

Consolidated Index

FOR VOLUME 1, ISSUE 1, 2010

to

VOLUME 14, ISSUE 3, 2023

of

SELIGSON, KRUGER, RUDNICKI & BLUMBERG

BUSINESS TAX & COMPANY LAW

QUARTERLY



juta

Index

This index covers volume 1, issue 1 to volume 14, issue 3.

In the page references below, the volume number is followed by the issue number in brackets, and then by the page numbers. For example 14(3): 11 refers to volume 14, issue 3, page 11.

A

- Acquired company ... 6(2): 41
- Acquiring company ... 6(2): 40
- Acquisition transaction ... 6(2): 41
- Administration of Estates Act 66 of 1965 ... 4(1): 26
- Amalgamation and/or merger ... 1(1): v; 2(1): 11, 12; 2(3): 12; 4(4): 1–2; 8(3): 1
see also Mergers and acquisitions (M&A)
- amalgamation, meaning ... 8(3): 3–4
- Companies Act, defined in ... 8(3): 5–6
- company law ... 8(3): 2
- conversion, meaning ... 8(3): 4–5
- Income Tax Act 58 of 1962, application of s 44 ... 8(3): 2–3
- merger, meaning ... 8(3): 4
- provisions of Companies Act and Income Tax Act compared ... 8(3): 9–10
- requirements, statutory ... 8(3): 6–9
 - agreement, written — s 113(2) of Companies Act ... 8(3): 6–8
 - creditors, notice to ... 8(3): 8
 - notice of merger ... 8(3): 9
 - regulatory approval ... 8(3): 8
 - shareholders, notice to and approval by ... 8(3): 8
 - solvency — s 113(1) of Companies Act ... 8(3): 6
- tax ... 8(3): 2
 - neutrality ... 8(3): 3
- transactions ... 1(4): 24; 5(3): 31–37
- Amendments, retrospective operation of
see Retrospective operation of statutory amendments
- Anti-avoidance
 - legislation ... 4(1): 23
 - Anti-avoidance (*cont*)
 - measures ... 1(4): v; 2(1): 16; 2(2): 1, 2, 6; 2(3): 11; 3(1): 1; 4(2): 18
 - provisions ... 1(1): 17, 20, 22, 23; 1(3): 27; 2(1): 16, 17, 22; 2(3): 6, 13; 3(1): 20; 4(3): 23
 - rules ... 1(1): 20–21; 1(2): v; 2(1): 16, 17; 2(2): 2; 2(3): 3, 6; 2(4): 4; 3(4): v, 1–8; 4(2): 23
 - 2-year anti-avoidance rule ... 2(1): 21–22
 - 6-year anti-avoidance rule ... 2(1): 18–20
 - Canadian Income Tax Act ... 2(3): 7
 - general (GAAR) *see* General anti-avoidance rule (GAAR)
 - proposed UK ... 3(4): v, 1–8
 - schemes ... 3(1): 20
- Appeal
 - lodging of
 - late, condonation of ... 9(1): 17–18
 - period for ... 9(1): 16–21
- Arrangement, meaning of ... 14(1): 6–7
- Assessed loss
 - set off against capital gains
see also Foreign capital losses and taxable income
 - ring-fencing ... 8(4): 8–15
 - business-purpose test ... 8(4): 13–14
 - s 20 of ITA ... 8(4): 10–12
 - s 20A of ITA ... 8(4): 12–14
 - suspect business ... 8(4): 13
- Asset, defined, s 41(1) of ITA ... 9(4): 5
- Asset-for-share transactions
 - acquisition of shares by seller of assets ... 6(1): 26
 - criteria ... 6(1): 23
 - disposal of assets ... 6(1): 26
 - illustration ... 6(1): 23

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Asset-for-share transactions (*cont*)
implications for acquirer of assets ... 6(1): 26–28
negative consequences of ‘prescribed debt’ assumed by purchaser ... 6(1): 28–29
parties ... 6(1): 24
purchase-price consideration ... 6(1): 24–25
roll-over relief (s 42 of Companies Act) ... 6(1): 22–29
subject matter of ... 6(1): 24
- Attribution ... 1(2): vi; 1(3): 24; 4(4): 18
rules ... 1(3): 24; 4(4): 19
(CGT) ... 1(3): 24
(CIS) ... 4(4): 19
- Authorities, tax cases ... 4(1): 16–18
- B**
- Back-to-back sales agreement ... 8(4): 18
- Bank under curatorship in terms of s 69 of Banks Act ... 6(1): 1–10
application of s 45 of Companies Act ... 6(1): 4
case law
ABP 4x4 Motor Dealers (Pty) Ltd v IGI Insurance Co Ltd ... 6(1): 6–7
African Bank Ltd v Theron and Another ... 6(1): 6
curator to comply with requirements for company directors ... 6(1): 5
curator’s freedom and flexibility in running bank’s business ... 6(1): 5
duties and powers of curator ... 6(1): 4–8
financial assistance to related company ... 6(1): 8
post-commencement finance ... 6(1): 9–10
s 45 of Companies Act no longer applies ... 6(1): 8
- Banks Act 94 of 1990 ... 4(2): vi, 15; 5(1): vi; 5(2): 16, 24
definition of ‘bank’ ... 4(2): 15
s 11(1) (bank is a company) ... 5(2): 24
s 69(1) (appointment of curator) ... 6(1): 3, 4
s 69(2B)(d) (curator to comply with requirements for directors) ... 6(1): 5
- Base Cost
- Base Cost (*cont*)
capitalisation of all costs to, management fees and incentive payments ... 12(3): 8–15
overarching rule ... 12(3): 9–10
particular expenditure added to expenditure incurred in increasing value of an asset ... 12(3): 12–15
qualifying remuneration related directly to acquisition or disposal of asset ... 12(3): 10–12
- Beneficial interest and beneficial ownership ... 14(2): 13–18
affected companies ... 14(2): 15–16
requirements ... 14(2): 16–17
enforcement ... 14(2): 17–18
non-affected companies ... 14(2): 16–17
requirements ... 14(2): 16–17
- Beneficial owner ... 1(2): 28; 1(3): 29; 3(1): v, vi, 6, 8–17; 3(3): vii, 23, 27, 28, 29, 30; 3(4): vi, 9, 10, 11, 15
definition of ... 3(4): 10–11
domestic context ... 3(1): 14–17
international context ... 3(1): 9–14
- Beneficial ownership ... 3(1): vi, 8, 9, 10, 12, 13, 14, 15, 16
deemed dividends ... 8(2): 31, 38–39
- Bewind trust *see* Trusts
- Bill of Rights *see* Constitution of the Republic of South Africa, 1996
- Binding General Ruling (Income Tax) 40 (10 February 2017) ... 8(1): 4–6
- Binding General Ruling (VAT) 41 (10 February 2017) ... 8(1): 6–9
- Binding private ruling 086 ... 3(4): 19–23
- Bitcoin *see* Cryptocurrency
- British Venture Capital Association ... 8(1): 14–15
- Business environment ... 1(1): 1; 5(3): 4
- Business rescue ... 1(3): 19–23; 5(3): v, 1–20
application of regimen ... 1(3): v
ch 6 of Companies Act 71 of 2008 ... 5(3): 1
claim in terms of s 22(3) of VAT Act ... 5(3): 16–19
commencement of ... 1(3): 21; 5(3): 15, 18; 6(4): 26
consequences of ... 1(3): 21
definition of ... 5(3): 5

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Business rescue (*cont*)
- divergence of views ... 5(3): vi
 - failure to regulate effectively, consequences ... 6(4): 30
 - failure to render tax returns ... 5(3): 1
 - impact on tax claims by SARS ... 5(3): 1–20
 - important issues ... 5(3): 7–15
 - internationally ... 6(4): 27–28
 - legal proceedings, moratorium on ... 6(4): 28–30
 - nature of ... 1(3): 20–21
 - plan ... 1(3): 21; 4(4): 3, 6, 7; 5(3): 1, 5, 6, 17
 - position of secured creditors ... 1(3): 22
 - post-commencement ... 5(3): 2
 - finance (s 135 of Companies Act 71 of 2008) ... 5(3): 7, 20
 - practical application ... 6(4): 27
 - practitioner (BRP) ... 1(3): v, 21, 22, 23; 5(3): v, 1, 2, 4, 6, 13, 14, 15, 16, 17, 18, 19, 20
 - duty and liability ... 8(3): 31–36
 - regulation and control of ... 6(4): 24–30
 - representative taxpayer ... 8(3): 32–36
 - Tax Administration Act 28 of 2011, ss 153–155 ... 8(3): 32–36
 - proceedings ... 1(3): 21; 4(4): 3; 5(3): v, vi, 1, 2, 3, 4, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
 - process ... 5(3): 3, 4, 5, 18, 20
 - provisions ... 1(1): v; 1(3): v, 20; 5(3): 16
 - purpose of ... 5(3): 2, 5
 - regimen ... 1(3): 19, 20, 23; 5(3): 3, 4
 - SARS
 - creditor, as ... 5(3): 1, 6
 - position of ... 5(3): 5–6
 - secured creditors, position of ... 1(3): 22
 - South African position ... 6(4): 25–26
 - tax
 - periods ... 5(3): v, 2, 4
 - returns ... 5(3): 16
- C**
- Canadian Income Tax Act 1985 ... 2(3): 5
- Canadian Revenue Agency (CRA) ... 2(3): 5–6
- Capital accounts ... 1(1): 18–19, 21; 1(2): 5–7; 3(1): 7
- Capital gains and losses ... 5(2): 8
 - see also* Foreign capital losses and taxable income
 - assessed loss, set off against? ... 7(2): 2
- Capital gains tax (CGT) ... 1(1): 1, 14, 20; 1(3): 25; 2(1): 16, 24; 2(2): 27; 3(2): 1, 12; 4(2): 21
- accounting for gains and losses ... 5(2): 8–13
- attribution rules ... 1(3): 24
- CGT Guide*
see also SARS Comprehensive Guide to Capital Gains Tax
- CIS attribution rules ... 4(4): 19
- consequences for creditor ... 1(1): 1, 10–11
- consequences of disposal of shares deemed to be vested ... 2(4): 15–16
- consequences re: reduction/cancellation of debt ... 5(1): 23
- debt reduction ... 6(3): 32
- on disposal ... 1(2): 23, 24; 3(1): v; 3(2): 1–13
- gains and losses ... 5(2): v, 8–13
- impact of ITA Eighth Schedule ... 2(4): 13–14
- implications for creditors ... 1(1): 2
- implications of employee share incentive/parSticipation trust scheme ... 2(4): 1, 11–16
- improvements effected on land ... 2(1): 23
- increased rate ... 3(1): v
- liability ... 1(4): 19; 2(1): 8; 2(3): 13, 16; 2(4): 11; 3(2): v, 3
- liability of debtor ... 1(1): 1
- non-residents ... 1(1): 20
- perspective ... 1(1): 20; 1(3): 28; 4(4): 21
- provisions ... 1(2): 23
- purposes ... 2(1): 8; 5(2): v, 8
- roll-over relief ... 2(1): 16
- tax treatment ... 4(3): 30
- termination of personal rights, CGT disposal? ... 12(1): 1–5
 - recent case law ... 12(1): 4–5
 - shift in SARS's CGT stance ... 12(1): 1–2

