



MONTHLY TAX UPDATE

LATEST DEVELOPMENTS IN TAX LAW – FEBRUARY 2020

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OUTLINE



Monthly tax update (Income tax, VAT and TAA – excluding customs).



18 February 2020.



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Cannot cover everything in detail.



Relevance of topics.



Missed anything?



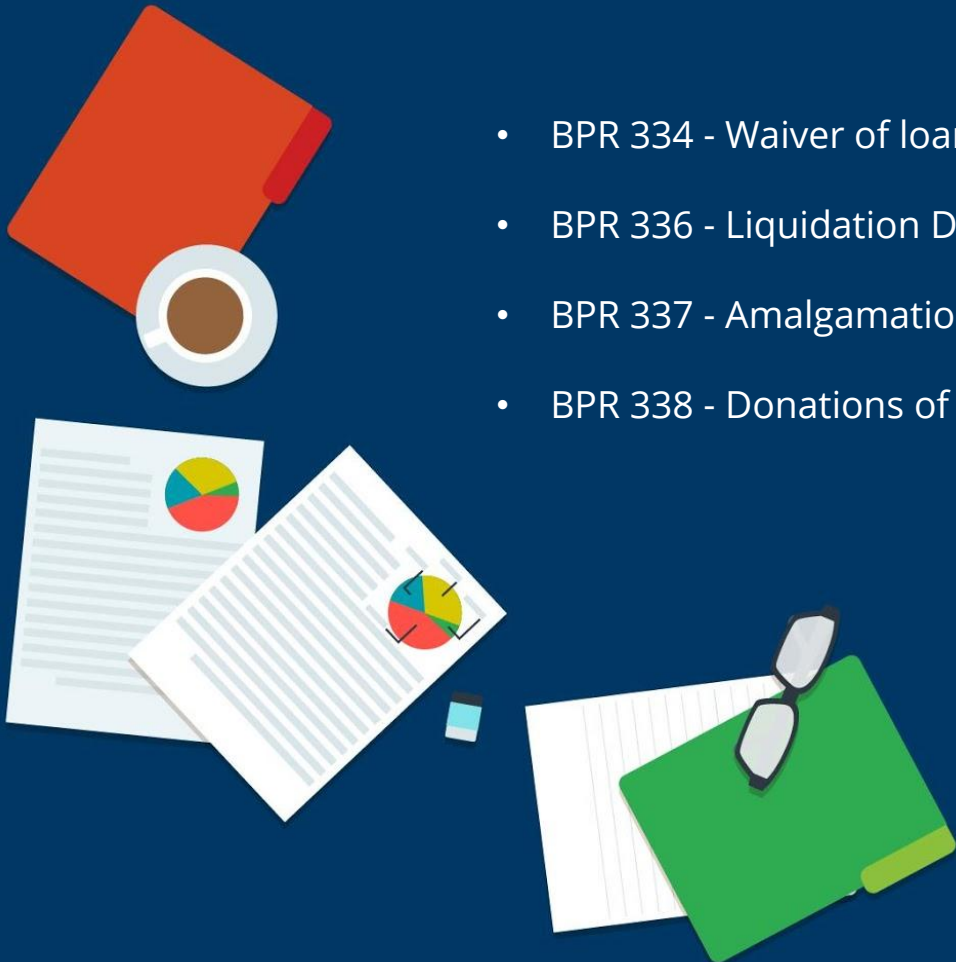
OVERVIEW

- Tax News Flash.
- General Developments.
- Practical issues (email me).
- Binding General Ruling (BGR) 9 (Issue 4) – Taxes on income and substantially similar taxes for purposes of South Africa's tax treaties;



OVERVIEW

- BPR 334 - Waiver of loan claims by the settlor of a trust;
- BPR 336 - Liquidation Distribution;
- BPR 337 - Amalgamation transactions involving the assumption of liabilities only;
- BPR 338 - Donations of money made to a public benefit organisation at a fundraising event;



OVERVIEW

- Brits and 3 Others v CSARS (2017-44380) ZAGPJHC (28 November 2017) – Applicant subject of VAT audit;
- Notice 37, as published in Government Gazette 42961, amending regulations under items (a) and (c) of the definition of "determined value" in paragraph 7(1) of the Seventh Schedule to the Income Tax Act, 1962, on the retail market value in respect of right of use of motor vehicle, as initially published by Government Notice R.362 of 28 April 2015;



OVERVIEW

- SARS Dispute Resolution & Judgments 2019 – 2013.
- Not Covered.
- Roll Overs.



