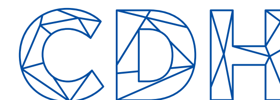
TAX & EXCHANGE CONTROL

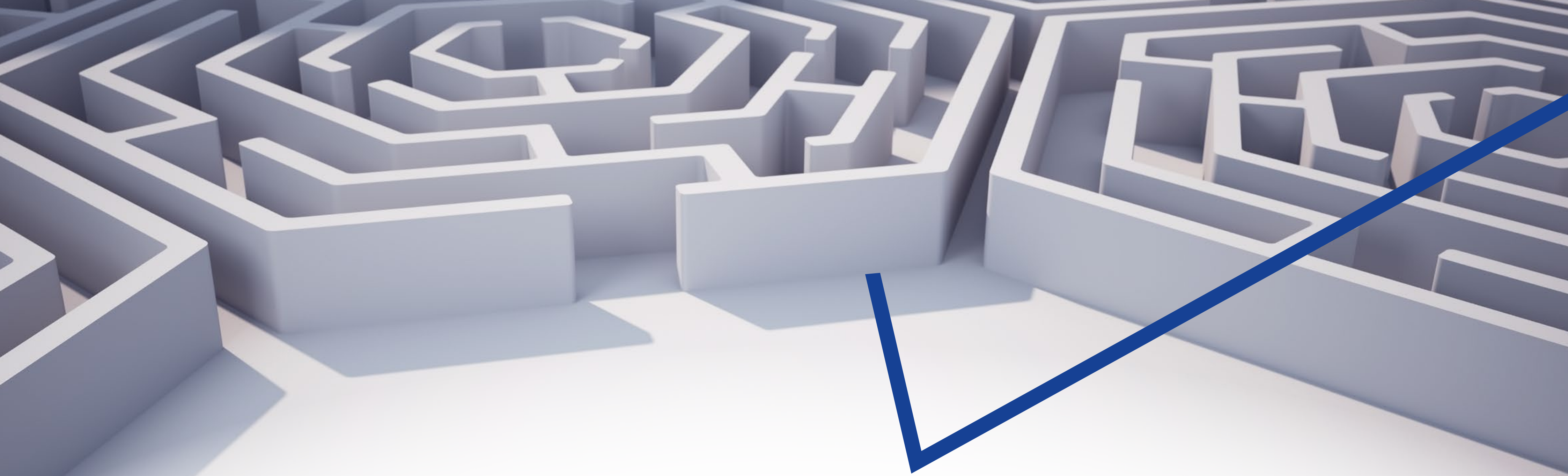
12 March 2025

Special Edition

Budget Speech Overview

The tax and exchange control legal partner for your business.





Index

Corporate tax 4

- The tax treatment of collective investment schemes
- Hold on to your hats (or your listed shares): The latest amendment to section 42 affects listed share-for-share transactions
- Aligning tax and accounting: Proposed changes to dividend taxation for banks
- Hybrid funding structures back in the spotlight

International tax 13

- Expanding the definition of equity shares to explicitly include foreign companies
- An additional consideration for access to the comparable exemption for controlled foreign companies
- Amendments to prevent the avoidance of the CFC exit charge

Individual tax and employees' tax 17

- Employment tax incentive: The gift that keeps on giving – or taking?
- The brackets are beginning to run
- Cross-border retirement fund exemptions facing reform

Tax administration 23

- Understatement penalties and *bona fide* inadvertent errors

Value-Added Tax (VAT) 26

- The VAT Rate

Customs & Excise 33

- Customs & Excise

Definitions

Abbreviation	Full reference
Budget	2024 Budget
Carbon Tax Act	Carbon Tax Act 15 of 2019
CFC	Controlled Foreign Company
CIS	Collective Investment Scheme
Customs Act	Customs and Excise Act 91 of 1964
ITA	Income Tax Act 58 of 1962
Minister	Minister of Finance
SARS	South African Revenue Service
TAA	Tax Administration Act 28 of 2011
VAT	Value-Added Tax
VAT Act	Value-Added Tax Act 89 of 1991

TAX & EXCHANGE CONTROL

Corporate Tax

CDH

The tax treatment of collective investment schemes

National Treasury released a discussion document on 13 November 2024 dealing with the tax treatment of portfolios of a CIS, including the tax treatment of the holders of the participatory interests in these portfolios (Units).

Amendments were proposed to the ITA in 2018 to provide certainty on the income tax treatment of profits earned by CISs. The proposal was to the effect that profits would be on capital account to the extent that a specific counter has been held for a period of longer than 12 months. However, after reviewing the public comments that were made at the time, it was decided to withdraw the proposals to allow more time to work with industry to find solutions that would not negatively affect the relevant stakeholders.

The discussion document came as somewhat of a surprise in circumstances where the impression was created that certain amendments would be proposed in the Budget. During a workshop that was held on 17 January 2025, National Treasury indicated, however, that decisions will not be made overhastily and that the interests of all stakeholders will be considered.

The relevant items that were highlighted in the discussion document were the following:

- the treatment of CISs themselves;
- the treatment of hedge funds;
- whether CISs should be allowed to participate in asset-for-share transactions in terms of section 42 of the ITA and to facilitate rollover relief; and
- the treatment of capital distributions by CISs.

The proposals dealing with the tax treatment of CISs

In terms of section 25BA of the ITA, CISs enjoy a flowthrough tax treatment insofar as income is concerned. This means that the holder of Units would be taxed on interest and/or dividends, as the case may be, as opposed to the CIS itself. A CIS would only be taxed to the extent that income/revenue is not distributed to investors within a period of 12 months after accrual/receipt thereof.

In making the proposals, National Treasury indicated that:

- not all returns are automatically taxed as capital, hence the current uncertainty in the market;
- the relevant proposals were made in addition to the common law principles dealing with whether receipts are on capital account;
- the relevant proposals are not aimed to tax all returns as revenue;
- the proposals are not aimed at raising more revenue;
- it will impact negatively upon returns by not allowing for tax deferrals; and
- not all hedge funds operate in a similar manner.

Two proposals were made in relation to the tax treatment of CISs insofar as it relates to capital receipts. Neither of these proposals is really practical and they present a number of concerns.

The tax treatment of collective investment schemes*...continued*

The first proposal entails the CIS being treated as fully tax transparent. Capital gains and losses would be allocated to Unit holders on a daily basis and reported to them on an annual basis. This would result in CISs not being subject to tax at all in respect of capital gains. This should be compared to paragraph 61 of the Eighth Schedule to the ITA which currently provides that:

- any capital gain or capital loss in respect of the disposal of an asset by a CIS must be disregarded; and
- a Unit holder must determine a capital gain or a capital loss in respect of a Unit only upon the disposal thereof.

The treatment of a CIS as fully transparent, however, would not be practical. Even though taxation only occurs at the investor level, there would be substantial reporting complexities. In addition, some Unit holders would be prejudiced in circumstances where the timing of the investment in the CIS and the timing of the disposal of an asset by a CIS did not coincide. New investors would thus be subject to capital gains in respect of profits enjoyed by earlier investors and vice versa. This would make CISs less attractive as saving vehicles. The problem is that fund compositions change daily due to investor flows and fund managers' intercessions. Even with accurate attribution, the subjective classification methods would remain vulnerable to SARS' challenges as intention is very difficult to verify. In addition, investors would be unfairly taxed in view of fund managers' decisions rather than their own investment activities. In addition, it may also result in some foreign investors not paying tax at all.

