana, Eswatini, Lesotho and Namibia (BELN)	Published in Government Gazette No. 49328 with implementation date of 22 September 2023.
15 Sept 23	Notice R.3871 – Amendment to rules under sections 47B and 120 – Insertion of forms for the air passenger tax in the Schedule to the Customs and Excise Rules (DAR250)	Published in Government Gazette No. 49304 with implementation date of 15 September 2023.
15 Sept 23	Notice R.3886 – Amendment to Part 2 of Schedule No. 5, by the substitution of Notes 2 and 5(a), as well as the descriptions under rebate items 522.00 and 523.02 in order to make reference to new rule 75.26 that provides for the electronic submission of drawbacks and refunds	Published in Government Gazette No. 49313 with implementation date of 15 September 2023.
15 Sept 23	Notice R.3885 – Amendment to Part 1 of Schedule No. 5, by the substitution of Note 5 in order to make reference to new rule 75.26 that provides for the electronic submission of drawbacks and refunds	Published in Government Gazette No. 49313 with implementation date of 15 September 2023.
15 Sept 23	Notice R.3884 – Amendment to rules under sections 59A, 60, 64F, 75, 101A and 120 – Electronic submission of applications for drawbacks and refunds of Schedules No. 5 and 6, and related rule amendments (DAR251)	Published in Government Gazette No. 49313 with implementation date of 15 September 2023.

1 Sept 23	<p>Draft amendments to Part 1 of Schedule No. 1:</p> <ul style="list-style-type: none"> • Draft amendment to insert new 8-digit tariff in Chapter 5, to provide for Ivory of elephants and rhinoceros in Part 1 of Schedule No. 1, for Prohibitions & Restrictions purposes • Draft amendment to delete and to insert new 8-digit tariff in Chapter 12 to provide for re-classification of Rooibos • Draft amendment to insert new 8-digit tariff in Chapter 30 to provide for vaccines imported in bulk and those for retail purposes, in Part 1 of Schedule No. 1 • Draft amendment to Chapter 72 to insert new 8-digit tariff subheadings to provide for new ranges in thickness, in Part 1 of Schedule No. 1 • Draft notice in Chapter 41 to amend the description of tariff heading 41.07 • Draft amendment to Chapter 94 to provide for the different furniture, in Part 1 of Schedule No.1 	Comments are due to SARS by Tuesday, 10 October 2023.
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Case law

In accordance with the date of judgment

29 Sept 23	Commissioner for the South African Revenue Service v Absa Bank Limited and Another (596 2021) [2023] ZASCA 125	This appeal concerns the exercise of the High Court's review jurisdiction in the context of a tax assessment raised in terms of s80B of the Income Tax Act 58 of 1962 (the ITA). The high court set aside a decision by SARS refusing to withdraw notices issued in terms of s80J of the ITA to the respondents, Absa Bank Limited and its wholly owned subsidiary, United Towers Proprietary Limited, respectively. It also set aside subsequent notices of assessment issued in terms of s80B of the ITA.
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Guides and forms

18 Sept 23	Manage Submission of IT3 Third Party Data – External Guide	This guide seeks to describe how taxpayers and organisations / entities can manage their submission of IT3 third party data to SARS.
18 Sept 23	Comprehensive Guide to the Income Tax return for Trusts	The purpose of this document is to provide guidance for the completion of the Income Tax return for Trusts (ITR12T).
18 Sept 23	Air Passenger Tax – External Policy	The purpose of this policy is to outline the liability requirements of operators for Air Passenger Tax (APT) in terms of Section 47B of the Customs and Excise Act 91 of 1964.
18 Sept 23	Air Passenger Tax – External Guide	This document provides guidance on the Air Passenger Tax system.
18 Sept 23	Registration Licencing and Designation – External Policy	The purpose of this policy is to provide clarity and certainty to Air Passenger Tax Customs and Excise clients to comply with their obligations.
18 Sept 23	Documentary Requirements – External Annexure	This document outlines the documentary requirements of the Air Passenger Tax system.
18 Sept 23	Exemption from Ad Valorem Excise Licence and Payment – External Annexure	Form for exemption from Ad Valorem Excise licence and payment.
18 Sept 23	Joint Ad Valorem Excise Licence – External Annexure	Application form for a Joint Ad Valorem Excise Licence.