Tax News Flash

- SARS RECOVERS OVER R2-BILLION IN TAXES

- “The revenue service says it's serious about clamping down on illicit financial flows in certain sectors.”

- 6 February 2020

- CRIMINAL CHARGES TO BE DROPPED IN SARS ‘ROGUE UNIT’ CASE

- “The trio faced various charges, including that they had set up an illegal unit within Sars - which was dubbed the “rogue unit” - to spy on taxpayers.”

- 07 February 2020

- SARS REIMAGINED – TAX DODGERS TAKE NOTE

- “...SARS hopes to build an organisation that will provide a world-class service to the compliant taxpayer.”

- 10 February 2020

General Developments

National Legislation

- Final Response Document on the 2019 Draft Tax Bills – 21 January 2020
- Explanatory Memorandum on the Taxation Laws Amendment Bill, 2019

General Developments

Publications

- Draft Binding General Ruling on unbundling of unlisted company: Impact of non-qualifying shareholders;
- Interpretation Note 16 (Issue 3) – Exemption from income tax: Foreign employment income;
 - 31 January 2020.
- Interpretation Note 67 (Issue 4) – Connected person;
 - 28 January 2020.
- Updated Table 3 of interest rates: Rates at which interest-free or low interest loans are subject to income tax.

DATE FROM	DATE TO	RATE
01.08.2019	31.01.2020	7.50%
01.02.2020	Until change in Repo rate	7.25%

PRACTICAL ISSUES

Email me -
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BINDING GENERAL RULING (INCOME TAX) 9 (ISSUE 4)

TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA'S TAX TREATIES - 30 January 2020

Background

- Identifies the taxes administered by SARS which in its opinion constitute taxes on income or substantially similar taxes for purposes of South Africa's tax treaties.
- A tax treaty generally provides for relief for
 - specified taxes, usually listed under Article 2 of a tax treaty, in existence at the time the tax treaty is entered into; and
 - any identical or substantially similar taxes on income that are imposed after the date of signature of the tax treaty in addition to, or in place of, existing specified taxes.



BINDING GENERAL RULING (INCOME TAX) 9 (ISSUE 4)

TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA'S TAX TREATIES - 30 January 2020

Taxes On Income

- Qualify for treaty relief under SA's tax treaties:
 - Normal tax on taxable income (includes a taxable capital gain);
 - Tax on foreign entertainers and sportspersons, a final tax [section 47B(1)];
 - Turnover tax on micro businesses (section 48A);
 - Withholding tax on royalties, a final tax [section 49B(1)]²;
 - Withholding tax on interest, a final tax [section 50B(1)]³; and;
 - Dividends tax [section 64E(1)]⁴.



BINDING GENERAL RULING (INCOME TAX) 9 (ISSUE 4)

TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA'S TAX TREATIES - 30 January 2020

Taxes On Income

- For purposes of the above list, the following are not taxes on income but represent advance payments:
 - Amounts withheld from payments to non-resident sellers of immovable property in South Africa (section 35A);
 - Employees' tax (Fourth Schedule to the Act); and;
 - Provisional tax (Fourth Schedule to the Act).



BINDING GENERAL RULING (INCOME TAX) 9 (ISSUE 4)

TAXES ON INCOME AND SUBSTANTIALLY SIMILAR TAXES FOR PURPOSES OF SOUTH AFRICA'S TAX TREATIES - 30 January 2020

Taxes That Are Not Taxes On Income Or Similar Taxes

- Do not qualify for treaty relief under SA's tax treaties (list is not exhaustive):
 - Customs and excise duties;
 - Diamond export levy;
 - Donations tax;
 - Estate duty;
 - Securities transfer tax;
 - Skills development levy;
 - Transfer duty;
 - Unemployment insurance contributions; and;
 - Value-added tax.