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Capital gains tax (CGT) (*cont*)
trustees' distribution of shares ... 2(4):
14–15
- Carried interest
causa for acquisition of ... 10(4): 22–24
meaning ... 10(4): 21–22
taxation of ... 10(4): 17–24
- CIS attribution rules ... 4(4): 19
- Close Corporations Act 69 of 1984 ...
1(2): 2; 3(2): 6; 4(2): 5
- Companies Act 61 of 1973 (largely
repealed) ... 1(1): v, 15, 19; 1(2): 1, 2,
8–9, 31, 32; 2(1): 1; 2(3): 21; 3(2): 1,
4, 7; 3(3): vi, 23; 4(1): 2, 30; 4(4): 1, 2;
5(3): 3
share buy-backs ... 2(1): 1–15
- Companies Act 71 of 2008 ... 1(1): v;
1(2): 1, 3, 6, 23, 27, 29, 32; 1(3): v, 19,
20, 22; 2(1): 1, 8; 3(2): 1; 3(3): v, 22;
3(4): 17; 4(1): 1, 3, 10–13, 30; 4(2): 5;
4(4): 1, 2; 5(3): v, 1, 3, 20, 36
112 ... 7(4): 4
113 ... 7(4): 4
114 ... 7(4): 4
152 ... 7(4): 5
adequate consideration ... 1(2): 23,
24, 30–31; 3(3): 22, 23; 5(3): 23
amalgamation or merger ... 8(3): 5
amendment of MOI ... 1(2): 4
application of certain provisions of, to
pre-existing companies ... 1(2): 7–8
application of ss 44 and 45 ... 4(1):
6–9
business rescue ... 1(3): 19–23; 5(3):
v, 1–20
ch 6 (ss 128–154) (business rescue) ...
5(3): v, 1
Companies Regulations (2011) (GN
R.351, published in GG 34239 of 26
April 2011) ... 4(1): 5
company names/name reservations
... 1(2): 8
conflict between provisions of, and
MOI of pre-existing company ...
1(2): 5
continuation of pre-existing compa-
nies ... 1(2): 2–3
court proceedings and orders ... 1(2):
9
deeming provisions ... 1(2): 4
distribution defined — s 1(a) ... 9(1):
3
- Companies Act 71 of 2008 (*cont*)
draft Companies Regulations (2008)
... 1(2): 6
finance ... 1(2): 7
financial assistance, provision of ...
4(1): 1–13
governance ... 1(2): 7
impact on Income Tax Act 58 of 1962
... 1(2): 23–32
Memorandum of Incorporation (MOI)
... 1(2): 1, 3–5, 7, 8, 24–30; 2(1): 11,
13, 14; 3(3): 27; 4(1): 1, 4, 5, 6, 10,
11, 12; 4(4): 3, 6, 7
non-executive director, recovery of
VAT ... 8(1): 10
preservation of rights and regulations
of 1973 Act ... 1(2): 9–11
repeal of 1973 Act ... 1(2): 2
rules ... 1(2): 1, 3–5, 7, 8; 2(1): 14
s 1: definition of 'distribution,' para
(a) ... 9(2): 4
s 4: solvency and liquidity test ... 9(2):
3–4
s 5(4) (dealing with inconsistencies
between Companies Act and other
legislation) ... 6(1): 7–8
s 37: preferences, rights, limitations
and other share terms ... 9(2): 5–6
ss 44 and 45 ... 4(1): 1–13
interpretation of ... 4(1): 6–9
s 45
applicability to bank under curator-
ship ... 6(1): 1–10
inconsistent with s 69 of Banks Act
... 6(1): 6
requirements for provision of finan-
cial assistance ... 6(1): 2
requirements inconsistent with
curator's powers ... 6(1): 5
s 46: distributions must be authorised
by board, and company must pass
solvency and liquidity test ... 9(2):
4–6
s 48: share buy-back, Acquired
company ... 9(2): 11
s 48: share repurchases, share redemp-
tions excluded ... 9(4): 7
s 135 ... 6(1): 9–10
s 135 (post-commencement finance)
... 5(3): 20
s 164 ... 7(4): 1–12

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Companies Act 71 of 2008: s 164 (*cont*)
‘obscure,’ seldom invoked ... 7(4):
11–12
provisions of ... 7(4): 4–8
purpose of ... 7(4): 3–4
schemes of arrangement, regulation
of ... 4(4): 1–12
share buy-backs ... 1(1): v; 1(2):
23–24, 31–32; 2(1): 1–15
share certificates ... 1(2): 5
shareholders’ agreements ... 1(2):
24–30; 2(2): 12
shares of pre-existing company ...
1(2): 5
statutory merger (s 113) ... 8(3): 2, 6
transition of regulatory agencies ...
1(2): 11–12
transitional arrangements ... 1(2): 2
transitional provisions ... 1(2): 5
variation of shareholder rights ... 1(2):
24–30
voting rights ... 1(2): 24–28
winding-up ... 1(2): 8–9
- Companies and Intellectual Properties
Commission (CIPC) ... 1(2): 11
- Company law, transition ... 1(2): 1–12
- Comparable uncontrolled-price method
(CUP) (transfer pricing) ... 2(3): 4
- Conditional liability not a debt ... 1(1):
2
- Connected person ... 1(1): 1, 12, 13,
14–17, 18, 20, 21, 22; 1(2): 26, 28; 1(4):
v, 7, 9, 12, 15; 2(1): 32; 2(3): v, 1; 3(4):
6; 5(2): 5
connected qualifying shareholder ...
5(3): vi, 21, 24, 27, 30
definition ... 1(1): 14–17
qualifying shareholder ... 5(3): vi
in relation to company ... 10(3): 1–9
meaning and effect of para (*d*)(iv)
of definition in s 1 of ITA ... 10(3):
5–6
other relevant definitions ... 10(3):
3–5
SARS *Interpretation note 67* ... 10(3):
5–6
critique of ... 10(3): 6–9
venture capital company ... 8(1): 18
- Consideration, meaning ... 6(3): 2
- Constitution of the Republic of South
Africa, 1996
- Constitution of the Republic of South
Africa, 1996 (*cont*)
8(1): all tax laws subject to Bill of
Rights ... 10(1): 4
Bill of Rights, SARS’s obligations
under ... 10(1): 3–4
s 33: right to just administrative
action ... 10(1): 4
s 195 ... 10(1): 7, 7–9
- Consumer Protection Act 68 of 2008 ...
1(3): 19
*A Company v The Commissioner For
The South African Revenue Service*
(IT 24510) [2019] ZATC 1 (17 April
2019) ... 10(2): 20–24
tax acts, vs ... 10(2): 19–28
- Contingent obligation not a debt ...
1(1): 3
- contra fiscum* rule ... 13(4): 20–23
- Contract
early termination of, tax implications
... 7(4): 13–24
capital gains tax ... 7(4): 19–22
income tax ... 7(4): 14–19
value-added tax ... 7(4): 22–24
future allowances on (s 24C of ITA) ...
11(3): 11–20
interpretation ... 12(4): 18–24
- Contract manufacturing across borders,
tax implications ... 7(1): 21–31
goods vs services ... 7(1): 22–23
manufacture of finished goods ...
7(1): 23–27
direct exports ... 7(1): 23–24
indirect exports ... 7(1): 24–27
provision of manufacturing services
... 7(1): 27–31
- Contractual nature of ‘forgiveness’ ...
1(1): 2
- Contributed Tax Capital, limitation
rules ... 9(3): 19–21
- Controlled foreign company ... 12(4):
9–17; 14(2): 1–7
disposal of shares held by, tax conse-
quences ... 6(4): 13–23
practical example ... 6(4): 20–23
FBE exemption ... 6(4): 16–18
high tax jurisdiction exemption ...
6(4): 16
outsourcing and the foreign business
establishment rule ... 14(1): 13–23
participation rights ... 12(4): 9–17

