

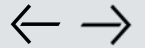


Synopsis

Tax today

September 2026





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

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

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***Ubi lex voluit, dixit:* where the statute speaks, the Court listens**

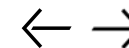
Unpacking the sameness imperative and Justice Wallis's expenditure challenge in the *Clicks Retailers* trilogy

Introduction

The proper construction of section 24C of the Income Tax Act¹ ('the Act') has been the subject of considerable judicial scrutiny in recent years, culminating in a trilogy of decisions which have materially circumscribed the ambit of the allowance for future expenditure on contracts. The extensive litigation between the Commissioner for the South African Revenue Service ('SARS') and Clicks Retailers (Pty) Ltd ('Clicks') traversed the Tax Court, the Supreme Court of Appeal ('SCA') and, ultimately, the Constitutional Court, thereby producing an authoritative exposition of the so-called 'sameness' requirement inherent in the provision.

This written piece undertakes a comprehensive analysis of the statutory architecture of section 24C, the factual matrix which gave rise to the dispute, and the divergent judicial reasoning across the three courts. Particular emphasis is placed upon the SCA's decision, wherein the main judgment penned by Justice Dlodlo was accompanied by a separate concurring judgment of Justice Wallis which, whilst arriving at the same dispositional outcome, articulated substantial reservations regarding the characterisation of Clicks's conventional stock purchases as 'expenditure' within the contemplation of the provision. That concurrence, it is submitted, represents a significant jurisprudential contribution which may have far-reaching implications for the application of section 24C to loyalty programmes and analogous commercial arrangements.

¹ Income Tax Act 58 of 1962, as amended.



Legislative framework

Genesis and purpose

Section 24C was originally introduced into the principal Act by section 18(1) of the Income Tax Act 104, of 1980. The provision was designed to address a longstanding issue in the construction and manufacturing industries: the timing mismatch between receiving advance payments and incurring deductible expenditure when performing contractual obligations.²

The Explanatory Memorandum accompanying the 1980 amendment expressly identified the paradigm case:

“The new section caters for the situation which often arises in the construction industry and sometimes in manufacturing concerns, where a large advance payment is made to a contractor before the commencement of the contract work, to enable the contractor to purchase materials, equipment etc. In a number of instances such advance payments are not matched by deductible expenditure, resulting in the full amounts of the advance payments being subject to tax.”³

The legislative purpose is therefore clear. Section 24C operates as a timing mechanism designed to alleviate the inequity which would otherwise arise where income is subject to tax in a year of assessment prior to the year in which the correlative expenditure is incurred in the performance of the income-generating contract.

The statutory architecture (before the 2015 amendment)

As it read during the years of assessment relevant to the Clicks dispute (prior to the 2015 amendment), section 24C comprised three subsections which operated in concert.

Subsection (1) defined ‘future expenditure’ as expenditure which the Commissioner was satisfied would be incurred after the end of the relevant year of assessment, in such manner that the amount would be allowed as a deduction from income in a subsequent year, or in respect of the acquisition of an asset in respect of which a deduction would be admissible.⁴

Subsection (2) provided the operative entitlement to the allowance. Where the income of a taxpayer included an amount received or accrued in terms of a contract, and the Commissioner was satisfied that such amount would be utilised to finance future expenditure to be incurred in the performance of obligations under ‘such contract’, the Commissioner was empowered to determine a deduction in respect of so much of the expenditure as related to the said amount.⁵

Subsection (3) imposed a recoupment mechanism: the amount of any allowance deducted was deemed to constitute income in the following year of assessment, thereby ensuring that the benefit operated as a deferral rather than a permanent exemption.⁶

The 2015 amendment

The Taxation Laws Amendment Act⁷ effected a significant amendment to section 24C(2) by excising the Commissioner’s discretionary powers.⁸ The references to the Commissioner being ‘satisfied’ and the allowance being ‘as the Commissioner may determine’ were removed, rendering the

provision self-executing upon the satisfaction of the statutory requirements. However, the fundamental architecture and, critically, the requirement that the future expenditure be incurred in the performance of obligations under the income-generating contract remained unchanged.

The sameness requirement

The critical textual feature of section 24C(2) resides in the phrase ‘such contract’. The use of the word ‘such’ creates what has been judicially characterised as the ‘sameness’ or ‘same contract’ requirement. The contract under which income is received must be the same contract under which the obligation to incur future expenditure arises. It is precisely this requirement which proved to be the fulcrum upon which the Clicks litigation turned.

The factual matrix of the Clicks dispute

Clicks operates a customer loyalty programme known as the ‘ClubCard’ programme. The commercial mechanics of the programme, as distilled from the judgments, can be outlined in three phases.

First, a customer enters into what is characterised as the ‘ClubCard contract’, being the overarching agreement establishing the customer’s participation in the loyalty programme and Clicks’s concomitant obligation to award points on qualifying purchases and to honour vouchers generated by the accumulation of such points.

Second, upon each qualifying purchase by a participating customer (the ‘first sale contract’), income accrues to Clicks and points are simultaneously credited to the customer’s ClubCard account in accordance with the terms of the ClubCard contract.

² Explanatory Memorandum on the Income Tax Bill, 1980.

³ *Id* at page 9, clause 18.

⁴ Section 24C(1)(a) and (b) of the Act.

⁵ Section 24C(2) of the Act (as it read prior to its amendment by section 42 of the Taxation Laws Amendment Act 25 of 2015).

⁶ Section 24C(3) of the Act.

⁷ Taxation Laws Amendment Act 25 of 2015.

⁸ Section 42 of the Taxation Laws Amendment Act 25 of 2015.

Third, upon the subsequent redemption of a voucher against a further purchase (the ‘second sale contract’), Clicks is required to afford the customer the discount represented by the voucher, thereby incurring what it argued before the court constituted future expenditure.

During the 2009 financial year, Clicks claimed an allowance in the sum of R44,275,965 in accordance with section 24C, contending that the expenditure which it would incur in honouring loyalty vouchers constituted ‘future expenditure’ to be incurred in the performance of its obligations under the contract from which income was derived.⁹

The Tax Court’s reasoning

The matter first came before Justice Nuku sitting in the Tax Court in Cape Town. Justice Nuku found in favour of Clicks, upholding the taxpayer’s entitlement to the section 24C allowance.¹⁰

The Tax Court’s reasoning proceeded from the factual observation that the loyalty card contract, standing alone, generates neither income nor any obligation to incur future expenditure. As Justice Nuku held, the loyalty card contract “merely records the terms upon which [Clicks] is to reward the loyalty card holders in respect of their future purchases”. It is only upon the conclusion of a qualifying purchase that any operative consequences flow.¹¹

Central to the Tax Court’s analysis was the finding that the conclusion of the first purchase and sale contract results in two things: first, the earning of income by Clicks and,

second, the incurrance of an obligation to provide goods to the customer upon the future redemption of vouchers.¹² Justice Nuku further held that it was “artificial” and “factually incorrect” to regard the future expenditure as arising under a “different contract” to the first purchase and sale contract pursuant to which the points were generated. In the learned judge’s assessment, the first purchase and sale agreement “incorporates the terms of the loyalty card contract” and remains “the contract that triggers both the earning of income by [Clicks] as well as an obligation by [Clicks] to incur future expenditure”.¹³

The Tax Court’s approach thus represented a commercially oriented interpretation, treating the qualifying purchase as the operative event giving rise to both income and the obligation to incur future expenditure within a single contractual framework. The Tax Court rejected SARS’s contention that the obligation to incur future expenditure arose solely under the loyalty card contract, finding instead that “the income is earned on the same contract that gives rise to the obligation to incur future expenditure”. Clicks’s appeal succeeded, and SARS appealed to the SCA.¹⁴

¹² *Id* at para 33.