The second proposal entails a safe harbour rule in the sense that disposals within a certain pre-determined ratio would be deemed to be on capital account. This ratio is set between portfolio trading turnover and portfolio size. A percentage of 33% was proposed by National Treasury. Even though this proposal obtained more support, it was indicated that its conceptual design and application still need careful consideration. Some commentators indicated that the safe harbour rule should not apply to closely held CISs. However, generally a 33% threshold is too low and restrictive. Turnover in a portfolio is only measured to determine if a fund is speculating or not. Thus frequency of trading in itself cannot be a test to determine whether proceeds are on capital account. It was also indicated that fund managers may retain underperforming or overvalued assets to avoid exceeding turnover limits. In other words, managers may avoid re-balancing portfolios merely to stay within the threshold.

Even though the safe harbour rule is thus more palatable than the transparent entity proposal, it still does not specifically cater for the requirements of CISs.

Hedge funds

One of the proposals was to exclude hedge funds from any deemed capital treatment. However, commentators argue that, if a hedge fund is treated as a CIS, it should get the same tax treatment. In addition, it is argued that there is no distinction between long only and other hedge funds. It would also create uncertainty about how hedge funds will otherwise be taxed.

Another proposal was to the effect that closely held funds should be excluded. However, the number of investors should not in itself impact upon the treatment of proceeds. Another objective criterion should be found.

The tax treatment of collective investment schemes *...continued*

There is a line of thinking that, to the extent that CISs in securities which generally focus on the actual acquisition of counters and are therefore "*long only*", it should potentially result in a separate treatment for these types of funds compared to hedge funds, or more particularly, qualifying investor hedge funds. This is especially the case to the extent that the investment framework for hedge funds is potentially different from CISs in securities.

Disqualification of CISs from corporate rollover relief

In terms of this proposal CISs could not participate in corporate rollover relief transactions. This is especially the case given the potential abuse in circumstances where:

- an investor needs to realise a specific investment because of corporate action, which will result in capital gains tax for the investor;
- the relevant counter is transferred by the investor to the CIS in terms of section 42 of the ITA dealing with asset-for-share transactions in return for the issue by the CIS of additional Units to the investor;
- the CIS thereafter realises the counter on the basis that paragraph 61 of the Eighth Schedule provides that the proceeds are exempt; and
- the investor continues to hold the relevant investment in the CIS even though the base cost of the Units is equal to the base cost of the counter that was transferred to the CIS.

Some of the proposals indicated that the exclusion of CISs from corporate rollover relief may harm legitimate transactions. One should rather apply the General Anti-Avoidance Rule, alternatively distinguish between publicly traded and widely held CISs to closely held CISs.

In terms of the Budget it was indicated that this proposal will be implemented. It seems that there was too much perceived abuse in this area where investors obtained relief by transferring their shares to a CIS.

Capital distributions by a CIS

There is currently a school of thought that capital distributions by a CIS will result in no tax whatsoever on the basis that:

- a CIS is exempt from capital gains; and
- there is no part disposal by a Unit holder to the extent that it receives a capital distribution from a CIS.

This type of transaction has not enjoyed that much attention given the fact that CISs could not make capital contributions in the past. However, with CISs being able to do so (especially hedge funds), attention has shifted on the basis that it seems to be accepted that:

- the base cost of the Unit holder should be reduced by the capital distribution on the basis that the CIS itself will not pay any tax; and
- to the extent that the Unit holder does not have any base cost in the Unit, a capital gain arises.

This proposal will also be implemented in terms of the Budget. In the interim it does seem that there was a flurry of capital distributions and the question arises of whether SARS will attack same or whether the amendment will be retrospective.

Emil Brincker

Hold on to your hats (or your listed shares): The latest amendment to section 42 affects listed share-for-share transactions

The corporate group relief measures contained in sections 41 to 47 of the ITA largely protect qualifying transactions from the normal tax consequences (taxable income and capital gains, dividend tax, recoupment of allowances, etc.) of such transactions. However, the details of these provisions are exceptionally intricate and often open to dispute regarding their precise interpretation and application. Furthermore, these provisions have been continually modified since their introduction.

In this year's Budget, the Minister has proposed a further amendment to section 42 of the ITA, dealing with *"asset for share transactions"*.

Summary of how section 42 works

An asset-for-share transaction essentially contemplates a transaction where a person transfers an asset to a resident company in exchange for the issue of shares by that company.

The basic requirements that must be satisfied to make use of this provision include:

- the asset must be disposed of to a resident company;
- the transferor must, at the end of the day of the transaction, hold a 'qualifying interest' in the transferee company or, if the company's business includes the provision of services, must be employed full time in that business or the business of a 'controlled group company';
- the market value of the asset being transferred must be equal to or exceed the tax cost of the shares to be issued; and
- the asset disposed of must retain its nature. Except where the transferor held the asset as a capital asset, the transferee company can acquire it as trading stock provided that the parties do not form part of the same group of companies.

The effect of applying section 42 is that the transferee effectively steps into the shoes of the transferor and any normal tax consequences that would have ensued, but for the application of section 42, will be rolled over to a later date (i.e. when the transferee subsequently sells the asset – provided another corporate group relief measure does not apply). In this context, the base cost of the shares will equal the base cost of the asset being transferred.

Hold on to your hats (or your listed shares): The latest amendment to section 42 affects listed share-for-share transactions*...continued*

However, the section will not apply to transactions where a transferor disposes of an equity share in:

- a listed company (A); or
- a portfolio of an 'equity' CIS; or
- a portfolio of a hedge fund collective investment scheme, to a listed transferee company (B) and immediately thereafter B, together with any other transaction concluded on the same terms within 90 days, holds:
    - at least 35% of the equity shares of A or the CIS; or
    - at least 25% of the equity shares of A if no person other than B holds an equal or greater amount of shares in A or in the CIS.

Rather, a special rule, introduced pursuant to the 2010 amendments, applies. This rule is discussed further below.

Special rule in relation to listed shares

In 2010, a unified special rollover regime was introduced to address the tax cost tracing problem in listed share-for-share transactions. The regime provided relief for acquiring companies (transferee), allowing them to take over the tax cost of the target shares (A) at market value. In other words, as if the shares were acquired by the acquiring company for cash.

By treating the expenditure as if acquired for cash, the acquiring company enjoys a 'step-up' in base cost to market value and need not step into the shoes of the target shareholders. The date for the acquisition of the shares will be the date on which the transaction is concluded.

The regime only applies where:

- the target company is listed; and
- the acquiring company will hold at least 35% of the shares in the listed target company after the transaction (or 25% if no other shareholder holds an equal or greater shareholding).

The regime further allows the acquiring company to hold the target shares as trading stock or capital assets without regard to the previous target shareholders' character – i.e., the asset need not retain its nature.

The above rule was incorporated in section 42 as a proviso to the definition of "*asset-for-share*" and was aimed at providing relief for listed share-for-share transactions by addressing the practical problems of tracing the character and tax cost of shares in a listed context – especially where the transferee is acquiring shares from a large number of minority shareholders.

As it currently stands, there is no limitation on the application of the relief. In other words, the relief will apply whether the transferee is acquiring shares from various minority shareholders or one major shareholder. This is the context within which the current proposed amendments must be understood.

Hold on to your hats (or your listed shares): The latest amendment to section 42 affects listed share-for-share transactions*...continued*

Proposed amendment in Budget

The proposed amendment in this year's Budget seeks to clarify the application of the rollover relief for listed shares in share-for-share transactions. Specifically, the amendment proposes limiting the special rollover regime relief to disposing shareholders holding less than 20% of the equity shares in the target company (transferor) before the transaction. This proposal is aimed at aligning the legislation with the original policy intent of National Treasury, which was introduced in 2010.