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Controlled foreign company: participation rights (*cont*)
- aggregation of participation rights percentages ... 12(4): 15–16
 - benefits of the rights attaching to a share ... 12(4): 11–14
 - capital ... 12(4): 14
 - income ... 12(4): 15
 - value approach ... 12(4): 16–24
 - voting rights ... 12(4): 11
- South African legislation ... 6(4): 15–18
- Controlling relationship between debtor and creditor ... 6(1): 13
- counterparty ... 6(1): 15
- definition ... 6(1): 15
- s 23M(3) limit on interest deduction ... 6(1): 13
- Corporate residence ... 1(3): vi, 1–13
- domestic test for ... 1(3): 3–8
 - importance of, in fiscal context ... 1(3): 2, 13
 - interpretation of treaties ... 1(3): 9–10
 - OECD Model Commentary on Article 4(3) (Vienna Convention) ... 1(3): 10
 - SA test ('[place of] effective management') ... 1(3): 3–5
 - test for ... 1(3): 2–3
 - tie-breaker provisions of DTAs ... 1(3): 1–2, 8, 9, 10, 11
 - tie-breaker rule ... 1(3): 1–2, 8, 9
 - tie-breaker test ... 1(3): 25
 - UK case law ... 1(3): 10–12
 - UK test ('place of central management and control') ... 1(3): 5–8
- Corporate tax administrators ... 4(2): v, 1–11; 4(3): v, 9–23; 4(4): 23–32
- Corporate tax residence ... 1(3): vi, 1–13
see also corporate residence
- Cost-plus method (transfer pricing) ... 2(3): 4
- Covid-19 tax relief ... 11(2): 1–8
- employees' tax deferrals ... 11(2): 6–7
 - tax considerations relating to ... 11(2): 4–6
 - provisional tax deferrals ... 11(2): 7–8
 - remuneration reduction or remuneration sacrifice ... 11(2): 2–4
- Creditor, definition ... 6(1): 14–15
- Cryptocurrency
- ecosystem ... 11(3): 24–26
 - Cryptocurrency (*cont*)
 - wallet, 'relevant material' for tax administration purposes? ... 11(3): 21–28
- CSARS v Coronation Investment Management SA (Pty) Ltd* ... 14(1): 13–23
- the dispute and the legislative context ... 14(1): 15–17
 - under-estimation of provisional tax ... 14(1): 21
- Supreme Court of Appeal decision ... 14(1): 18–21
- why it is wrong ... 14(1): 21–23
- Tax Court decision ... 14(1): 17–18
- understatement penalty ... 14(1): 21
- ### D
- Davis Tax Committee
- Base Erosion and Profit Shifting, Report on ... 9(3): 1–13
 - leveraged foreign tax credit generators ... 9(3): 1
- Debt
- see also* value-added tax (VAT)
 - cancellation of ... 4(3): 34; 5(1): 21–29
 - conditional liability (not a debt) ... 1(1): 2
 - contingent obligation (not a debt) ... 1(1): 3
 - definition ... 6(1): 14–15
 - discharge of ... 1(1): 2
 - forgiveness ... 1(1): 1
 - meaning of ... 1(1): 1, 2–3
 - obligation to pay ... 1(1): 2, 3, 5
 - receipt of less than face value of ... 1(1): 1, 5, 7, 13; 2(4): 20; 4(1): 19
 - reduction of ... 1(1): 1; 4(3): 34; 5(1): 21–29
 - waiver of ... 1(1): 1–13; 5(1): 27; 5(4): 52–63
 - applicable legal principles ... 1(1): 1
 - contractual nature of ... 1(1): 1, 2
 - debt-waiver rules ... 5(4): 52–63
 - discharge of debt ... 1(1): 1
 - exemption ... 5(4): 52–63
 - rules ... 5(4): 52–63
 - see also* tax exemptions in debt-waiver rules
 - exemptions ... 5(4): 52–63
 - working of ... 5(4): 53–55
 - tax exemptions in, rules ... 5(4): 55–63

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Debt forgiveness *see* debt — ‘forgiveness’ of debt
- Debt funding to avoid tax ... 6(1): 12
- interest-deduction limitations to combat ... 6(1): 12
- OECD Action Plan on Base Erosion and Profit Shifting* ... 6(1): 12
- Debt instruments ... 1(3): 17; 2(4): 18; 3(1): 3; 3(3): vi, 3, 14, 15, 16, 17, 18, 19, 20; 4(2): 8, 12, 13; 4(3): 1–3, 29
- government ... 1(2): v
- ‘hybrid’ ... 4(2): 8
- interest-bearing ... 4(3): 1, 2–5
- listed ... 1(2): v
- security by interest-bearing ... 4(3): 2–3
- Debt reduction
- cost price reduction ... 6(3): 32
- donations tax ... 6(3): 33
- rules under s 19 and para 12A of Eighth Schedule of the Income Tax Act 58 of 1962
- new rules introduced by the Taxation Laws Amendment Act 17 of 2017 ... 9(2): 16–1
- old rules ... 9(2): 14–15
- SARS interpretation notes and published binding private rulings ... 9(2): 15–16
- tax consequences ... 6(3): 30–35
- borrower (s 19 of ITA 1962) ... 6(3): 31–32
- CGT implications ... 6(3): 32–33
- Debt restructuring ... 10(2): 13–18
- consequences of application ... 10(2): 14
- debt to equity conversion of debt capital ... 10(2): 16
- debt to equity conversion within a South African group of companies ... 10(2): 16–28
- s 24J of ITA ... 10(2): 17–18
- tax triggers ... 10(2): 14–15
- conversion of debt into equity ... 10(2): 15
- exclusion from taxing provisions ... 10(2): 15–17
- Debtor, definition ... 6(1): 14
- Debtor’s tax position ... 1(1): 1, 2
- Deemed dividends *see* Dividends
- Deferred-delivery share incentive schemes ... 2(4): v, 26–34
- Deferred-delivery share incentive schemes (*cont*)
- application of ITA s 8A ... 2(4): 31–33
- application of ITA Schedule 7 (fringe benefits) ... 2(4): 33–34
- doctrine of legitimate expectation ... 2(4): 30–31
- prevailing practice ... 2(4): 29–30
- three-year prescription period ... 2(4): 28–29
- Deferred disposal of equity shares ... 1(1): 19–20
- Directives
- conditional ... 3(3): 20
- criteria used in process ... 3(3): 19–20
- deduction subject to issue of ... 3(3): 18–19
- effective date of ... 3(3): 20–21
- restrictive ... 3(3): 20
- Directors’ fees, VAT ... 6(3): 10–11
- Discharge of debt ... 1(1): 2
- Disposal of equity instruments ... 2(4): 7, 8
- Dispute resolution, existing framework ... 9(2): 20–23
- Disputed debts
- application of s 19 and para 12A of Eighth Schedule of ITA ... 11(4): 1–6
- key definitions ... 11(4): 2–4
- concession or compromise ... 11(4): 2–3
- debt ... 11(4): 3
- debt benefit ... 11(4): 3–4
- debt owed ... 11(4): 4–5
- disputed debt ... 11(4): 5–6
- Dissenting minority shareholders’ appraisal rights ... 7(4): 1–12
- see also* Companies Act 71 of 2008, s 164
- Distribution ... 9(1): 3–7
- Companies Act 71 of 2008
- ‘distribution’ defined — s 1(a) ... 9(1): 3
- Eighth Schedule, para 76B ... 9(1): 6, 7
- Income Tax Act 58 of 1962, s 46(5) ... 9(1): 8
- Dividend *in specie* ... 1(2): 31; 3(4): 10, 11, 12; 4(3): 31; 5(3): vi, 21, 26, 27; 8(2): 29–40

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Dividend income ... 2(2): 6; 3(1): v, 1, 6, 8, 12, 15, 16, 17; 3(3): 28, 29; 4(2): 17; 4(3): v, 1–8
see also Recharacterisation Rules
- Dividend stripping ... 9(3): 14–21
extraordinary dividends ... 9(3): 17–19
legislative changes ... 9(3): 16–19
provisions, application of ... 9(3): 18–19
qualifying interest ... 9(3): 17–19
- Dividends ... 2(1): 7
see also Hybrid equity instruments
acquired by virtue of cession agreement ... 3(1): 7
deemed ... 8(2): 29–40
beneficial ownership ... 8(2): 31
conflicts between deeming provisions and DTA ... 8(2): 31–32, 40
deeming provisions ... 8(2): 32–33
definition ... 8(2): 31
under the SA/US DTA and the Model Convention ... 8(2): 33–38
dividends tax ... 8(2): 32
double tax agreements ... 8(2): 29–40
treaty relief and special anti-avoidance rules ... 8(2): 31, 39–40
definition ... 8(2): 31
derived as part of share incentive schemes ... 3(1): 5
disposals ... 3(1): 6
exemption from tax ... 3(1): 1–7; 5(3): 7, 22, 28
income *see* Dividend income
shares relating to borrowed shares ... 3(1): 6–7
in specie see Dividend *in specie*
tax *see* Dividends tax
- Dividends tax ... 3(1): v, 8, 9, 14, 17; 3(3): vii, 22, 23, 27, 30; 3(4): 9–15; 4(3): 30, 31; 5(3): vi
see also double taxation agreements (DTAs)
'beneficial owner' – definition ... 3(1): 14, 15; 3(4): 10
domestic ... 3(1): 9
domestic context ... 3(1): 14–17
exemption from ... 1(4): v; 3(1): 9, 10; 3(3): 27; 4(3): 30, 31
- Dividends tax (*cont*)
implications ... 3(3): v, vi, vii, 22; 3(4): vi, 24
liability for ... 3(3): 23; 3(4): 10–11
most favoured nation ... 13(2): 1–8
current status ... 13(2): 2–4
Kuwaiti Protocol ... 13(2): 4–5
Pienaar Bros case ... 13(2): 5–7
0% dividends tax rate, risks of claiming ... 13(2): 7–8
purposes ... 3(3): 27, 29; 4(3): 30, 31
reduced rate ... 3(3): 27
refund of ... 3(1): 17
regulatory intermediary ... 3(4): 5
transactional net-margin method ... 2(3): 4
trigger for ... 3(4): 11–12
when due ... 3(4): 11–12
- Divorce Act 70 of 1979 ... 4(1): 26
- Doctrine of legitimate expectation ... 2(4): 30–31
- Doctrine of substance over form ... 4(1): v, 14, 15, 22, 23, 25; 4(3): 22; 5(4): v, vi, 1, 2, 3, 23
economic versus legal substance ... 4(1): 15–16
principles governing ... 4(1): 22; 5(4): 3
- Double taxation agreements (DTAs) ... 1(2): v; 1(3): vi, 1, 2, 25; 3(1): 8, 9, 10, 11, 12, 14; 3(2): 5; 6(2): 14
deemed dividends ... 8(2): 29–40
legal status in South Africa ... 13(2): 2
SA–US ... 3(2): 5
UK–SA ... 1(3): vi, 1
- Doubtful debts ... 11(1): 9–17
85% allowance ... 11(1): 16–20
IFRS 9 ... 11(1): 10–17
application to s 11(j) of ITA ... 11(1): 15–16
credit risk assessment ... 11(1): 14
measurement of expected credit losses ... 11(1): 15
three stages of impairment ... 11(1): 13–14
s 11(j) of ITA ... 11(1): 9–10
- Due diligence ... 11(4): 7–15
investigation ... 11(4): 12–14
annual financial statements review ... 11(4): 13–14
tax compliance ... 11(4): 13