Period: Date of issue until it is withdrawn or amended.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

Recap

- A resident individual in South Africa;
- Made loans to a trust of which he is the settlor and beneficiary;
- Will waive some of the loans to the trust.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

Parties to the proposed transaction

- The applicant: a resident individual who is the settlor and beneficiary of the trust
- The trust: a trust formed and registered in South Africa



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

The proposed transaction

- The applicant has made loans to the trust of over R30 million.
- The trust used the proceeds of the loans to acquire an equity interest in a South African private company.
- The loans are unsecured, interest-free and have no terms of repayment.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

The proposed transaction

- The loans are section 7C loans and to date the interest that the applicant should have received has been calculated and donations tax has been paid in accordance with that section.
- The applicant will waive some of the loans to the trust on or after 31 July 2019.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

Conditions and assumptions

- All donations made on or after 01 March 2018 must be taken into account in calculating the aggregate value of the donation in calculating the aggregate value and applicable donations tax rate.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

Ruling

- The applicant:
 - The loan waivers will be a donation for purposes of section 55;
 - Under section 64(1)(a) donations tax will be levied at 20% to the extent that the aggregate value of the donations are less than R30 million, and at 25%, for amounts exceeding R30 million;
- Paragraph 56(1):
 - any capital loss resulting from the disposal of debt owed by the trust to the applicant must be disregarded because they are connected persons; and
 - insofar as the R100 000 exemption under section 56(2)(b) is taken into account in calculating donations tax, and the trust reduced its expenditure i.r.o. the shares acquired in the private company under paragraph 12A, the R100 000 capital loss will not be disregarded for paragraph 56(2)(b) but will still be subject to paragraph 39.



BINDING PRIVATE RULING (BPR) 334 - 21 NOVEMBER 2019

Waiver of loan claims by the settlor of a trust

Ruling

- The trust:
 - Paragraph 12A will not apply to the debt benefit received when the applicant waives the loan claims, as paragraph 12A(6)(b) excludes 12A to the extent that debt is reduced via a donation for purposes of section 55(1);
 - To the extent that the R100 000 exemption under section 56(2)(b) is taken into account in calculating donations tax, paragraph 12A will not apply and the expenditure incurred for acquiring the shares must be reduced by R100 000 for purposes of paragraph 20;
 - Paragraph 20(3)(b) will not apply to reduce the amount of expenditure incurred in respect of the shares in the private company.



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Recap

- Liquidation distribution (Section 47(1) of the IT Act)
 - Resident company (“liquidating company”);
 - disposes all of its assets;
 - to shareholders;
 - anticipation / course of liquidation / winding up / deregistration;
 - to the extent that the assets are disposed of to another resident company (“holding company”); and
 - on date of disposal forms part of same group of companies.



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Parties to the proposed transaction

- Applicant (“app”) – Listed resident company; and
- Co-Applicant (“co-app”) – Resident company and wholly owned subsidiary of the applicant.



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Description of the proposed transaction

- Step 1:
 - Co-app will dispose of all its assets (shares in app) to the app as a dividend in specie.
- Step 2:
 - Distribution in terms of liquidation distribution.
- Step 3:
 - Loan app granted to co-app in order to acquire shares will be waived.
- Step 4:
 - App will cancel shares and co-app will be deregistered.



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Conditions and assumptions

- Co-app must within 3 years take steps in terms of section 41(4)



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Ruling

- Distribution of shares is a 'liquidation distribution' (paragraph (a) of the definition in section 47(1) of the IT Act);
- No capital gains tax consequences (section 47(2) of the IT Act);
- Disregard disposal or return of capital for purposes of determining taxable income / assessed loss / aggregate capital gain / aggregate capital loss;
- Include dividend in gross income;
- Dividend exempt (section 10(1)(k)(i));
- Co-app must not withhold dividends tax (section 64G(2)(b));
- Paragraphs 77 and 43A of the Eighth Schedule does not apply;



BINDING PRIVATE RULING 336: LIQUIDATION DISTRIBUTION

06 December 2019

Ruling

- No disposal on cancellation of shares (paragraph 11(2)(b)(i) of the Eighth Schedule);
- No securities transfer tax (section 8(1)(a)(v) of STT Act); and
- Paragraph 12A(6)(e) of the Eighth Schedule will apply.



BINDING PRIVATE RULING 337: AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

09 January 2020

Recap

- Amalgamation transaction (Section 44(1) of the IT Act)
 - Resident company (“amalgamated company”);
 - disposes all of its assets;
 - to another resident company (“resultant company”); and
 - by means of amalgamation / conversion / merger.



BINDING PRIVATE RULING 337: AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

09 January 2020

Parties to the proposed transaction

- Applicant (“app”) – Resident company;
- Co-Applicant 1 (“co-app 1”) – Resident company;
- Co-Applicant 2 (“co-app 2”) – Resident company;
- Co-Applicant 3 (“co-app 3”) – Resident company;

Wholly owned by nonresident company



BINDING PRIVATE RULING 337: AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

09 January 2020

Description of the proposed transaction

- Step 1:
 - App, co-app 1 and co-app 2 (“sellers”) dispose of all their assets to co-app 3 and as consideration co-app 3 will assume the liabilities of the sellers; and
 - Transaction will be in the form of a merger transaction.
- Step 2:
 - Sellers commence with liquidation proceedings within 36 months of date of transaction.