¹³ *Id* at para 36.

¹⁴ *Id* at para 37.



The Supreme Court of Appeal’s decision

The main judgment of Justice Dlodlo

The SCA allowed the appeal, reversing the Tax Court’s decision and holding that Clicks was not entitled to the section 24C allowance. The main judgment was penned by Justice Dlodlo, while Justice Wallis delivered a separate concurring judgment which, although aligned with the outcome, proceeded on a materially broader analytical footing. Justice Dlodlo’s analysis was materially informed by the SCA’s earlier decision in *CSARS v Big G Restaurants (Pty) Ltd* (‘Big G’).¹⁵ Following the analytical framework established in *Big G*, Justice Dlodlo identified three distinct contracts in the Clicks arrangement:

- The ClubCard contract, establishing the loyalty programme and the obligation to award points and honour vouchers;
- The first sale contract, being each qualifying purchase from which income accrues to Clicks; and
- The second sale contract, being the subsequent purchase upon which the voucher is redeemed.

The critical determination was the identification of the contract which gave rise to the obligation to incur future expenditure. Justice Dlodlo held unequivocally:

“The contract that creates the right to income by Clicks is the first contract of sale. However, the contract that obliges Clicks to honour the vouchers and thereby incur expenditure, when a customer concludes the second contract of sale with Clicks, is neither that contract, nor the second contract of sale, but the ClubCard contract.”¹⁶

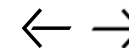
⁹ *The Commissioner for the South African Revenue Service v Clicks Retailers (Pty) Ltd* (58/2019) [2019] ZASCA 187 (3 December 2019) at para 4.

¹⁰ *ITC 13988* [2018] ZATC 5; 81 SATC 214 (1 November 2018).

¹¹ *Id* at para 31.

¹⁵ *CSARS v Big G Restaurants (Pty) Ltd* [2018] ZASCA 179; 2019 (3) SA 90 (SCA).

¹⁶ *The Commissioner for the South African Revenue Service v Clicks Retailers (Pty) Ltd* (58/2019) [2019] ZASCA 187 (3 December 2019) at para 18.



The sameness requirement was accordingly not satisfied: the income-generating contract (the first sale contract) was not the same contract as that which imposed the obligation to incur future expenditure (the ClubCard contract).

Justice Dlodlo further rejected the contention that section 24C should be construed to encompass arrangements where different contracts are ‘inextricably linked’¹⁷. In essence, the learned judge held that such an expansive construction found no support in the language of the provision and would be incompatible with the decision in *Big G*. More specifically, the learned judge held that “the income received and the future expense sought to be deducted, did not arise from the same contract and the Commissioner correctly refused to grant a s24C allowance”.¹⁸

Justice Wallis’s concurring judgment

Whilst concurring in the order proposed by Justice Dlodlo, Justice Wallis penned a separate judgment which, it is submitted, constitutes the most jurisprudentially significant contribution of the SCA’s decision. The concurrence, far from being a mere endorsement of Justice Dlodlo’s reasoning, articulated independent and more far-reaching reservations about the viability of Clicks’s claim, particularly the characterisation of the alleged expenditure.

The purposive analysis of section 24C

Justice Wallis commenced by returning to first principles, emphasising the legislative purpose underlying section 24C. He observed that the provision was enacted to alleviate a specific mischief, being the taxation of advance payments received by builders and manufacturers prior to the

incurrence of the expenditure necessarily required to perform the contract. Justice Wallis cautioned:

“To permit an allowance for such future expenditure would result in future expenses being taken into account before they were incurred and afford taxpayers a means to manipulate the timing of tax payments. That was not the purpose of s 24C.”¹⁹

This purposive analysis served as the foundation for Justice Wallis’s more searching inquiry into the nature of the expenditure claimed by Clicks.

The expenditure objection

It is in paragraphs 29 to 31 of the concurring judgment that Justice Wallis’s most trenchant criticism of Clicks’s position emerges. He questioned, in terms which leave little room for equivocation, whether the stock purchases upon which Clicks relied could properly be characterised as ‘expenditure’ within the contemplation of section 24C at all:

“The ‘expenditure’ on which Clicks relied was nothing more than its conventional purchases of stock in the ordinary course of its business. It does not purchase any item of stock specifically for the purpose of satisfying its obligations under the loyalty programme.”²⁰

This observation strikes at the foundation of Clicks’s claim. Justice Wallis drew a fundamental distinction between, on the one hand, expenditure which is causally and directly necessitated by the performance of a specific contractual obligation (the paradigm case of a building contractor purchasing materials to fulfil an identified contract) and, on the other, expenditure which constitutes no more than the ordinary recurrent outgoings of a business which would be incurred irrespective of the existence of any particular contractual obligation.

The court elaborated upon this distinction with characteristic precision:

“I have considerable difficulty in seeing how perfectly conventional stock purchases – which do involve expenditure – are directly financed by earlier sales, as opposed to being financed out of general revenue. There is no direct connection between the two.”²¹

This passage identifies a critical conceptual difficulty with Clicks’s position: the absence of any nexus between the specific income received and the specific expenditure allegedly financed thereby. In the paradigm case of a construction contract, the advance deposit is earmarked for, and causally connected to, the procurement of materials and labour required to perform that specific contract. No such connection exists in the case of Clicks’s ordinary stock purchases.

The characterisation of the loyalty programme obligation

Justice Wallis further questioned the very characterisation of the loyalty programme obligation as one giving rise to ‘expenditure’ at all:

“[T]he loyalty programme is no more than an undertaking in certain circumstances to afford to customers who present a rewards voucher a discount on the goods they happen to have purchased”, and this, he stated, “can hardly count as expenditure as contemplated by s 24C”.²²

The significance of this characterisation cannot be overstated. By reconceptualising the loyalty programme obligation as the provision of a conditional discount rather than the incurrence of expenditure, Justice Wallis identified a conceptual difficulty which operates independently of, and antecedently to, the sameness inquiry. Even if the sameness requirement had been satisfied (which it was not), the claim might still have failed on whether the obligation constituted ‘expenditure’ within the statutory meaning.

¹⁷ *Id* at para 17.

¹⁸ *Id* at para 20.

¹⁹ *Id* at paras 25–26.

²⁰ *Id* at para 29.

²¹ *Id* at para 30.

²² *Id* at para 31.

