

TAX UPDATE

For period: January 2026 to March 2026

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1. FOREWORD

This update provides a summary of key tax developments during the first quarter of 2026, with a particular focus on IT and VAT.

It highlights the Budget, case law, IN and, rulings that may be relevant to taxpayers and their advisors. Readers are encouraged to consider how these developments may apply to their specific circumstances and to seek advice where appropriate.

Particular attention is drawn to the tax cases discussed, as well as to INs and rulings, which offer valuable insight into SARS' approach to the application of tax legislation.

Should you wish to discuss any of the matters addressed in this update, or require assistance with any tax-related issue, you are welcome to make contact.

'In appropriate circumstances, a court will carefully scrutinize the substance of a particular transaction to establish its true nature. The amendment will permit the true issue between the parties to be ventilated. This basic principle of tax law is underscored by s 143(1) of the TAA, which provides that SARS has a duty 'to assess and collect tax according to the laws enacted by Parliament and not to forgo a tax which is properly chargeable and payable.' This principle must also relate to the corollary – SARS's obligation not to levy taxes which are not payable in terms of the law. This could be the situation if the amendment was not granted.'

Weiner JA C:SARS v Free State Development Corporation (86 SATC 289 at par. 47)

2. BUDGET

2.1. Main proposal

The 2026 Budget tax proposals adjust thresholds, rebates and duties, providing taxpayers with relief from the impact of inflation on their tax payments for the first time since 2023/24.

2.2. Personal tax rates

2026 year of assessment		2027 year of assessment	
Taxable Income	Rates of tax	Taxable Income	Rates of tax
R0 – R237 100	18% of each R1	R0 – R245 100	18% of each R1
R237 101 – R370 500	R42 678 + 26% of the amount above R237 100	R245 101 – R383 100	R44 118 + 26% of the amount above R245 100
R370 501 – R512 800	R77 362 + 31% of the amount above R370 500	R383 101 – R530 200	R79 998 + 31% of the amount above R383 100
R512 801 – R673 000	R121 475 + 36% of the amount above R512 800	R530 201 – R695 800	R125 599 + 36% of the amount above R530 200
R673 001 – R857 900	R179 147 + 39% of the amount above R673 000	R695 801 – R887 000	R185 215 + 39% of the amount above R695 800
R857 901 – R1 817 000	R251 258 + 41% of the amount above R857 900	R887 001 – R1 878 600	R259 783 + 41% of the amount above R887 000
R1 817 001 and above	R644 489 + 45% of the amount above R1 817 000	R1 878 601 and above	R666 339 + 45% of the amount above R1 878 600

Rebates		Rebates	
Primary	R17 235	Primary	R17 820
Secondary	R9 444	Secondary	R9 765
Third rebate	R3 145	Third rebate	R3 249
Tax threshold		Tax threshold	
Below age 65	R95 750	Below age 65	R99 000
Age 65 and over	R148 217	Age 65 and over	R153 250
Age 75 and over	R166 895	Age 75 and over	R171 300

2.3. Tax thresholds and limit reviewed

Description	Last amended	Current Monetary amount	Proposed Monetary amount
Small Businesses			
VAT compulsory registration threshold	2009	R1 000 000	R2 300 000
Annual turnover limit for the turnover tax	2009	R1 000 000	R2 300 000
Voluntary VAT registration threshold	2009	R50 000	R120 000
CGT			
CGT exclusion for small business asset disposal	2012	R10 000 000	R15 000 000
Exclusion amount on disposal of small business when person over 55 years	2012	R1 800 000	R2 700 000
Exclusion at death	2012	R300 000	R440 000

Exclusion in respect of disposal of primary residence	2012	R2 000 000	R3 000 000
Annual exclusion	2017	R40 000	R50 000
Savings and retirement			
Tax-free investments: annual limit	2021	R36 000	R46 000
Retirement fund contribution deduction limit	2016	R350 000	R430 000
Retirement interest de minimis threshold for annuitisation	2016	R247 500	R360 000
Living annuity commutation	2020	R125 000	R150 000
Donations tax			
Exemption for donations made by entities	2002	R10 000	R20 000
Exemption for donations made by individuals	2007	R100 000	R150 000
Tax-exempt employment benefits			
Bursaries / Scholarships: annual remuneration ceiling for all employees including persons with disabilities (PwD)	2017	R600 000	R900 000
Bursaries / Scholarships: annual ceiling for employee relatives' primary / secondary education (PwD)	2017	R20 000 (R30 000)	R30 000 (R45 000)

Bursaries / Scholarships: annual ceiling for employee relatives' tertiary education (PwD)	2017	R60 000 (R90 000)	R90 000 (R130 000)
Remuneration proxy (cap): employee loans for immovable property	2018	R250 000	R360 000
Market value of property: employee loans for immovable property	2018	R450 000	R650 000
Maximum compensation exemption for employees dying in fulfilment of duties	2007	R300 000	R800 000
Awards for bravery and long service	2003	R5 000	R16 000

The VAT registration thresholds will be effective from 1 April 2026 while the other thresholds will be effective from 1 March 2026. In addition the restriction on tax year end dates will be removed to make the turnover tax regime more attractive.

2026 year of assessment		2027 year of assessment	
Threshold	Rates of tax	Threshold	Rates of tax
R0 – R335 000	0%	R0 – R600 000	0%
R335 001 – R500 000	1% of the amount above R335 000	R600 001 – R950 000	1% of the amount above R600 000
R500 001 – R750 000	R1 650 + 2% of the amount above R500 000	R950 001 – R1 400 000	R3 500 + 2% of the amount above R500 000
R750 001 and above	R6 650 + 3% of the amount above R750 000	R1 400 001 and above	R12 500 + 3% of the amount above R1 400 000

2.4. *Special economic zones*

Qualifying companies located in special economic zones approved by the Minister of Finance are taxed at a corporate tax rate of 15 per cent instead of 27 per cent. To prevent companies from shifting profits to connected firms in a special economic zone simply to take advantage of a lower tax rate, companies are disqualified if more than one-fifth of expenditure or gross income arises from transactions with connected firms outside the zone. These rigid rules work against businesses already operating in the zones, as well as against potential investors wanting to use the zones to strengthen their own supply chains.

Government proposes a different approach. It will assess whether companies are buying or selling their products to connected parties outside the zone at market-related prices to ensure that profits are not shifted into the low-tax zone.

2.5. *Update to urban development zone tax incentive review*

As part of the review of the urban development zone tax incentive and in line with Operation Vulindlela's objective to reduce spatial inequality, government will explore targeting the incentive to better support affordable housing developments in areas that are close to jobs, public transport and essential services. A workshop will be held with relevant stakeholders during 2026, with the aim of tabling proposals in the 2027 Budget.

2.6. *Collective investment schemes*

Following public consultation after the publication of the discussion paper on collective investment scheme (CIS) taxation in 2024, the National Treasury will release a response document with revised proposals for further consultation.

The draft recommendation in the response document proposes that all investment returns generated by regular CISs and retail investment hedge funds be taxed as capital. This is to encourage savings and to provide the industry with certainty about the tax treatment of these savings vehicles. CISs and retail investment hedge funds are open to the general public, are well regulated and have diversification and other requirements, providing an important avenue for savings. By contrast, qualified

investment hedge funds are not open to the general public, have minimal investment criteria and only cater for those able to invest a minimum of R1 million. Government will propose excluding such qualified funds from the CIS tax regime. Alternative tax regime options for these funds will be proposed in the response document.

2.7. *National online gambling tax*

The National Treasury published a draft national online gambling tax discussion paper for public comment in November 2025. It proposed a tax of 20 per cent on gross gambling revenue generated by online gambling. This tax would be in addition to the current taxes paid to provinces. The public comment period was extended to close on 27 February 2026.

Following receipt of the comments, the National Treasury will hold a workshop with those who commented. A proposal, including any revisions from the consultation, will be included in draft legislation that will be made available for public comment later in the year.

2.8. *Individuals, employment and savings – Allowing rollover treatment of capital allowances on allowance assets transferred between spouses*

The IT Act regulates the transfer of assets between spouses through section 9HB of the act. This provision establishes a rollover mechanism for the transfer of trading stock, livestock and capital assets between spouses. However, the recoupment component of the rollover for allowance assets is not provided for, as section 9HB does not prevent the recoupment of capital allowances in the hands of the transferor spouse under section 8(4)(k) of the act, nor does it allow the transferee spouse to take over the accumulated allowances previously claimed. It is proposed that section 9HB be amended to prevent the recoupment of capital allowances on the transfer of allowance assets between spouses and to provide for the carry-over of accumulated allowances to the transferee spouse.

2.9. *Individuals, employment and savings – Limiting the donations tax exemption rules where a spouse ceases to be a tax resident*

Section 56 of the IT Act exempts donations between spouses from donations tax. Government has become aware of tax avoidance arrangements, particularly involving high-net-worth individuals planning to cease to be South African tax residents.

The arrangement involves deliberately staggering the cessation of tax residence between spouses where significant assets are transferred to a spouse who has already become non-resident before the remaining spouse ceases residence.

In these circumstances, the donations tax exemption applies, while the subsequent cessation of tax residence by the remaining spouse results in a reduced IT liability under section 9H of the act. These arrangements are designed to avoid both donations tax and the IT on cessation of residency, undermining the original policy intent of these provisions.

It is proposed that the donations tax exemption rules applicable to spouses be limited to donations made to a spouse who is a resident effective from 25 February 2026.

2.10. *Individuals, employment and savings – Extending the eligibility for the medical scheme fees tax credit*

Certain statutory medical schemes face regulatory constraints that remove them from the authority of the Council for Medical Schemes. Consequently, individual members of these schemes are not eligible for the medical scheme fees tax credit under section 6A of the IT Act.

It is proposed that eligibility for this tax credit be extended to such members, provided that the schemes offer benefits, and adhere to governance and solvency requirements that are at least equivalent to those prescribed under the Medical Schemes Act

2.11. Retirement provisions – Determining the application of the de minimis limit for multiple living annuities held with the same insurer or fund

The IT Act allows a living annuity to be commuted and paid as a lump sum when the value of the assets falls below the prescribed de minimis limit, currently set at R125 000.

This limit is applied on a per-insurer or per-fund basis, depending on whether the living annuity is provided by the fund or purchased from an insurer, whereby the value of all living annuities held by an annuitant with the same insurer or fund is aggregated when applying the limit. However, differing interpretations of the law exist regarding whether the R125 000 limit applies per policy or cumulatively per insurer or fund.

Applying the limit on a per-policy basis could undermine retirement income security by enabling the early commutation of multiple small annuities and facilitating tax-driven restructuring of retirement assets.

It is therefore proposed that the definition of ‘living annuity’ in section 1 of the Act be amended to explicitly provide that the prescribed de minimis limit must be determined cumulatively where an annuitant holds multiple living annuities with the same insurer or fund.

2.12. Business (general) – Extending the rehabilitation fund regime

In 2006, government introduced a unified regime for the tax treatment of mining environmental rehabilitation funds with the objective of applying their assets solely for rehabilitation on premature closure, decommissioning, final closure and post-closure coverage of any latent and residual environmental impacts.

As a result, under certain conditions, all cash contributions to the mining rehabilitation fund are tax deductible and the growth in the fund is exempt from tax. Like mining operations, nuclear facilities are subject to strict legislative requirements for environmental rehabilitation and decommissioning through adequate financial provisioning to support environmental preservation.

It is proposed that the rehabilitation fund regime be extended to allow nuclear facilities to also be eligible for the rehabilitation fund regime.

2.13. Business (general) – Withdrawing the proposal to align the two different interest limitation rules

In 2024, the Taxation Laws Amendment Act included amendments to align the formula contained in the rules that limit interest deductions in terms of section 23N of the Act with changes that had been introduced to section 23M of the act (formula applicable to interest in respect of debts owed to persons not fully subject to tax).

Over the past two years, concerns have been raised that the proposed alignment in section 23N of the Act, with an effective date of 1 January 2027, is not necessary given the distinct nature of the rules and transactions to which sections 23M and 23N of the Act respectively apply.

It is proposed that the 2024 amendment to align the formulas be withdrawn.

2.14. Business (financial sector) – Aligning short-term insurance taxation with IFRS 17 terminology

While most of section 28 of the IT Act was updated to reflect International Financial Reporting Standard (IFRS) 17, section 28(3B)(a) was inadvertently omitted from these consequential amendments. Currently, this subsection continues to refer to ‘liabilities on investment contracts’ and ‘insurance liabilities relating to premiums and claims’ using outdated terminology.

It is proposed that section 28(3B)(a) of the act be amended to align the deduction with the amounts deducted under subsection (3) or (3A) and included under subsection (4), thereby aligning the tax treatment of insurance liabilities transferred between short-term insurers with the requirements of IFRS 17.

2.15. International – Aligning the interaction between CFC inclusion and DTMC currency translation rules

Section 9D(6) of the IT Act requires that the net income of a CFC be determined in its functional currency (for example, US dollars). When including the relevant amount in the income of a South African shareholder, this amount must be translated into rands by applying the average exchange rate for the CFC’s foreign tax year.

Section 25D(5) of the act, however, provides that where the South African shareholder is a DTMC (for example, with a US dollar functional currency), any amount received in

a currency other than its functional currency (such as the rand attribution of an amount of net income) must first be determined in the DTMC's functional currency (US dollars) and thereafter translated back into rands using the average exchange rate applicable to the DTMC's year of assessment. At issue is that the current interaction between section 9D(6) and section 25D(5) of the act may inadvertently create onerous translation requirements, resulting in distortions in the taxable income ultimately reflected in South Africa.