BINDING PRIVATE RULING 337: AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

09 January 2020

Conditions and assumptions

- Debt of the sellers were incurred within 18 months before the disposal and is attributable to and arose in the ordinary course of their business undertakings;
- The debt were not incurred by the sellers for the purpose of enabling, facilitating, funding or acquisition by the co-app 3 of the assets.
- Sellers will within 36 months take steps to liquidate / wind up / deregister.
- Will not withdraw steps taken to liquidate / wind up / deregister.



BINDING PRIVATE RULING 337: AMALGAMATION TRANSACTIONS INVOLVING THE ASSUMPTION OF LIABILITIES ONLY

09 January 2020

Ruling

- Disposal of assets is a 'amalgamation transaction' for each seller (paragraph (a) of the definition in section 44(1) of the IT Act);
- Sellers and co-app 3 will be entitled to relief (section 44(2) and 44(3) of the IT Act); and
- Section 44(14) does not apply.



BINDING PRIVATE RULING 338

SECTION 18A DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT - 17 January 2019

Background

- This is a ruling on the interpretation and application of section 18A.
- Tax treatment of payments made to a public benefit organisation (PBO) at a fundraising event;
 - approved under section 30; and
 - applicable as at 17 September 2019.



BINDING PRIVATE RULING 338

SECTION 18A DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT - 17 January 2019

Parties to the proposed transaction

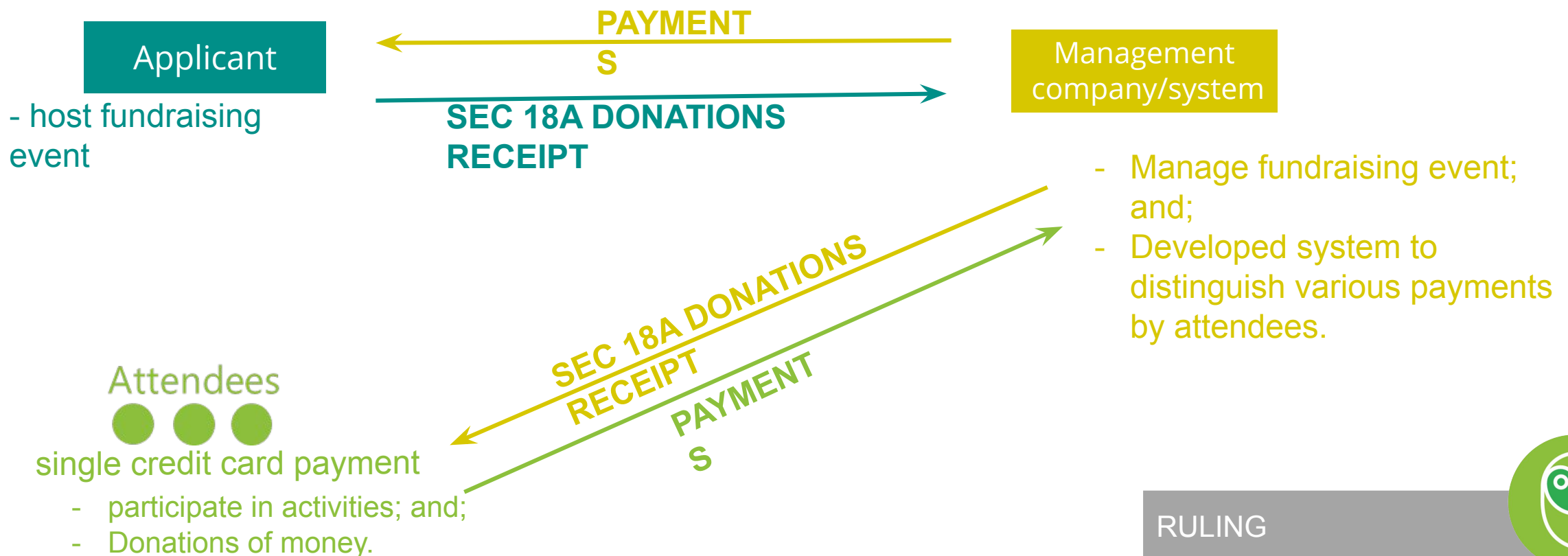
APPLICANT:

- Non-profit resident company
- Approved as a PBO



BINDING PRIVATE RULING 338

SECTION 18A DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT - 17 January 2019



BINDING PRIVATE RULING 338

SECTION 18A DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT - 17 January 2019

Conditions and assumptions

- payment tracking system used should perform intended function;
- accounting for donations of money separately from other payments.