The effect of the proposal is that disposing shareholders holding more than 20% of the equity shares in the target company before the transaction will not be able to make use of the relief provided in the special rollover regime. As such, parties still wishing to make use of the rollover relief contemplated in section 42 will have to apply the tracing rules as to the nature and tax cost of the shares as envisaged in the provision.

However, it can be argued that the practical difficulties that exist in the case of minority shareholders are less prevalent in relation to shareholders who have a shareholding of 20% or more in the target company.

Conclusion

In conclusion, asset-for-share transactions are a crucial mechanism in corporate transactions. Understanding the intricacies of the provision is essential for taxpayers who wish to use the rollover relief available for such transactions. The proposed amendments in this year's Budget seek to clarify the application of the rollover relief for listed shares in share-for-share transactions, ensuring alignment with the original policy intent of National Treasury. It is advised that taxpayers have a clear understanding of what constitutes an asset-for-share transaction and the specific requirements and limitations associated therewith. Failure to do so may have unintended (and costly) tax consequences.

Puleng Mothabeng

Aligning tax and accounting: Proposed changes to dividend taxation for banks

Section 24JB of the ITA addresses the taxation of profits or losses recognised by "*covered persons*" in relation to financial assets and liabilities. The term "*covered person*" encompasses entities such as banks, branches of banks and companies forming part of banking groups, as defined within the Banks Act 94 of 1990. This legislative provision applies to financial assets and liabilities measured at fair value through profit or loss. Consequently, gains or losses arising from financial instruments, as recognised under International Financial Reporting Standard 9 (IFRS 9), are incorporated into or deducted from the taxable income of the "*covered person*".

A prevalent practice among "*covered persons*" involves the utilisation of financial instruments, including equity shares, for the purpose of hedging financial liabilities, such as equity-linked notes. This hedging strategy results in the receipt of dividends, which are currently exempt from taxation, while concurrently generating tax-deductible payments associated with the aforementioned financial liabilities. This discrepancy in tax treatment potentially creates a misalignment between the economic substance of the transaction and its fiscal implications.

In response to this inconsistency, National Treasury proposes amending the tax treatment of dividends received from hedging activities in the context of these types of transactions. The objective of this amendment is to align the taxation of these dividends with their corresponding financial accounting treatment under IFRS 9. Specifically, it is proposed that these dividends be incorporated into the taxable income of the "*covered person*". This measure seeks to ensure that the tax treatment accurately reflects the financial reporting of these transactions, thereby promoting consistency and parity within the tax framework.

The proposed amendment is predicated on the principle of ensuring equitable and consistent tax treatment across comparable financial activities. By subjecting dividends from hedging activities to taxation, the legislative framework aims to mitigate potential tax arbitrage opportunities and enhance the integrity of the tax system. This alignment with IFRS 9 therefore signifies a commitment by National Treasury to modernise the tax regime to reflect the complexities of contemporary financial instruments and practices.

Stephan Spamer

Hybrid funding structures back in the spotlight

Funding structures are again in the crosshairs, with National Treasury having identified preference and equity funding structures that circumvent the third-party backed share anti-avoidance rules.

Third-party anti-avoidance rules take aim at funding structures where the preference or equity shareholder, or a connected person in relation to the shareholder, has a fixed or contingent right against a party other than the issuer to:

- acquire the instrument from the holder;
- make any payment in respect of the instrument in respect of a guarantee, indemnity or similar arrangement; or
- assist with either of the above.

These rights are generally enforced in the event of default and if triggered it deems the dividend income, which would otherwise have been income tax exempt, as income subject to normal tax.

No meaningful details were provided in the Budget review documents as to the specific arrangements in question (arguably intentionally so) but it appears that the concern lies with security features falling outside the ambit of the definition of an "*enforcement right*" as defined in section 8EA(1) of the ITA.

National Treasury might clarify its intention or broaden the legislation to target the specific mischief. What would, however, be welcomed is if National Treasury at least affords taxpayers the opportunity to restructure affected transactions and apply the amendment prospectively.

Hybrid equity instruments

Preference shares are generally regarded as "*hybrid equity instruments*" in section 8E of the ITA if:

- the issuer is obliged to redeem the share or distribute an amount constituting a return of the issue price of that share; or
- the holder may exercise an option in terms of which the issuer must redeem the share or distribute an amount constituting a return of the issue price of that share,

  within a period of three years from the date of issue,

or the preference share is secured by a financial instrument or subject to an arrangement in terms of which a financial instrument might not be disposed of, unless the share was issued for a qualifying purpose.

Again, if section 8E is triggered then the dividends are recharacterised as income in the hands of the recipient.

National Treasury has identified preference share structures falling outside the definition of hybrid equity instruments as defined in section 8E(1) of the ITA. It has thus been announced that the preference share definition will be amended to include the targeted structures, and it appears that the amendment will be applied prospectively.

No finite details were provided, however, it is hoped that none of the traditional safe havens such as giving the issuer the option to redeem the preference shares will be removed.

Dries Hoek

International tax

CDH

Expanding the definition of equity shares to explicitly include foreign companies

The Budget has introduced a proposed amendment to the ITA aimed at refining the definition of "*equity shares*" to explicitly include shares in foreign companies. According to the Budget review documents, the current wording of the "*equity share*" definition does not accommodate shares in foreign companies, raising uncertainties regarding their classification.

Under the existing definition, an "*equity share*" refers to a share in a company that is not restricted in terms of the holder's rights to participate in either the capital or dividends of the issuing company. Holding a certain percentage of equity shares can grant taxpayers access to favourable tax treatment, such as corporate rollover relief, which allows tax-neutral asset transfers between companies, provided that specific equity shareholding thresholds are met.

Conversely, equity shareholding can also trigger adverse tax consequences in certain cases, such as when entities are considered "*connected persons*" due to their percentage ownership. This can result in transactions being subject to deemed market value provisions on disposals or the application of transfer pricing rules in cross-border transactions.

The Budget review documents acknowledge that while definitions exist for "*foreign dividends*" and "*foreign return of capital*," the current definition of "*equity share*" does not explicitly accommodate shares in foreign companies. This is particularly noteworthy in the context of South Africa's "*participation exemption*" provisions under section 10B of the ITA and paragraph 64B(1) of the Eighth Schedule. Both provisions require a taxpayer to hold a minimum of 10% of "*equity shares*" in a foreign company to qualify for tax relief and provide for the following implications:

- Section 10B exempts foreign dividends from income tax if, among other qualifying criteria, the taxpayer holds at least 10% of the "*equity shares*" or voting rights in the foreign company.
- Paragraph 64B(1) allows for the exemption of capital gains and losses on the disposal of shares in a foreign company if the taxpayer meets the same 10% equity shareholding or voting rights requirement.

If the current definition of "*equity shares*" did not extend to foreign companies, it would suggest that taxpayers have never met these requirements; an interpretation that is evidently incorrect.

A closer examination of the ITA reveals that the existing definition of "*equity shares*" arguably already supports the inclusion of foreign company shares. The term "*company*" as used in the definition includes, under paragraph (c), companies incorporated outside of South Africa. Additionally, the term "*share*" is broadly defined in section 1 and is not limited to equity instruments issued under South African law. Therefore, as long as the rights to dividends and capital comply with the definition, foreign company shares should already qualify as "*equity shares*".

That said, an explicit legislative clarification confirming that shares in a foreign company qualify as "*equity shares*" would be a welcome development, eliminating any potential lingering uncertainty on the matter.

Howmera Parak

An additional consideration for access to the comparable exemption for controlled foreign companies

The "*high tax*" (or "*comparable tax*") exemption is one of the most favourable exemptions under the CFC provisions, as it fully excludes a foreign company from these rules if it pays at least 67,5% of the tax it would have owed in South Africa had it been a South African tax resident.