To resolve this anomaly, it is proposed that legislation be amended to ensure that where a DTMC is the resident shareholder of a CFC, section 9(6) of the act does not require the translation of an amount of net income to rands.

2.16. VAT – Services rendered to a CCAE or SEZ operator

Taxpayers requested that the VAT Act be amended to reflect the policy position on services rendered in terms of the zero-rating provisions of section 11(2)(k) of the VAT Act. There is confusion about whether all services rendered to a CCAE or to an SEZ operator in a customs-controlled area are required to be physically rendered therein to qualify for the zero-rating.

It is proposed that section 11(2)(k) of the VAT Act be amended to reflect that the services must be physically rendered in the customs-controlled area to qualify for zero-rating.

2.17. VAT – Supply of gold to banks

Refineries rely on pooled contributions from various depositors to achieve the required purity and volume of gold. The input includes low-grade by-products, recycled bullion, previously manufactured gold from jewellery, coins and dental alloys. Section 11(1)(f) of the VAT Act provides for the zero-rating of gold, in specific forms, supplied to the listed entities that has not 'undergone any manufacturing process other than the refining thereof or the manufacture or production in order to achieve such specific forms'.

It is complex to trace or isolate unprocessed, primary-source gold, and the refined product will likely have both components of primary and secondary gold that have gone through the process of manufacturing. This results in suppliers not being able to

comply with section 11(1)(f) of the VAT Act and the SARS must follow protracted audit procedures to confirm the validity of the application of the zero-rating.

In light of this, it is proposed that section 11(1)(f) of the VAT Act be repealed.

2.18. VAT – Time period to deduct notional input tax

A vendor is allowed a notional input tax deduction on the acquisition of second-hand goods when such goods are acquired under a non-taxable supply from a resident of South Africa for the purpose of making taxable supplies in terms of section 16(3) of the VAT Act. When the vendor subsequently exports the second-hand goods, the vendor may apply zero-rating in terms of section 11(1)(a) of the VAT Act unless the supplier of the second-hand goods or a connected person has deducted notional input tax on the acquisition thereof under section 16(3) of the VAT Act.

Similarly, in the case of an indirect export by a qualifying purchaser, the VAT Refund Administrator may only refund the qualifying purchaser to the extent that the VAT charged exceeds the notional input tax deduction.

Where the seller had not claimed the notional input tax at the date of sale but obtained a valid and completed VAT 264 as per section 20(8) of the VAT Act, the presumption is that there is an intention to claim the notional input tax at a later stage, so the sale cannot be zero-rated and must be standard rated instead.

The limitation on the refund and the implication on the zero-rating only apply when the supplier claimed the notional input tax, and the supplier has five years to claim the tax. This creates a risk that the fiscus will incur a financial loss if SARS refunds the full amount including the notional input tax portion on the basis that it was not claimed by the seller, and the vendor later claims the notional input tax.

It is proposed that section 16(3) of the VAT Act be amended to restrict the deduction of the notional input tax to a tax period not later than the tax period in which the supply of the second-hand goods takes place, subject to the five-year prescription rule.

2.19. VAT – Electronic services and intermediaries

The 2024 amendments to section 54(2B) of the VAT Act included the introduction of the concept of a written agreement between the intermediary and the principal supplier. Where a principal makes a supply of electronic services via an intermediary's platform,

the intention was to hold the intermediary liable to account for the VAT on the electronic services provided.

It has come to government's attention that this poses compliance risks for SARS in that SARS must engage the principal to recover the VAT, and intermediaries may have difficulty in entering into agreements with smaller foreign electronic principals, who are often also most likely to be non-compliant, to account for the VAT on their behalf.

It is thus proposed that section 54(2B) of the VAT Act be amended to state that the default situation is that the intermediary accounts for the VAT, unless there is an agreement to the contrary. The joint and several liability will still apply.

2.20. VAT – Leasehold improvements

A problem arises where leasehold improvements are supplied for no consideration to a lessor who is not a vendor (for example, a lessor who is below the VAT registration threshold or only makes exempt supplies). The adjustment under section 18C of the VAT Act must be made by a lessor who is a vendor where leasehold improvements are applied for non-taxable purposes. Based on the current wording of the provision, if the lessor is not a vendor, section 18C does not apply. This means that a lessor who is not a vendor will receive the benefit of leasehold improvements in respect of VAT that was effectively not incurred by that lessor. It is proposed that the VAT Act be amended so that this treatment is no longer restricted to lessors who are vendors and that a specific declaration channel be made available in this regard.

2.21. Tax Administration – IT Act – Excluding certain exempt entities that are companies from the definition of 'provisional taxpayer'

The definition of 'provisional taxpayer' in the Fourth Schedule of the IT Act excludes certain entities that are subject to partial taxation. The exclusion of these entities was mainly aimed at reducing their compliance burden, for example, the difficulty in determining how provisional tax should apply to amounts subject to exemption only up to a specified threshold. In terms of paragraph (b) of the definition of 'provisional taxpayer', any company is a provisional taxpayer.

It is thus proposed that fully exempt entities and certain partially exempt entities, which are regarded as companies, should also be excluded from being classified as provisional taxpayers.

2.22. Tax Administration – IT Act – Additional requirement with regard to the obligation to withhold employees’ tax for non-resident employers

The Fourth Schedule of the IT Act was amended by the Tax Administration Laws Amendment Act (2023) to extend the obligation to withhold employees’ tax to non-resident employers conducting business through a permanent establishment (PE) in South Africa. It has been argued that this amendment can have anomalous consequences if the employee in question is not also effectively connected to the PE. For example, a non-resident employer with a PE in South Africa could employ a South African resident employee in its home country who does not have any connection to the South African PE. In such circumstances, the non-resident employer would have a withholding obligation in relation to the South African resident employee although employment is not exercised in South Africa. Hence it is proposed that the PE requirement for non-resident employers should be amended to include an additional requirement that the employee is effectively connected to the PE in South Africa.

2.23. Tax Administration – IT Act – Reviewing penalty regime for underestimation of provisional tax

To trigger the penalty for underestimating provisional tax, a taxpayer must first underestimate their taxable income outside acceptable tolerances. If the taxpayer submits an estimate that is within the acceptable tolerance but pays no provisional tax, the underestimation penalty cannot be imposed.

The only penalty applicable in these instances is the lesser late payment penalty.

It is proposed that, with effect from 25 February 2026, timely payment of the amount of the estimate be required before it may be relied on. There are existing rules to ensure that there is no duplication of the underestimation and the late payment penalties.

Furthermore, the R1 million cap for relying on amounts based on historical assessments, rather than current estimates, will be increased to R1.8 million for years of assessment commencing on or after 1 March 2026.

2.24. Tax Administration – VAT – Expanding documentary requirements for second-hand goods

Second-hand goods remain part of the illicit economy. There is no requirement under the VAT Act or TAA for second-hand goods dealers to be licensed or have documents prescribed under any other relevant acts, such as the Second-Hand Goods Act (2009). The Second-Hand Goods Act seeks 'to regulate the business of dealers in second-hand goods and pawnbrokers, in order to combat trade in stolen goods; to promote ethical standards in the second-hand goods trade; and to provide for matters connected therewith'.

Section 21 of the Second-Hand Goods Act requires dealers to keep a record in a prescribed form containing certain information, with additional information prescribed under section 24 of that Act for dealers in second-hand motor vehicles. To mitigate the risk of fraudulent notional input tax claims, it is proposed that the documentation requirements for second-hand goods vendors under section 20(8) of the VAT Act be extended to those prescribed under the Second-Hand Goods Act and its regulations.

2.25. Tax Administration – VAT – Additional information required on tax invoice on acquisition of second-hand goods subsequently supplied by vendor

The zero-rate on exports does not apply to second-hand goods on which the supplier has deducted notional input tax. In this case, the supplier must levy VAT equal to the notional input tax deducted to recoup the notional input tax. Similarly, in the case of an indirect export by a qualifying purchaser, the VAT Refund Administrator may only refund the qualifying purchaser to the extent that the VAT charged exceeds the notional input tax deduction.

To ease compliance for purchasers and administration, it is proposed that section 20 of the VAT Act be amended to require that the tax invoice issued by the supplier on the subsequent supply of second-hand goods on which a notional input tax was claimed must reflect the purchase price paid by the vendor on acquisition and the amount of notional input tax previously claimed.

2.26. Tax Administration – VAT – Removing distinction between eFilers and non-eFilers

To encourage vendors to submit returns and make payments electronically, vendors using eFiling are permitted to do so on the last business day of the month in which filing is required, rather than on the 25th of that month. As the vast majority of VAT vendors now make use of eFiling, the objective of increasing uptake has been achieved. Hence, it is proposed that the distinction be removed by creating a single, simplified system requiring all VAT vendors to submit returns and make payments on the last business day of the month.

2.27. Tax Administration – Permitting pre- or post-deposit screening of refunds by banks

The TA Act requires banks to report suspicious tax refunds to SARS and hold the refunds for up to two business days while SARS investigates. SARS is working with banks to explore screening potential refunds prior to their deposit in taxpayers' accounts. This will expedite legitimate refunds. It is therefore proposed to explicitly permit pre- or post-deposit screening of refunds by banks.

2.28. Tax Administration – Interest relief on defaults disclosed during voluntary disclosure application

In the recent *Medtronic International Trading S.A.R.L* case, the Constitutional Court held that it is not possible to combine a voluntary disclosure application with a request for remission of interest under the various tax acts without legislative authority to this effect.

It is proposed that provision be made to specifically permit applicants for voluntary disclosure relief to simultaneously apply for the separate remission of interest, under the provisions of the relevant tax act, in respect of the defaults disclosed in the voluntary disclosure application. It is further proposed that this amendment take effect from 1 March 2026 to assist potential applicants without affecting existing applications.

2.29. Tax Administration – Tax compliance status pending the outcome of a request for remission of penalty

Section 164(6) of the TA Act suspends the taxpayer's obligation to pay tax pending SARS' decision on the suspension of payment request. In terms of section 256 of the act, a taxpayer must be indicated as 'tax compliant' during this interim period. Section 256 of the act does not provide for a scenario where a taxpayer's obligation to pay tax is automatically suspended pending the outcome of a request for remission of penalties in accordance with section 215(3) of the Act. It is proposed that this anomaly be addressed. It is further proposed that the periods for which a suspension under sections 164 and 215 of the Act continues after a request has been rejected by SARS be aligned to 10 business days.

3. NOTICES / REGULATION

3.1. Table of interest

Interest rates charged on outstanding taxes, duties and levies and interest rates payable in respect of refunds of tax on successful appeals and certain delayed refunds.

DATE FROM	DATE TO	RATE
1 January 2025	28 February 2025	11,50%
1 March 2025	30 April 2025	11,25%
1 May 2025	31 Aug 2025	11,00%
1 September 2025	31 October 2025	10,75%
1 November 2025	28 February 2026	10,50%
1 March 2026	Until change in the Public Finance Management Act rate	10,25%

Interest rates payable on credit amounts (overpayment of provisional tax) under section 89quat(4) of the IT Act.

DATE FROM	DATE TO	RATE
1 January 2025	28 February 2025	7,50%
1 March 2025	30 April 2025	7,25%
1 May 2025	31 August 2025	7,00%
1 September 2025	31 October 2025	6,75%
1 November 2025	28 February 2026	6,50%
1 March 2026	Until change in the Public Finance Management Act rate	6,25%

As from 1 April 2003 the 'prescribed rate' is linked to the rate determined in terms of section 80(1)(b) of the Public Finance Management Act, but for IT purposes the rate only becomes effective as from the first day of the second month following the date on which the PFMA rate comes into operation.

A taxable benefit (fringe benefit) arises if an employee incurs a debt in favour of the employer, any other person by arrangement with the employer, or an associated institution in relation to the employer, if no interest is payable or if the interest payable is less than the 'official rate of interest'. The difference between the amount which would have been payable if the debt had incurred interest at the official rate, and the interest actually paid by the employee, is taxed as a fringe benefit.

DATE FROM	DATE TO	RATE
1 February 2025	31 May 2025	8,50%
1 June 2025	31 August 2025	8,25%
1 September 2025	30 November 2025	8,00%

1 December 2025	Until change in the Repurchase rate as announced by the Reserve Bank	7,75%
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The 'official rate' as defined in section 1(1) of the Act is linked to the repurchase rate plus one%. The official rate is adjusted at the beginning of the month following the month during which the Reserve Bank changes the repurchase rate.

4. TAX CASES

4.1. *Richards Bay Mining (Pty) Ltd v C:SARS (87 SATC 562)*

The taxpayer had conducted mining operations and it fell, *inter alia*, within the provisions of the Mineral and Petroleum Resources Royalty Act (the Royalty Act).

The Royalty Act provided that a person must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of a mineral resource extracted from within South Africa and the Royalty Act further provided for the determination of the appropriate royalty.

Section 4 of the Royalty Act provided for the appropriate royalty formulae.

Since that Act came into effect in November 2009, and at least since 2010, SARS and the mining industry had interpreted the Royalty Act in accordance with the tenor of the *Explanatory Memorandum* relating to the Bill prior to the promulgation of the Royalty Act and SARS had accepted that the court could take cognisance thereof as an aid when determining the interpretation of section 4(2) of the Royalty Act.

The issue before the court related to the words 'mineral resources' in section 4(2) and the taxpayer contended that those words clearly indicated the plural form of the concept. On the other hand, SARS contended that it should be considered to be a reference to the singular form of the concept.

The taxpayer further contended that in the context of the text of that section, it explicitly deployed the plural form of the operative concept: unrefined mineral resources.