BINDING PRIVATE RULING 338

SECTION 18A DONATIONS OF MONEY MADE TO A PUBLIC BENEFIT ORGANISATION AT A FUNDRAISING EVENT - 17 January 2019

Ruling

- donations made to the applicant will constitute “bona fide” donations made to a PBO under section 18A; and the
- applicant may issue the donors with section 18A receipts in respect of donations made.
- Nothing precludes the Commissioner from exercising the powers under section 30(5), or any amendment or substitution of that provision.

PERIOD: valid for a period five years from 1 January 2020.

RULING



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Issue

- SARS' to adhere to requirements of administrative justice during tax audit.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Background

- This is an urgent application by the applicants for an order:
 - (1) to compel SARS to provide the applicants with the documents on which SARS had based its audit; and
 - (2) to interdict SARS from issuing any additional, estimated or other assessments pursuant to the letters of audit findings until 30 days after the documents had been provided.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Background

- The applicants are VAT vendors who conduct business by purchasing gold jewelry from the public and then selling it to micro refineries and other entities.
- Two other entities rendered administrative assistance to the applicants, and these two entities were in possession of documents relating to the applicants' tax affairs.
- During November 2015 SARS raided the offices of these two other entities and confiscated the applicants' tax (VAT) documents for the 2012 – 2015 years of assessment.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Background

- As a result the applicants were not in possession of any of the relevant documents.
- SARS completed its VAT audits and, during October 2017 issued its letters of audit findings which concluded that:
 - all the applicants' transactions were fictitious; and
 - all input VAT claimed by the applicants for the 2012 – 2017 years of assessment must be written back.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Background

- Due to the far-reaching consequences for the applicants, the applicants made application to SARS for copies of the documents on which the audit findings were based (on 31 October 2017).
- SARS refused to provide the documentation, which meant that it could issue assessments within 21 days without the applicants having had the chance to give their side of the story.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Arguments for the applicants

- SARS refused to provide the documentation.
- As a result, SARS would have become entitled to issue assessments within 21 days after the applicants' request, without the applicants having had the chance to give their side of the story.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Arguments for the applicants

- The applicants relied on section 42 of the TAA (keeping the taxpayer informed).
- In terms of section 42(3) a taxpayer has the opportunity to respond to a tax audit so that the taxpayer may persuade SARS that the audit is incorrect, and which could avoid an assessment.
- CSARS vPretoria East Motors



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Arguments for SARS

- SARS opposed the application on the basis that:
 - (1) SARS had invited the applicants to a meeting to discuss the audit findings; and
 - (2) the applicants had alternative remedies at their disposal other than interdictory relief, i.e. in that they could object to the assessments once issued.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Judgment

- The Court ruled in favour of the applicants.
- The applicants had the right, not only in terms of section 42 of the TAA but also section 32 of the Constitution, to the documents.
- The application was indeed urgent.
- The applicants had made out a case for the relief sought, and the relief was therefore granted.
- SARS was ordered to pay the applicants' costs for the urgent application.



BRITS AND OTHERS V CSARS | CASE NUMBER: 2017/44380

Administrative justice during tax audit

Relevance

- SARS' must adhere to the principles of administrative fairness and fair procedure during tax audits.



GOVERNMENT GAZETTE 42961, REGULATION 37: AMENDMENT OF REGULATIONS UNDER ITEMS (A) AND (C) OF DEFINITION OF "DETERMINED VALUE" IN PARAGRAPH 7(1) OF SEVENTH SCHEDULE TO INCOME TAX ACT, 1962

17 January 2020

Previous regulation (362)

– Regulation 2:

“in cases other than motor vehicle manufacturers, motor vehicle importers, motor vehicle dealers or motor vehicle rental companies, in respect of any year of assessment, the price of acquisition of the motor vehicle paid by the employer (including value-added tax).”