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Due diligence: investigation (*cont*)
tax risk management and govern-
ance ... 11(4): 12
meaning ... 11(4): 8–9
objectives and features ... 11(4): 9–10
report ... 11(4): 14–15
scoping ... 11(4): 11–12
transaction cycle (from tax perspec-
tive) ... 11(4): 10–11
identification and evaluation phase
... 11(4): 10–11
implementation and execution
phase ... 11(4): 11
integration and value-realisation
phase ... 11(4): 11
- E**
- Earn-outs
case law ... 6(3): 13–17
contractual arrangements ... 6(3):
18–26
described ... 6(3): 13
tax characterisation of ... 6(3): 12–20
time of accrual ... 6(3): 18–20
- Economic versus legal substance ... 4(1):
15–16
- Electronic Services Regulations (GN
R221 of 28 June 2014) ... 5(2): 23–26
- Electronic services, VAT implications for
foreign suppliers of ... 5(1): 7–14
- Employee, VAT Act definition vs
employee at common law ... 6(3): 5–6
- Employee incentivisation schemes ...
12(4): 1–8
C:SARS v Spur Group (Pty) Limited,
Supreme Court of Appeal, case
320/2020, 15 October 2021 ... 12(4):
2
prescription ... 12(4): 7–8
- Employee Share Participation Trust ...
2(4): 1–17
applicable provisions of ITA s 8C ...
2(4): 4–7, 11
calculation of gain or loss ... 2(4): 6–7
capital gains tax (CGT) implications
of scheme ... 2(4): 11–16
definition of ‘equity instrument’ for
purposes of ITA s 8C ... 2(4): 5–6
disposal of restricted equity instru-
ment ... 2(4): 6
features of a typical scheme ... 2(4):
3–4
- Employee Share Participation Trust
(*cont*)
impact of ITA s 8C on ... 2(4): 1–17
s 8C issues ... 2(4): 7–11
SARS rulings ... 2(4): 16–4
taxation under ITA s 8C ... 2(4): 5
vesting of equity instrument in
employee taxpayer ... 2(4): 6
- Employer funding arrangements ...
12(4): 1–8
C:SARS v Spur Group (Pty) Limited,
Supreme Court of Appeal, case
320/2020, 15 October 2021 ... 12(4):
2
prescription ... 12(4): 7–8
- Employment Tax Incentive Act 26 of
2013 (ETI Act) ... 5(2): v, 1
- Employment tax incentive (ETI) ... 5(2):
v, 1, 2, 5
*Draft Guide on the Employment Tax
Incentive (ETI)* ... 5(2): 2, 5
- Employment tax incentive programme
... 5(2): 1–7
- Energy-efficiency tax allowance ... 6(2):
1–12
see also Income Tax Act 58 of 1962
(ITA): s 12L — energy-efficiency
savings allowance
- Enterprise, meaning ... 6(3): 2
- Equity funding ... 9(3): 14–21
- Equity instrument
defined, for purposes of s 8C of ITA ...
9(1): 10–11; 10(3): 19
- Equity instruments ... 2(2): v, 10, 11, 12,
13, 14, 15, 16–17; 2(4): 1, 5, 6, 7, 8, 9,
10, 11, 12, 15, 16, 17; 3(1): 1, 6; 4(2):
16, 17; 4(3): 1
defined, for purposes of s 8C of ITA ...
2(4): 5–6
disposal of ... 2(4): 7, 8
disposal of restricted ... 2(4): 6
forfeiting ownership of ... 2(2): 17
gains and losses ... 2(2): 11
hybrid ... 2(2): v, 1, 2, 4, 5, 7, 8, 9, 10;
3(1): 2–3; 4(2): 8; 4(3): v, 1, 2, 3, 4, 8
market value of ... 1(2): 31
restricted ... 2(2): 13, 15, 16; 2(4): 5, 6,
7, 8, 9, 10, 11, 12, 13, 15, 16; 3(1): 5
returns on ... 7(4): 29–32
restrictions ... 2(2): 15–17
trust ... 2(4): 8
unrestricted ... 2(2): 13; 2(4): 6

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Equity instruments (*cont*)
vesting of ... 1(2): 30
vesting of gains and losses ... 2(2): 12
- Equity-linked notes (ELNs) ... 2(4):
19–21
definition of ‘instrument’ ... 2(4): 19
definition of ‘interest’ ... 2(4): 19
gains and losses ... 2(4): 19
interest-bearing ... 2(4): 18–25
return on ... 2(4): 22–23
variable rate ... 2(4): 23–25
- Equity share capital (ITA and VAT Act)
... 1(1): 10, 15, 16, 18, 19, 20; 1(2): 29
- Equity shares ... 1(1): 19–20, 29
- Estate Duty Act 45 of 1955 ... 2(1): v;
3(3): 1, 3; 4(1): 26
- ETI programme *see* employment tax
incentive programme
- Exchange control, SA’s ambiguous
climate ... 14(3): 15–22
- Executive share schemes ... 2(2): v,
10–18
- Expatriate employees, facilitating and
paying for their tax compliance ...
10(4): 25–28
- Expenditure ... 6(4): 6–12
barter ... 6(4): 11–12
diminution of assets test ... 6(4): 7–11
Eighth Schedule, para 64B(1) ... 6(4):
18–19
s 9H, exit-charge provisions ... 6(4):
20
- Export of goods ... 1(2): 13–22
- External companies in SA, registration
of foreign companies as ... 4(1): 30–39
- F**
- Face value of debt, receipt of less than
... 1(1): 1
- Fair value of dissenting shareholder’s
shares ... 7(4): 8–11
how determined ... 7(4): 10–11
restrictions ... 7(4): 8–10
- FATCA *see* Foreign Account Tax Compli-
ance Act (FATCA) (USA)
- Financial Action Task Force ... 14(2):
13–15
- Financial assistance ... 1(1): v; 1(4): 4, 5,
12, 13, 15, 16; 4(1): 1–13
definition of ... 1(4): 11; 2(3): 2
excessive ... 1(4): 5
fixed capital ratio ... 1(4): 4, 5
- Financial assistance (*cont*)
foreign ... 1(4): 8
to foreign company ... 1(4): 13, 14, 16
granted by foreign investor ... 1(4): 4,
5, 12, 13
granted by foreign resident investor
... 1(4): 7
granted by third party ... 1(4): 4
granting of ... 1(4): 1, 4, 16; 4(1): 4
guideline ratio ... 1(4): 5
inter-company ... 4(1): 2
i/o intellectual property ... 1(4): 12
provision of ... 1(1): v; 1(2): 8; 4(1):
v, 1–13
resident connected person/corporate
resident ... 1(4): 11
types of ... 4(1): v, 1, 2, 6
value of ... 1(4): 4
- Financial instruments ... 1(2): vi; 1(3): v,
vi, 14–18; 2(4): 5, 6; 3(1): 1, 3; 4(2): vi,
12–19; 4(3): 3, 29; 4(4): 13
see also IAS39: *Financial Instruments: Recognition and Measurement*
accounting for ... 1(3): 14–15
accounting rules for taxation of ...
4(2): 13
accounting treatment of ... 4(2): 13,
14
acquisition of ... 1(3): vi
calculation of market value ... 1(3):
17–18
classification of ... 4(2): 13, 14
convertible to shares/equity instru-
ments ... 2(2): 14, 16; 2(4): v
covered person ... 4(2): vi, 15, 18
covered person, definition of ... 4(2):
vi, 15
dealing in ... 1(3): 16–17
dealing in, definition ... 1(3): 17
deductions in respect of ... 1(3): v
definition of ... 2(2): 14; 4(3): 3
definition of ‘covered person’ ... 4(2):
vi, 15
disposal of ... 4(3): 3; 4(4): 15
divergence of income tax and
accounting rules ... 4(2): 13
exclusion of financial liabilities ...
4(2): 14
exemption from tax ... 1(2): vi
expenditure in respect of ... 1(2): vi;
1(3): vi; 3(1): 20
financial precedent ... 4(2): 14–15

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Financial instruments (*cont*)
gains and losses ... 1(3): 14–18; 4(2): 12–19
gains and losses (realised and unrealised) ... 1(3): 14–18; 4(2): 12–19
IAS39: Financial Instruments: Recognition and Measurement ... 1(3): 14, 15, 17
IFRS9: Financial Instruments ... 4(2): vi, 16
interest-rate agreements ... 1(3): 16–17
leverage of ... 4(4): 15
listed ... 3(4): 12
non-covered persons ... 4(2): 18
option contracts ... 1(3): 16–17
qualifying ... 1(3): 14
'short selling' of ... 4(4): 15
specified ... 4(4): 13
splitting of ... 4(2): 13
tax rules relating to ... 4(2): 12, 14
tax treatment of ... 4(2): 19; 4(3): 24, 29–31
taxation of ... 1(3): 15; 4(2): 13, 14
taxation of, from 2014 ... 4(2): 12–19
taxation of gains and losses ... 4(2): 12–19
trading stock ... 1(1): 26–27; 1(3): 14, 16, 17, 18; 1(4): 19, 21; 2(1): 7, 17; 2(2): 21; 2(3): 12; 3(1): 7; 5(1): 22, 27; 5(2): 12; 5(3): 33, 34, 35; 5(4): 54
- Foreign Account Tax Compliance Act (FATCA) (USA) ... 3(2): v, 21–28
curbing of perceived tax abuses iro offshore bank accounts and/or investments ... 3(2): 21–28
landscape ... 3(2): 26–27
requirements ... 3(2): 22–26
- Foreign branches and VAT ... 10(3): 10–17
branch as separate person ... 10(3): 11–14
deemed supplies by local vendor to foreign branch ... 10(3): 14
foreign branch that does not fall within the ambit of the proviso ... 10(3): 16–17
zero rating of services supplied by SA main business to foreign branch ... 10(3): 14–15
- Foreign branches and VAT (*cont*)
zero rating of services supplied by SA third party vendor to foreign branch ... 10(3): 15–16
- Foreign business establishment
how foreign is it? ... 14(2): 1–7
;iCommissioner for the South African Revenue Service v Coronation Investment Management SA (Pty) Ltd;d 2023 JDR 0295 (SCA) ... 14(2): 2–7
s 9D of Income Tax Act 58 of 1962 ... 14(2): 1
- Foreign capital losses and taxable income ... 7(2): 1–5
SARS standpoint ... 7(2): 2–3
counter-arguments ... 7(2): 3–5
- Foreign companies, registration as external companies in SA ... 4(1): 30–39
- Foreign currency option contract ... 7(1): 16, 20
- Foreign dividend, interpretation of ITA definition of ... 9(1): 1–8
- Foreign Exchange, Amnesty ... 1(4): 27
- Foreign exchange gains, weak currency and the taxation of ... 7(1): 13–20
consequences of rand depreciation on ... 7(1): 16–20
dollar-denominated creditor ... 7(1): 16–19
foreign currency option contracts ... 7(1): 20
forward exchange contracts ... 7(1): 19–20
debt ... 7(1): 15
exchange differences ... 7(1): 16
exchange items ... 7(1): 14–16
foreign currency option contract ... 7(1): 16, 20
forward exchange contract ... 7(1): 15–16
s 24I of the Income Tax Act 58 of 1962 ... 7(1): 14–16
- Foreign return of capital ... 9(1): 1–8
interpretation of ITA definition of, Acquired company ... 9(1): 1–8
- Foreign suppliers of electronic services, VAT implications ... 5(1): 7–14
- Foreign tax credit generators ... 9(3): 1–13
legal façade, cracks in ... 9(3): 2–8