SARS contended that, in the statutory context of the Royalty Act, the content of section 4(2) related to the singular form of mineral resource in view of the use of the

singular form in other sections of the Royalty Act and therefore section 4(2) of the Royalty Act required the calculation to be performed by adopting a mineral-by-mineral, or category-by-category approach.

Although the true issue raised by the taxpayer in these proceedings related to the interpretation of section 4(2) of the Royalty Act, SARS raised as a point *in limine* an objection to this court's jurisdiction in hearing this matter and it was thus required that a determination first be made in respect of whether the court *in casu* had jurisdiction to hear the issue relating to the interpretation of section 4(2) of the Royalty Act.

Hence the first determination in the case related to one of jurisdiction and SARS contended that section 105 of the TAA Act had ousted the High Court's jurisdiction in all matters relating to tax issues.

SARS further contended that the only court to have jurisdiction in respect of tax matters was the Tax Court.

Section 105 of the TAA Act provided:

‘A taxpayer may only dispute an assessment or ‘decision’ as described in section 104 in proceedings under this Chapter, unless a High Court otherwise directs.’

Judge Van der Westhuizen held the following:

As to the scope of section 105 of the TAA Act

- (i) That on a purposive reading of section 105 of the TAA Act it is gleaned that in respect of a dispute of an assessment or a decision as described in section 104 of the TAA Act, such dispute is to be heard by the Tax Court unless a High Court otherwise directs. Thus, inherently section 105 of the TAA Act acknowledges that a High Court may entertain a disputed assessment or a decision and the issue is: when would a High Court direct otherwise.
- (ii) That in *Barnard Labuschagne Incorporated v SARS and Another* 84 SATC 351 the Constitutional Court held that the jurisdictional fact on which Chapter 9 of the TAA Act dispute resolution process, as contemplated in section 105 of the TAA Act, depended, related to a dispute of an assessment (or decision as defined in section 104 of the TAA Act). In the context of the judgment in *Transnet v Total* 2023 (3) BCLR 333 (C), where there was no dispute in respect of an assessment or decision, as defined in section 104 of the TAA Act, section 105 of the TAA Act would not find application. In that case the

Constitutional Court confirmed that jurisdiction was determined by the pleadings, i.e. the taxpayer's pleaded case.

- (iii) That taxpayer *in casu* contended that the present issue, that of interpretation, did not impugn an 'assessment' or 'decision' of SARS. Hence, section 105 of the TA Act found no application. For section 105 to operate against the taxpayer, its pleadings would determine whether it disputed an 'assessment' or a 'decision' by SARS. In this regard it was gleaned from the notice of motion that it concerned the interpretation to be afforded to section 4(2) of the Mineral and Petroleum Resources Royalty Act 28 of 2008.
- (iv) That, clearly, the taxpayer's case did not concern an assessment or decision contemplated in section 104 of the TA Act but its pleaded case concerned declaratory relief relating to the interpretation of a section of the Royalty Act. That fact was supported by the taxpayer's affidavits filed in this application and it constituted the main relief sought in the notice of motion.
- (v) That it followed that section 105 of the TA Act found no application in the present instance and SARS' preliminary point was thus without substance and could not be upheld and accordingly stood to be dismissed.
- (vi) That, consequently, this court had jurisdiction to hear the matter on the interpretation of section 4(2) of Royalty Act and SARS' point *in limine* stood to be dismissed.

As to the scope of section 4(2) of the Royalty Act

- (vii) That the canons of construction of interpretation were trite. Primarily, the language used in the context of the provision or clause was the starting point. That was to be considered in the context of the document as a whole and applying the ordinary rules of grammar and syntax. A holistic approach was to be undertaken, where simultaneously the text, context and purpose was to be considered.
- (viii) That, applying the approach explained in *University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC), no absurdity resulted in following the plural form of mineral resources in section 4(2) of the Royalty Act. Although the legislature did apply the singular form of mineral resources in the Royalty Act where intended, it followed that the change in the meaning of the wording in section 4(2) of the Royalty Act was intentional. To hold otherwise, would defeat the purpose of the rules of interpretation and it would nullify the principle of considering the ordinary language, grammar and syntax used in the section, in particular where no absurdity would follow by applying that principle

- (ix) That it was to be noted that the reference to unrefined mineral resources, clearly contemplated the non-further processing thereof into separate and distinct minerals as to be found in the Schedule to the Royalty Act.
- (x) That the purpose of the accompanying *explanatory memorandum* to the Bill, was to inform Parliament of what was intended with the Bill. In that regard, the *explanatory memorandum* explained the policy choice and methodology adopted by Parliament and the approach to per-mineral methodology was specifically rejected. The memorandum stipulated a regime which imposed royalties on an aggregated basis applicable to the mineral resources, i.e. in the plural form. The *explanatory memorandum* clearly contradicted an interpretation as contended for by SARS – a clear support of the ordinary language, grammar and meaning interpretation and such interpretation to be afforded to section 4(2) of the Royalty Act, supported the purpose of the royalty regime to compensate the State fully for the value of the minerals.
- (xi) That as far as the parties' prior approach to the meaning of the phrase 'mineral resources' in section 4(2) of the Royalty Act was concerned, SARS as well as the industry, until this matter came to the fore in the present instance, had applied the aggregated approach contended for by the taxpayer, and in line with the *explanatory memorandum* to the Bill.
- (xii) That it followed that the interpretation of section 4(2) of the Royalty Act as contended for by SARS, i.e. the singular form of the concept, could not be upheld. It was a contradictory approach to applying the ordinary principles of interpretation and stood to be rejected.
- (xiii) That, accordingly, the taxpayer was entitled to the declaratory relief sought by it in the notice of motion.

It was declared that for purposes of determining the percentage to be applied under section 4(2) of the Royalty Act all unrefined mineral resources transferred by Richards Bay Mining (Pty) Ltd, as the same extractor must be aggregated; accordingly a single percentage was to be calculated (thus only one royalty rate was to be applied) in respect of all unrefined mineral resources transferred by Richards Bay Mining (Pty) Ltd, as the same extractor and therefore the calculation was not to be performed by adopting a mineral-by-mineral or category-by-category approach.

4.2. ***Aspasa NPC and others v C:SARS (87 SATC 528)***

First Applicant, ASPASA, was a registered non-profit company whose members were small businesses and individuals holding an interest in small surface mines.

First Applicant promoted the South African small surface mining industry and the Second to Eleventh Respondents were members of ASPASA.

Fourth to Eleventh Applicants were all extractors of a non-refined mineral resource in the form of aggregates. Aggregates were used in the construction industry and various products required in the marketplace were provided. The first point of sale was at the quarry face and this was referred to as the 'muck pile'. Products with varying specifications were produced by putting the shot rock (i.e. as excavated) through processes like crushing, washing and screening.

Second Applicant was a supplier of construction materials, including aggregate of various categories.

Third Applicant was a global supplier of building supplies, including aggregates.

Fourth to Eleventh Applicants were subsidiaries of the Second Applicant and they operated quarries for the extraction of aggregates.

In the context of the Mineral and Petroleum Resources Royalty Act 28 of 2008 (the Royalty Act), aggregates were a non-refined mineral resource and each of the Applicants advanced an own interest basis for *locus standi* in terms of section 38(a) of the Constitution.

The application before the court turned on the correct legal interpretation of the word 'bulk' as used in Schedule 2 of the Royalty Act in relation to aggregates.

In terms of the Royalty Act a royalty was payable upon the transfer (disposal) of a mineral resource after extraction. The royalty was calculated with reference to a formula set out in section 4 of the Royalty Act.

What triggered the obligation to pay a royalty was the 'transfer' of a mineral resource. This referred to the disposal of a mineral resource after extraction, typically through a sale. The condition specified in Schedule 2 of the Royalty Act in respect of aggregates was 'bulk.' The question was whether the word 'bulk' referred to aggregates upon extraction (i.e. at the muck pile), or whether it referred to the benefited state of the aggregates stockpile at the time of the transfer.

SARS contended that 'bulk' in terms of its dictionary meaning indicated that the condition of aggregates did not change in the process of beneficiation and bulk remained bulk at whatever stage of beneficiation the aggregate was found at the time of transfer and this was the core of the legal issue raised by this matter.

SARS had raised a number of preliminary defences in its answering affidavit. The first related to section 105 of the TA Act that provided that taxpayers may only dispute an assessment in terms of Chapter 9 of the TA Act (i.e. in the Tax Court) unless a High Court directs otherwise and SARS contended that this matter should be decided in the Tax Court.

SARS contended further that the Applicants had not made out a case for declaratory relief and there was, according to SARS, another statutory remedy, i.e. an appeal to the Tax Court in terms of Chapter 9 of the TA Act. Further, SARS contended that there were material disputes of fact.

SARS had further challenged the *locus standi* of the Applicants in respect of section 38 of the Constitution and had also challenged the authority of the Applicants' deponent to depose to the affidavit.

SARS had also raised a non-joinder point pertaining to Blurock Quarries (Pty) Ltd, whose tax appeal had turned on the same interpretation issue referred to above.

Applicants contended that, until the issue of IN 108 by SARS in 2019 the industry and SARS had been *ad idem* on the methodology pertaining to royalties payable in respect of aggregates in terms of the Royalty Act.

SARS' new construction appeared from its IN 108 issued in 2019 which was issued without prior consultation with the industry and in that IN SARS referred to the common understanding set out in the Industry Practice Note (IPN) and stated that it did not accept that view.

Applicants contended that the ordinary grammatical meaning of 'bulk' as used in the mining industry, and as referred to in Schedule 2 of the Royalty Act, set the condition for aggregates as they were at muck pile, before beneficiation whereas SARS stated that the condition remained 'bulk' at every beneficiated stockpile thereafter.

SARS contended that it had only ever expressed itself officially once on the meaning of 'bulk' and that was in its IN 108 of 2019 and in that IN it was contended as follows: 'In the context of Schedule 2 'bulk' refers to a body of a particular type of mineral resource which is treated as a single mass, the intention being to not require an

analysis of its quality, as opposed to other unrefined minerals for which a quality standard is specified’.

SARS contended that gross sales must be calculated with reference to section 6(2)(a) of the Royalty Act and not section 6(2)(b) whereas the Applicants contended that SARS’ interpretation, resulting in the redundancy of section 6(2)(b), as far as aggregates were concerned, was an absurd result.

Applicants contended that SARS’ interpretation penalised beneficiation, as the value of the product after the muck pile is higher than at muck pile and as the royalty is calculated on the gross sales of the beneficiated product, the royalties were higher to the extent that it became too expensive to mine quarries. The contention was further that the royalties imposed by SARS on its approach, would result in the construction industry countrywide being placed under an additional tax burden, pushing up the costs of construction generally.

Judge Labuschagne held the following:

As to whether the High Court had jurisdiction in the matter

- (i) That the purpose of section 105 of the TA Act was to determine the Tax Court as the forum for the resolution of disputes pertaining to tax assessments or decisions described in section 104 of the Royalty Act. While the Tax Court is the only port of call in respect of such tax disputes (further appeals aside) there are rare instances where the High Court is entitled to deal with a legal issue in the context of a tax assessment or decision. In such rare occasions, the High Court would first issue a direction in terms of section 105, indicating that the High Court had assumed jurisdiction.
- (ii) That SARS contended that the High Court did not have jurisdiction by virtue of section 105 of the TA Act and it was contended that the default position was that the matter should be heard by the Tax Court and **it was only in exceptional circumstances where the High Court could order otherwise**, and it was contended that such circumstances were not present. It was contended that the objection and appeal process in terms of the TA Act needed to be exhausted before an appeal to the High Court and the SCA would be competent.
- (iii) That even where a tax dispute regarding an anticipated decision or assessment arises, section 105 finds application and it was referred to as a gatekeeping provision to ensure that tax disputes are resolved through the Tax Court, and not the High Court.

- (iv) That the exception to the aforesaid default position, as stated above, arose when an IT case turned purely on a legal issue or legal issues. The authorities indicate that the High Court will only have jurisdiction in relation to tax assessments (whether issued or not) in rare situations or exceptional circumstances and such circumstances will exist where the issue is to be determined on a purely legal point and the High Court regarded declaratory relief as appropriate.
- (v) That SARS had contended that a similar tax dispute, in which a competitor of the applicant quarries ('the Blurock tax dispute') had received an assessment as envisaged in section 104 of the TA Act in respect of aggregates based on the SARS interpretation of 'bulk' and that assessment was being challenged in the Tax Court, was the backdrop of the current application and therefore regarded the tax decision or assessment in the Blurock tax appeal as the reason why the High Court did not have jurisdiction. It was common cause that none of the parties to **87 SATC 528 at 531** this application was a party to that tax appeal and it was also common cause that there was no issued assessment or decision in respect of the applicants before this court. Blurock was also not a party to the current proceedings and the current proceedings not reflecting a 'decision' or 'assessment' in terms of section 104 of the TA Act as the basis of the application.
- (vi) That the meaning of 'bulk' as a legal issue arose in the Blurock tax appeal and SARS contended there that gross sales must be calculated with reference to section 6(2)(a) of the Royalty Act and not section 6(2)(b) and that was an issue that existed in both the current proceedings and in the Blurock tax appeal. Hence SARS contended that Blurock and the Applicants had made common cause on the interpretation of 'bulk' and Blurock should have been joined as a party to the current proceedings.
- (vii) That SARS contended that there were no exceptional circumstances as to why the current application should be heard in the High Court, rather than in the Tax Court.
- (viii) That SARS' contention that the Blurock tax appeal was the reason for the current application and that the matter should not be heard by the High Court because of that reason, therefore had no substance. As SARS had agreed to pend the Blurock tax appeal, it could not attack this court's jurisdiction on the basis that it had advanced.