GOVERNMENT GAZETTE 42961, REGULATION 37: AMENDMENT OF REGULATIONS UNDER ITEMS (A) AND (C) OF DEFINITION OF "DETERMINED VALUE" IN PARAGRAPH 7(1) OF SEVENTH SCHEDULE TO INCOME TAX ACT, 1962

17 January 2020

New regulation (37)

– Regulation 2:

“in cases other than motor vehicle manufacturers, motor vehicle importers, motor vehicle dealers or motor vehicle rental companies, in respect of any year of assessment, the price of acquisition of the motor vehicle paid by the employer (including value -added tax) or where the motor vehicle was acquired at no cost, the market value of that vehicle.”



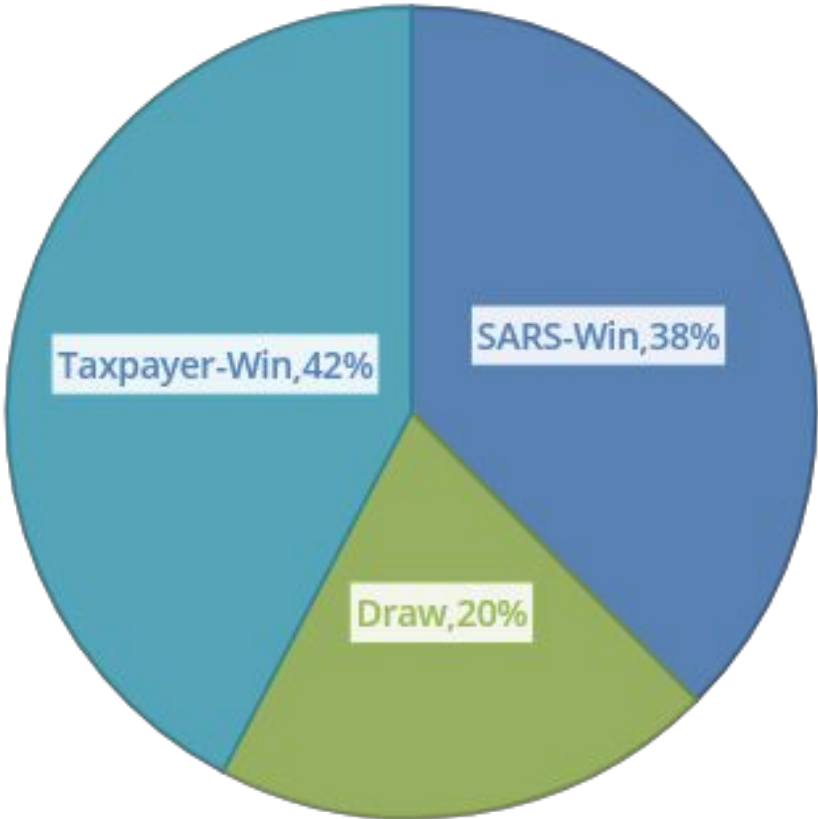
GOVERNMENT GAZETTE 42961, REGULATION 37: AMENDMENT OF REGULATIONS UNDER ITEMS (A) AND (C) OF DEFINITION OF "DETERMINED VALUE" IN PARAGRAPH 7(1) OF SEVENTH SCHEDULE TO INCOME TAX ACT, 1962
17 January 2020