A CFC is a company in which South African residents collectively hold at least 50% of the participation or voting rights. It also includes a foreign company whose financial results are included in the consolidated financial statements of a South African taxpaying company. The CFC rules aim to strike a balance between safeguarding the South African tax base and facilitating legitimate international business activities. The comparable tax exemption ensures that only foreign entities paying a fair level of tax abroad benefit from relief under these provisions.

Determining whether a foreign entity qualifies for the high tax exemption requires an actual tax calculation. This involves computing the CFC's net income as if it were a South African tax resident – i.e. applying South African tax principles to the foreign entity's financial activities – and then comparing the resulting tax liability to the foreign taxes already paid. The determination of "*net income*" is governed by section 9D(2A) of the ITA, which outlines the specific inclusions and deductions that must be considered.

According to the Budget review documents, the comparable tax exemption does not currently take into account tax systems in which a country allows certain shareholders of a foreign company to receive refunds for tax paid by the dividend-declaring company. In response, National Treasury has proposed that such shareholder tax refunds should be factored into the comparable tax exemption calculation. Although the precise method of implementation has not been specified, it may be that the refunded tax amount will be treated as a reduction in the foreign tax paid by the CFC when assessing compliance with the 67,5% threshold.

This adjustment seeks to prevent instances where a CFC appears to meet the high tax threshold based on a nominal tax rate, while a significant portion of that tax is ultimately refunded to its shareholders. By incorporating these refunds into the calculation, the integrity of the exemption could arguably be reinforced, ensuring that only entities genuinely subject to a substantial tax burden abroad qualify for relief.

Howmera Parak

Amendments to prevent the avoidance of the CFC exit charge

Section 9H of the ITA, which pertains to the imposition of an exit charge, stipulates that upon a foreign company ceasing to be a CFC, a deemed disposal of its worldwide assets is triggered, occurring on the day immediately preceding the cessation. Complementary to this, section 9D(2A) mandates that the "*net income*" of a CFC be calculated as if the CFC were a South African taxpayer and tax resident. These provisions are designed to prevent the avoidance of South African tax through the manipulation of foreign subsidiaries and their control structures.

National Treasury has identified arrangements between South African holding companies and their foreign subsidiaries, designated as CFCs, which facilitate the acquisition of all shares in the South African holding companies by the CFCs. This transaction, while effectively shifting control, is being structured in a manner that avoids the triggering of the exit charge under section 9H. Consequently, the intended tax implications associated with the change in control and deemed disposal of assets are circumvented, leading to a potential loss of revenue for SARS.

To address this anomaly, National Treasury proposes an amendment to the ITA to ensure that the exit charge is appropriately triggered when a CFC acquires the shares of its South African holding company. This measure seeks to uphold the integrity of the CFC rules and prevent potential tax avoidance through the impermissible exploitation of structural inversions.

Stephan Spamer

Individual tax and employees' tax

CDH

Employment tax incentive: The gift that keeps on giving – or taking?

It goes without saying, but South Africa faces a significant and concerning unemployment rate. The 2025 State of the Nation Address reiterated South Africa's omnipresent employment challenges. In particular, the Quarterly Labour Force Survey reported an unemployment rate of 31,9% in Q4 of 2024. Even more concerning is the lack of employment within the younger population. Statistics South Africa recently noted a 45,5% unemployment rate among young individuals aged 15–34 years.

The future of South Africa depends on its youth and their ability to upskill and become employable, thereby contributing to the economy and overall prosperity of South Africa. With almost every second young person not employed, it is one of the most critical issues currently facing South Africa and if interventions and programmes are not implemented, it could have drastic long-term negative effects.

One of these interventions is the Employment Tax Incentive (ETI). Essentially it is aimed at encouraging employers to assist with labour market activation and increase employment by allowing for a reduction of the employer's employees' tax liability to the extent that they employ and pay remuneration to employees who fall within the qualifying criteria (e.g. within the youth category).

In other words, typically, individuals qualifying to be employed under the ETI programme would not cross the lowest marginal income tax threshold, being taxable income of R95,750 per annum.

By virtue of the fact that these individuals do not fall within the minimum tax bracket, employers do not need to deduct employees' tax on remuneration paid to them. However, employers will still have an employees' tax liability for employees that do not fall within this category. It is this employees' tax liability that benefits from the ETI as it reduces the monthly bill payable by the employer to SARS.

Current ETI calculations

The ETI has a fairly complicated calculation that needs to be performed on a monthly basis to determine the amount of ETI an employer can claim per eligible employee. At its simplest, the calculation takes into account the following items:

- the monthly remuneration paid to the qualifying employee (i.e. the amount paid to the employee);
- the period for which the qualifying employee is employed (i.e. if they are employed within the first or second 12 months); and
- the amount or percentage that may be claimed.

Given inflation and other impacts, the monetary thresholds and amounts applicable to claiming the ETI have been amended since it was first introduced in 2013. As recently as 2022, relevant legislation was passed that amended the calculation of monthly remuneration for purposes of the Employment Tax Incentive Act 26 of 2013 (ETI Act) from 1 March 2022.

Employment tax incentive: The gift that keeps on giving – or taking?

...continued

The current monetary ETI calculation amounts in effect are:

Monthly remuneration	Formula *First 12 months*	Formula *Second 12 months*
R0 to R1,999.99	75% of monthly remuneration	37,5% of monthly remuneration
R2,000 to R4,499.99	R1,500	R750
R4,500 to R6,499.99	R1,500 – (75% x (monthly remuneration – R4,500))	R750 – (37,5% x (monthly remuneration – R4,500))

This table is important because, amongst other things, an employer that is otherwise eligible to claim the ETI could be denied from claiming it if the wage paid to a qualifying employee is less than the prescribed minimum amount. The actual prescribed minimum is dependent on whether or not the wage is paid under a wage regulating measure or the National Minimum Wage Act 9 of 2018.

Currently, in terms of section 4(1)(b)(i) of the ETI Act an employer that is not subject to a wage regulating measure will only be allowed to claim the ETI for an employee who is employed and paid remuneration for at least 160 hours in a month if the wage paid to that employee for that month is at least R2,000. If the employee works for less than 160 hours per month there is an apportionment calculation that needs to be performed.

Over and above this, effective 1 March 2025, the national minimum wage for all workers was increased to R28.79 for each ordinary hour worked. This was an increase on the previous minimum of around 4,4%. For a person working a 160-hour month this is equivalent to approximately R4,606 per month. This means that an eligible employee working 160 hours or more in a month needs to be paid R4,606 per month.

Employment tax incentive: The gift that keeps on giving – or taking?

...continued

Changes to the ETI income bands

Given these amendments to the national minimum wage, it was announced that effective from 1 April 2025, the formula to calculate the ETI and the eligible income bands would be adjusted. The reasons for this are partially due to adjustments of minimum wages since the last increase in the value of the incentive in 2022. This is because the minimum wage impacts the net effect of the ETI that is claimable and hence the viability of the incentive.

On this basis, Government proposes maintaining the value of the ETI at a maximum of R1,500 per month in the first 12 months and R750 per month in the second 12 months of eligibility. However, employers will only be able to claim the incentive at a rate of 60% of the wages below R2,500 per month, where such wage minimums are allowed due to existing exemptions.

Furthermore, the maximum value of R1,500 per month will apply to employees earning between R2,500 and R5,500 monthly, up from R2,000 and R4,500 previously. The incentive value will decline as wages increase, tapering to zero at a monthly income of R7,500 (previously R6,500).