The four requirements

Justice Wallis distilled from the statutory language and its legislative purpose four discrete requirements which ought to be satisfied for a section 24C allowance to be sustained:²³

- a. The taxpayer must conclude a contract under which it receives revenue.
- b. The taxpayer undertakes obligations under that contract to be performed in the following tax year.
- c. The performance of those obligations must oblige the taxpayer to incur expenditure in a future year of assessment.
- d. The revenue received must be used to finance the performance of the taxpayer's obligations under the contract.

This formulation, whilst entirely consistent with Justice Dlodlo's reasoning on the sameness point, introduces the additional requirement of a direct financing nexus between the income received and the performance of the contract, a requirement which, in Justice Wallis's analysis, Clicks manifestly failed to satisfy.

The significance of the divergence

The separate concurrence of Justice Wallis, whilst not constituting a formal dissent, represents a substantive divergence from the main judgment in a manner of considerable jurisprudential import. Whereas Justice Dlodlo's main judgment disposed of the appeal on the relatively narrow ground of the sameness requirement (the income-generating contract was not the same as the expenditure-generating contract), Justice Wallis's concurrence impugned Clicks's claim on the broader and more fundamental ground that the alleged expenditure did not constitute 'future expenditure' within the statutory meaning at all.

²³ *Id* at para 32.

The practical consequence of this divergence is that, even in a hypothetical scenario in which the sameness requirement were satisfied (for instance, where a loyalty programme obligation is somehow embedded within the sale contract itself), a taxpayer might nonetheless fail to qualify for the allowance if the expenditure relied upon constitutes nothing more than ordinary business stock purchases that lack both a direct causal connection to the specific contractual obligation and a sufficient nexus to the accrued income from which such expenditure is financed.



The Constitutional Court's decision and the sameness test

Clicks obtained leave to appeal to the Constitutional Court.²⁴ The unanimous judgment was penned by Theron J, with Mogoeng CJ, Jafta J, Khampepe J, Madlanga J, Mathopo AJ, Mhlantla J, Tshiqi J, and Victor AJ concurring.

The reformulation of the requirements

The Constitutional Court distilled from section 24C(2) three requirements for a valid claim:²⁵

- a. Income must be earned in terms of a contract.
- b. There must be an obligation requiring future expenditure.
- c. There must be contractual sameness, that is, the contract from which income is derived must be the same contract under which the obligation to incur future expenditure arises.

The same-contract basis

On the question of whether sameness could be established on a 'same-contract' basis, the Constitutional Court endorsed the SCA's conclusion that it could not. The obligation to honour loyalty vouchers was sourced in the ClubCard contract, whereas income accrued in terms of the first sale contract. These were, on any view, distinct contractual instruments.²⁶

The inextricably linked basis

The Constitutional Court, departing to some extent from the SCA's approach, acknowledged the theoretical possibility that

²⁴ *Clicks Retailers (Pty) Limited v Commissioner for the South African Revenue Service* [2021] ZACC 11 (21 May 2021).

²⁵ *Id* at para 31.

²⁶ *Id* at para 38.

sameness might be achieved not only on a same-contract basis but also on what was termed an ‘inextricably linked’ basis, where contracts are so interconnected as to achieve functional sameness.²⁷

However, whilst accepting that the ClubCard contract and the sale contracts were ‘inextricably linked’ in a commercial sense, the Constitutional Court held that the threshold for contractual sameness was not thereby satisfied. Justice Theron articulated the test as follows:

“[A]t a minimum both the earning of income and the obligation to finance future expenditure must depend on the existence of both contracts. If either contract can be entered into and exist without the other, they can hardly achieve sameness.”²⁸

Applying this test, the Court found that the sale contract did not owe its existence to the ClubCard contract. Clicks earned income from sales regardless of whether a customer was a ClubCard member, and each sale contract was complete and self-standing without reference to the ClubCard contract. The Constitutional Court concluded:²⁹

“The contract under which income accrues (the contract of sale) and the contract under which the obligation to finance future expenditure arises (the ClubCard contract) are simply too independent of each other to meet the requirement of contractual sameness.”³⁰

The appeal was accordingly dismissed.

²⁷ *Id* at paras 44–45.

²⁸ *Id* at para 46.

²⁹ *Id* at paras 44 and 48.

³⁰ *Clicks Retailers (Pty) Ltd (CC)* para 49.



Analysis and implications for taxpayers

The narrowing of section 24C

The decisions in *Big G* and the *Clicks* trilogy (*Clicks* (TC), *Clicks* (SCA), and *Clicks* (CC)) have materially narrowed section 24C’s scope by strictly enforcing the contractual sameness requirement. This confines the provision more closely to its original purpose: addressing the timing mismatch in contracts where advance payments are received. Importantly, this narrowing is doctrinal, not sectoral. Section 24C is not limited to the construction and manufacturing industries where it originated. It has been applied across various sectors, including the motor industry, financial services, and publishing, provided all requirements, including the sameness requirement, are met. What the trilogy forecloses is not the extension of section 24C to new industries, but rather the expansive interpretation that would apply the provision to loyalty programmes, customer retention schemes, and similar arrangements where the income-generating and expenditure-imposing contracts do not satisfy the sameness requirement.

The implications of Justice Wallis’s concurrence

The separate concurrence of Justice Wallis carries implications which transcend the immediate factual matrix of the *Clicks* dispute. Justice Wallis’s observations regarding the nature of ‘expenditure’ suggest that section 24C cannot be invoked where:

- The expenditure relied upon constitutes ordinary recurring business costs which would be incurred in any event, irrespective of the specific contractual obligation;
- There is no direct causal nexus between the income received and the specific expenditure allegedly financed thereby, that is, the expenditure is financed out of general revenue rather than being directly attributable to the contract under which income was received; and
- The alleged obligation is more properly characterised as an undertaking to afford a conditional discount rather than an obligation to incur expenditure.

These principles, whilst *obiter* in the strict sense (the matter being disposed of on the sameness ground), nonetheless represent persuasive authority of considerable weight, emanating as they do from one of the most distinguished commercial jurists to have sat on the SCA bench.

Remaining uncertainties in the sameness test

Notwithstanding the Constitutional Court’s articulation of the ‘inextricably linked’ test, considerable uncertainty persists regarding the circumstances in which contracts will satisfy the sameness requirement on this alternative basis. As SARS’s Interpretation Note 78 acknowledges, neither Constitutional Court judgment provided comprehensive commentary on when contracts would be “so inextricably linked” as to

achieve sameness.³¹ The minimum threshold, that both the earning of income and the obligation to fund future expenditure must depend on the existence of both contracts, is stated at a level of generality which admits of difficult questions of application in novel factual contexts.

By way of illustration, a retailer that sells an extended service plan bundled inseparably with the sale of a product, such that the plan cannot be purchased independently of the sale and the sale cannot be concluded without the customer electing to take up the plan, may more readily satisfy the “inextricably linked” threshold, since neither the income-producing contract nor the obligation-imposing contract could exist without the other.

By contrast, a standalone subscription or membership programme which a customer may join independently of any particular purchase, and pursuant to which the retailer’s obligation to reward members is not conditional on any specific contemporaneous sale, is unlikely to meet the threshold, since each contract remains capable of independent existence, thus mirroring the conclusion reached in respect of the ClubCard and sale contracts in *Clicks* itself.