Commencement

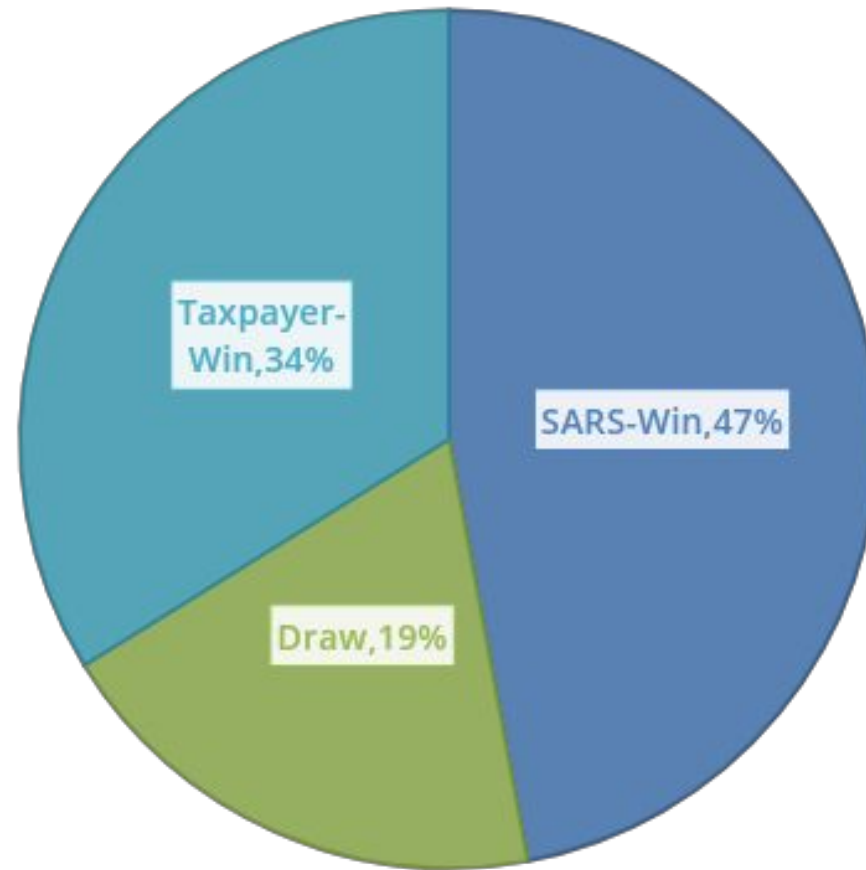
- 01 March 2020



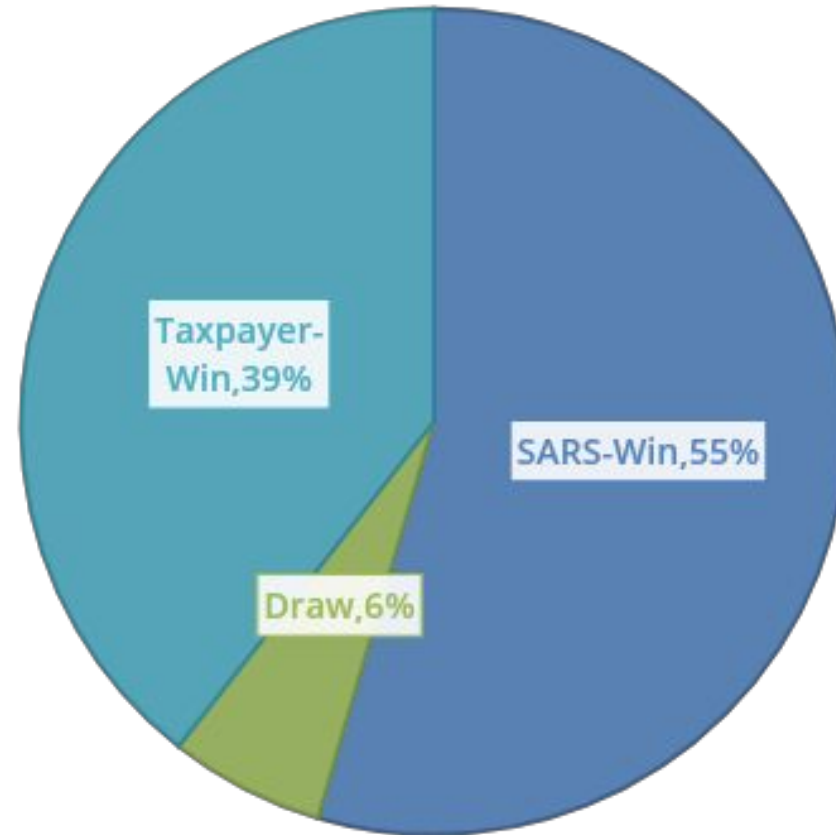
SARS DISPUTE RESOLUTION & JUDGMENTS 2019 – 2013