It is welcomed that Government is continuously alive to the impact of the national minimum wage on the feasibility and use of the ETI. While previously the amount claimable under the ETI was increased due to inflation and minimum wage adjustments over time, this time around, Government has proposed adjusting the eligible income bands instead. It will be interesting to see whether these adjustments are sufficient to maintain the attractiveness of the ETI, thereby encouraging the right behaviour by the private sector to assist Government with the unemployment crisis.

Jerome Brink

The brackets are beginning to run

Along with the false start in February, it appears the February Budget documents jumped the gun when proposing inflationary adjustments to all personal income tax brackets. The actual Budget tabled by the Minister has shown that these tax brackets have not been adjusted for inflation for the second year in a row. If this trend continues, these brackets will no longer creep, but will begin running.

Notably, this bracket creep is across the board (whereas the February proposal allowed full adjustments for lower tax brackets and partial adjustments for higher tax brackets), and includes the stagnation of medical scheme tax credits. Furthermore, all three rebates (primary, secondary and tertiary) remain unchanged and the income tax minimum thresholds stay frozen in place from the 2024 tax year.

The result of this is that any increases to taxable income may propel individuals into a higher tax bracket, while the same amount of taxable income earned by an individual in their 2026 tax year will be taxed at the same rate that it was during their 2024 tax year. Put differently, individuals will lose more of their taxable incomes to SARS in real terms when taking inflation into account.

This is often a more discreet way of indirectly raising taxes that does not necessarily raise the ire of the median taxpayer who is not immersed in the full gamut of tax policy proposals.

Personal income tax comprises approximately 40% of the total revenue collected by SARS. Therefore, with the previously mooted 2% increase in VAT being revised down to a 1% increase staggered over two tax years, allowing the personal income tax brackets to creep for another year will give National Treasury a projected additional R19,5 billion with which to plug the fiscal deficit.

This will also be a home run for SARS, which will not need to put additional resources into collecting a new type of tax (such as if a wealth tax were introduced), but rather just collect an existing tax at a higher effective rate. It is also a more politically neat way of collecting more revenue that is usually less controversial to the average taxpayer.

The only relief on the horizon is the adjustment of the transfer duty brackets. This, however, only benefits those with the resources to purchase immovable property, and does not translate into ongoing relief. For the average individual taxpayer, the real increase in the amount of income tax payable may hit hard at a time when household expenditure is already high, and the rate of VAT is also being increased.

Nicholas Carroll

Cross-border retirement fund exemptions facing reform

The Budget has confirmed that reform is on the horizon for the tax treatment of cross-border retirement funds due to the concern that the current tax framework creates an inadvertent 'double non-taxation' scenario.

Under the ITA, any foreign pension, lump sum or annuity received by a South African tax resident is included in their gross income. However, certain exemptions often result in such income being excluded from taxation (i.e. the foreign retirement fund amount was received for services rendered outside of South Africa). While these provisions aim to prevent undue double taxation, National Treasury has identified cases where the interaction between domestic exemptions and double taxation agreements (DTA) leads to income being taxed in neither jurisdiction (i.e. double non-taxation).

This issue arguably arises when a DTA grants South Africa the exclusive right to tax a specific type of retirement income, but domestic legislation simultaneously exempts it. The result is a potential unintended anomaly in the system.

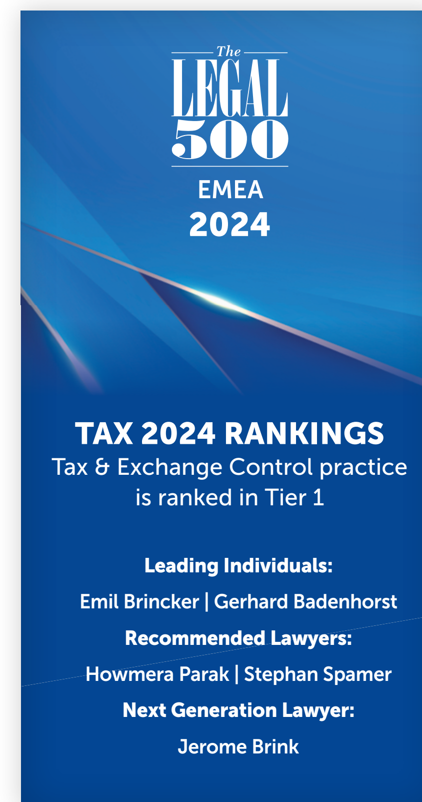
The Minister has proposed in the Budget that *"changes be made to the rules that currently exempt lump sums, pensions and annuities received by South African residents from foreign retirement funds for previous employment outside South Africa, with amendments in the current legislative cycle"*.

While further specifics relating to the proposed changes have not been provided, the overall goal appears to be to align South Africa's tax system with international best practices, ensuring that income from foreign retirement funds is appropriately taxed, especially where there is no tax in the source jurisdiction.

However, what is also important to note that any domestic amendments should not contradict or be inconsistent with the DTAs already in place with many foreign jurisdictions.

Addressing the taxation of foreign retirement funds is a complex issue that requires balancing the need for revenue collection with the need to remain attractive to foreign professionals and investors. As National Treasury develops specific legislative amendments, it will be important to consider the potential impacts on individuals and businesses, ensuring that the tax system remains fair, efficient and competitive.

Mariska Delport



Tax administration – understatement penalties

CDH

Understatement penalties and *bona fide* inadvertent errors

Section 222(1) of the TAA provides that SARS must impose an understatement penalty on a taxpayer where that taxpayer has made an "*understatement*". An "*understatement*" can include various acts resulting in prejudice to SARS or the fiscus, but a basic example would be where a taxpayer has understated its income in a return.

The amount of the penalty is determined with reference to a table contained in section 223(1) of the TAA, which lists various categories, each corresponding to a relevant penalty percentage.

The categories include "*substantial understatement*", "*reasonable care not taken in submitting return*", "*no reasonable grounds for tax position taken*" and "*gross negligence*".

A "*substantial understatement*" is factually determined with reference to the amount involved. If the prejudice to SARS exceeds 5% of the amount of tax that should have been charged, or it exceeds R1 million, it will constitute a substantial understatement.

The applicability of the other categories is determined with reference to the behaviour of the taxpayer.

However, no understatement penalty may be imposed if the understatement resulted from a *bona fide* inadvertent error.

SARS' interpretation of a *bona fide* inadvertent error

SARS has generally taken a very narrow view on what constitutes a *bona fide* inadvertent error.

In SARS' Guide to Understatement Penalties (Issue 2), it is explicitly stated that "*the only errors that may fall within the* bona fide *inadvertent class are typographical mistakes – but only properly involuntary ones.*"

Developments in case law

Recently, there have been at least two important cases dealing with the issue of understatement penalties and what constitutes a *bona fide* inadvertent error.

In the case of *The Thistle Trust v Commissioner for the South African Revenue Service* [2024] ZACC 19 (2 October 2024), the taxpayer had relied on a tax opinion in respect of a particular tax position taken.

SARS disagreed with the position and assessed the taxpayer to tax as well as an understatement penalty on the basis of "*reasonable care not taken in completing return*" and "*no reasonable grounds for tax position taken*". The court agreed with SARS that the tax position was not correct. In respect of the understatement penalty, the taxpayer argued that, since it relied on a tax opinion (which appears to have been incorrect), the understatement resulted from a *bona fide* inadvertent error, and no understatement penalty should be imposed. In the Supreme Court of Appeal, it appears that SARS may have conceded this point. On appeal to the Constitutional Court, the issue of whether there was a *bona fide* inadvertent error was not decided, but the court did mention that because the taxpayer relied on a tax opinion, SARS would fail to discharge the burden of proving that the taxpayer did not take reasonable care or that it had no reasonable grounds of the tax position taken.