- (ix) That the question arose whether, despite the aforesaid, section 105 did not find application because the relief sought related to an anticipated assessment or decision by SARS of the royalties due by the applicant quarries.
- (x) That despite the absence of a 'decision' or 'an assessment' of the tax liability of the applicant quarries being before the court, the envisaged assessment or decision of SARS in regard to such royalty liability was the motivation for the current application. The default position is then that the Tax Court should hear the application. That is, unless there are exceptional circumstances, and the High Court directed otherwise.
- (xi) That the High Court has an inherent jurisdiction to decide any dispute brought before it, unless expressly ousted by legislation. Section 105 is an ouster of the High Court's jurisdiction in respect of a tax assessment or decision, unless the High Court rules otherwise in exceptional or rare circumstances.
- (xii) That the interpretation of 'bulk' in Schedule 2 of the Royalty Act was a purely legal issue that affected an entire industry. If this issue had to be decided on a case-by-case determination in the Tax Court, such rulings would not be binding on the industry, but only bind the immediate parties. Certainty would only be established through the further appeal processes when the High Court and/or the Supreme Court of Appeal rules on the issue and the principle of *stare decisis* applied.
- (xiii) That the Tax Court cannot issue a declaratory order on the meaning of 'bulk' that would be binding industry wide. In fact, it cannot grant declaratory relief.
- (xiv) That the court was satisfied, for the reasons given, **that the current application did fall within those rare circumstances when the High Court can hear an application which would otherwise fall within the ambit of section 105 of the TA Act.**
- (xv) That in the premises the court found that section 105 of the TA Act did find application due to the dispute between the applicants and SARS being in respect of an anticipated assessment or decision in terms of section 104 of the TA Act.
- (xvi) That the court was inclined to grant an order as envisaged in section 105 of the TA Act and as sought in prayer 1 of the notice of motion, that this court will hear the current dispute due to the presence of exceptional circumstances.

As to non-joinder of a taxpayer

- (xvii) That Blurock Quarries (Pty) Ltd was aware of these proceedings and had filed an affidavit in which it indicated that it did not insist on being joined, i.e. it did

not assert its interests in these proceedings but nevertheless would abide an order if the court directed it to be joined to these proceedings. It expressly stated that it regarded itself to be bound by the precedent that this judgment would represent and this in itself was sufficient to render the joinder of Blurock Quarries unnecessary.

As to locus standi of the Applicants

- (xviii) That the contention that a deponent needs to be authorised is fundamentally flawed. What qualified a deponent was his knowledge of relevant facts. A deponent need not to be authorised to make an affidavit. The proceedings and the institution thereof need to be authorised and the challenge to the authority of the attorney needs to be done through Rule 7 of the Tax Court Rules and this challenge to standing therefore fails.
- (xix) That the second challenge to standing was based thereon that the Applicants had not made out a case for a declarator. The Applicants had asserted a right to approach the court in terms of section 38 of the Constitution but this was without expressly identifying the fundamental rights allegedly infringed or at risk of infringement in the founding affidavit.
- (xx) That what SARS had advanced was a challenge to whether the Applicants had established a right to a remedy in terms of section 38 of the Constitution, i.e. a declarator as appropriate relief. The issue of *locus standi* is not considered merely from the vantage point of section 38. The relief sought was an invocation of the High Court's power in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013, in respect of declaratory relief. If the Applicants prove that they have a direct and material interest in a right or obligation, whether present, contingent or future, and they have persuaded the court to exercise its discretion to grant declaratory relief, then the issue of *locus standi* had been established. It is factual.
- (xxi) That the Applicants no doubt have *locus standi* under section 38 of the Constitution. The First Applicant acts in its own interest and in the interests of its members (section 38(e)). Each of the other Applicants asserts an own interest (section 38(a)). The contention that the Applicants lack *locus standi* was without substance.
- (xxii) That the true issue was whether the Applicants had established a right to declaratory relief in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013.

As to the requirements for declaratory relief

- (xxiii) That there were two requirements for declaratory relief: the court must firstly be satisfied that the Applicant had an interest in an 'existing, future or contingent right or obligation' and, if satisfied, it has secondly to exercise its discretion by deciding either to refuse or grant the order sought.
- (xxiv) That the contention of SARS that there was no live controversy between the Applicants and SARS and that they therefore lacked *locus standi* could not be upheld and the challenge to the First Applicant's *locus standi* was consequently without substance or merit.
- (xxv) That the presence of a live controversy as a basis for declaratory relief was assumed by SARS to be a prerequisite for declaratory relief but this was not so and the Applicants had standing. The court was consequently satisfied that the Applicants had a direct interest in respect of a declarator affecting their future obligations to pay royalties for aggregates that they had extracted in terms of the Royalty Act and the first leg of the inquiry into relief in terms of section 21(1)(c) had been established.
- (xxvi) That the exercise of a discretion to grant declaratory relief or not, is a discretion to be exercised judicially, taking into account all the circumstances of the case and there were specific issues that needed specific consideration in this regard.
- (xxvii) That SARS had contended that this case was not one in which the discretion should be exercised to grant the declarator as there were irresolvable disputes of fact on the papers as highlighted by SARS. The court was satisfied that the alleged disputes of fact were either not factual disputes or were not material disputes when it came to the interpretation from a legal perspective of 'bulk' in Schedule 2 of the Royalty Act.
- (xxviii) That it was axiomatic to state that the core of the exercise of the discretion to grant declaratory relief was whether the court's interpretation of the word 'bulk' was consistent with the declarator sought. That affected the utility of the declarator to the industry and SARS and answered the question whether the declarator settled a material issue between the parties.
- (xxix) That SARS contended that there were a multitude of considerations as to why the discretion should not be exercised in favour of the Applicants. However, a declarator would have significant utility in the aggregates and construction industries and the declaratory relief will settle an issue of great significance to the aggregates industry and thereby bring clarity to extractors of aggregates. As a ruling in favour of the Applicants would represent an advantage in that it

demonstrated the incorrectness of SARS' approach in the Tax Court, and that is a tangible and justifiable advantage. The resolution of this purely legal interpretation of the word 'bulk' represented the advantage to the administration of justice and it avoided the case-by-case repeated determination of this matter in the Tax Court.

- (xxx) That the High Court was empowered to issue declarators whereas the Tax Court could not grant declaratory relief. The declarator would have the benefit of enforcing and endorsing the purpose of the Royalty Act in a single process, rather than in multiple processes that will not have a binding effect other than on the immediate parties in a tax dispute before the Tax Court and it has practical significance. Moreover, the objection and appeal process in the Tax Court would generate a proliferation of litigation in the Tax Court, which is not in the public interest or in the interest of justice. The declarator would therefore avert litigation, rather than foster such litigation.
- (xxxi) That, on balance, the court was therefore satisfied that the declaratory relief would dispose of the true issue between the parties.

As to the striking out application and prejudice

- (xxxii) That the Applicants had sought the striking out in terms of Rule 6(15) of the Uniform Rules of Court of certain paragraphs in the Respondent's answering affidavit contending that they were prejudiced by the allegations.
- (xxxiii) That there was no factual underpin for the allegations made by SARS in par. [18] of its answering affidavit that was sought to be struck out. The allegations quoted in the application to strike out did not form part the core defence of SARS and the alleged factual basis for the allegations was not established.
- (xxxiv) That there was an additional requirement for a strike out in motion proceedings and that related to the establishment of prejudice as envisaged in Rule 6(15). The words used by the Respondent and which formed the subject of the application to strike out had the capacity to prejudice the Applicants and the question was whether there was sufficient prejudice to come to the Applicants' assistance.
- (xxxv) That whether there were factors warranting strike out will depend on the facts of the matter at hand. In this instance the need for the Applicants to submit to SARS assessments in the future, in the face of the words, was a consideration that the court took into account. It was an interests of justice consideration in **87**

SATC 528 at 534 the administration of justice and SARS or any other organ of state must treat taxpayers with respect.

- (xxxvi) That the prejudice in Rule 6(15) must relate to the conducting of the specific case but this case has not only a history, but a future and if SARS were permitted to use such an intemperate tone with a taxpayer who had no choice but to have continuing interactions with SARS, then the playing fields need to be levelled to avoid such intemperate language.
- (xxxvii) That the court was satisfied that, despite there not being *de facto* prejudice at present, the facts of this matter were sufficient to warrant a finding of prejudice in the sense of that term in Rule 6(15). The strike out application succeeded and the Respondent, being the Commissioner for SARS, was ordered to pay the costs of the application to strike out on a punitive scale, as a mark of disapproval of the conduct of SARS in its treatment of a taxpayer approaching the court for relief on a matter of law.

As to the meaning of 'bulk'

- (xxxviii) That the interpretation of 'bulk' in Schedule 2 to the Royalty Act was a unitary process with reference to text, context and purpose and in this matter the purpose of the Royalty Act presented a vantage point that assisted in the consideration of both text and context.
- (xxxix) That the preamble to the Royalty Act and section 3(1) of the Royalty Act reflected the change in mindset pertaining to minerals in South Africa. Contrary to its predecessors, section 3(1) contained an acknowledgement that South Africa's Mineral and Petroleum Resources belonged to the nation and the State was the custodian for the benefit of all South Africans. Section 2 of the Royalty Act imposed a royalty payable to the National Revenue Fund in respect of the transfer of a mineral resource. The 'transfer' referred to a disposal of mineral resources if that mineral resource had not previously been disposed of. This referred therefore to mineral resources as extracted and did not include on-sales which were subject to different taxes, e.g. VAT or IT.
- (xl) That section 6 of the Royalty Act set a basic condition at which the royalty was determined. The purpose was to ensure that the State was compensated at a base value which extractors could not undermine in order to reduce the extent of the royalty payable. In terms of section 6(2) gross sales in respect of an unrefined mineral resource transferred attracted a royalty in the condition specified in section 6(2)(a). In respect of gross sales of an unrefined mineral resource transferred in a condition other than as specified in Schedule 2, the

gross sales were determined as if the mineral resource were transferred in the condition as specified in Schedule 2.

(xli) That the dual purpose of the Royalty Act was therefore (1) to promote beneficiation and (2) to prevent under-compensation of the State by setting a base condition at which the royalty is determined. There was a fundamental difference between a royalty and a tax. In the context of the Royalty Act, the royalty payable to the State as custodian for the nation was to compensate the nation for the loss of minerals that have been extracted. The condition of the refined minerals is set out in Schedules 1 and 2 respectively to set the base for compensation payable to the State.

(xlii) That SARS contended for the ordinary grammatical meaning of 'bulk' in ordinary parlance and it referred to a pile or heap. In general parlance the word 'bulk' did bear the meaning contended for by SARS but if that general meaning were applied, absurd results ensued, like the redundancy of section 6(2)(b) in respect of aggregates. The word 'bulk' in Schedule 2 is used in a technical context in the schedule in which it appeared and in such an instance the presumption is that the technical meaning of the term was to be interpreted. The Royalty Act was passed with reference to the mining industry and the words used need to be understood by those in that industry, even if it differed from the ordinary meaning of the word. The use of dictionaries in this context also needs to be assessed with reference to determining for whom the word was intended to bear meaning.

(xliii) That the interpretation must be functionally satisfactory. The term 'bulk' therefore needs to be defined with reference to the mining industry, rather than the meaning in common parlance. Further, its meaning in a Schedule of a technical nature needs to be taken into account.

(xliv) That the court, after a detailed analysis of the interpretations advanced by the Applicants and the Commissioner, stated that the interpretation assigned to the word 'bulk' by SARS did not withstand a proper interpretation exercise of the term with reference to text, context and purpose. Moreover, SARS' interpretation defeated the purpose of the Royalty Act and rendered redundant section 6(2)(b), which evidently found application to aggregates that have undergone beneficiation and are sold in a different condition beyond the muck pile.

(xlv) That, in the premises, the court found that the term 'bulk' in Schedule 2 of the Royalty Act bore the meaning contended for by the Applicants and issued a declarator that 'bulk' as used in respect of aggregates in Schedule 2 to the

Royalty Act meant the condition in which shot rock (i.e. blasted rock) existed at the muck pile prior to processing, i.e. crushing or other form of beneficiation. Accordingly, aggregates as at the muck pile was the condition stipulated by Schedule 2.

4.3. C:SARS v M (87 SATC 507)

The respondent, 'M', during the tax years of assessment, 2007–2010, had received or had accrued to him amounts in the total sum of R9 578 217.82 which, according to the SARS had constituted his gross income during those years. However, the total income that had been declared by him in respect of those tax years was the sum of R3 897 792.

SARS, accordingly, on 15 May 2015, issued a 'Finalisation of Audit' letter in respect of the 2007–2010 years of assessment wherein SARS advised M of its findings that an amount of R5 680 425.82 had been received by M during those tax assessment years in addition to the R3 897 792 that had been declared by him as income in respect of that period and those findings were incorporated into a table prepared by SARS.

Pursuant to the finalisation of audit letter, accompanied by the additional assessments, SARS made the consequential adjustments to M's taxable income and adjusted upward M's tax liability in respect of the 2007–2010 tax assessment years by an amount of R3 610 053.80. SARS also levied understatement penalties amounting in total to R2 134 966 which resulted in an additional tax liability for M amounting to the sum of R5 745 019.80.

It was not in dispute that during the period from 1 March 2006 to 28 February 2010 M had received from time to time payment of amounts totalling R9 578 217.82 and the individual sums received into a particular bank account or from a particular source during a particular period were listed and itemised in various schedules, the contents of which were common cause between the parties. At the same time, during the hearing in the court *a quo*, being the Tax Court, SARS had accepted explanations given by M for certain receipts and/or accruals and this meant that those particular amounts were no longer to be included in the calculation of M's income for the relevant period.