15 Sept 23	SARS Payment Rules – External Guide	This document details the payment rules that must be adhered to when paying SARS to ensure timeous and accurate payment allocation.
15 Sept 23	Guide for Codes Applicable to Employees Tax Certificates 2024	The purpose of this guide is to explain the relevant source codes used by the employer when issuing an Employees' Income Tax certificate to an employee.
15 Sept 23	Guide for Validation Rules Applicable to Reconciliation Declarations 2024	The purpose of this guide is to assist employers in understanding the validation rules for completion of Employees' Income Tax certificates for 2024.
15 Sept 23	Guide for Completion and Submission of Employees Tax Certificates 2024	This guide prescribes the rules for issuing and submitting Employees' Tax certificates.
15 Sept 23	Guide to the Employer Reconciliation Process	The purpose of this document is to assist employers with their reconciliation submission to fulfil their tax responsibilities and to ensure a smooth employer reconciliation process (interim and annual), and this external guide must be read in conjunction with 'Business Requirement Specifications for PAYE Employer Reconciliation' for all validation rules published on the SARS website.
15 Sept 23	Customs and Excise Refunds and Drawbacks – External Guide	The purpose of this guide is to provide the trader with step by step guidance on the Customs and Excise Automated Refund and Drawback claims submitted on eFiling.
15 Sept 23	ROT02	Recognition of GN18 Purchase of Member or Beneficiary Owned Pension or Annuity – External Form.
15 Sept 23	ROT01	Recognition of Transfer Between Approved Funds – External Form.
15 Sept 23	NR03	Tax Directive Application by Non-Resident Seller of Immovable Property in SA – External Form.
15 Sept 23	IRP3(s)	Application for Tax Directive Share Option – External Form.
15 Sept 23	IRP3(q)	Variation of Employees Tax – External Form.
15 Sept 23	IRP3(c)	Application for Tax Directive Fixed Amount – External Form.
15 Sept 23	IRP3(a)	Application for Tax Directive Gratuities – External Form.
15 Sept 23	Form E	Request for a Tax Deduction Directive After Retirement and Death - Annuity Commutations – External Form.
15 Sept 23	Form C	Request for a Tax Deduction Directive Retirement Annuity Funds – External Form.
15 Sept 23	Form B	Request for a Tax Deduction Directive Pension and Provident Funds - Events Before Retirement or Death – External Form.
15 Sept 23	Form A&D	Request for a Tax Deduction Directive Pension and Provident Funds on Retirement/Death before Retirement – External Form.
15 Sept 23	Guide to Complete Submit and Cancel a Recognition of Transfer	The purpose of this guide is to provide guidance on the use, submission and cancellation of: <ul style="list-style-type: none"> • The recognition of transfer form (ROT01) for transfers between Funds and Preservation Funds; and • The recognition of the purchase of an annuity form (ROT02) for annuities purchased on retirement, the annuity purchase by the beneficiary upon the death of the member / annuitant or for annuities transferred to / between Long-term Insurers.