Understatement penalties and *bona fide* inadvertent errors *...continued*

In the case of *Commissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd* (1269/2021) [2023] ZASCA 10 (07 February 2023), the facts were somewhat similar in that the taxpayer had also relied on advice and an opinion in respect of a particular tax position. In the Supreme Court of Appeal the court held that the tax position was wrong, but also held that the taxpayer's *bona fide's* could not be questioned: the relevant tax returns were submitted in the *bona fide* belief that the tax position taken was correct. The court also held that it made no difference that the taxpayer did not disclose the tax opinion on which it relied. Accordingly, the imposition of the understatement penalty was set aside. This matter did eventually proceed to the Constitutional Court on appeal, where the taxpayer was successful on the merits, and the issue of understatement penalties fell away.

New proposal

It was indicated in the Budget that the concept and scope of a "bona fide *inadvertent error*" is contentious – most likely as a result of the difference between the view that SARS has taken in its guide compared to the position that the courts have adopted.

The brief explanation provided in the Budget is that other tax administration regimes do not make use of the concept of a *bona fide* inadvertent error because they do not mix purely factual categories such as the "*substantial understatement*" category with behavioural categories in a single provision.

It is now proposed that the "bona fide *inadvertent error*" exemption be explicitly linked to the category of "*substantial understatement*".

Presumably what is meant is that the "bona fide *inadvertent error*" exemption will only apply to a penalty imposed as a result of a "*substantial understatement*" and not a penalty based on any of the other behavioural categories.

It is interesting to note that the exemption contained in section 223(3) of the TAA, where a taxpayer may escape liability for an understatement penalty where it had obtained a qualifying tax opinion, only applies to penalties imposed on the basis of a substantial understatement.

Heinrich Louw

VAT

CDH

The VAT rate

The Budget that was set to be tabled on 19 February 2025 was postponed primarily on the basis that Cabinet was unable to reach consensus on a proposed two percentage point increase in the VAT rate.

Following the three-week deliberation period, it seems that a compromise was reached, as it was announced that the VAT rate will be increased in two stages, the first being by a 0,5 percentage point to take effect on 1 May 2025 and by a further 0,5 percentage point to take effect on 1 April 2026. This will bring the VAT rate from 15% to 15,5% with effect from 1 May 2025, and then to 16% with effect from 1 April 2026.

The VAT rate increase was motivated as being necessary to raise additional revenue required to increase funding for key public services, including education, health and commuter rail, and in particular, to enable the continued funding of the COVID-19 Social Relief of Distress grants. It has been stated that in making this decision, Government considered the potential contributions of each of the main tax instruments. VAT was considered to be an efficient source of revenue with a broad base and a simple design. It was also highlighted that South Africa's VAT rate is still relatively low compared with peer countries. It seems that in making this statement, the Minister omitted to consider the VAT rates of such other countries holistically in relation to those countries' other tax rates. For example, such countries may have lower income tax or corporate tax rates, and other benefits such as free education and healthcare are afforded to the citizens of those countries with higher VAT rates.

While this lower rate increase is of course preferred, it is not without consequence.

The VAT rate increase will have a significant impact on low-income households. In this regard, it has been recognised that a rate increase affects all households through price increases, but most VAT is paid by higher-income households that consume more. It was pointed out that over 75% of VAT revenue is derived from households in the top four expenditure deciles. In this regard, we note that, notwithstanding that 75% of VAT revenue is derived from higher income households, it remains that lower-income households spend a substantially larger portion of their disposable income on VAT in comparison to higher-income households, and as such, stand to be most adversely affected by the increased VAT rate.

To alleviate this impact on low-income households, it is proposed that there will be above-inflation increases to social grants and that the list of zero-rated foodstuffs will be expanded, as discussed below.

The proposed effective date of 1 May 2025 for the first increase does not leave much time for vendors to amend their systems and procedures to properly implement the VAT rate increase from that date. As was the case with the 2018 VAT rate increase, some of the industries that will be most affected by the change are

The VAT rate*...continued*

the financial services sector and the insurance industry, which face a number of practical challenges with regard to supplies made before and after the effective date of the increase.

In terms of the general time of supply rules contained in section 9 of the VAT Act, a supply generally takes place at whichever is earlier between when an invoice is issued or payment is received. Therefore, the rate of tax applicable at the date upon which the time of supply takes place would be the rate applicable to such supply. Uncertainty may, however, arise in certain instances, for example, with supplies that commence pre-May 2025 but are only concluded after 1 May 2025, or where agreements are entered into and prices agreed upon prior to the time of supply for VAT purposes. In such instances, there are certain provisions in the VAT Act, in particular, sections 67 and 67A, that deal with supplies over the transitional period from the current rate to the new rate, as well as certain anti-avoidance provisions to prevent vendors from structuring transactions to avoid paying VAT at the new rate. These provisions in the VAT Act will need to be carefully considered by vendors so as to ensure the correct treatment of transactions as we transition from the current VAT rate to the increased VAT rate.

Zero-rated foodstuffs

Section 11(1)(j) of the VAT Act provides for the zero-rating of certain foodstuffs as set out in Part B of Schedule 2 of the VAT Act. The VAT Act currently provides for the zero-rating of 21 essential food items.

To alleviate the impact of the increased VAT rate on low-income households, the Budget proposes expanding the list of zero-rated foodstuffs.

From 1 May 2025, the zero-rating will be expanded to include edible offal of sheep, poultry, goats, swine and bovine animals; specific cuts such as heads, feet, bones and tongues; dairy liquid blends; and tinned or canned vegetables.

The 2022/23 Income and Expenditure Survey shows high consumption of these proposed additional items by low-income households. It is estimated that these measures will cost Government about R2 billion in forgone revenue.

Importation of low-value goods

The VAT Act provides for a VAT exemption in respect of the importation of certain low-value goods. The legislation will be reviewed to ensure the equal VAT treatment of such goods purchased online, as many foreign suppliers of these goods are not registered for VAT.

Debit and credit notes relating to a going concern as per section 8(25) of the VAT Act

In terms of section 21(1)(d)(ii) of the VAT Act, where a vendor acquires a business as a going concern from another vendor under section 11(1)(e), the purchasing vendor, being the new owner, may issue a credit note in respect of goods or services that were

The VAT rate *...continued*

supplied by the seller of the enterprise, but which are now returned to the purchasing vendor as the new owner.

Section 21(1)(d)(ii) only applies to the zero-rated supply of a business as a going concern under section 11(1)(e). It does not apply to a transfer of a business as a going concern under section 42 or 45 of the ITA read with section 8(25) of the VAT Act.

It is proposed that section 21(1)(d)(ii) of the VAT Act be expanded to include the return of goods or services that were supplied by the transferor of a business as a going concern under section 42 or 45 of the ITA read with section 8(25) of the VAT Act, where the goods or services are returned to the transferee.

Reviewing the scope of the intermediary provisions

An "*intermediary*" is defined in the VAT Act to mean a person who facilitates the supply of electronic services (e-services) by an e-services supplier and who is responsible for the issuing of invoices and collecting payment for the supply.

In the context of e-services supplied by foreign suppliers to South African consumers, section 54(2B) of the VAT Act makes provision for intermediaries to account for VAT on supplies made on behalf of foreign suppliers of e-services as if these supplies were made by the intermediary. Section 54(2B) is, however, only applicable where the intermediary is a vendor; the principal/e-services supplier is not a resident of the Republic and is not a registered vendor; and the e-services are supplied to a person in the Republic.

It follows that the section 54(2B) deeming provision which allows for intermediaries to account for VAT on supplies made on behalf of foreign suppliers of e-services does not extend to supplies made on behalf of local suppliers. This results in the intermediary not being able to issue a single consolidated tax invoice for these supplies to the customer. It is proposed that the intermediary provisions be widened to include supplies facilitated on behalf of local suppliers.