What was not common cause between the parties were the details relating to the nature of the receipts in issue and in other words, whether those amounts were income

in the hands of M as alleged by SARS or whether they were repayment of loans which M had advanced to related third party entities, which was M's case.

M accordingly disputed the findings of SARS as per its finalisation of audit letter and contended that the receipts and accruals in issue represented repayments to him of loans which he had advanced to related third party entities.

M, on 1 June 2015, lodged an objection to the additional assessments issued by SARS which was disallowed by SARS in a letter dated 4 September 2015 in which SARS reiterated its stance that the additional approximately R5.7 million represented gross income in the hands of M and which ought to have been declared by him.

M thereafter on 11 September 2015 filed a notice of appeal in the court *a quo* being the Tax Court in terms of section 107 of the TA Act against the foregoing additional assessments and against SARS' disallowance of his objection.

The Tax Court (*per* Crutchfield AJ) upheld M's appeal and set aside the additional assessments, thus accepting M's explanation that the amount of about R5.7 million received by him represented in the aggregate the total amounts of the loan repayments to him from third party entities.

SARS thereafter appealed against the judgment of the Tax Court to the Full bench of the High Court.

The issue before the High Court was whether the aforementioned receipts were income received by M or the repayment of loans which he had advanced to the payees of those amounts.

Judge Adams held the following:

- (i) That this was a factual issue and the real question to be considered was whether M had proven that the said amounts were not income. The contention by SARS in this appeal, as it was in the Tax Court, was that M failed to adduce evidence in support of his contention that the specific amounts included in his gross income by SARS should not be taxed in his hands.
- (ii) That, moreover, SARS contended that the court *a quo* had erred in finding that the 'substance over form' approach should find application and that the economic substance of the loan agreements between Sanderling Inc, a Trust, FX Africa and M ought to prevail over their legal form. SARS further submitted that the court *a quo* had erred in finding that M had proved that Sanderling Inc

had ceded its loan accounts against FX Africa to M in terms of an oral cession agreement.

- (iii) That 'gross income', in relation to any year or period of assessment, is defined in section 1 of the IT Act to mean:

'(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident ... during such year or period of assessment, excluding receipts or accruals of a capital nature...'

The definition of 'gross income' referred to two concepts, namely 'received by' or 'accrued to' which were notions central to the issues in this appeal.

- (iv) That M was required to address every single receipt and accrual, as detailed in the finalisation of audit letter and the question was whether that had indeed been done by him. It is so that, in terms of Rule 7 of the Rules of the Tax Court, a taxpayer, in his objection must specify in detail 'the specific amount of the disputed assessment objected to.' Moreover, in terms of section 102(1)(a) of the TA Act, 'a taxpayer bears the burden of proving – (a) that an amount, transaction, event or item is exempt or otherwise not taxable'.
- (v) That the question was simply whether M had discharged the *onus* on him of proving that, as a matter of fact, the amounts received by him were not income in his hands but the fact that these amounts were received by him was common cause.
- (vi) That whilst M explained in papers before the Tax Court that these receipts related to repayment of monies lent and advanced by him during 2005 in order to assist another company with start-up capital, he led no evidence in support of his contention that these deposits should not be treated as income in his hands.
- (vii) That the court, in sum, after analysing the evidence before the Tax Court, stated that M, instead of dealing with each assessed amount, contended that the Tax Court only had to consider the 'principle' whether payments from FX Africa and other parties constituted the repayment of loans. It was submitted by SARS that this approach was incorrect as M was required to prove in respect of each amount assessed by SARS that such amount should not form part of his gross income and the court found itself in agreement with this contention.
- (viii) That the point was simply that this matter could not and should not be decided on the basis of a broad principle instead of considering the specific amounts

that were taxed by SARS. There should be evidence of exactly what amounts constituted these repayments of loans and in the absence of such, the reasonable inference to be drawn was that such sums should be treated and regarded as income in the hands of the taxpayer.

- (ix) That what was telling was the fact that the amounts in the numerous SARS schedules as constituting the total aforesaid sum of R8 937 750.82 were completely irreconcilable with the repayments claimed by M in respect of the loans.
- (x) That, for all these reasons, the court did not accept as correct the Court *a quo*'s finding that there was a sufficiently close correlation between the total of the omitted amounts and the dates over which the omitted amounts were deposited into M's accounts on the one hand and the deduction in the loan accounts and the dates thereof recorded in FX Africa's financial statements. Far from it, as had been demonstrated above.
- (xi) That, furthermore, as regards the claim by M that some of the payments were received from FX Africa by related parties, being Paddy's Pad, Phoenix and Evening Star, should have been rejected by the Tax Court. This averment and M's evidence in support thereof were completely at odds with the case pleaded on behalf of M in the Tax Court and in his objection to the additional assessments. For these reasons the court rejected M's contention that payments made by Paddy Pads, Phoenix and Evening Star constituted repayment of loans to him.
- (xii) That, in the circumstances, the court concluded that the amounts received by M, excepting only the amount of R2 300 000 already referred to, as identified in SARS' letter of audit findings of 15 May 2015, were not repayments of loans and were therefore also not capital in nature and M had failed to give any plausible explanation as to why these amounts should not be taxed in his hands and an order to that effect should be issued.
- (xiii) That, in regard to whether SARS' notice of intention to appeal had been filed within the prescribed period of time, i.e. within twenty-one days after the Registrar had notified the parties of the court's decision, the court was of the view that SARS' notice of appeal had been filed within the prescribed time period and there was no need to apply for condonation.
- (xiv) That, in regard to the issue of prescription, in terms of sections 92 and 99 of the TA Act SARS was precluded from raising additional assessments after the lapse of a three-year period from the date of the previous assessments. *In casu*, the additional assessments were issued long after the lapse of the three-

year period and in view of the foregoing findings, the issue of prescription therefore arose.

- (xv) That the court disagreed with M's contention that SARS had a duty to plead and adduce evidence to establish the prerequisites for re-opening assessments after three years were satisfied and therefore SARS could not succeed on the prescription issue because the prerequisites for re-opening assessments after three years had not been established.
- (xvi) That on the evidence before the Tax Court, and in light of the court's findings above, relating to the loan repayments dispute, the court was of the view that SARS had raised the additional estimated assessments after the three-year period, because there had been a non-disclosure of material facts and once SARS had become aware of these material facts it was able to raise the additional estimated assessments for 2007–2011.
- (xvii) That there could be little doubt that SARS had established the required satisfaction that the full amount of tax chargeable was not assessed due to fraud or material misrepresentation or non-disclosure of material facts. The resultant substantial increase in M's assessed tax liability for the relevant period of assessment inferentially established such 'satisfaction'.
- (xviii) That SARS had also notified M that it intended to re-open the assessments as there had been non-disclosure of material facts, as M had failed to declare all the income earned during the said periods. This was done pre-litigation in a number of documents, which was also introduced into evidence during cross-examination.
- (xix) That, accordingly, M's *in limine* prescription point fell to be rejected.

SARS's appeal against the order of the Tax Court dated 16 July 2021 was upheld.

Each party to pay its own costs of this appeal.

4.4. Bullion Star (Pty) Ltd v C:SARS (87 SATC 580)

Applicant had made an application to the High Court for the reconsideration and the setting aside of a warrant obtained *ex parte* by the SARS on 28 March 2022 for the search and seizure of certain premises connected to Bullion Star (Pty) Ltd (Bullion).

Bullion had initially claimed for the setting aside of the warrant, return of the goods that were seized and an interdict prohibiting SARS from utilising any of the information gathered during the search.

Bullion had also wanted to introduce further relief, i.e. a declaration that the search and seizure was unlawful and unconstitutional, but the court was of the view that such further relief was unnecessary.

The warrant had been obtained in terms of section 60 of the TA Act and could be set aside on two grounds, i.e.:

- (a) due to defects in the *ex parte* application. and
- (b) the warrant that was issued in terms thereof or due to the manner in which the warrant was executed.

The court dealt firstly with the *ex parte* application for the warrant and the contents of the warrant.

Bullion operated as a licensed gold refinery with beneficiation facilities and its operation involved the purchasing of second-hand gold, the smelting and refining of the gold into either coins or bars which were sold to customers. The purchase of second-hand gold and the selling of gold coins and bars in the local market attracted VAT.

Bullion, from September 2020 until December 2021 only sold gold bars and coins in South Africa, but in February 2022 it also began exporting refined and unrefined gold bars and export sales attracted a zero VAT rate.

Bullion, during June 2021, was identified for a VAT audit for the tax periods September 2020 to March 2021 and on 20 October 2021 SARS addressed a letter to Bullion in which it was stated that SARS was in possession of evidence that all goods that were purchased from three of its suppliers were in fact Kruger coins and not second-hand jewellery and queried why Bullion had rendered tax invoices indicating that second-hand jewellery had been purchased when in fact Kruger coins had been purchased.

Applicant denied that it had purchased Kruger coins from the three suppliers and tendered to make all documentation relating to each and every purchase made by it together with photographs available to SARS.

Despite further exchanges between the parties SARS brought its *ex parte* application for the search and seizure warrant on 28 March 2022 and the warrant was issued on the same day.

Bullion relied broadly on the following grounds in its application to the High Court for the reconsideration and setting aside of the warrant:

- That SARS in its *ex parte* application failed to disclose material facts and misrepresented other facts;
- That SARS in its *ex parte* application had failed to establish that there were reasonable grounds to believe that Bullion had failed to comply with an obligation under the tax Act or had committed a tax offence;
- SARS in its *ex parte* application had failed to establish that there were less drastic and invasive means to elicit the information that SARS had sought.

Judge Janse van Nieuwenhuizen held the following:

As to non-disclosure and misrepresentation in SARS' *ex parte* application

- (i) That it was trite that an applicant must observe the utmost good faith in an *ex parte* application. The principle is based on the *audi alteram partem* rule and formed the cornerstone of our judicial system. The party against whom relief was requested was not before the court and the court was only privy to the version presented by the applicant.
- (ii) That, in respect of the alleged failure to disclose material facts by SARS, the court was of the view that Bullion's complaints had no merit.
- (iii) That it was clear that the purpose of the warrant was to obtain material in respect of the suspicion that Bullion had bought and sold Kruger coins locally. Exported goods were zero VAT rated and were totally irrelevant for the investigation conducted by SARS.
- (iv) That, having regard to the totality of the evidence contained in SARS' affidavit and the purpose for which the warrant was sought, the court was of the view that the facts pertaining to SARS' failure to capture the VAT declaration timeously was not material and was irrelevant to the case made out for the issuing of the warrant and it should be noted that SARS dealt fully in its answering affidavit with the allegations of non-disclosure contained in the founding affidavit.
- (v) That it would be most unfair to deprive SARS of an opportunity to deal with the further alleged non-disclosures and would be in conflict with the trite principle that an applicant must make out a case for the relief it claimed in its founding affidavit.
- (vi) That, in the result, the court was of the view that the instances of alleged non-disclosure relied upon by Bullion in its founding affidavit were without merit and the court was satisfied that SARS had disclosed all material facts in its affidavit in support of the *ex parte* application for the issuing of a warrant.

As to whether SARS had established the jurisdictional prerequisites for the issuing of a warrant in terms of section 60 of TA Act.

- (vii) That section 59 of the TA Act made provision for an application for a warrant and section 59(2) provides as follows:

‘SARS must apply *ex parte* to a judge for the warrant, which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.’

- (viii) That this stage of the procedure entails, no doubt, that SARS must observe the utmost good faith in preparing the application and the next stage was the issuing of the warrant and was regulated by section 60 of the TA Act.
- (ix) That it was clear that the discretion to issue a warrant rested with the judge considering the application. It was the judge who had to be satisfied that the facts set out in support of the requirements contained in section 60(1)(a) and (b) of the TA Act constituted reasonable grounds for the issuing of the warrant.
- (x) That there were two jurisdictional facts for the issue of a search warrant: the existence of a reasonable suspicion that a crime had been committed, and the existence of reasonable grounds to believe that objects connected with an investigation into that suspected offence may be found on the relevant premises.
- (xi) That whether a judge was satisfied that the objective jurisdictional factors were present to justify the judge, in his/her discretion, to issue a warrant, was a question that should be considered when one has regard to the contents of the warrant and the court would refer to the question when considering the contents of the warrant below.

As to whether there were less drastic and invasive means to elicit the information that SARS sought

- (xii) That the court did not deem it a failure by SARS to not address the ‘less drastic and invasive manner’ in which the information could be obtained. It was rather a factor that the court, in view of all the evidence contained in the affidavit, could have considered in exercising its discretion to issue the warrant and in the result this ground of complaint also failed.

As to the warrant

- (xiii) That the warrant that was issued was problematic and it authorised SARS to search for and seize a host of documents that were not dealt with in SARS’

affidavit in any manner whatsoever. For example, documentation relating to bank accounts, documentation evidencing the holding of assets, the import and export of goods, income and expenditure, etc. Furthermore, SARS was allowed to search for and seize annual financial statements, income statements, balance sheets and VAT schedules. In fact, only the search and seizure of two of the thirteen items listed in the warrant was supported by the facts set out in its affidavit.