15 Sept 23	Guide to Complete the Lump sum Tax Directive Application Forms	This guide is to assist Fund Administrators / Long-term Insurers and / or employers on how to complete all the various tax directive application forms in order to obtain a tax directive (IRP3e) before a lump sum benefit can be paid to a member.
15 Sept 23	APT 101	Air Passenger Tax: Agent's application for registration / cancellation or changing of registered particulars
15 Sept 23	APT 102	Air Passenger Tax: Operator's application for registration / cancellation or changing of registered particulars
15 Sept 23	APT 201	Air Passenger Tax Return
14 Sept 23	Relationship Management on Customs Trader Portal – External Guide	This document provides guidance of the Relationship Management (RM) functionality that provides traders with a secure online solution to manage their trading relationships, allowing SARS to facilitate relationship management efficiently and effectively amongst traders without getting directly involved.
13 Sept 23	FAQs: Tax Directives	Published frequently asked questions for the enhancements of Tax Directives.
6 Sept 23	FAQs: DA66 Automation	Published frequently asked questions on DA66 Automation for Customs Refunds and Drawbacks.
4 Sept 23	FAQs: Vaping products	Published frequently asked questions on vaping products following the introduction of excise duty on these products.
<i>Other publications</i>		
27 Sept 23	OECD: Eswatini signs landmark agreement to strengthen its tax treaties and Armenia and Côte d'Ivoire deposit their instrument for the ratification of the Multilateral BEPS Convention	Eswatini signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, becoming the 101st jurisdiction to join the BEPS Convention. Additionally, Armenia and Côte d'Ivoire deposited their instrument of ratification for the BEPS Convention and will enter into force on 1 January 2024 for both jurisdictions.
25 Sept 23	OECD: Progress continues in strengthening tax transparency through Country-by-Country reporting	OECD released the latest outcomes of the implementation of BEPS Action 13 on the transparency of global operations of large MNEs, demonstrating strong progress in international efforts.
21 Sept 23	Tax Alert: Changes to the requirements to obtain EUR1 Origin Certificates for goods exported to the United Kingdom and the European Union	This Alert provides more details regarding the changes relating to the registration requirements and obtaining origin certificates under both the Economic Partnership Agreements ("EPAs") between the United Kingdom Southern African Customs Union and Mozambique ("UK EPA") and between the European Union ("EU") and the Southern African Development Community ("EU EPA"). In this regard, SARS announced systems enhancements for the administration and interpretation of the UK EPA and the EU EPA that went live on the SARS' systems in July 2023.
20 Sept 23	OECD: Tax challenges arising from digitalisation: Public comments received on Amount B under Pillar One relating to the simplification of transfer pricing rules	OECD published public comments received on Amount B under Pillar One relating to the simplification of transfer pricing rules.
15 Sept 23	SARS: Enhancements to Trust Beneficial Ownership information	In order to comply with the Financial Action Task Force (FATF) requirements, certain beneficial ownership information must be submitted via e-Filing which may include: <ul style="list-style-type: none"> • An organogram, illustrative, or schematic diagram depicting effective control of the Trust. Where the Beneficial Ownership is in the form of other legal arrangements or legal entities, this should be provided in a separate attachment. • An Excel spreadsheet containing the above information; or • Such other document(s), which will elaborate on Beneficial Ownership in relation to the Trust.

15 Sept 23	SARS: Tax directive system and application form enhancements	<p>The tax directive system and the tax directive application form (Form C) were enhanced to allow up to four contracts/policies to be transferred to multiple approved retirement annuity approved funds. The tax directive system will reject a tax directive application if:</p> <ul style="list-style-type: none"> • The amount to be transferred is split in such a way that the value of each contract/policy does not exceed R371,250; and/or • The remaining amount in the retirement annuity fund does not exceed the amount of R371,250, in circumstances where the member's vested interest is not transferred in full.
13 Sept 23	OECD: Countries deploy tax policy to shield households and businesses from decade-high inflation	New OECD report finds that tax policy has played a central role as governments sought to shield households and businesses from the impact of high inflation levels.
8 Sept 23	OECD: The Platform for Collaboration on Tax releases new report on carbon pricing metrics	This report aims to help policymakers, businesses and other stakeholders strengthen their understanding of different carbon pricing metrics of the IMF, OECD, UN and World Bank Group.
8 Sept 23	OECD: OECD Secretary-General Tax Report to G20 Leaders	OECD published report setting out the latest developments in international tax reform since November 2022.
8 Sept 23	SARS: Discussion Paper on VAT Modernisation	This discussion paper sets out the high-level vision for the modernisation of the South African VAT administrative framework. Comments are due to SARS by Tuesday, 31 October 2023.
7 Sept 23	OECD: Papua New Guinea deposits its instrument for the ratification of key multilateral conventions against tax evasion and avoidance and Romania completes its internal procedures for the entry into effect of the provisions of the Multilateral BEPS Convention	On 31 August 2023, Papua New Guinea deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention) as well as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.
6 Sept 23	SARS: New annual Service Charter	The new annual Service Charter has been published with effect from 1 September 2023.
5 Sept 23	SARS: Digitalisation of Tax Administrations and contemporary issues	Keynote address by Mr Edward Kieswetter, Commissioner for the South African Revenue Service (SARS) and vice-chairperson of the African Tax Administration Forum (ATAF), on the occasion of the second Network of Tax Organisations (NTO) technical conference.
4 Sept 23	SARS: New Air Passenger Tax System	From 15 September 2023 SARS will be implementing a new system for APT wherein the APT201 returns will now be submitted via eFiling including the payment thereof. Taxpayers will be issued with new APT tax numbers which must be used to register the APT client on eFiling and activate the tax type.
1 Sept 23	SARS: Employer Interim Reconciliation	This year the Employer Interim Reconciliation for Employers Filing Season starts on 18 September 2023 until 31 October 2023.



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