Reviewing VAT rules dealing with documentary requirements for silver exports

Refineries receive silver containing material from various depositors for refining or smelting purposes. In certain instances, the refineries may act as agents and sell or export the silver on behalf of these depositors.

The refinery and smelter require large quantities of silver to operate effectively and efficiently, and no single depositor provides sufficient quantities of silver for processing on its own. It is accordingly not possible for each depositor to have its own silver containing material treated separately from the silver containing material of other depositors. Accordingly, when a specific depositor's silver containing material enters the refining/smelting process, it is co-mingled with the silver containing material of other depositors and effectively loses its identity as belonging to a specific depositor.

It is impossible to determine which depositor's silver is exported or delivered by the refinery due to the fact that the refined silver cannot be identified as being the silver in the silver containing material provided by a specific depositor.

The exportation of goods from the Republic will generally be subject to VAT at the zero-rate provided that certain requirements, including certain documentary requirements, are complied with.

The VAT rate *...continued*

As a result, depositors find it difficult to obtain the documentary evidence required in terms of section 11(3) of the VAT Act to support the application of the zero-rate on a transaction-by-transaction basis in relation to their silver, as contemplated in paragraph (a) of the definition of *"exported"* in section 1(1) as well as in terms of the regulations issued in terms of section 74(1) of the VAT Act read with paragraph (d) of the definition of *"exported"* in section 1(1).

The processes relating to the refining and sale of silver as briefly described above, takes place in essentially the same manner as the refining and sale of gold by refineries on behalf of their depositors.

In respect of gold sales, the VAT Act was amended with the introduction of section 54(2C) with effect from 1 April 2024, which provides, *inter alia*, that where gold is exported from South Africa by an agent on behalf of a principal, the agent must obtain and retain documentary proof as is acceptable to the Commissioner for the supply to be zero-rated.

Notwithstanding that the same issues relating to documentary evidence that are experienced by gold refineries in respect of the refining and sale of gold on behalf of its depositors are experienced with the refining and sale of silver for export, it remains that section 54(2C) only refers to supplies of gold, and not also to silver.

In this regard, we note that when the Draft Taxation Laws Amendment Bill that introduced section 54(2C) was published, submissions were made proposing that the amendment also include silver. However, this proposal was not accepted on the basis that *"The checks and balances present with the refinery of gold and the export thereof are not the same as those relating to silver and other metals."* Following engagement with industry, it is now understood that the reporting requirements for silver are similar to those required for gold. To address this issue regarding documentary evidence, it is proposed that changes be made to the VAT Act.

Updating part of the Export Regulations

When movable goods are exported from South Africa by the foreign recipient or their appointed cartage contractor, specific requirements outlined in the Export Regulations (No R.316 Government Notice 37580 issued on 2 May 2014) must be followed to zero-rate the supply to the foreign recipient. Regulation 8(2)(e) applies where a vendor supplies movable goods to a qualifying purchaser or a registered vendor, the goods are delivered to the port authority, master of the ship, container operator, aircraft pilot, or the control area of the airport authority, and the goods are destined for export.

In some instances the goods are delivered to a private entity operating within the harbour precinct where ownership passes to the foreign recipient, and the question has arisen as to whether such goods are delivered to the *"port authority"*, as contemplated by Regulation 8(2)(e). It is proposed that Regulation 8(2)(e)(ii) be amended to clarify that goods delivered to a private entity operating within the harbour precinct from where the goods are exported by the foreign recipient also qualify for the zero-rate.

The VAT rate*...continued*

Reviewing the VAT treatment of clinical trial drug testing services

According to SARS, the current wording of section 11(2)(l) of the VAT Act prohibits the application of the zero-rating of clinical trial testing services supplied to non-residents who are outside South Africa at the time of supply, even though the results are consumed offshore. This is because the testing may involve local patients or may in certain circumstances be performed directly on movable property situated within South Africa (such as blood samples), which is not subsequently exported, resulting in these services being subject to VAT at the standard rate. It is proposed that a review be conducted to reassess the VAT status of these services.

Updating Regulations on the domestic reverse charge mechanism for valuable metal

The definition of "*residue*" in Regulation 1 of the Domestic Reverse Charge Regulations was amended in 2024 to be limited to material derived from or incidental to mining operations. Concerns were raised about the practical difficulties that arose from identifying residue not resulting from or incidental to mining operations from other scrap gold items. It is proposed that the definition of "*residue*" be amended to remove this limitation. This amendment will address the difficulties experienced in distinguishing between different types of waste materials containing gold.

Reviewing the definition of "*insurance*"

A revision of the definition of "*insurance*" in the VAT Act is proposed following the Constitutional Court ruling in *Capitec Bank Limited v Commissioner for the South African Revenue Service* (CCT 209/22) [2024] ZACC1.

This case involved the VAT implications of loan cover which Capitec provides to its customers for no consideration in the event of death or retrenchment. The Constitutional Court held that the loan cover was a mixed supply made in the course or furtherance of Capitec's exempt activities of lending money and its enterprise activities in the course of which taxable fees are charged.

It is expected that the definition of "*insurance*" in the VAT Act will be amended to exclude insurance or guarantees provided for no consideration.

Clarifying the VAT treatment of temporary letting of residential properties

Section 18D was introduced with effect from 1 April 2002 to provide for the VAT treatment of the temporary letting of residential properties which have been developed for sale. Although this section has been amended a number of times since its introduction, certain interpretational issues remain.

It is proposed that section 18D and consequential sections of the VAT Act in relation thereto be reviewed and updated.

Reviewing the VAT treatment of airtime vouchers for use outside South Africa

Airtime vouchers supplied in South Africa for exclusive use in an export country consist of two components, namely telecommunication services provided outside South Africa and distribution

The VAT rate *...continued*

services within South Africa. Currently, VAT is charged on the sale of these vouchers, despite their exclusive use and consumption outside South Africa. It is proposed that the VAT Act be amended to classify the sale of these vouchers as zero-rated supplies, aligning with their intended international use.

VAT disputes on the importation of goods

The imposition of VAT on imported goods, including any penalties or interest arising from import transactions, is governed by the VAT Act. For administrative efficiency, disputes related to VAT on imports, such as the refusal to waive penalties and interest, are typically addressed through the Customs internal administrative appeals framework outlined in Chapter XA of the Customs and Excise Act.

However, vendors retain the right to challenge these matters by lodging objections and appeals under the TAA. This dual framework creates practical and administrative complexities, as customs and VAT disputes are often interrelated and would be more effectively resolved under a unified dispute resolution process.

To enhance efficiency and consistency, it is proposed that the dispute resolution mechanisms under both acts be reviewed to establish a more integrated approach for handling such disputes. We hope that these dispute resolution mechanisms will be extended to disputes relating to exports as well.

Inspecting enterprises submitting voluntary VAT registration

Under the TAA, SARS has the authority to conduct inspections at business premises under specific conditions. It is proposed that this provision be expanded to include inspections for voluntary VAT registration applications.

To prevent VAT fraud and misuse, SARS may require a site inspection upon submission of a voluntary VAT registration application. This inspection would verify the existence of the business address provided and assess whether the premises are suitable for carrying out the declared business activities.

Gerhard Badenhorst, Varusha Moodaley and Tersia van Schalkwyk

Customs & Excise

CDH

Customs and Excise

Excise duties

Alcoholic beverages

- Government published a discussion paper, The Taxation of Alcoholic Beverages, for public comment on 13 November 2024. It proposes adjustments to the alcohol excise taxation policy framework, including the introduction of a three-tier progressive excise duty rate structure for wine and beer.
- Government will hold public consultations on the new excise framework during 2025.
- Considering that the details of the new alcohol excise taxation framework will only be finalised after the 2025 Budget, Government proposes to increase excise duties on alcoholic beverages by 6,75% for 2025/26.