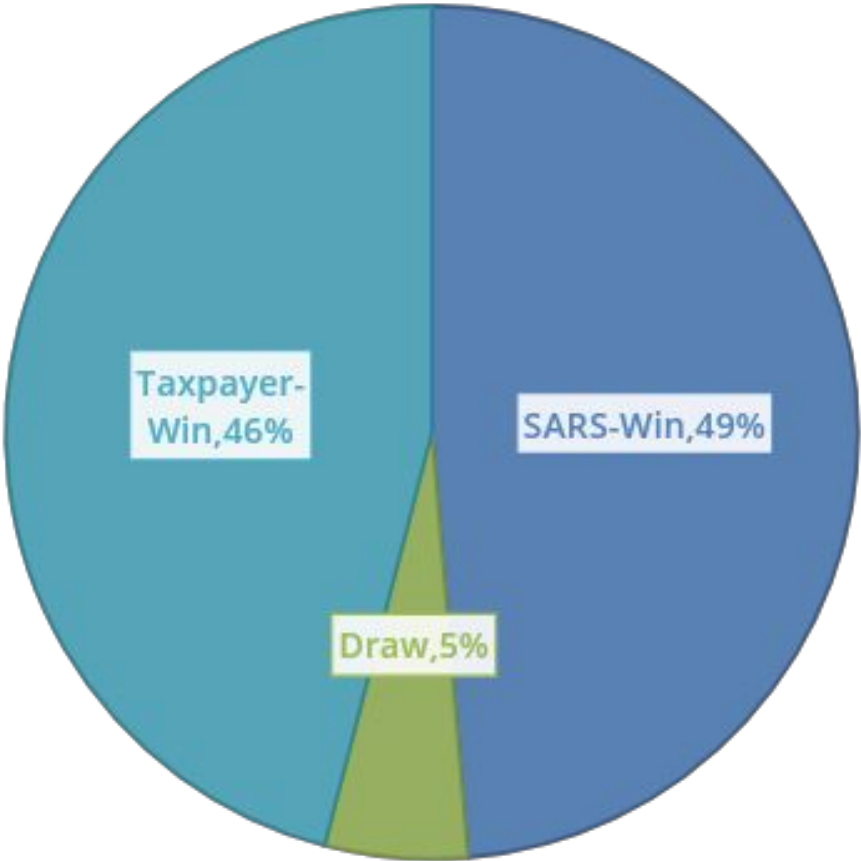
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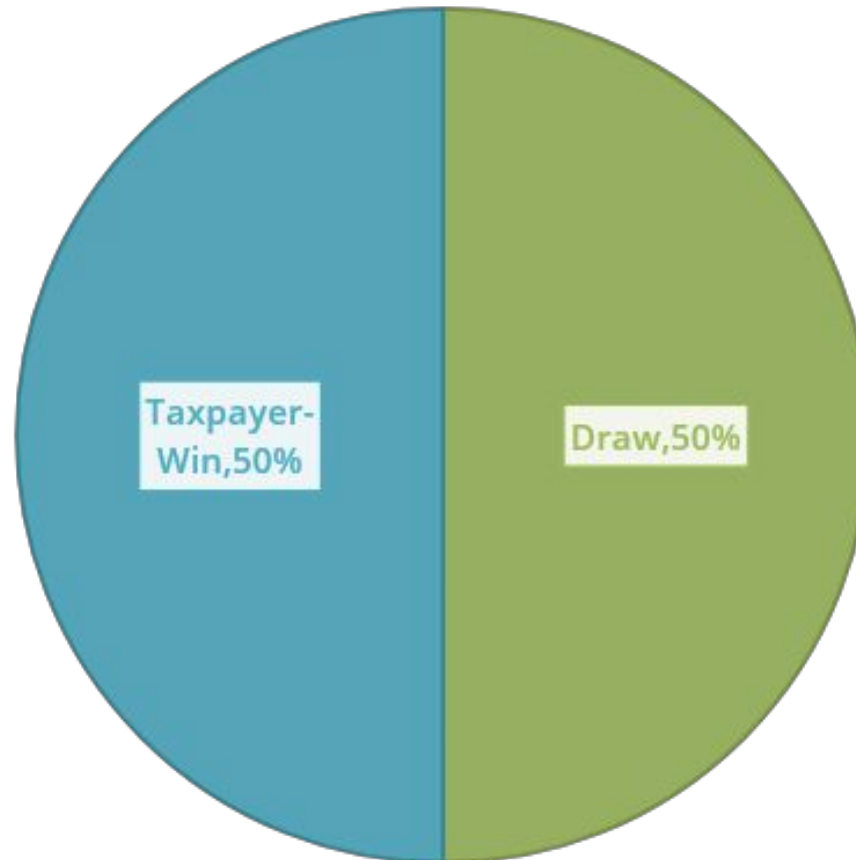
SARS DISPUTE RESOLUTION & JUDGMENTS 2019 – 2013



SARS DISPUTE RESOLUTION & JUDGMENTS 2019 – 2013



SARS DISPUTE RESOLUTION & JUDGMENTS 2019 – 2013



NOT COVERED

- N/A



ROLL OVERS

- Interpretation Note 75 (Issue 3) – Exclusion of certain companies and shares from a "group of companies" as defined in section 41(1)



Any Questions

- Please use the Question Portal on iLearn to post any questions.



THANK YOU

You are welcome to send any other questions to ntheron@unicustax.co.za

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