An assessment of SARS’s Interpretation Note 78

On 31 March 2026, SARS issued Interpretation Note 78 (Issue 2), setting out its consolidated guidance on the interpretation and application of section 24C in light of, amongst other authorities, the *Clicks* trilogy discussed above.

Areas of agreement

We are of the view that SARS’s adoption of the Constitutional Court’s tripartite sameness test as the governing law

is correct and unobjectionable, being no more than a restatement of binding precedent from which SARS, as a matter of law, has no discretion to depart.

We further agree with the Note’s treatment of ‘expenditure’ as requiring a voluntary, designed outlay causally connected to the performance of a contractual obligation, as distinct from a fortuitous loss, drawing on the well-established distinction in *COT v Rendle*³² and *CSARS v Labat Africa Ltd.*³³ This underlying principle is, in substance, consistent with the concern which animated Justice Wallis’s concurrence in *Clicks* (SCA).

Areas of disagreement

Notwithstanding the foregoing, we submit that the Note does not go far enough in engaging with Justice Wallis’s expenditure objection. Although the Note quotes at length from the concurring judgment’s discussion of conventional stock purchases and the absence of a direct connection between such purchases and earlier sales, it does not elevate this reasoning into a discrete, freestanding requirement within its own summary statement of the law, which continues to be framed solely by reference to the tripartite sameness test.

This omission is, in our view, a missed opportunity. Given that Justice Wallis’s reasoning, whilst *obiter*, exposes a further hurdle facing taxpayers whose claimed expenditure is financed out of general revenue rather than being earmarked for a specific contractual obligation, taxpayers and their advisers are left without clear guidance as to whether SARS will apply this narrower expenditure-based objection when assessing tax in practice, particularly in the context of loyalty, subscription, and similar programmes.

On balance, whilst we agree with SARS’s core articulation of the sameness requirement as a faithful application of binding Constitutional Court authority, we consider that the Note falls short in failing to clarify whether, and to what extent, Justice Wallis’s expenditure-based objection informs SARS’s approach, and in declining to provide further practical guidance on the application of the inextricably linked test. These remain, in our respectful view, continuing sources of uncertainty for taxpayers structuring loyalty, subscription, and other similarly structured commercial arrangements.



³¹ SARS Interpretation Note 78 (Issue 2, 31 March 2026).

³² 2013 (2) SA 33 (SCA), 74 SATC 1.

³³ 1965 (1) SA 59 (SRAD), 26 SATC 326 at 329.

Practical guidance for taxpayers

In light of the foregoing analysis, taxpayers seeking to rely upon section 24C would be well advised to ensure that their claims satisfy the following criteria:

- a. The income received and the obligation to incur future expenditure must arise under the same contractual instrument, or under contracts which are so mutually dependent that neither can exist without the other.
- b. The future expenditure must be directly and causally necessitated by the performance of the specific contractual obligation, as opposed to constituting ordinary recurring business costs.
- c. There must be a direct financing nexus between the income received and the anticipated expenditure.
- d. The income must be earmarked for the performance of the contract, not merely absorbed into general revenue.
- e. The expenditure must be of a character which would not be incurred but for the need to perform the specific contractual obligation.

Conclusion

The *Clicks Retailers* litigation represents a watershed in the jurisprudence of section 24C of the Act. The decisions of the SCA and Constitutional Court have confirmed that the sameness requirement operates as a substantial constraint upon the availability of the allowance, precluding its application where income is derived under one contractual instrument and the obligation to incur future expenditure arises under another.

The concurring judgment of Justice Wallis, however, introduces an additional dimension of analysis which extends beyond the sameness inquiry. By questioning whether

conventional stock purchases, undertaken in the ordinary course of business and lacking any direct causal connection to the loyalty programme obligation, can properly constitute 'expenditure' within the statutory meaning, Justice Wallis has signalled that the conceptual difficulties relating to the application of section 24C to loyalty programmes are not confined to the question of contractual identity.

It is submitted that Justice Wallis's observations, whilst not forming part of the *ratio decidendi* of the SCA's decision, merit serious consideration in future litigation. The distinction between expenditure which is causally and directly necessitated by a specific contractual obligation, which is the paradigm of the construction advance, and expenditure which constitutes nothing more than the ordinary cost of doing business, such as conventional stock purchases, is one which goes to the heart of the legislative purpose underlying section 24C. Future litigants and the Commissioner alike would do well to have regard to this distinction in assessing the viability of claims under the provision.

The law, as it currently stands, may be summarised as follows: section 24C remains available where a taxpayer receives income under a contract and is required, under that same contract or contracts achieving functional sameness through mutual dependence, to incur expenditure of a character directly necessitated by the performance of the contractual obligation and directly financed by the income received. Claims which do not satisfy each of these requirements, as Clicks's claim manifestly did not, will not survive judicial scrutiny. In light of the complexities attendant upon the application of section 24C, taxpayers contemplating claims under this provision are well advised to obtain professional tax advice.

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We gratefully acknowledge the contribution of **Nthabiseng Kulate** to this article.



Beyond the formula: what VAT Case 22498 means for VAT apportionment

In brief

The Tax Court dismissed the taxpayer's appeal against SARS's refusal to approve a transaction-count method for its enterprise as a whole.

The judgment confirms that an apportionment method must fairly reflect how mixed expenses are actually used or applied in the making of taxable supplies and that the vendor, not SARS, bears the onus of demonstrating this through clear, reliable, and auditable evidence.

Background and the ruling history

The appellant was a registered bank and VAT vendor. According to the judgment, its principal activity was the provision of unsecured credit, from which it earned exempt interest income under section 12(a), read with section 2(1)(f) of the VAT Act.¹ The appellant also derived taxable income from loan administration, transactional banking, card facilities, interchange services, binder commissions, and agency services. As certain expenses were incurred for both taxable and exempt purposes, the VAT incurred on those expenses was required to be apportioned.

SARS had previously approved the appellant's use of a transaction-count method, subject to a specified expiry date, being September 2020 or the end of the financial year in which the appellant first offered transactional banking services to the public, whichever occurred first.

¹ Act 89 of 1991, as amended.

This limitation anticipated that the proposed transactional banking offering could alter the relationship between transaction volumes, income streams, and shared costs, and could therefore affect the continued appropriateness of the approved methodology.

Following its entry into the public transactional banking market during the 2019 financial year, the appellant applied to SARS for approval to continue applying the transaction-count method across its enterprise.

SARS declined the application and instead issued a ruling approving a dual methodology. Under this approach, a modified standard turnover-based method (referred to in the judgment as the Bank Association South Africa ('BASA') method) would apply to general mixed expenses, while the transaction-count method would apply to mixed IT infrastructure costs.

The appellant objected to, and subsequently appealed against, SARS's decision not to approve its proposed methodology.

A preliminary jurisdictional dispute ultimately came before the Supreme Court of Appeal. The Court held that SARS's approval of a substantively different methodology amounted, in practical effect, to a refusal of the method proposed by the appellant. SARS's decision was therefore subject to objection and appeal under section 32(1)(a)(iv) of the VAT Act.