- (xiv) That the warrant authorised SARS to unfettered access to certain private residences to embark on a search for all the items listed in the warrant but did not reflect the stipulated condition in its affidavit.
- (xv) That, in the result, the issuing of the warrant did not in law or fact comply with the provisions of section 60(1) of the TA Act and stood to be set aside.
- (xvi) That it was noteworthy that the warrant was prepared by SARS and presented to the court for authorisation. SARS had failed dismally to explain on what basis the warrant, in view of the facts presented by it, was prepared. Although it remained in the discretion of the court to issue a warrant, the legal practitioner presenting the matter had a duty to draw the court's attention to anything that might be contentious. Courts rely on the unscrupulous and ethical conduct of officers of the court when adjudicating matters, more so *ex parte* applications that were voluminous and brought on an urgent basis.
- (xvii) That in view of the finding above, it was not necessary to consider the further basis for the setting aside of the warrant, to wit; the execution of the warrant.
- (xviii) That, accordingly, the warrant issued on 28 March 2022 was set aside.

4.5. C:SARS v Buthelezi and others (87 SATC 571)

SARS had sought and obtained a provisional preservation order (the preservation order) in terms of section 163 of the TA Act against twenty-eight Respondents.

Among the Respondents cited were the 20th to 23 Respondents, being Mr Maphoto, Mrs Maphoto, Setumishi Building Construction and Enterprise CC (Setumishi) and Unit 7 Rena (Pty) Ltd (Unit 7), collectively referred to as the Setumishi Respondents.

The Setumishi Respondents, as they were entitled to do in terms of the provisional preservation order, had anticipated the return day of the preservation order and they sought to have the preservation order discharged.

Applicant moved to have the preservation order made final as against the Setumishi Respondents.

The Setumishi Respondents raised various objections to the preservation order which required consideration by the court:

- They contended that the relevant senior SARS official who authorised the *ex parte* application that resulted in the preservation order had failed to aver that he was satisfied that an amount of tax may be due and payable and hence the application was defective from the outset and had to be dismissed.
- They contended that SARS' application for the preservation order was predicated upon their involvement in an unlawful syndicated scheme concerning the transportation and sale of coal to Eskom, which was not proven. Moreover, SARS had changed its approach regarding the involvement of the Setumishi Respondents in the unlawful scheme in order to support the preservation order and this change by SARS was fatal to its case.
- They contended that SARS had identified transactions as income, when they were short term loans extended and then repaid. The tax debts of the Setumishi Respondents, upon which SARS had relied, were claimed to be considerably overstated, because short term loans made by them and then repaid should not have been treated as income;
- They contended that SARS had failed to make out a case that there was a risk of the removal or dissipation of assets. The businesses conducted by Setumishi Respondents required their assets to remain in place and the transactions in issue were conducted in the ordinary course of business and there was no risk of the removal of assets to frustrate the collection of tax.
- They contended that there was no justification for the appointment of the *curator bonis* and that he had exercised his powers to compromise the business conducted by them.
- They contended that SARS had breached the duty to preserve the secrecy of taxpayer information contrary to section 69(1) of the TA Act.

Judge Unterhalter held the following:

- (i) That section 163(1) of the TA Act required that a senior SARS official may authorise an *ex parte* application to the High Court for the preservation of assets and that authority, for present purposes, contemplated that there was an amount of tax that was due and payable or that the official on reasonable

grounds is satisfied that an amount of tax may be due or payable. The court was here concerned with the second type of authorisation.

- (ii) That the SARS official concerned had advanced reasons for the tax liability of the Setumishi Respondents in its affidavits and was satisfied that they provided reasonable grounds to consider that tax may be due or payable by the Setumishi Respondents and on this analysis the senior SARS official's affidavits set out a sufficient basis upon which he had authorised the application for the preservation order in compliance with section 163(1).
- (iii) That the application brought by SARS for a preservation order was authorised in conformity with section 163(1) of the TA Act.
- (iv) That even if, as the Setumishi Respondents contend, SARS placed reliance upon the unlawful scheme to secure the preservation order, it did not follow that the absence of proof that the Setumishi Respondents participated in the scheme or benefitted from it would render the preservation order insupportable. A fair reading of the affidavit filed in support of the preservation order indicated that SARS relied upon a case that identified breaches by each of the Setumishi Respondents of their obligations to render full and truthful tax returns reflecting their taxable income and this case did not rest upon the unlawful scheme.
- (v) That the issue was thus whether the breaches alleged by SARS warranted the imposition of the preservation order, without regard to the alleged unlawful scheme. The invocation of the scheme in the supporting affidavit of SARS was not dispositive of the case brought by SARS for the preservation order.
- (vi) That the court then considered whether there was a case made out that the breaches alleged by SARS required the confirmation of the preservation order. Central to the substantive defence offered by the Setumishi Respondents was the claim that SARS had identified transactions as income, when they were short term loans extended and then repaid. Moreover, the tax debts of the Setumishi Respondents, upon which SARS relied, were claimed to be considerably overstated.
- (vii) That, in sum, there was a paucity of corroborative evidence as to the loans made and repaid, beyond the say so of one of the Respondents and the tax advisors employed by the Setumishi Respondents did not offer further elucidation.
- (viii) That a preservation order is an intrusive order. It is not to be granted simply because a taxpayer is liable or is likely to become liable for tax. The purpose of the order is set out in section 163(1). It is to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full

amount of tax that is due or payable or which a senior SARS official, on reasonable grounds, is satisfied may be due or payable. The preservation order must be required to secure the collection of tax. It does not suffice that the order may simply have some utility. One way to assess what is required is to consider what risks might arise absent the grant of such an order, on the evidence before the court.

- (ix) That the Setumishi Respondents contend that SARS has failed to make out a case that there is risk of the removal or dissipation of assets. This case, however, is not simply a dispute as to the quantification of tax liability. There has been a failure to declare taxable income and render proper returns. This was compounded by what appeared to be a deliberate failing to calculate the correct amount of VAT and make proper VAT returns.
- (x) That their conduct gave rise to the risk that their deliberate obfuscation of their tax liability will extend to the treatment of their assets which will be used by SARS to collect the full amount of tax owing by the Setumishi Respondents. This risk was compounded by the fact that the relationship between the Setumishi Respondents was in essence a family enterprise. The manner in which loans were paid and repaid, on the version of the Setumishi Respondents, indicated little respect for any formal separation between these respondents.
- (xi) That in these circumstances the court considered that a preservation order was required, and remained so. This was not an ordinary case of a dispute over a tax liability that may be payable. It was a case in which SARS had set out evidence that the Setumishi Respondents had sought to evade their tax liability. That evidence had not been satisfactorily rebutted and in such circumstances a preservation order was required because there was an appreciable risk that the Setumishi Respondents would treat their assets which would be used to satisfy their tax liability in the same way that they had sought to hide from sight their taxable income and VAT liability.
- (xii) That the Setumishi Respondents had submitted that there was no justification for the appointment of the *curator bonis* and that he had exercised his powers to compromise their business. However a case had been made out that the *curator bonis* had introduced procedures for the payments made by the Setumishi Respondents and that he had taken measures to ensure proper accounting and this would assist in determining the tax liability of the Setumishi Respondents and ensure that assets were properly disclosed that may be used

to satisfy such liability and accordingly the appointment of the *curator bonis* was warranted and remained so.

- (xiii) That the Setumishi Respondents complained that SARS had breached the duty to preserve the secrecy of taxpayer information contrary to section 69(1) of the TAA Act but SARS submitted that the disclosure was lawful because it was done under the authority of a court order. SARS's submission was technically correct but it failed to square up to the fact that once SARS had apprehended that it could not maintain that the Setumishi Respondents formed part of the unlawful scheme, there was every reason to make some provision in the order to protect the Setumishi Respondents from having their taxpayer information disclosed to the other respondents and this SARS did not do. However, the court considered that this want of care on the part of SARS could not serve to invalidate the preservation order and it was and remained a justified measure.
- (xiv) That in the result the provisional preservation order of 24 October 2023 as against the 20th, 21st, 22nd and 23rd Respondents was confirmed and made final. It was further ordered that the preservation order would endure until 31 July 2024 in respect of the aforesaid respondents.

5. INTERPRETATION NOTES

5.1. ***IT exemption: Bodies corporate, share block companies and associations of persons managing the collective interest common to all members – No. 64 (Issue 5)***

This Note provides guidance on the interpretation and application of section 10(1)(e).

Section 10(1)(e)(i) exempts from IT the levy income of a body corporate, a share block company and association of persons.

Expenditure incurred in respect of the levy income is not an allowable deduction.

Section 10(1)(e)(ii) provides for a basic exemption.

The following is concluded:

- Bodies corporate and share block companies automatically receive an exemption from IT under section 10(1)(e)(i)(aa) and (bb), respectively, they do not need approval from SARS.

- Associations of persons must apply to SARS to obtain exemption under section 10(1)(e)(i)(cc).
- SARS can grant exemption retrospectively to an association of persons if all the relevant conditions and requirements are satisfied as outlined in this Note.
- A person disqualified under the Trust Property Control Act, the NPO Act, or the Companies Act cannot manage the collective interests common to all the members in an association of persons.
- Levies income from bodies corporate, share block companies, and associations of persons (once exempted by SARS) is completely exempt from IT under section 10(1)(e)(i).
- The sum of any other income other than levy income that bodies corporate, share block companies, or associations of persons (once exempted by SARS) receive is subject to a basic exemption under section 10(1)(e)(ii).
- An assessed loss created when the allowable expenditure exceeds income from sources other than levy income and the basic exemption of bodies corporate, share block companies, or associations of persons, can be carried forward to a future year of assessment and a balance of assessed loss is not forfeited if only levy income is received.
- Bodies corporate, share block companies, and associations of persons are not required to pay provisional tax or submit provisional tax returns.
- Donations made by or to bodies corporate, share block companies, or associations of persons are exempt from donations tax under section 56(1)(h).
- Bodies corporate, share block companies, and associations of persons are not allowed to issue section 18A receipts for levies or donations they receive.
- When a share block company transfers immovable property to a holder of shares, it does not result in a capital gain or capital loss for the company under paragraph 67B(3)(a) of the Eighth Schedule.
- Cash dividends paid to bodies corporate, share block companies, or associations of persons are exempt from dividends tax under section 64F(1)(a).
- A dividend in specie declared and paid by a share block company, that comprises a disposal contemplated in paragraph 67B(2) of the Eighth Schedule, is exempt from dividends tax under section 64FA(1)(d).

5.2. *Transfer Duty exemption: Public Benefit Organisations and institutions, boards or bodies – No. 22 (Issue 6)*

This Note provides guidance on the interpretation and application on:

- section 9(1)(c), which exempts from the payment of transfer duty a PBO or any institution, board, or body provided the whole or substantially the whole of the property acquired is used for carrying on one or more PBAs; and
- section 9(1A), which exempts from the payment of transfer duty the transfer of property by a PBO to any other entity controlled by that PBO.

For purposes of this Note, the transactions do not constitute taxable supplies of fixed property.

Transfer duty is levied under the Transfer Duty Act on a sliding scale having regard to the value of any property acquired by any person under a transaction or in any other manner. The person acquiring the property (the transferee) is normally the person who is liable for the payment of transfer duty.

All the exemptions from transfer duty in respect of the acquisition of property are contained in section 9. The exemptions in section 9(1)(c) and section 9(1A) apply only to PBOs, and institutions, boards, or bodies meeting the requirements.

This Note provides general guidelines and considers the broad principles of the Transfer Duty Act. The circumstances of each case must be considered before an exemption from transfer duty can be approved.

5.3. *Concession or compromise of a debt – No. 91 (Issue 3)*

This Note provides guidance on the interpretation and application of section 19 and paragraph 12A which deal with the concession or compromise of debt.

The information in this Note is based on the IT and tax administration legislation as at the time of publishing. This Note takes into account legislative amendments introduced by the Taxation Laws Amendment Act 17 of 2023, effective from 1 January 2024.

The Note does not address section 22 of the VAT Act dealing with irrecoverable debt.

Debt relief is the partial or total remission of a debt and occurs in, for example, insolvency, business rescue, similar statutory proceedings or informal workouts, 1 and can occur within and outside a group of companies. The debt is reduced or

extinguished without the debtor having to pay the full amount of the debt and thus results in a benefit to the debtor.

A uniform system that provides relief from normal tax to persons under financial distress in specified circumstances is available under section 19 and paragraph 12A.

The relief available aims to subject debt relief to only one of the following taxes:

- Estate duty
- Donations tax
- IT on a fringe benefit received by an employee
- IT on income
- CGT

Section 19 deals with the concession or compromise of debt used to fund expenditure for which a deduction or allowance was granted under the Act. The section operates in conjunction with paragraph 12A. Paragraph 12A deals with the concession or compromise of a debt used to fund expenditure, other than expenditure on trading stock for which a deduction or allowance was granted under the Act. Paragraph 12A does not apply when section 19 applies, unless the debt benefit arises in respect of debt that funded expenditure incurred in acquiring an allowance asset, in which event both section 19 and paragraph 12A may apply.

Section 19 underwent various amendments over the years. For a consideration of the amendments before the latest amendment by the Taxation Laws Amendment Act 17 of 2023, consult the previous issues of this Note.

Section 19 and paragraph 12A deal with the concession or compromise of a debt. These provisions apply to trading stock, deductible expenditure, allowance assets and capital assets financed by debt that is subsequently cancelled, waived, extinguished or settled, in the case of a company, by being converted to or exchanged for shares in that company or applying the proceeds from shares issued by the company.

The application of section 19 and paragraph 12A depends on the nature of the expenditure funded by the debt. Specific ordering rules apply to a debt benefit in respect of debt owed on or used to fund expenditure incurred on the following assets:

- Trading stock that is held and not disposed of at the time the debt benefit arises
Any deduction under section 11(a) or the value of opening stock or closing stock is reduced by the debt benefit under section 19(3). Any excess amount is deemed under section 19(4) to be an amount recovered or recouped for purposes of section 8(4)(a).