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Foreign tax credit generators: legal façade, cracks in (*cont*)
example ... 9(3): 2–4
problems for the SA investor ... 9(3): 4
problems for the US banking group ... 9(3): 4–6
tax gross-up mechanism ... 9(3): 6–8
leveraged ... 9(3): 8–13
borrowing money from the market ... 9(3): 12
domestic tax arbitrage payoff ... 9(3): 12–13
example
real-life ... 9(3): 10–12
simplified ... 9(3): 9–10
plausible deniability ... 9(3): 12
risk (and economic substance), eliminating ... 9(3): 8–9
Forfeiting ownership of equity instruments ... 2(2): 17
Forfeiture, alternative to ... 1(1): 1
Forfeiture, alternative to ... 1(1): 1
‘forgiveness’ of debt ... 1(1): 1
contractual nature of ... 1(1): 2
Forward exchange contract ... 7(1): 15–16, 19–20
Franchise ... 7(2): 17–24
SARS *Draft Guide on the Taxation of Franchisors and Franchisees* ... 7(2): 17–24
SARS *Draft Guide on the Taxation of Franchisors and Franchisees*
practical complexities not considered ... 7(2): 20–23
premium or like consideration ... 7(2): 20–22
royalty payments ... 7(2): 22–23
summary ... 7(2): 19–20
Freign business establishment, meaning ... 14(1): 15
Fringe benefits
income tax ... 2(4): 33; 5(3): vii, 22, 23, 26, 29–30
VAT ... 6(3): 8–9
Future expenditure claims under s 24C of ITA *see* Income Tax Act 58 of 1962 (ITA), s 24C
Future services, issue of shares in exchange for, or negotiable instruments ... 3(3): 22–30
- G**
G20 Finance Ministers ... 5(1): 8
Gauteng Tax Court ... 1(1): 5
General anti-avoidance rule (GAAR) ... 1(2): v; 2(3): 6; 3(4): v, 1–7; 4(2): 20, 23; 14(3): 1–14
see also Anti-avoidance
‘broad-spectrum,’ not beneficial to UK ... 3(4): 2
purpose ... 14(3): 11
connotations ... 14(3): 12–13
Gallager judgment ... 14(3): 11–12
s 80G of the ITA ... 14(3): 9
South African GAAR ... 4(2): 20–25
subjective vs objective ... 14(3): 1–14
subjectivity, Achilles heel of s 103 ... 14(3): 3–5
thesis ... 14(3): 2–3
tax-shelter products and the modern tax-avoidance industry ... 14(3): 5–8
aggressive marketing ... 14(3): 6–7
challenges confronting SARS ... 14(3): 8–9
complexity ... 14(3): 5–6
pretense ... 14(3): 7–8
text and context ... 14(3): 9–11
UK draft legislation ... 3(4): v, 1–8; 4(2): 20–24
UK GAAR ... 4(2): 20–25
General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 ... 14(2): 14–15
Goods
export of ... 1(2): 13–22
movable ... 1(2): 19–22
- H**
Headquarter company
80% cost requirement ... 13(3): 1–6
Alternative argument 1 ... 13(3): 4–5
Alternative argument 2 ... 13(3): 5–6
proviso ... 13(4): 1–6
s 9I requirements ... 13(3): 2–3
SARS Interpretation Note 87 ... 13(3): 3–4
s 9I(2)(b) of ITA, analysis ... 13(4): 3–5
statutory interpretation ... 13(4): 5–6
Hedge funds ... 4(4): 13–22; 13(3): 15–26

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Hedge funds (*cont*)
market overview ... 13(3): 24–26
meaning ... 13(3): 16–18
regulatory evolution in SA ... 13(3): 21–24
tax considerations ... 13(3): 18–21
taxation of ... 4(4): 13–22
- Holding-company
deductions ... 13(3): 7
trade
carrying on a trade, factors impacting ... 13(3): 10–12
meaning of ... 13(3): 9–10
moneylender vs carrying on a trade ... 13(3): 12–13
- Hybrid equity instruments ... 2(2): v, 1, 2, 4, 5, 7, 8, 9, 10; 3(1): 2–3; 4(2): 8; 4(3): v
definition, s 8E of Income Tax Act 58 of 1962 ... 9(2): 9
redemption vs buy-back ... 9(2): 9–12
para 39 of Eighth Schedule to Income Tax Act 58 of 1962 ... 9(2): 10
subject to s 46 of Companies Act 72 of 2008 ... 9(2): 11
- I**
- IAS39: Financial Instruments: Recognition and Measurement ... 1(3): 14, 15, 17
IFRS9: Financial Instruments ... 4(2): vi, 16
- Immovable property ... 4(3)30; 1(1): 18, 20; 2(1): 27, 28; 2(2): 19, 29; 3(2): v, 1, 2, 3, 7; 4(1): 34
acquisition of ... 3(2): 2; 5(1): 28
CGT claims by SARS ... 3(2): 3
customary deduction allowances ... 4(3): 29, 33
disposal of ... 4(3)30; 3(2): 1
mortgage bond registered over ... 3(2): 2
mortgaged ... 3(2): 3
mortgagee's secured claim to proceeds ... 3(2): 1–13
non-deductible allowances ... 4(3): 24, 29
post-liquidation sale ... 3(2): 12
realisation of ... 3(2): 6
rental of ... 4(2): 8
sale of ... 4(3)29; 9(3): 22–30
- Immovable property: sale of (*cont*)
OECD Commentaries in interpretation of, VAT, vs ... 9(3): 23–26
secured ... 3(2): 9
transfer duty, sale subject to suspensive conditions ... 9(3): 26–30
secured, realisation of ... 3(2): 1–13
use of ... 4(3): 24
- Income tax ... 5(3): 1
deductions, limitations under s 23H of ITA ... 11(3): 1–10
see also Income Tax Act 58 of 1962 (ITA): s 23H
- Income Tax Act 58 of 1962 (ITA) ... 1(1): 1, 3–7, 8, 14, 26, 28, 29, 30; 2(1): 26; 2(2): 1–9; 2(4): 2, 8; 3(2): 4, 5, 6, 9, 11; 4(2): vi; 4(3): 25, 26, 27, 28, 29, 30, 33, 34; 5(2): 5; 5(3): vi, vii, 8, 10, 11; 6(1): 21, 22–29; 14(1): 9–11
amendment of s 31 by Act 7 of 2010 ... 1(4): 1–16
amount deemed dividend (s 64C(2)(b)) ... 1(1): 9–10
anti-avoidance provisions ... 5(4): 1
cancellation of debt ... 4(3): 34
Chapter II, Part III (special corporate rules) ... 10(2): 1–28
Companies Act 71 of 2008, impact on ... 1(2): 23–32
cross-issue of shares ... 1(1): 19
debt-reduction provisions, s 19 ... 6(3): 31–32
deduction for leave pay ... 1(1): 29–30
deferred disposal of equity shares ... 1(1): 19–20
discharge of debt ... 1(1): 1
disposal of shares (capital account) ... 1(1): 18
dividends tax ... 4(3): 30
donation/deemed donation ... 1(1): 8–9
donations tax ... 1(1): 10
Eighth Schedule ... 1(1): 1, 2, 5, 6, 7, 8, 10, 20, 21, 28; 1(2): 12, 24, 25, 26, 27, 28; 1(3): 27, 28; 2(1): 8, 27, 28, 29, 30; 2(4): 1, 2, 11, 12, 14, 15; 3(2): 1, 4, 5, 9; 4(3): 30, 33, 34; 5(1): vi, 6, 21, 22, 23–24, 28; 5(2): 8; 5(3): 33
para 12(5) ... 1(1): 1, 2, 5