The matter was subsequently remitted to the Tax Court for a determination of the merits, in *VAT Case 22498*.

Legislative framework and issue before the court

The central issue in this matter was the identification and approval of an apportionment method that appropriately reflected the vendor's business activities.

As a general principle, a vendor may deduct VAT incurred on expenses as input tax to the extent that those expenses are used, consumed, or supplied in the course of making taxable supplies.

In line with this principle, where an expense is incurred for the business as a whole and supports both taxable and non-taxable supplies (a 'mixed expense'), the vendor is required to determine the proportion of the related VAT that qualifies for deduction.

Section 17(1) of the VAT Act provides that the deductible portion of input tax must be determined in accordance with a VAT ruling issued by the Commissioner.

In determining the most appropriate apportionment method, it was further accepted that the Commissioner must exercise the discretion conferred by section 17(1) in a fair and reasonable manner.

In this matter, the Tax Court accepted that the enquiry focuses on the intended use of the inputs and the nature and extent of the activities they support, rather than solely on the turnover or income generated by those activities. Accordingly, the relative value of a vendor's income streams does not necessarily provide an accurate indication of how inputs are allocated or consumed within the business.

Against this background, the key question in *VAT Case 22498* was effectively which method more accurately reflected the appellant's actual input consumption. This required factual evidence.





Burden of proof and why the appellant failed

The principal issue before the court was whether the appellant had discharged the burden of proving that the transaction-count methodology constituted a **fair and reasonable method** of apportionment for its enterprise as a whole.

In terms of section 102(1)(f) of the Tax Administration Act 28 of 2011, the onus rested on the appellant to establish that SARS's decision was incorrect. It was therefore insufficient for the appellant merely to identify perceived shortcomings in the methodology approved by SARS. Rather, it was required to demonstrate, on a balance of probabilities, that its proposed methodology appropriately reflected the extent to which mixed inputs were consumed in the course of its taxable and exempt activities.

A key concern identified by the court was that the transaction-count methodology attributed equal weight to all transactions, irrespective of their nature, value, or underlying resource requirements. For example, a low-value debit order and a high-value financing transaction were each treated as a single transaction, notwithstanding the material differences in the economic activity, revenue contribution, and

operational resources associated with them. In the court's view, the methodology therefore placed undue emphasis on transaction frequency rather than on the economic substance and operational realities of the business.

The court also recognised that the appellant's lending activities remained a significant component of its enterprise and were supported by extensive functions, including treasury, risk management, regulatory compliance, and capital management. Although these activities may have generated fewer countable transactions, they nevertheless consumed a meaningful proportion of the enterprise's shared inputs. This was particularly relevant in light of the appellant's own evidence that the financing function represented approximately two-thirds of the business as a whole.

Against this background, the appellant was unable to demonstrate that transaction frequency provided an appropriate proxy for the consumption of mixed expenses. Nor did it establish that the earning of interest income was sufficiently transaction-intensive to justify applying a transaction-count methodology across the enterprise.

The court further emphasised that the appropriateness of an apportionment methodology must be assessed with reference to the full range of activities undertaken by the vendor, together with the functions and resources supporting those activities. This consideration was especially relevant given the evolution of the appellant's business from one focused predominantly on unsecured lending to a broader banking operation incorporating transactional banking services. Any acceptable methodology therefore needed to reflect the commercial and operational realities of the expanded business model.

Importantly, the court observed that a banking enterprise cannot be viewed merely as a processor of payment transactions. It is a sophisticated financial institution generating both taxable and exempt income streams. Lending and other exempt activities may require substantial capital deployment, treasury management, credit-risk modelling, arrears management, legal enforcement, and regulatory compliance, even where those activities generate comparatively fewer transactions. Transaction frequency alone may therefore understate the extent to which shared inputs are consumed in making exempt supplies.

Ultimately, the appellant did not present sufficient empirical evidence to establish a reliable relationship between transaction volumes and enterprise-wide input consumption. In particular, it did not produce a cost-driver analysis, resource-allocation study, or other auditable data demonstrating that shared operational costs were driven primarily by transaction frequency. The court accordingly concluded that the appellant had failed to prove that the transaction-count methodology was a fair and reasonable method of apportionment for its enterprise as a whole.



A closer look at the judgment

Revenue significance

The court placed particular emphasis on interest income as the principal revenue and economic driver of the business, noting that fee income represented a comparatively modest proportion of total income.

While these considerations are relevant, the significance of a revenue stream does not, in itself, demonstrate how costs or inputs are consumed across the business.

Accordingly, a substantial amount of exempt income does not necessarily indicate extensive use of VAT-bearing mixed expenses, just as a high volume of taxable transactions does not, in itself, establish significant taxable use of those expenses.

Rather, the economic and functional characteristics of lending indicate that it is likely to consume material shared resources. In our view, the judgment should not be interpreted as establishing revenue significance as the determining factor in selecting an apportionment methodology. Instead, it demonstrates that a formula based solely on the number of payment events may fail to capture the supporting functions integral to a lending business, including treasury, credit risk, regulatory compliance, arrears management, and capital deployment.

On the facts, the taxpayer did not establish that the transaction-count methodology adequately captured or represented the extent to which the lending business consumed mixed expenses. The court therefore considered

the economic substance of the business in assessing whether the proposed methodology appropriately accounted for the relevant categories of input-consuming activity.

In light of the Tax Court's decision, vendors should distinguish evidence of income generation from evidence of cost consumption. The latter requires consideration of the underlying cost drivers, including the functions performed, personnel deployed, systems utilised, and external expenditure incurred to generate and sustain the relevant income streams.

In selecting an appropriate methodology, a vendor should identify the relevant mixed expenses, determine the activities or factors that best explain how those expenses are consumed or utilised in the business, and adopt the method that most reliably reflects the corresponding cost drivers.

Economic drivers and cost drivers

An economic driver describes the factor that generates enterprise value or income, whereas a cost driver identifies the activity or factor that causes a mixed expense to be consumed.

Interest income may therefore constitute an economic driver of the business, while treasury activity, employee time, collection and compliance activities, systems usage, and transaction volumes may serve as relevant cost drivers or indicators of input consumption.

The central enquiry is whether the selected methodology provides a fair and reasonable approximation of how the particular mixed expenses are used across the vendor's taxable and exempt activities.

Industry comparatives

In this matter, the court considered evidence that the taxpayer's activities had evolved to resemble those of a commercial bank and that the outcome produced by the dual-method ratio fell more closely within the range observed in the banking industry.

Industry context may therefore provide a useful reasonableness check and is a factor to which SARS is likely to have regard.

Industry comparatives may assist in identifying the functions ordinarily required to make particular supplies and may highlight an anomalous outcome warranting further analysis or explanation. However, an industry ratio or range should not, on its own, determine whether a methodology is fair and reasonable.

Accordingly, industry comparatives are corroborative rather than determinative. Each vendor's circumstances must be assessed on its own merits, with the selected methodology tailored to the nature, operations, and input-consumption profile of that vendor's business.