- Trading stock disposed of and other deductible expenditure excluding allowance assets
The debt benefit is deemed under section 19(5) to be an amount recovered or recouped for purposes of section 8(4)(a)].
- Assets not disposed of in a year of assessment before that in which the debt benefit arises
The base cost of the asset is reduced under paragraph 12A(3) by the debt benefit. After the base cost of an allowance asset has been reduced to RNil, any excess amount is deemed under section 19(6) to be an amount recovered or recouped for purposes of section 8(4)(a). Future capital allowances are limited under section 19(7) to the cost of the asset less the debt benefit and any previous allowances claimed on the asset.
- Assets disposed of in a year of assessment before that in which the debt benefit arises
Under section 19(6A) and paragraph 12A(4) respectively, the debt benefit triggers a re-determination of the recoupment of allowances or the capital gain or loss recognised in that earlier year of assessment. The difference between the re-determined recoupment and the amount of recoupment in the earlier year of assessment is treated as an amount recovered or recouped for purposes of section 8(4)(a) in the year of assessment in which the debt benefit arises. The absolute difference between the re-determined capital gain or loss and the capital gain or loss determined in the earlier year of assessment is treated as a capital gain in the year of assessment in which the debt benefit arises.

A special rule applies to debt that financed the acquisition of a pre-valuation date asset. The effect of the rule in paragraph 12A(5) is to treat the asset as a post-valuation date asset by re-establishing its base cost as expenditure which can be reduced by the amount of a debt benefit. Special rules apply to a debt benefit in respect of a debt that funded expenditure incurred by persons carrying on mining.

Section 19 and paragraph 12A do not apply to a debt benefit in respect of any debt owed by a person:

- that is an heir or legatee of a deceased estate to the extent that the debt is owed to, and reduced by, the deceased estate and the amount by which the debt is reduced forms part of the property of the deceased estate for purposes of estate duty under the Estate Duty Act [section 19(8)(a) and paragraph 12A(6)(a)];

- to the extent that the debt is reduced by way of a 'donation', as defined in section 55(1) or any transaction to which section 58 applies, for which donations tax is payable [section 19(8)(b) and paragraph 12A(6)(b)];
- to an employer to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule, the so-called fringe benefits tax provisions [section 19(8)(c) and paragraph 12A(6)(c);
- to another company forming part of the same domestic group of companies and the debtor company did not carry on a trade during the year of assessment in which the debt benefit arises and during the immediately preceding year of assessment, unless certain provisions apply [section 19(8)(d) and paragraph 12A(6)(d)];
- to another company forming part of the same domestic group of companies and the debtor company reduces or settles the debt directly or indirectly by means of issuing shares, unless certain provisions apply [section 19(8)(e) and paragraph 12A(6)(f)]; or
- to the extent that the debt so owed is settled, directly or indirectly, by being converted to or exchanged for shares in the debtor company or by applying the proceeds from shares issued by that company and does not consist of or represent an amount owed on interest incurred by that person during any year of assessment [section 18(8)(f) and paragraph 12A(6)(g)].

In addition, paragraph 12A does not apply to any debt owed by a company to a connected person if the debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company under specified circumstances [paragraph 12A(6)(e) and (7)].

Consequential amendments to prevent double taxation have been made to sections 8(4)(a), 9C(5), 24J(4A)(b) and paragraphs 3(b)(ii), 20(3)(b)(i) and (iii) and 56(2)(a).

The amount of a debt benefit in respect of a debt that is denominated in a currency other than the currency of South Africa must be translated to the currency of South Africa (the rand) on the date on which the debt benefit arises by applying the applicable exchange rate under section 25D.

A foreign exchange loss may have been claimed as a deduction under section 24I(3)(a) and a foreign exchange gain included in income in one or more earlier years of assessment upon annual translation of the outstanding debt to rand or upon realisation of the debt in the current year of assessment. Foreign exchange losses must be included in income under section 8(4)(a) when a debt benefit arises. Foreign exchange

gains included in the income of a debtor before a concession or compromise or as a result thereof remain taxable.

The amount of expenditure contemplated in section 19(2) or paragraph 12A(2) funded by a debt that is cancelled, waived, extinguished or settled must be determined:

- exclusive of VAT for a debtor that is a vendor and that is or was entitled to a deduction of input tax under section 16(3) of the VAT Act; and
- inclusive of VAT for a debtor that is not a vendor.

5.4. *Meaning of ‘similar finance charges’ – No. 142*

This Note considers the meaning of ‘similar finance charges’ and, by way of example, considers the application of that meaning in assessing whether raising fees in respect of a financial arrangement fall within the ambit of ‘similar finance charges’.

The meaning of ‘similar finance charges’ is considered from the perspective of the borrower. However, the same principles apply when considering the term from the perspective of the lender.

Taxpayers are often party to financial arrangements when obtaining or granting loan or debt funding. Under these arrangements, the lender normally advances an amount to the borrower who is obliged to repay an amount that includes the amount advanced and interest (often calculated as a percentage of the loaned amount). Various finance charges, for example, loan application fees, service fees, administration fees, structuring fees and raising fees are often also payable by a borrower to the lender.

Broadly, section 24J(2) deems a taxpayer to have incurred an amount of interest equal to the relevant accrual amounts in the particular year of assessment in respect of an instrument, or determined according to the alternative method, to be deductible from the income of a taxpayer if certain definitions, provisions and requirements are met.

Interest for purposes of section 24J includes, amongst others, amounts constituting ‘interest’ and ‘similar finance charges’. Uncertainty exists as to whether the finance charges referred to above qualify as ‘similar finance charges’ in section 24J(1).

In interpreting the phrase ‘similar finance charges’ one has to have regard to the wording used, its context, and its purpose. The phrase must therefore be interpreted to mean charges similar in kind or nature to ‘interest’. Furthermore, paragraph (a) stipulates that the charges contemplated must be ‘in terms of or in respect of a financial arrangement’. The charges therefore need to be part of the financial arrangement itself.

The term 'similar finance charges' is not a catch-all for all forms of costs associated with a financial arrangement. Amounts charged for the granting, approval or administration of a financial arrangement while being linked to the arrangement, are not compensation for the use of the funds and are therefore not similar to interest.

Finance charges relating to a financial arrangement that do not qualify for a deduction under section 24J(2), may be deductible under section 11(a) depending on the facts of the case and whether the requirements of section 11(a), read with section 23(g) have been met.

5.5. *IT Exemption: Registered Political Party – No. 143*

This Note provides guidance on the interpretation and application of the exemption from IT under section 10(1)(cE) of the receipts and accruals of any political party registered under section 15 of the Electoral Commission Act.

According to the Constitution, all adult citizens are entitled to vote in elections for any legislative body created by the Constitution. Citizens are also assured the right to free, fair, and regular elections for these bodies. Additionally, the Constitution guarantees each citizen's right to make political choices, which encompasses:

- forming a political party;
- participating in the activities of a political party or recruiting its members; and
- campaigning on behalf of a political party or a particular cause.

Chapter 9 of the Constitution establishes certain state institutions to support and uphold constitutional democracy. Amongst these, the Commission is specifically identified, with its constitutional duties including:

- overseeing the conduct of elections for national, provincial, and municipal legislative bodies as required by national legislation,
- ensuring that these elections are conducted freely and fairly, and
- declaring the outcomes of such elections within the shortest period allowed by national legislation.

The Constitution also states that the Commission is granted further powers and functions as determined by national legislation. The Electoral Commission Act was enacted to give effect to this constitutional requirement by formally establishing the Commission and outlining its extended powers and functions. These include, amongst other things, compiling and maintaining a register of political parties, as well as

fostering liaison and co-operation with political parties, independent representatives, and independent candidates.

In *My Vote Counts NPC v Minister of Justice and Correctional Services and another*, the Constitutional Court recognised that political parties and independent candidates are the constitutionally designated means for attaining public office. However, it was observed that running a successful campaign for public office typically requires significant financial resources. Many candidates lack sufficient funding to conduct an effective campaign without outside support. While the State does offer some financial assistance to political parties for their activities, including campaigning, this support seems to fall short of which is needed to operate an effective political organisation or election campaign. As a result, there is a need for considerable financial contributions from the private sector or individuals to bridge the gap.

An independent candidate or representative, based on the definitions of 'party', 'independent candidate', and 'independent representative' in the Electoral Commission Act, do not qualify for this exemption. Therefore, this Note focuses exclusively on registered political parties, as they are currently the only entities eligible for the exemption under section 10(1)(cE).

Section 10(1)(cE) provides an automatic exemption from IT for all receipts and accruals of any political party registered under the Electoral Commission Act, no application or approval from the Commissioner is required.

Registered political parties are not allowed to issue section 18A receipts to donor taxpayers for any donations received.

All reporting and administrative requirements under the Act and TA Act must be met.

It is the responsibility of the political party to prove its registration under the Electoral Commission Act and compliance with the relevant requirements for purposes of the IT exemption considered in this Note. The registered political party must keep sufficient evidence to support its status and the view taken and if SARS requests it, this proof must be provided in an acceptable form.

5.6. Public Benefit Activity: Bid to host or hosting or any international event – No. 122 (Issue 2)

This Note provides guidance on the interpretation and application of PBA 11(b)¹ relating to the bid to host or hosting of any international event approved by the Minister having regard to the specified prescribed criteria.

This Note does not address any other taxes or duties that may arise when bidding for or hosting an international event, nor does it consider any exemptions that might be necessary for such taxes or duties.

Hosting or bidding to host an international event elevates South Africa's profile internationally by fostering national pride, attracting visitors from abroad, changing perceptions of South Africa as a destination for business and leisure, and generating an inflow of funds. These advantages can be achieved in a tax-efficient manner when the Minister approves an international event for purposes of PBA 11(b), and the Commissioner approves the bidding or hosting organisation of the international event as a PBO.

The OECD defines an international event as:

‘an event of a limited duration having global reach in terms of participation, audience and media coverage’.

An international event, which may include for example the Olympic Games, single-sport competitions and cultural events, is therefore typically a short-term occasion that attracts worldwide participation, viewership, and media attention.

The OECD outlines the following advantages that countries can gain from hosting global events:

‘The hosting of global events such as the Olympic Games, Expos, World Cups, Cultural Festivals, and many more have long been seen as opportunities to stimulate growth and development in the countries, and particularly the cities, that host them. Hosts increasingly seek to ensure that such events act as catalysts for local development, are used to leverage long-term infrastructure investments, boost tourism and trade, create jobs and promote community development.

¹ Means the PBA listed as the bid to host or hosting of any international event approved by the Minister for purposes of this PBA, having regard to the foreign participation in the event and the economic impact the event may have on the country as a whole.

To deliver on these promises, events must be deliberately designed and executed to generate long-term benefits. They need to clearly demonstrate how they impact upon communities to contribute to economic growth and development. Tax incentives, investment and sponsorship deals must be thoroughly assessed and managed to ensure that each event benefits host cities and the awarding body.

Global events can leverage investment, urban, rural and infrastructure development towards progressive opportunities for further job creation, community development, business development, environmental protection, social cohesion and post-event uses.'

Local development benefits often arise during the bidding process as well as before and after hosting an event. These benefits can include enhancements to the environment, infrastructure, and public amenities, increased international exposure, growth in tourism and the visitor economy, promotion of trade and investment, job creation, social and business development, national pride, and greater public engagement. These local development outcomes are key reasons for hosting such events, justifying the investment and serving as motivation to ensure the event's success. An event should leave a positive legacy, rather than burdening the host country or city with unused, costly facilities or significant debt.

The Minister has full discretion to determine whether an international event qualifies for approval under PBA 11(b). In making this decision, the Minister considers the extent of foreign participation as well as the overall economic impact the event may have on South Africa as a whole. Organisations applying for such approval must therefore provide detailed reasons to motivate why the event should be recognised as an international event for purposes of PBA 11(b).

Approval of an organisation as a PBO intending to bid for or host an international event depends on the Minister first approving the event under PBA 11(b). The organisation carries the burden of demonstrating that it meets all the requirements for PBO approval and must keep sufficient evidence to support its position. This burden may be discharged by way of submitting supporting evidence. Whether an organisation satisfies the criteria under PBA 11(b) is determined based on the specific facts of each case, and every application will be assessed on its individual merits.

6. DRAFT INTERPRETATION NOTES

6.1. *Meaning of ‘holds a qualifying interest’*

This Note clarifies the meaning of ‘holds a qualifying interest’ in a company, as required under paragraph (a) of the definition of ‘asset-for-share transaction’.

The definition of ‘asset-for-share transaction’ stipulates, amongst other requirements, the issuance of an equity share in the company and that the person disposing of an asset must hold a qualifying interest in that company at the close of the day on which the asset is disposed of. The definition of ‘qualifying interest’ in section 42(1) refers to an equity share ‘held’.

The term ‘hold’ was previously defined in section 41(1), but this definition has since been deleted. Uncertainty exists regarding the meaning of ‘hold’ or ‘held’ in section 42(1), especially when an asset is disposed of on one day while related administrative actions (such as updating the share register and, if certificated, issuing a share certificate) are completed on a subsequent day. It is common for such exchange agreements to provide for the implementation of the administrative actions a few days after the fulfilment of the last condition precedent, allowing time for the collation of documents and the gathering of relevant individuals at a mutually convenient time and place.

This Note examines the meaning of ‘hold’ and ‘held’ within the context of section 42 and does not address other requirements of an asset-for-share transaction as outlined in that section.

The definition of ‘asset-for-share transaction’ requires that the person disposing of an asset must hold a qualifying interest in the company at the close of the day on which the asset is disposed of.