Tobacco and related products

- The guideline excise tax burden as a percentage of the retail selling price of the most popular brand within each tobacco product category is currently 40%.
- Government proposes increasing tobacco excise duties by 4,75% for cigarettes, cigarette tobacco, and electronic nicotine and non-nicotine delivery systems (vaping).
- The proposed increase for pipe tobacco and cigars is 6,75%.
- To ease the administrative burden of implementing adjustments on Budget day, in future years adjustments to excise duties will take effect from 1 April. Legislative provisions to deal with unusual clearances of cigarettes around Budget announcements have been in place since 2021 and may be extended.

Health promotion levy

- An inflationary increase in the health promotion levy was due to take effect from 1 April 2025.
- Government proposes cancelling this increase to allow the sugar industry more time to restructure in response to regional competition.

Ad valorem excise duties on smartphones

- Currently, ad valorem excise duties on smartphones are charged at a flat rate of 9%.
- To enhance smartphone affordability at the lower end of the price spectrum and support efforts to promote digital inclusion for low-income households, Government proposes that as of 1 April 2025 this duty rate be applied only to smartphones with a price paid of greater than R2,500 at the time of export to South Africa.

Fuel taxes and levies

- To mitigate the effects of higher inflation arising from fuel price increases, the general fuel levy has remained unchanged since 2022. Government proposes keeping the general fuel levy unchanged for 2025/26.
- The Road Accident Fund (RAF) levy and the customs and excise levy will also remain unchanged.

Adjustment to the diesel refund for the primary sector

- To support South Africa's international competitiveness, tax regulations enable farming, mining and forestry businesses to qualify for a refund of the general fuel levy and RAF levy for 80% of eligible diesel fuel purchases.
- Government proposes aligning with the original policy intent and applying the refund for all eligible diesel purchases declared to SARS, effective from 1 April 2026.

Customs and Excise *...continued*

- The proposal should hopefully simplify the administration of the diesel refund system.

Customs Act

Delegation of functions of customs officers and designation of persons as customs officers

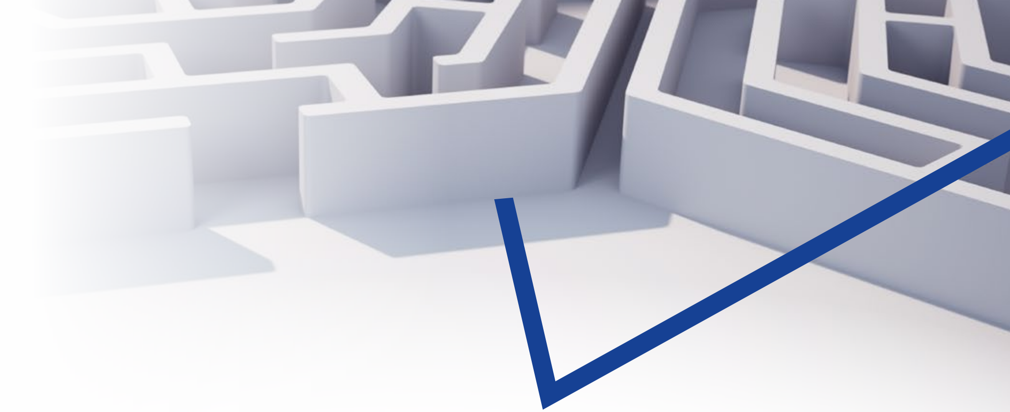
- It is proposed that section 3 of the Customs Act be amended to insert a provision providing that the Commissioner may, with the concurrence of an organ of state or institution with whom the Commissioner has concluded an agreement in terms of section 2(1A), delegate functions of customs officers to persons in the service of such organ of state or institution, or designate persons in the service of such organ of state or institution to act as customs officers for a specific purpose.
- This amendment is related to the implementation of the new SARS electronic traveller management system, among other things.

Customs voluntary disclosure programme

- The TAA provides for a voluntary disclosure programme, but excludes the Customs Act. It is proposed that the Customs Act be amended to provide for a customs and excise voluntary disclosure programme.

Timing of adjustment of bill of entry

- It is proposed that section 40 of the Customs Act be amended in relation to the timing of the adjustment of the bill of entry to create flexibility in respect of adjustments made in a manner prescribed by the Commissioner. The required flexibility can be achieved by providing for the Commissioner to also prescribe the timing for such adjustments.
- The Commissioner may by rule determine a different manner to adjust a bill of entry – for example, by allowing a single consolidated document to be submitted to adjust various affected bills of entry. This could happen in instances of transfer pricing adjustments or where invoices for bulk export shipments are amended. In these instances, the mandatory adjustment of the affected bills of entry cannot happen "*without delay*" as currently required by section 40. SARS is also reviewing how a single document could be used to adjust various bills of entry in such instances.



Customs and Excise *...continued*

Body-worn cameras

- SARS is investigating issuing body-worn cameras to customs officers to promote trust, transparency and accountability in relation to the enforcement functions performed by customs officers.

Diesel refund

- The Customs Act may require amendments to facilitate the implementation of the new diesel refund system.

Dutiability of waste derived from processing imported goods in manufacturing plants

- SARS aims to consider, with the co-operation of relevant government agencies such as the International Trade Administration Commission of South Africa, the dutiability of waste derived from processing imported goods in a manufacturing plant to provide for relief when waste is disposed of in a sustainable and environmentally friendly manner, such as recycling.

Movement of fuel products

- The fuel industry in South Africa has increasingly shifted from local manufacturing to importing refined petroleum products such as petrol, diesel, illuminating kerosene and aviation kerosene.
- Companies importing fuel levy goods highlighted the challenges they encounter in moving imported products (especially aviation kerosene) through the national multi-product pipeline.
- SARS proposes to review the legislation pertaining to the fuel industry to align it with changes in this industry and to facilitate the movement and storage of fuel products.

Petr Erasmus and Savera Singh

OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa, Kenya and Namibia, please contact:

Emil Brincker
Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com

Gerhard Badenhorst
Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com

Jerome Brink
Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com

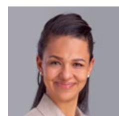
Petr Erasmus
Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com

Dries Hoek
Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com

Alex Kanyi
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com

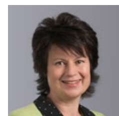
Heinrich Louw
Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com

Lena Onyango
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lena.onyango@cdhlegal.com

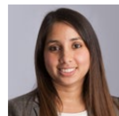


Howmera Parak
Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com

Stephan Spamer
Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



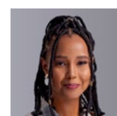
Tersia van Schalkwyk
Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



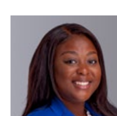
Varusha Moodaley
Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com

Nicholas Carroll
Associate:
Tax & Exchange Control
T +27 (0)21 481 6433
E nicholas.carroll@cdhlegal.com

Mariska Delport
Associate:
Tax & Exchange Control
T +27 (0)11 562 1574
E mariska.delport@cdhlegal.com



Puleng Mothabeng
Associate:
Tax & Exchange Control
T +27 (0)11 562 1355
E puleng.mothabeng@cdhlegal.com



Sophie Muzamhindo
Associate:
Tax & Exchange Control
T +27 (0)11 562 1729
E sophie.muzamhindo@cdhlegal.com

Savera Singh
Associate:
Tax & Exchange Control
T +27 (0)11 562 1575
E savera.singh@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2025 14224/MAR

CDH