Conclusion

VAT Case 22498 neither rejects the transaction-count apportionment method outright nor specifically endorses SARS's dual method.

The judgment does, however, affirm that a vendor must substantiate, with appropriate evidence, why its chosen apportionment method is fair and reasonable in the context of its business. On the facts, the taxpayer failed to discharge this burden.

A fair and reasonable method must reflect how mixed expenses are consumed across the business, having regard to the vendor's activities as a whole. The enquiry is not directed at achieving the highest ratio or most favourable recovery, but at identifying the methodology that produces a reasonable and supportable outcome.

In our view, mathematical certainty is neither required nor contemplated by section 17(1), which inherently provides for an apportionment ratio and, therefore, an approximation. The methodology must nevertheless be credible and auditable, and supported by a sufficient factual foundation against which its suitability can be assessed.

Vendors seeking approval for an alternative method should therefore support their applications with robust empirical evidence, such as cost-driver analyses, resource-allocation studies, and auditable data linking mixed expenses to their taxable and exempt activities.

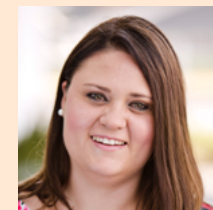
Binding General Ruling No. 16 (Issue 3) similarly provides that the standard turnover-based method ('STB') may be applied only where it is fair and reasonable in relation to the vendor's business activities. The principles arising from VAT Case 22498 are therefore equally relevant to a vendor applying the STB. Such a vendor should be able to demonstrate, by reference to credible and auditable evidence, that the method appropriately reflects the use of mixed expenses in its business.

The judgment raises the standard of analysis required when selecting and supporting an apportionment methodology. Vendors should accordingly review their methodologies regularly and retain credible, auditable evidence demonstrating that each method remains fair and reasonable, having regard to the evolution of the business and the actual consumption of mixed expenses across taxable and exempt activities.

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We gratefully acknowledge the contribution of **Katleho Ndlovu** to this article.



Opening the black box: why SARS can no longer hide behind confidentiality to withhold records

Introduction

The boundaries of SARS's obligation to produce a complete record in judicial review proceedings have long been a source of contention between revenue authorities and taxpayers. In the recent judgment of *Devland Cash and Carry (Pty) Ltd v Commissioner for the South African Revenue Service*,¹ the Gauteng Division of the High Court delivered an important ruling that reinforces taxpayers' rights to access the full deliberative record underlying SARS's administrative decisions, even where SARS claims confidentiality or privilege under section 68 of the Tax Administration Act 28 of 2011 ('TAA').

At its core, this case confronts a question of growing practical significance for tax controversy practitioners: can SARS invoke statutory confidentiality provisions to refuse to make available documents that formed part of SARS's

decision-making process affecting that taxpayer's own affairs? The Court's answer is a resounding "no", and in reaching that conclusion, it provides welcome clarity on the interplay between rule 53 of the Uniform Rules of Court ('Rules'), the TAA, and the Promotion of Access to Information Act 2 of 2000 ('PAIA').

This article examines the facts, legal reasoning, and practical implications for taxpayers engaged in disputes with SARS.



¹ (5837/2020) [2026] ZAGPJHC 967 (28 August 2026).

Background and facts

Devland Cash and Carry (Pty) Ltd (“Devland”) is a Johannesburg-based wholesaler of fast-moving consumable goods, supplying customers in South Africa and neighbouring countries. Following an audit, SARS finalised reassessments of Devland’s VAT returns (by 15 November 2018) and corporate income tax returns (by 28 September 2018), resulting in a total reassessed liability of approximately R1.9 billion, inclusive of penalties and interest.

SARS’s reassessments were grounded in findings of serious non-compliance, including allegations that Devland had made false statements in its returns, issued fraudulent credit notes to reduce income and output tax, incorrectly zero-rated goods supplied to related parties, failed to account for long-standing credit balances and unallocated receipts, and recorded domestic sales as exports to avoid output tax.

Devland requested a suspension of payment of the tax debt in terms of section 164 of the TAA. In February 2020, SARS declined the suspension request. Devland then launched an urgent application and obtained an interim interdict from Tsoka J on 25 February 2020, restraining SARS from taking any recovery action pending finalisation of the review proceedings.

The dispute over the rule 53 record

The central dispute before Makume J concerned Devland’s application to compel SARS to produce the complete record of proceedings under rule 53 of the Uniform Rules of Court.

SARS delivered a first batch of the record on 9 December 2020 and a supplementary record on 31 March 2021. However, Devland contended that the

record remained incomplete, and on 15 June 2021, it amended its notice of motion to demand an extensive list of additional documents. These included, among others, detailed risk assessments, link chart analyses, committee sign-off sheets, minutes of meetings, documents evidencing changes in SARS’s position on the risk of asset dissipation, forensic audit memoranda, debt collection plans, and audio recordings of committee meetings.

SARS resisted, arguing that the additional documents fell outside the scope of rule 53 and that production was barred by section 68(1) of the TAA and section 35 of PAIA, which deal with the mandatory protection of certain SARS records. SARS contended that the risk reports, debt collection plans, and link chart analyses constituted opinions, advice, reports, and recommendations protected under these provisions, and that disclosure would jeopardise the effectiveness of SARS’s audit methods.



The Court’s reasoning

The purpose and scope of rule 53

The Court emphasised that rule 53 plays a vital role in enabling courts to perform their constitutionally entrenched review function, and that compliance with the rule’s requirement to furnish a complete record is not merely procedural but a substantive requirement. Citing the Constitutional Court’s decision in *Helen Suzman Foundation v Judicial Service Commission*,² the Court reiterated that the unfairness of withholding relevant documents from a review applicant lies in the fact that the withheld information “may provide evidence of reviewable irregularities that are not revealed by the other documentation”. All relevant documentation must be provided unless there is a legally cognisable basis for withholding it.

The Court further noted the established principle that an “incomplete record is not a record as contemplated in rule 53”, citing *Badi and Another v East Cape Cycling and Others*.³

Importantly, the Constitutional Court has confirmed that the content of the record is determined by relevance to the impugned decision and not by the case as pleaded in the founding affidavit, because a review applicant’s case is only fully particularised once it has seen the record and supplemented its grounds of review.

² 2018 (4) SA 1 (CC).

³ [2019] ZACPEHC 82.

Section 68 of the TAA does not provide a blanket shield

The Court found that SARS's reliance on section 68 of the TAA was "without lawful merit". Several grounds underpinned this conclusion:

1

Section 68(3) expressly allows disclosure of SARS's confidential information where authorised by any other Act which expressly provides for such disclosure despite the confidentiality provisions. Rule 53, and the Uniform Rules of Court more broadly, constitute such an "other act" for this purpose.

2

The Court drew a critical distinction between legal professional privilege, which is a substantive evidentiary privilege recognised at common law and preserved in section 68(1)(b) of the TAA, and statutory confidentiality, which is a creature of the TAA whose scope must be determined by reference to sections 67 to 74 and "not simply asserted as a synonym to privilege". SARS had failed to identify any self-standing basis for privilege outside the benefit of confidentiality, which was 'fatal' to its opposition.