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- para 12A, settlement of disputed debts
see Disputed debts: applIncome Tax Act 58 of 1962 (ITA): Eighth Schedule (*cont*)
- cation of s 19 and para 12A of Eighth Schedule of ITA
 - enhanced R&D allowance ... 1(1): 18
 - exchange gains or losses ... 1(1): 19
 - Fourth Schedule ... 6(3): 3
 - remuneration ... 6(3): 2
 - general anti-avoidance rule (GAAR) ... 10(2): 10–11
 - general deduction formula (for leave pay) ... 1(1): 30
 - 'group of companies' – definition ... 1(1): 15
 - IFRS (International Financial Reporting Standards) – definition ... 4(3): 27
 - impact of s 8C ... 1(2): 29; 2(4): 2
 - impact of s 23K on deductible interest ... 3(3): 14–21
 - impact on debtor's tax position ... 1(1): 1, 2
 - impact on waiver of debt ... 1(1): 13
 - 'insolvent estate' – definition ... 3(2): 4
 - insolvent estates, taxation of ... 3(2): 4
 - interest deductibility ... 12(1): 20–23; 12(2): 20–23
 - 'market value' – definition ... 1(1): 27
 - mergers and acquisitions ... 5(3): vii
 - misuse of s 45, proposal to combat ... 2(3): 17–19
 - objectives of s 45 ... 2(3): 11–19
 - preference-share transactions, refinancing ... 12(3): 1–7
 - provisions affecting debtor ... 1(1): 3–8
 - qualifying percentage (interest) ... 1(1): 16
 - real estate investment trust (REIT) ... 4(3): 25
 - receipt of less than face value of debt ... 1(1): 1
 - recharacterisation provisions ... 1(2): 30
 - recoupment of deduction ... 1(1): 4–5, 17–18
 - reduction of assessed loss (s 20(1)(a)(ii)) ... 1(1): 3–4
- Income Tax Act 58 of 1962 (ITA) (*cont*)
- reduction of debt ... 4(3): 34
 - 'remuneration' – definition (Fourth Schedule) ... 2(4): 3
 - reportable arrangements (s 35 (1) and (2)) ... 10(2): 11–15
 - s 1
 - 'assessed loss' ... 1(1): 3
 - 'connected person' ... 1(1): 14–16, 17
 - para (d)(iv) ... 10(3): 1–9
 - see also* Connected person
 - s 1(1): 'share' defined ... 9(2): 9
 - s 7C ... 7(4): 27–29
 - apportioned donations ... 7(4): 29
 - deemed donations tax ... 7(4): 28
 - exclusions ... 7(4): 29
 - loss of loan, advance or credit ... 7(4): 28
 - s 8(4)(a), recoupment of VAT ... 12(1): 6–7; 12(2): 6–7
 - s 8C
 - application of ... 2(4): 2
 - equity instrument ... 10(3): 19
 - may extend beyond employment link ... 10(3): 18–25
 - qualifying criteria ... 10(3): 19–25
 - employment or office of director ... 10(3): 20–21
 - equity instruments acquired by virtue of any restricted equity instrument ... 10(3): 21–22
 - restricted equity instruments acquired during period of employment or office of director ... 10(3): 22–25
 - s 8C, application of ... 9(1): 9–15
 - s 8E ... 13(1): 29–30
 - application of ... 2(2): 1, 3, 8
 - 'hybrid equity instrument' defined ... 9(2): 9
 - preference-share transactions, refinancing ... 12(3): 3–6
 - 'qualifying purpose' exemption ... 13(1): 7–15
 - s 8EA
 - amendment by Taxation Laws Amendment Act 15 of 2016 ... 8(1): 26
 - application of ... 3(1): 2
 - preference-share transactions, refinancing ... 12(3): 6–7

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Income Tax Act 58 of 1962 (ITA) (*cont*)
- s 8G of ITA ... 13(4): 7–14
 - s 9I ... 13(3): 2–3
 - s 9I(2)(b) of ITA ... 13(4): 3–5
 - s 11(d) ... 11(1): 9–10
 - s 11(e) ... 7(2): 2–5
 - s 12H allowance ... 7(3): 23–28
 - administrative requirements ... 7(3): 28
 - allowances ... 7(3): 25–27
 - annual allowance ... 7(3): 25–26
 - completion allowance ... 7(3): 27
 - learners with disabilities ... 7(3): 27
 - exclusion from ... 7(3): 27–28
 - qualification for ... 7(3): 24–25
 - employer ... 7(3): 24
 - learner ... 7(3): 24
 - Registered Learnership Agreement ... 7(3): 25
 - s 12J ... 8(1): 13
 - practical application ... 8(1): 20
 - tax strategy ... 11(1): 1
 - overview of current provisions ... 11(1): 3–6
 - problem areas in application ... 11(1): 6–8
 - s 12L — energy-efficiency savings allowance ... 6(2): 1–12
 - claims for period prior to 1 November 2013 ... 6(2): 6–10
 - regulations under subsec (5) ... 6(2): 4–6, 10–11
 - text of ... 6(2): 11–12
 - s 19, settlement of disputed debts *see* Disputed debts: application of s 19 and para 12A of Eighth Schedule of ITA
 - s 20 ... 7(2): 1, 3–5; 8(4): 9, 10–12
 - s 20(1) ... 7(2): 3, 4
 - s 20(1)(a) ... 7(2): 3
 - s 20(1)(b) ... 7(2): 3
 - s 20(1)(c)(i), qualifying remuneration related to acquisition of asset form part of base cost ... 12(3): 10–12
 - s 20(1)(e), expenditure incurred to increase value of asset forms part of base cost ... 12(3): 12–15
 - s 20A ... 8(4): 12–14
 - s 23H ... 11(3): 1–10
- Telkom SA SOC Limited v Commissioner for the South African Revenue Income Tax Act 58 of 1962 (ITA): s 23H (cont)*
- Service [2020] 2 All SA 763 (SCA) ...*
- 11(3): 1–10
 - critical analysis ... 11(3): 7–10
 - SCA judgment ... 11(3): 5–7
 - Tax Court judgment ... 11(3): 3–5
 - s 23M ... 6(1): 11–21
 - 2021 amendments, highlights ... 14(1): 25–26
 - adjusted taxable income ... 14(1): 30–31
 - example ... 14(1): 31
 - amounts deemed to be interest in terms of s 24JA ... 14(1): 29
 - amounts under s 24K interest rate agreement ... 14(1): 28–29
 - controlling relationship between debtor and creditor ... 6(1): 11–21
 - debt owed to a creditor in a controlling relationship ... 14(1): 27
 - finance cost element of finance leases ... 14(1): 29
 - foreign exchange gains and losses ... 14(1): 29
 - interaction with s 23N ... 6(1): 20
 - interaction with s 31 ... 6(1): 20
 - interest
 - deduction limitation ... 14(1): 24–31
 - meaning of ... 14(1): 27–29
 - not subject to tax ... 14(1): 27
 - s 24J definition ... 14(1): 28
 - interest ‘subject to tax’ ... 6(1): 17
 - taxing provision ... 14(1): 29–31
 - treaty no-discrimination ... 6(1): 21
 - s 23N ... 6(3): 26–28
 - interest-deduction limitation ... 6(2): 38–44
 - acquired company ... 6(2): 41–44
 - acquiring company ... 6(2): 40–44
 - acquisition transaction ... 6(2): 41–44
 - application ... 6(2): 42–44
 - debt push down ... 6(2): 41–42
 - debt push up ... 6(2): 42
 - interest ... 6(2): 41–44
 - reorganisation transaction ... 6(2): 41–44
 - s 24C

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Income Tax Act 58 of 1962 (ITA): s 24C
(*cont*)
- allowance for future expenditure ...
 - 10(1): 11–19; 11(3): 11–20
 - Commissioner, South African Revenue Service v Big G Restaurants (Pty) Ltd* 2019 (3) SA 90 (SCA) ... 11(2): 12–15; 11(3): 11–20
 - Commissioner, South African Revenue Service v Clicks Retailers (Pty) Ltd* 2020 (2) SA 72 (SCA) ... 11(2): 16–17; 11(3): 11–20
 - correlation between future expenditure incurred in the performance of obligations under a contract and the income derived from such contract ... 10(1): 15–19
 - identification of income received or accrued ... 10(1): 12–14
 - income and a contract, relationship ... 10(1): 14–15
 - the law ... 11(3): 13
 - s 24J ... 6(3): 23–26, 30–31; 10(2): 17–18
 - interest, definition ... 14(1): 28
 - s 24K, interest rate agreement ... 14(1): 28–29
 - s 24O ... 6(3): 28
 - s 26A ... 7(2): 1
 - s 35 (1) and (2), reportable arrangements ... 10(2): 11–15
 - s 42 ... 9(4): 2
 - asset-for-share transaction ... 6(1): 22–29; 10(2): 6–8
 - compared with s 44 ... 6(1): 22–29
 - s 44 ... 8(3): 1–10
 - s 44, amalgamation transactions ... 11(2): 26–30
 - s 45
 - amendments to ... 2(3): 11–19
 - application of ... 2(3): 11–19
 - s 45(1)(a): intra-group transaction ... 9(4): 3
 - s 46, unbundling transaction ... 10(2): 8–9
 - s 47, liquidation transactions ... 10(2): 10
- Income Tax Act 58 of 1962 (ITA) (*cont*)
- s 47, liquidation, winding-up and deregistration transactions ... 11(2): 26–30
 - s 79 ... 7(2): 10–11
 - s 80D ... 13(1): 31–32
 - s 80G ... 14(3): 9
 - s 80J
 - arrangement, meaning ... 14(1): 6–7
 - misconceptions about ... 14(1): 7–9
 - genesis and purpose of ... 14(1): 3–5
 - language and context ... 14(1): 5–6
 - misuse and abuse ... 14(1): 1–12
 - background ... 14(1): 2–3
 - notice
 - misconceptions about ... 14(1): 7–9
 - proper role of ... 14(1): 9–11
 - s 103(2) ... 7(2): 2, 4
 - s 8EA ... 13(1): 29–30
 - ‘qualifying purpose’ exemption ... 13(1): 7–15
 - SARS may challenge waiver of debt ... 1(1): 9
 - scope and effect of new s 31 (as substituted by Act 7 of 2010) ... 1(4): 8, 15–16
 - sequestration of insolvent estates ... 3(2): 4
 - special corporate rules (ss 41–47) ... 10(2): 1–12
 - tax consequences for debtor ... 1(1): 8
 - tax treatment ... 1(1): 1
 - taxation of insolvent estates ... 3(2): 4
 - waiver of debt ... 1(1): 1, 13
- Income tax and VAT implications iro compensation for surrender of a right ... 2(2): 19–30
- Income tax consequences for creditor ... 1(1): 1
- Indemnity payment under contract of insurance not the same as indemnity/guarantee under contractual relationship *see* Value-added tax (VAT): indemnity payment
- Independent contractor, VAT ... 6(3): 6–7
- Information-gathering by SARS *see* Tax Administration Act 28 of 2011: information-gathering by SARS under