An asset transferred under an asset-for-share transaction can only be exchanged for shares ‘issued’ to the transferor by the transferee company. A sale of shares in the company by a third party will not satisfy this requirement. The holding of a share issued by a company is generally evidenced by a certificate. Every company must, as soon as practicable after issuing any share, enter or cause to be entered in its securities register certain prescribed information. The phrase ‘as practicable after issue’ suggests that entering the particulars in the register is not a requirement for holding a share. The Companies Act also provides for beneficial interest in shares. Thus, a shareholder holds a share and all the rights attached to it when it has been transferred to the

shareholder, not only when the related administration is completed. The date from which the share is held is a factual question.

The issuance of a physical share certificate to reflect the shareholder is not a prerequisite for holding a qualifying interest. The terms 'hold' or 'held' in this context refer to beneficial ownership rather than registered ownership should such a duality exist.

6.2. *IT exemption: Bargain councils*

This Note provides clarity on the approval of registered bargaining councils as institutions, boards, or bodies under section 10(1)(cA)(i) of the IT Act.

The Constitution guarantees fair labour practices for all. It grants workers the right to form trade unions, and employers the right to form employers' organisations. Both trade unions and employers' organisations are entitled to manage their own affairs, organise themselves, and form or join federations. Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

The Constitution further provides that national legislation be enacted to regulate collective bargaining. The LRA was enacted to give effect to these constitutional labour rights, providing for all trade unions, employers' organisations and employers to engage in collective bargaining to promote economic development, social justice and labour peace. LAWSA provides the following on the LRA:

'One of the primary objects of the Labour Relations Act is to provide a framework for orderly collective bargaining at sectoral level. Bargaining councils are central to this statutory imperative and provide a regulated structure designed to enable employers' organisations and trade unions to collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest in a specific sector and area.' (Footnotes omitted)

Because of their significant role in supporting the economy, registered bargaining councils are eligible for exemption under section 10(1)(cA)(i), as explained in this Note.

Bargaining councils registered under the LRA are central to promoting and facilitating collective bargaining and maintaining orderly industrial relations in South Africa. Their activities not only advance economic development but also provide necessary and

useful services to both the State, and members of the general public, and also promote the industries within their registered scope.

Registered bargaining councils are granted preferential tax treatment under section 10(1)(cA)(i) if their constitutions meet the prescribed requirements. These requirements include the proper use of funds, a prohibition on distributions, and the transfer of remaining assets on dissolution. This preferential treatment provides a complete exemption from income tax on all receipts and accruals, as well as exemption from certain other taxes. The preferential tax treatment further ensures that the resources of registered bargaining councils that have been approved by the Commissioner as institutions, boards, or bodies are directed towards advancing collective bargaining, industrial stability, and the broader socio-economic objectives.

7. VAT RULINGS

7.1. *Apportionment – VR 014*

This VR approves the methods of apportionment being the page-space method and the varied turnover-based method which are applied by a vendor in the retail industry.

In this VR, all references to sections hereinafter are to sections of the VAT Act unless otherwise stated. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the VAT Act.

This VR concerns the interpretation and application of the following provisions of the VAT Act:

- Section 1(1) – definition of ‘input tax’
- Section 16
- Section 17(1)

Parties to the application

The Applicant is a company incorporated under the laws of South Africa and resident of South Africa.

Description of the transactions

The Applicant is a home shopping retailer operating through multiple distribution channels. The Applicant sells goods to customers on store retail credit and direct payments.

The Applicant conducts the following activities:

- It has showrooms across the country where customers can view merchandise and decide whether they would want to place an order. Sales are not made at the showrooms as all orders must be made through the online platform or a call centre.
- The website and catalogues provide information about products and pricing, including basic credit sale details.

The following income streams are received:

- Sales of goods (wholly taxable supplies)
- Initiation and service fees which constitute consideration for taxable supplies
- Interest earned on credit sales – consideration for exempt supplies, resulting from the extension of credit under a contractual agreement
- Occasional proceeds from the sale of irrecoverable debtors' book being consideration for the transfer of ownership of a debt security, deemed to be a financial services which is exempt from VAT (exempt supplies)

The Applicant classified its acquisitions of goods and services, that is, expenses, into five separate categories:

- Category A: Goods and services which are used exclusively for the purposes of making taxable supplies, for which VAT incurred may be deducted in full as input tax.
- Category B: Goods and services acquired for the purpose of making mixed supplies in relation to the marketing cost centre (advertising spend cost centre).
- Category C: Goods and services incurred in the course of making mixed supplies for the telemarketing cost centre.
- Category D: Goods and services incurred in the making of mixed supplies, relating to administrative and legal functions including billing, collections, customer analytics, legal activities.
- Category E: Goods and services which are used exclusively for the making of exempt supplies and in respect of which the VAT incurred may not be deducted as input tax.

The Commissioner for SARS (the Commissioner) is requested to issue a ruling under section 41B, read with section 17(1) confirming that the Applicant may:

For Category B – apply the page space method of apportionment as set out below:

$$y = a / (a + b) \times 100$$

where:

- y = Apportionment ratio/percentage;
- a = The page space used in the catalogue to advertise the wholly taxable product; and
- b = The page space used in the catalogue to advertise the instalment options on credit sales in respect of which interest is earned for the provision of credit (exempt supplies).

For Categories C and D – apply the turnover-based method of apportionment as set out below:

$$y = a / (a + b + c) \times 100$$

where:

- y = Apportionment ratio/percentage;
- a = The value of all taxable supplies (including deemed taxable supplies) made during the period;
- b = The value of all exempt supplies made during the period, including a portion of the proceeds from the sale of irrecoverable debtors' book, calculated by multiplying the proceeds by the difference between the Prime Lending Rate and the Johannesburg Interbank Average Rate (JIBAR), and
- c = The sum of any other amounts of income not included in 'a' or 'b' in the formula which were received or accrued during the period (whether in respect of a supply or not).

Conditions and assumptions

This VR is subject to the Standard Terms, Conditions and Assumptions issued by the Commissioner, and the provisions of Chapter 7 of the TA Act, excluding sections 79(4)(f), (k), (6) and 81(1)(b).

Ruling

The ruling made in connection with the Category B to Category D transactions, is as follows.

The Applicant may, for the purpose of determining the ratio to be applied to the VAT incurred relating to mixed expenses, apply the following methods of apportionment as set out below:

For Category B

Apply the page space method of apportionment as set out below:

$$y = a / (a + b) \times 100$$

where:

- y = Apportionment ratio/percentage
- a = The page space used in the catalogue to advertise the wholly taxable product; and
- b = The page space used in the catalogue to advertise instalment options for credit sales in respect of which interest is earned for the provision of credit (exempt supplies).

Categories C and D

Apply the varied turnover-based method of apportionment as set out below:

$$y = a / (a + b + c) \times 100$$

where:

- y = Apportionment ratio/percentage;
- a = The value of all taxable supplies (including deemed taxable supplies) made during the period;
- b = The value of all exempt supplies made during the period including a portion of the proceeds from the sale of irrecoverable debtors' book, calculated by multiplying the proceeds by the difference between the Prime Lending Rate and JIBAR; and
- c = The sum of any other amounts of income not included in 'a' or 'b' in the

formula which were received or accrued during the period (whether in respect of a supply or not).

Note:

- All income streams should be taken into account when determining the apportionment ratio based on the formula above, except as otherwise provided in the formula.
- All the other notes in respect of the formula for the standard turnover-based method contained in BGR 163 shall apply (where applicable).

8. BINDING PRIVATE RULING

8.1. *Interest incurred on loan funding used to redeem preference shares and settle dividends – No. 424*

This ruling considers the deductibility of interest incurred in respect of loan funding used to redeem preference shares and settle any current or accumulated preference share dividends.

In this ruling, references to sections are to sections of the IT Act applicable as at 12 December 2025. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of section 24J.

Parties to the proposed transaction

The Applicant: A resident company

Bank: A resident commercial bank

Description of the proposed transaction

The sole purpose of the Applicant is to develop and own a project (the Project). The Bank has offered a project finance facility. The funds raised by way of the facility will be used by the Applicant to fund costs attendant to the Project.

The salient terms and conditions that will be applicable to the facilities to be provided by the Bank to the Applicant, will be as follows:

- 40% of the funding will be in the form of the 'Senior JIBAR Facility' which the Applicant will utilise to fund costs attendant to the construction costs and initial start-up costs in relation to the Project (the Initial Loan);
- 60% of the funding will, initially, be provided by the Bank subscribing for unsecured, redeemable preference shares in the Applicant (the Preference Shares). The Applicant will use the proceeds from the Preference Shares to fund construction costs and initial start-up costs in relation to the Project.

The Preference Shares and, if applicable, any accumulated dividends will later be redeemed using the 'Post Construction Senior JIBAR Facility' (the New Loan).

Once the Preference Shares are replaced with the New Loan, all the funding provided to the Applicant will be in the form of senior debt.

The New Loan is considered part and parcel of the funding facility from inception since its terms are agreed alongside those of the Initial Loan and the Preference Shares, that is, the New Loan comes into existence as a contractual arrangement at inception, but drawdowns are only available from when the Preference Shares become redeemable.

The Applicant's payment obligations under the Initial Loan and the New Loan are secured by, amongst others, notarial bonds over the assets of the Applicant, security cession of debtors' balances and claims against third parties, bank accounts, insurance proceeds, guarantees and performance bonds, shares in the Applicant and a subordination of shareholder claims. A special purpose vehicle (the Security SPV) will be established on behalf of the Bank for the sole purpose of securing the payment obligations of the Applicant in respect of the Initial Loan and the New Loan.

Security for the Applicant's obligations under the Preference Shares is limited to a cession in security by the Applicant of its non-interest-bearing claim against the Security SPV for residual proceeds, following the enforcement of security.

The terms of the finance facility stipulate, amongst others, the following in relation to the purpose of the Initial Loan:

'Funding the design, construction, erection, commissioning and operating of the Project, as well as for capitalising the Reserve Accounts, paying Interest during construction ('Interest Capitalised') and initial working capital and any other agreed expenditure in connection with the Project.'

The Preference Shares will have a term of seven years and confer on the holder (the Bank) the right to receive a preferential, cumulative cash dividend, calculated as per the terms of the finance facility. Subject to the specified dividend grace period, which is the period from financial close until the scheduled commercial operations date (SCOD), dividends will accrue and will be payable quarterly in arrears. There is also a partial deferment of dividends for a period of three years after SCOD.

The terms of the finance facility include, in relation to redemption of the Preference Shares, the following:

'No Preference Share may be redeemed unless and until all accumulated, accrued and unpaid Dividends on that Preference Share have been paid.

Scheduled Redemption of the Preference Share shall begin on the next Dividend Payment Date following at the earliest 3 years and 1 day after the last Drawdown under the Preference Share Facility and at the latest 3 years after

SCOD. On the Final Redemption Date (being seven (7) years after the issue date) any outstanding Preference Shares may be redeemed using proceeds drawn under the Post-Construction Senior JIBAR Facility.'

The purpose of the New Loan is articulated in the terms of the finance facility as follows:

'The facility shall be used for the purposes of redeeming any outstandings under the Preference Share Facility.'

The Post-Construction Senior JIBAR Facility is the New Loan and, although no Preference Share may be redeemed unless all unpaid dividends have been paid, the Applicant may drawdown on the New Loan to fund any unpaid dividends and the redemption amount of the Preference Shares, in question. This may occur at any time from SCOD plus three years and up to seven years after SCOD, which date coincides with the date by which all the Preference Shares must be redeemed.

The New Loan endures for a period of 20 years following SCOD. The drawdown may be made in one lumpsum during the availability period, following notice. The New Loan has an availability period of seven years from SCOD. Once drawn, the terms and conditions applicable to the Initial Loan will also apply to the New Loan.

The New Loan will bear interest at the rate specified in the terms of the finance facility, subject to an interest roll-up period of between six and seven years after the date of the financial close of the Project.

The funding arrangements are subject to several conditions precedent, one of which reads:

'... tax opinion (including without limitation that the structure and Prefs do not fall foul of section 8E and section 8EA of the IT Act) in respect of the preference shares from counsel acceptable to the Subscriber and in a form and substance satisfactory to the Subscriber'.

Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

Ruling

The ruling made in connection with the proposed transaction is as follows:

- The Applicant will be entitled to deduct interest, determined in accordance with the provisions of section 24J, in respect of the New Loan to the extent that the interest does not relate to amounts used to fund the payment of current or

accumulated dividends in respect of the Preference Shares, from the year of assessment during which the first drawdown of funds occurs.

- No ruling is issued in relation to the application of section 8E or section 8EA in respect of the Preference Shares.

9. GLOSSARY OF TERMS

For purposes of this update the terms listed hereunder bear the following meanings:

CFC – Controlled Foreign Company; a foreign company in which South African residents hold a participation interest, potentially giving rise to imputed income in South Africa

CCA – a customs-controlled area enterprise

DTMC – Domestic Treasury Management Company; a South African company approved to use a foreign currency as its functional currency for tax purposes

IN – Interpretation Note issued by SARS

IT – Income Tax

IT Act – Income Tax Act, No. 58 of 1962 (as amended)

SARS – South African Revenue Service

SEZ – Special economic zone operator

TA Act – Tax Administration Act, No. 28 of 2011 (as amended)

VAT – Value-Added Tax

VAT Act – Value-Added Tax Act, No. 89 of 1991 (as amended)

VR – VAT Ruling issued by SARS

10. INDEMNITY / DISCLAIMER

This update is provided for general information purposes only and does not constitute legal or tax advice.

While every effort has been made to ensure the accuracy of the information contained herein, no responsibility is accepted for any loss or damage arising from reliance on

its contents.

Readers are advised to seek professional advice tailored to their specific circumstances before taking any action based on this update.