3

Section 68(3) provides a general override, permitting disclosure of SARS confidential information when required by order of the High Court.

4

Section 73 of the TAA confers a positive entitlement on a taxpayer to access information relating to its own tax affairs, including particulars of assessments or decisions and information which the taxpayer itself submitted to SARS. The Court stressed that the confidentiality regime exists principally to protect taxpayer affairs against disclosure to third parties or the public, rather than to shield SARS decision-makers from the very taxpayer whose affairs are at issue.

5

Even where documents carry privilege or confidentiality, the Court endorsed the approach in *Comair Ltd v Minister for Public Enterprises and Others*,⁴ under which privileged documents should be included in the record subject to appropriately limited disclosure agreements or court orders, rather than being excluded entirely.

Relevance to the section 164(3) discretion

The Court also tied the relevance of the requested documents to the structure of section 164(3) of the TAA, which requires a senior SARS official to have regard to eight enumerated factors when deciding a suspension-of-payment application, including the taxpayer's compliance history, the risk of asset dissipation, whether adequate security can be provided, and whether fraud is involved. Records showing how SARS committees considered and weighed these factors "go to the heart of whether the refusal was lawful, reasonable, and rational".

An unconstitutional interpretation

In a significant concluding observation, the Court regarded SARS's interpretation of section 68 as unconstitutional because it restricted rather than advanced rights. This language signals a firm judicial stance against expansive reliance on statutory confidentiality to frustrate review proceedings.

The order

The Court granted the application, compelling SARS to produce the complete record, including a comprehensive list of over 20 categories of documents that ranged from risk assessment annexures and committee minutes to forensic audit memoranda, debt collection plans, management accounts, and audio recordings of committee meetings.

⁴ 2014 (5) SA 608 (GP).

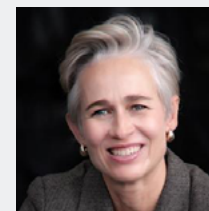


Key takeaways

1	SARS's decision to decline a suspension-of-payment request is reviewable. Although established in previous cases, this judgment reminds us of the administrative and constitutional law principles that apply to section 164 of the TAA.
2	Section 68 of the TAA is not a general secrecy provision. It preserves specific categories of privilege, including legal professional privilege, but it does not permit SARS to withhold from a taxpayer the deliberative record relating to that taxpayer's own affairs.
3	Confidentiality and privilege are distinct concepts. SARS cannot assert statutory confidentiality as a synonym for legal professional privilege. Any claim to withhold documents must identify a specific, substantive basis for privilege; mere confidentiality is insufficient.
4	Taxpayers have a positive right to access information about their own records. Section 73 of the TAA entitles taxpayers to access information relating to their own tax affairs, and the confidentiality regime is primarily aimed at protecting taxpayers against third-party disclosure, not at shielding SARS from the taxpayer whose affairs are under consideration.
5	Rule 53 requires a complete record. The content of the record is determined by relevance to the impugned decision, and courts will not countenance an incomplete record. Taxpayers bringing review applications must be able to access all documents that formed part of or informed the decision-making process.

6	Calibrated disclosure is preferred. Where genuine privilege or confidentiality concerns exist, courts favour limited-disclosure arrangements (such as confidentiality regimes between the parties) over blanket exclusion from the record.
7	Strategic implications for dispute resolution. This judgment empowers taxpayers to insist on full transparency in the rule 53 record when challenging decisions by SARS, including suspension-of-payment refusals under section 164(3). Taxpayers should consider the relevance of committee deliberations, internal risk assessments, and other deliberative materials when formulating record-production demands.

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We gratefully acknowledge the contribution of **Louise Swart** to this article.

Ubi lex voluit, dixit: where the statute speaks, the Court listens

Beyond the formula: what VAT Case 22498 means for VAT apportionment

Opening the black box: why SARS can no longer hide behind confidentiality to withhold records

Latest developments



Latest developments

Latest developments 26 August 2026 to 30 September 2026

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14 September 2026

Global Tax Policy Alert

[OECD Inclusive Framework Pillar Two package addresses consistency of rule application and reporting](#)

The OECD/G20 Inclusive Framework (IF) on 11 September 2026 released a package of Pillar Two materials, including a revised GloBE Information Return (GIR), a framework for the full legislative review of jurisdictions' Pillar Two rules, and Administrative Guidance on certain conditional taxes and issues with respect to Qualified Domestic Minimum Top-up Taxes (QDMTT) fiscal-period mismatches.

The revised GIR implements reporting changes arising from the January 2026 Side-by-Side (SbS) Package. For qualifying US-parented groups applying the SbS safe harbour, certain Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR) reporting is reduced, although QDMTT reporting generally remains. The Alert provides additional information regarding the matter.

16 September 2026

Africa-wide tax policy campaign

As part of the launch of the Africa Tax Policy Campaign (Tax Policy, Our Future: Africa in Conversation), PwC South Africa has published a [LinkedIn post](#) highlighting perspectives from our tax policy leaders across Africa. We encourage you to follow the campaign for ongoing insights and discussions.

As the post highlights:

“Tax policy is increasingly shaping Africa’s economic future, influencing how countries fund public services, attract investment, and strengthen the relationship between governments and citizens.”

The full article cited in the post is available [here](#).

SARS tables of interest rates and average exchange rates

30 September 2026

[Table 3 - Rates at which interest-free or low interest loans are subject to income tax](#)

SARS updated the rates at which interest-free or low-interest loans are subject to income tax on 30 September 2026 in line with the South African Reserve Bank changing the repo rate on 23 September 2026. The updated rates apply from 1 October 2026.

9 September 2026

Average exchange rates

The following SARS tables of average exchange rates have been updated:

- [Table A](#) – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003.
- [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.

Interpretation

30 September 2026

Interpretation Note (IN) 74 (Issue 4) – Deduction and recoupment of expenditure incurred on repairs

Issue 4 of IN 74 provides guidance on the interpretation and application of section 11(d) of the Income Tax Act, 1962, which allows a deduction for expenditure incurred on repairs for the purposes of trade.

The question of whether the cost of repairs deducted under section 11(d) can be recovered or recouped under section 8(4)(a) when the property is sold is also considered. The Note replaces Issue 3.

2 September 2026

Interpretation Note 146 - Meaning of “deemed to be one and the same person” for determining the entitlement to the wear and tear allowance under an amalgamation transaction

This Note provides guidance on the interpretation and application of the phrase “deemed to be one and the same person” as it appears in section 44(3)(a) of the Income Tax Act 1962 to determine which party to an amalgamation transaction may be entitled to the wear-and-tear allowance in the year of assessment when an allowance asset is disposed of. The Note does not consider the corporate rules or the requirements for the wear-and-tear allowances in detail.

1 September 2026

Interpretation Note 54 (Issue 3) – Deductions not allowed – corrupt activities, fines and penalties, and fruitless and wasteful expenditure

Issue 3 of IN 54 has been published and replaces Issue 2.