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Insolvency Act 24 of 1936 ... 3(2): 1; 4(1): 26; 5(3): 6
- Insolvent estates
- realisation of secured immovable property ... 3(2): 1–13
 - taxation of ... 3(2): 4
 - winding-up of ... 3(2): 1–13
- inter vivos*
- see also* trusts
 - trustees ... 4(1): 26–29
 - trusts ... 4(1): 26–29
- Interest
- circumstances where SARS approval not required ... 3(3): 17–18
 - conditional directives ... 3(3): 20
 - criteria used in directive process ... 3(3): 19–20
 - deductibility ... 12(1): 20–23; 12(2): 20–23
 - deductible ... 3(3): 14–21
 - deduction limitation ... 6(1): 11–21
 - s 23M deduction formula ... 6(1): 18–19
 - deduction subject to issue of directive ... 3(3): 18–19
 - definition ... 6(1): 16; 6(2): 41
 - effective date of directive ... 3(3): 20–21
 - exemption for non-residents, withdrawal of ... 1(2): v
 - impact of ITA s 23K ... 3(3): 16–17
 - restrictive directives ... 3(3): 20
 - withholding tax ... 6(1): 17
- Interest-free credit, impact on deduction of input tax ... 7(3): 5–10
- accounting treatment ... 7(3): 8
 - supply for no consideration ... 7(3): 8
 - VAT principles ... 7(3): 6
 - VAT status of granting ... 7(3): 6–8
 - VATCOM Report ... 7(3): 9
- Interest-free loans *see* shareholder loans
- Interest on loan funding used to acquire shares, deductibility of ... 6(3): 21–29
- ITA 1962, s 23N ... 6(3): 26–28
 - ITA 1962, s 24J ... 6(3): 23–26
 - ITA 1962, s 24O ... 6(3): 28
- International Accounting Standards
- Board (IASB) ... 4(3): 27
- International Financial Reporting Standards (IFRS) ... 4(3): 27
- Interpretation note, legal status ... 13(4): 23–24
- Interpretation of contracts *see* Contract: interpretation
- Interpretation of statutes
- conventional approach ... 12(1): 9–10; 12(2): 9–10
 - new approach in *Endumeni* ... 12(1): 11–12; 12(2): 11–12
 - application to taxing statutes ... 12(1): 13–16; 12(2): 13–16
 - impact on interpretation of tax law ... 12(1): 16–18; 12(2): 16–18
- Intra-group transactions
- STT, exemption under s 45 Income Tax Act ... 9(4): 1–6
 - was an asset acquired? ... 9(4): 3–4
 - was it a capital asset? ... 9(4): 5–6
- ITA *see* Income Tax Act 58 of 1962 (ITA)
- ### J
- Joint ventures/partnerships
- agent and principal ... 3(4): 24–25
 - members conducting enterprise ... 3(4): 23–24
 - value-added tax (VAT) ... 3(4): 16–25
- Judicial management ... 5(3): 1, 3, 4
- see also* business rescue
 - order ... 5(3): 4
 - procedures ... 5(3): 1
 - replaced by business rescue ... 5(3): 1
- ### L
- Labour broker
- definition ... 6(3): 4–36
 - VAT ... 6(3): 7–8
- Leasehold improvements ... 2(1): 23–33; 5(4): v, 25–51
- see also* the main entry for open-market value of supply
 - IN 71: Interpretation Note – Value-Added Tax: Supplies Made for No Consideration* ... 5(4): 30, 31, 38
 - Draft IN: Draft Interpretation Note – Value-Added Tax: Leasehold Improvements* ... 5(4): v, 25, 26, 27, 28, 29, 36, 37, 47, 49
 - income tax ... 2(1): 24–30
 - open-market value of supply ... 2(3): 31; 5(4): v, 25, 27, 35, 36, 37, 39, 47
 - right of use ... 5(4): 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51
 - time of supply ... 5(4): 42–49

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Leasehold improvements (*cont*)
value-added tax (VAT) ... 2(1): 30–33;
5(4): v, 25–51
- Leases, lodging, sub-leases and purpose
... 10(1): 20–24
conclusions ... 10(1): 23–24
the law ... 10(1): 21–23
High Court judgment ... 10(1):
22–23
Supreme Court of appeal judgment
... 10(1): 23
- Leave pay, deduction for ... 1(1): 29–30
- Legal principles ... 1(1): 1
discharge of debt ... 1(1): 1
receipt of less than face value of debt
... 1(1): 1
waiver of debt ... 1(1): 1–13
- Leveraged management buyouts (LBOs)
... 2(3): 11, 15–17
- Liability for CGT ... 2(4): 11
- Limited-recourse loans ... 6(3): 33–35
- Loadshedding, tax allowance for energy
efficiency ... 6(2): 1–12
- Loans
funding used to acquire shares,
deductibility of interest on *see*
Interest on loan funding used to
acquire shares, deductibility of
replacement, interest deduction
flow-through ... 12(1): 19–26; 12(2):
19–26
to trusts ... 7(4): 26–27
- Local subsidiary, acquisition of shares by
non-resident (s 8G of ITA) ... 13(4): 7
- Low-interest loans *see* shareholder loans
- M**
- M&A *see* mergers and acquisitions
‘market value’ – definition ... 1(1): 27
- Matrimonial Property Act 88 of 1984 ...
4(1): 26
- Meaning of debt *see* debt — meaning of
- Mergers and acquisitions (M&A)
see also Amalgamation and/or merger
definition of ‘enterprise’ ... 3(2): 16
input tax ... 3(2): 16
VAT incurred in relation to ... 2(3):
20–31; 3(2): 14–20
- Mineral and Petroleum Resources
Royalty Act 28 of 2008 ... 3(1): vii,
18–24
- Mining companies ... 5(1): 21–29
- Mining companies (*cont*)
cancellation of debt ... 5(1): 21–29
challenge to, of Act 28 of 2008 ...
3(1): 18–24
reduction of debt ... 5(1): 21–29
- Minority protection ... 4(4): 1–12
- Model Commentary on Article 4(3)
(Vienna Convention), Organisation for
Economic Co-operation and Develop-
ment (OECD) ... 1(3): 9
- Money laundering ... 14(2): 13–18
- N**
- Natal Joint Municipal Pension Fund v
Endumeni Municipality* 2012 (4) SA 593
(SCA), impact on interpretation of
fiscal legislation ... 12(1): 8–18; 12(2):
8–18
- National Credit Act 34 of 2005 ... 1(3):
19; 2(4): 22
- National Treasury ... 1(2): vi; 1(4): 32,
33; 2(2): v; 2(3): 11, 12; 2(4): 25; 3(1):
18, 22, 23; 4(2): 12, 13, 14; 4(3): 1, 25,
34; 4(4): 14, 16, 18; 5(1): 2, 15; 5(2): 2,
17, 21
- Negotiable instruments ... 2(4): 21; 3(3):
v, vi–vii, 22–30
dividend distribution (default
position) ... 3(3): 26–30, 30
issue of shares in exchange for, or
future services ... 3(3): 22–30
shares held in trust ... 3(3): 26–30
- Nominee director, directors’ fees,
employees’ tax and VAT ... 8(2): 2–4
- Non-executive director
directors’ fees — employees’ tax and
VAT ... 8(2): 1–4
nominee director ... 8(2): 2–4
directors’ fees and VAT ... 6(4): 1–5;
8(1): 1–12
recovery of VAT ... 8(1): 10
company law considerations ...
8(1): 10
- Non-residents
acquisition of shares in local subsid-
iary ... 13(4): 7–14
withdrawal of interest exemption for
... 1(2): v
- O**
- Obligation to pay ... 1(1): 2, 3, 5; 1(3):
21; 5(2): 28, 29, 35

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- OECD *see* Organisation for Economic Co-operation and Development (OECD)
- Offshore bank accounts and/or investments, curbing of tax abuses ... 3(2): 21–28
- Offshore trusts ... 1(3): 24–29
consequences of chosen funding method ... 1(3): 27–29
settlers ... 1(3): 24–29
tax and estate planning ... 1(3): 27–29
tax residence of ... 1(3): 25–27
transfer to trustees ... 1(3): 25
trustees ... 1(3): 25, 26, 27, 29; 1(4): 28
validity of ... 1(3): 24–25
- Open-market value of supply ... 2(3): 31; 5(4): v, 25, 27, 35, 36, 37, 39, 47
- Organisation for Economic Co-operation and Development (OECD) ... 1(4): 1, 6, 10, 11; 2(3): 1, 3; 5(1): 7, 12
Action Plan on Base Erosion and Profit Shifting ('BEPS' Action Plan) ... 5(1): 6, 8
Action Plan 4 ... 6(1): 12
arm's-length principle ... 1(4): 1, 4, 10, 11; 2(3): 3, 4
commentaries, relevance to tax-treaty interpretation ... 8(2): 15–26
Conduit Companies Report ... 3(1): 11
Guidelines ... 2(3): 3–5
Model Commentary on Article 4(3) (Vienna Convention) ... 1(3): 9, 10, 11
Model Tax Convention ... 1(4): 7, 8, 10–11; 2(3): 3
art 26 ... 7(1): 11–12
principles ... 5(1): 12
Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines)
Vienna Convention on the Law of Treaties, articles 31 and 32 ... 8(2): 5–40
- Organisation for Economic Cooperation and Development (OECD)
Model Tax Convention
on income and on capital ... 6(2): 14
on place of effective management, article 4 — resident ... 6(2): 17–20
- P**
- Paid-up capital (VAT Act) ... 1(1): 16
- Par value shares ... 1(2): 5–7, 29; 2(1): 3
continuation of ... 1(2): 5–6
conversion of, regulations relating to ... 1(2): 6–7
- Parol evidence rule ... 12(4): 18–24
- Partnerships/joint ventures
agent and principal ... 3(4): 24–25
members conducting enterprise ... 3(4): 23–24
tax treatment of partnership ... 10(4): 20
see also Private equity partnership value-added tax (VAT) ... 3(4): 16–25
- PAYE ... 4(2): 21; 5(3): 1, 7
- Payment, VAT and dividends tax ... 9(4): 13–19
- Pension schemes
foreign ... 14(3): 30–49
are contributions to pension plan subject to donations tax? ... 14(3): 33–35
double taxation ... 14(3): 42–43
estate duty or capital gains tax implications on death of discretionary SA Member ... 14(3): 44–49
income tax and capital gains tax implications ... 14(3): 35–42
vested vs discretionary member rights to income and capital derived by foreign pension scheme ... 14(3): 32–49
- Personal rights, termination of, CGT disposal? *see* Capital gains tax (CGT): termination of personal rights, CGT disposal?
- Personal service provider
definition ... 6(3): 4–36
VAT ... 6(3): 7–8
- Place of effective management ... 6(2): 13–37
British legal precedent ... 6(2): 24–26
confusion ... 6(2): 26–30
Income Tax Interpretation Note 6 ... 6(2): 15–17, 20–24
Katz Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa ... 6(2): 14