Customs and Excise

25 September 2026	Facility codes	The facility codes used in Box 30 on the Goods Declaration have been updated to include details of the terminal for Port Dynamics (Pty) Ltd, located in Durban. This addition enables Customs to transmit electronic messages communicating the status of the consignment to this terminal. • SC-CF-19-A02 – Facilities Code List – External Annexure
22 September 2026	Enhanced diesel refund registration	As part of the ongoing SARS Customs Modernisation Programme, diesel refund registration is being separated from VAT registration. A new automated platform for diesel refund registration has been developed and was implemented on 18 September 2026. In addition, the diesel refund relationship management function has been implemented on eFiling. For more information, see the following resources: • Guide to Diesel Refund Relationship Management • Diesel Refund Scheme webpage
11 September 2026	Tariff amendments	Publication details for the following tariff amendment notices have been made available: • R7904, as published in Government Gazette 55355 of 11 September 2026. • R7903, as published in Government Gazette 55355 of 11 September 2026. • R7902, as published in Government Gazette 55355 of 11 September 2026.
18 September 2026	Rule amendments	Notice R7921, published in Government Gazette 55406 of 18 September 2026, amends the rules under sections 75 and 120 in relation to diesel refund registrations (DAR280).
7 September 2026	Draft amendments to forms	• DA 159 – Petroleum Products: Account for Special Storage Warehouse • DA 160 – Petroleum Products: Account for Manufacturing Warehouse Comments were due to SARS by 21 September 2026.
4 September 2026	Tariff amendments	Publication details for the following tariff amendment notices have been made available: • R7888, as published in Government Gazette 55338 of 4 September 2026. • R7874 and R7875, as published in Government Gazette 55298 of 4 September 2026.
28 August 2026	Tariff amendments	Publication details for tariff amendment notices R7864 and R7865, as published in Government Gazette 55269 of 28 August 2026, have been made available.

SARS guides

30 September 2026	General guides	The following SARS general guides have been made available: • Taxation in South Africa 2026 • Tax Guide for Small Businesses (2025/2026)
3 September 2026	Quick Guide – Alternative Dispute Resolution (Issue 2)	Issue 2 of the guide to Alternative Dispute Resolution has been made available.
28 August 2026	Guide to the Tax Compliance Status ('TCS') functionality on eFiling	<u>The Guide to the Tax Compliance Status functionality on eFiling</u> was updated to indicate that non-resident directors who make multiple transfers of rental income or directors' fees during the year only need to submit one Approval for International Transfer (AIT) application.

Case law

In accordance with the date of judgment

23 September 2026	<i>Cuba Dumakude v Bidvest Bank Limited and Another</i> (054716/25) [2026] ZAG-PPHC (8 September 2026)	The principal issues were as follows: • Whether SARS was correct to issue a third-party notice to Bidvest Bank; • Whether SARS was correct not to issue a final demand prior to issuing the notice; and • Whether the applicant was entitled to the funds held by Bidvest Bank.
11 September 2026	<i>SARSTC IT 46306</i> (IT) [2026] ZATC CPT (13 April 2026)	The case dealt with the treatment of capital gains tax ('CGT') on the transfer or migration of shares in a trust to a non-resident trust. The key issues were: • Whether the appellant had met the burden of proving that SARS was not entitled to assess it for CGT in relation to a disposal of assets which occurred in the 2018 year of assessment; • Whether the appellant was entitled to a remission of interest imposed in terms of the Income Tax Act 58 of 1962 ('the Act'); • Whether the appellant was entitled to a remission of penalties imposed in terms of the Act; and • Whether SARS was correct in imposing an understatement penalty of 10% on the levying of CGT on the disposal in question.
2 September 2026	<i>SARSTC IT 77406</i> and <i>IT 77357</i> (IT) [2026] ZATC (24 August 2026)	The case dealt with rental income in the hands of a share block company. The key issues were: • Whether the rental income in question accrued to the appellants for purposes of the definition of "gross income" in section 1 of the Income Tax Act; and, if so, • Whether the amounts were taxable in the appellants' hands.

2 September 2026	SARSTC IT 46503 (ADM) [2026] ZATC JHB (1 June 2026)	The issue was whether the Commissioner should have been fully indemnified against the costs of the postponement.
1 September 2026	SARSTC IT 77272 (ADM) [2026] ZATC GQ (11 August 2026)	The issue was whether SARS had proven that it was entitled to impose an understatement penalty in terms of the Tax Administration Act, 2011 and whether it had correctly categorised the understatement as 'intentional tax evasion'.
1 September 2026	SARSTC IT 46515 and VAT 22578 (ADM) [2026] ZATC JHB (4 August 2026)	The issue was whether the taxpayer should have been permitted, at the appeal stage, to introduce a factual basis for its claim to an input tax deduction that was not disclosed during the audit in terms of the Tax Administration Act 28 of 2011.

Notices

25 September 2026	Public notice 7958	Notice 7958 , published in Government Gazette 55438 of 25 September 2026 under section 95(6) of the Tax Administration Act 28 2011, extends the deadline to 22 January 2027. The extension applies to a provisional taxpayer who has received an automatic assessment under paragraph 3(3) of the notice to submit returns and wishes to request a reduced or additional assessment.
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Other publications

30 September 2026	OECD	Model Tax Convention on Income and on Capital 2025 (full version): This publication is the 11th edition of the full version of the Model Tax Convention on Income and on Capital, a key reference used by OECD Members and non-Members as a basis for negotiating, applying, and interpreting bilateral tax treaties. It plays a central role in removing tax-related barriers to cross-border trade and investment, helping to prevent tax evasion and avoidance, and addressing issues of international double taxation.
22 September 2026	SARS	SARS has published translated versions of the VAT Modernisation Consultation Paper in several South African languages for greater accessibility and stakeholder participation. Additional language versions will be published as they become available. Interested parties are invited to review the proposals and submit comments by 16 October 2026. The consultation papers are available on the SARS webpage.
21 September 2026	SARS	Global Minimum Tax: New administration capabilities for affected multinational enterprise groups. SARS has introduced the GMT03 declaration process for circumstances where GMT information is submitted by a foreign entity filing on behalf of a South African entity. If information has already been submitted in another jurisdiction and subsequently exchanged with SARS, a South African entity may still be required to submit a GMT03 declaration to meet local administration and payment requirements. More information on the new administration capabilities is available on the SARS webpage.

21 September 2026

ATAF

Article: [African Development Bank, ATAF urge gender-responsive tax reform across Africa](#)

11 September 2026

OECD

[Tax challenges arising from the digitalisation of the economy – GloBE Information Return \(September 2026\)](#); the GloBE Information Return (GIR) sets out a standardised information return designed to facilitate compliance with and administration of the Global Minimum Tax.

Following its initial release in 2023, the Inclusive Framework on BEPS published an updated version of the GIR in January 2025. This revised version of the GIR incorporates the Side-by-Side Package released in January 2026 and it shall only be used for the filing of GIRs with respect to Fiscal Years commencing on or after 31 December 2025.

1 September 2026

ATAF

Article: [What is AMATM? Why Africa needs stronger cooperation to fight tax evasion and avoidance](#)



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