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Place of effective management (*cont*)
OECD MTC article 4 — resident ...
6(2): 17–20
SA tax authorities on ... 6(2): 30–37
- Pope, Alexander ... 1(1): 1
An Essay on Criticism ... 1(1): 1
- Post-commencement assessment ...
5(3): 1
- Post-commencement claim ... 5(3): 2
- Post-commencement finance ... 5(3): 2
bank under curatorship ... 6(1): 9–10
- Post-commencement finance (s 135 of
Act 71 of 2008) ... 5(3): 7, 20
- Practice generally prevailing ... 13(4):
23–24
- Pre-production problems ... 5(1): 1–6
- Preference-share transactions, ss 8E and
8EA of Income Tax Act ... 12(3): 1–7
- Preference shares
Companies Act, relevant provisions ...
9(2): 3–6
s 1: definition of ‘distribution,’ para
(a) ... 9(2): 4
s 4: solvency and liquidity test ...
9(2): 3–4
s 37: preferences, rights, limitations
and other share terms ... 9(2): 5–6
s 46: distributions must be author-
ised by board and company must
pass solvency and liquidity test ...
9(2): 4–6
nature of ... 9(2): 6–7
right to enforce payment of redemp-
tion amount ... 9(2): 1–8
standard commercial preference share
terms ... 9(2): 2–3
- Preferential loans ... 5(3): vi
- Private Equity and Venture Capital Asso-
ciation ... 8(1): 14
- Private equity partnership
structure ... 10(4): 18
co-ownership ... 10(4): 20
profit sharing ... 10(4): 19–20
tax treatment ... 10(4): 20–21
- Pro-*fiscus* ... 13(4): 24–26
- Profit-split method (transfer pricing) ...
2(3): 4, 5
- Q**
- Qualifying percentage interest (ITA and
VAT Act) ... 1(1): 16
- ‘Qualifying purpose’ exemption, purpo-
sive interpretation ... 13(1): 7–15
- R**
- Real Estate Investment Trust (REIT) ...
4(3): 24–34
application of s 25BB(2) (examples) ...
4(3): 28–29
capital gains tax treatment ... 4(3):
30–31
conversion of property investment
vehicles ... 4(3): 30
deduction permitted from gross
income ... 4(3): 27–28
definition of REIT ... 4(3): 26
non-deductible allowances in respect
of immovable property ... 4(3): 29
other definitions ... 4(3): 26–27
proposed amendments to s 25BB ...
4(3): 31–34
tax treatment of financial instruments
... 4(3): 29–31
taxation of dividends ... 4(3): 30–31
taxation under ... 4(3): 24–34
treatment of interest ... 4(3): 30
- Recharacterisation provisions (ITA s 8E)
... 1(2): 30
- Recharacterisation Rules ... 4(3): v, 1–8
- Recoupment of deduction ... 1(1): 4–5,
17–18
- Reduction of debt *see* Debt reduction
- Reduction of debt, and taxation ... 7(3):
11–22
allowance assets ... 7(3): 15
appropriation of debt reduction ...
7(3): 18–20
debt reduction provisions, application
of ... 7(3): 13–14, 16–23
merger ... 7(3): 16–17
non-allowance assets ... 7(3): 16
other assets and expenses ... 7(3): 15
payment ... 7(3): 16
prescription ... 7(3): 18
release ... 7(3): 18
set-off ... 7(3): 17–18
trading stock held and not disposed
of ... 7(3): 14
VAT ... 7(3): 20–22
- Registered Learnership Agreement ...
7(3): 25
- Regulation of schemes of arrangement
... 4(4): 1–12

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Regulation of schemes of arrangement
(*cont*)
minority protection ... 4(4): 1–12
- REIT regimen ... *see* Real Estate Investment Trust (REIT)
- Related-party transactions ... 1(1): 14–23
connected persons ... 1(1): 14
at less than market value ... 1(1): 23
terms and conditions ... 2(3): 9
- Release of debtor by creditor ... 1(1): 2
- Relevant material *see* Tax Administration Act 28 of 2011: relevant material
- Relevant provision (Eighth Schedule, para 12(5)) ... 1(1): 1, 2
- Remote working, source of income ... 13(1): 1–6
- Remuneration ... 6(3): 1–11
definition ... 6(3): 3
meaning ... 6(3): 2–3, 3–5
VAT on ... 6(3): 1–11
employee/office holder ... 6(3): 2
- Reorganisation transaction ... 6(2): 41
- Reportable arrangements under the TAA (ss 34–39) ... 13(1): 27–34
failure to report ... 13(1): 34
qualifying features ... 13(1): 31–33
accommodating or tax-indifferent parties ... 13(1): 32
characteristics contained in the GAAR provisions ... 13(1): 31
elements that have the effect of off-setting or cancelling each other ... 13(1): 33
accounting versus tax treatment ... 13(1): 33
no reasonable expectation of a pre-tax profit ... 13(1): 33
reasonable expectation of a pre-tax profit that is less than the value of the tax benefit ... 13(1): 33
interest charges dependent on tax assumptions ... 13(1): 31–32
when to report ... 13(1): 33–34
who must report ... 13(1): 29–31
person who derives financial benefit ... 13(1): 30
promoter ... 13(1): 31
tax benefit ... 13(1): 29–30
- Resale-price method (transfer pricing) ... 2(3): 4
- Restricted equity instruments ... 2(2): 13, 15, 16; 2(4): 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16; 3(1): 5
see also equity instruments; unrestricted equity instruments ... 3(1): 5
- Restructuring companies via the corporate rules ... 10(2): 1–12
illustration ... 10(2): 3–5
current group structure ... 10(2): 3
proposed restructure ... 10(2): 3
steps and effect of ... 10(2): 4–5
tax implications of proposed restructure ... 10(2): 5–12
GAAR, application of ... 10(2): 10–11
reportable arrangement ... 10(2): 11–12
s 42 asset-for-share transaction ... 10(2): 6–8
s 46 unbundling transaction ... 10(2): 8–9
s 47 liquidation transactions ... 10(2): 10
simulated transaction ... 10(2): 11
- Retrospective legislation ... 5(1): 15–20
recourse for taxpayers ... 5(1): 15–20
- Retrospective legislation — the *Pienaar Brothers* case ... 8(3): 11–19
comments on judgment
Davis, Dennis ... 8(3): 17–18
Emslie, TS ... 8(3): 16–17
- Retrospective operation of statutory amendments ... 8(1): 21–30
formulae used in Taxation Law Amendment Act ... 8(1): 23–30
presumption against retrospectivity ... 8(1): 24–26
- Right, surrender of
compensation for ... 2(2): 19–30
income tax and VAT implications ... 2(2): 19–30
- Ring-fencing assessed loss ... 8(4): 8–15
- Rollover relief provisions ... 5(3): vii, 31
- Royalty Act, *see* Mineral and Petroleum Resources Royalty Act 28 of 2008 ... 5(3): 31
- S**
- Sale of assets within group ... 2(3): 13–15
- Sale of business ... 1(1): 24; 1(4): 17–26

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

Sale of business (*cont*)

- assumption of liabilities ... 1(4): 18–23, 29–30
- value-added tax *see* value-added tax (VAT)

Sale-of-business transactions ... 1(1):

- 24–30; 1(4): 25
- completion date ... 1(1): 28
- effective date ... 1(1): 28
- primary consideration ... 1(1): 24
- purchase-price adjustment ... 1(1): 27–28
- purchase-price allocation ... 1(1): 25
- purchase-price considerations ... 1(1): 26–28
- salient features of ... 1(1): 24
- trading stock ... 1(1): 26–27; 1(3): 14, 16, 17, 18; 1(4): 19, 21; 2(1): 7, 17; 2(2): 21; 2(3): 12; 3(1): 7; 5(1): 22, 27; 5(2): 12; 5(3): 33, 34, 35; 5(4): 54

SANEDI *see* South African National Energy Development Institute (SANEDI)

SARB *see* South African Reserve Bank (SARB)

SARS ... 1(3): 1, 3, 14; 1(4): 1, 2, 27; 2(2): 8; 2(3): 1; 2(4): 13, 27; 3(2): 8, 14, 15; 3(3): 14; 4(2): 2; 4(3): 9, 26; 4(4): 23, 26; 5(1): 9, 15; 5(2): 2, 14, 15, 27; 5(3): 4, 26

- Binding Private Ruling 101 ... 9(4): 2
- commissioner, proposed amendment for appointing ... 14(3): 27–29
- Comprehensive Guide to Capital Gains Tax* ... 2(1): 27

Draft Guide on the Disclosure of Reorganisation Transactions (12 August 2011) ... 3(3): 15, 16, 19, 21

Draft Guide on the Employment Tax Incentive (ETI) ... 5(2): 2, 5

Draft Guide on the Taxation of Franchisors and Franchisees *see* Franchise Explanatory Memorandum (to the Taxation Laws Amendment Act 7 of 2010) ... 1(4): v, 1, 3, 6, 7, 8, 11, 13, 14

information-gathering under the Tax Administration Act 28 of 2011 *see* Tax Administration Act 28 of 2011: information-gathering by SARS under

SARS (*cont*)

- Legislative Overview of the TAA* ... 3(3): 1
- Memorandum on the Objects of the Tax Administration Bill, 2011* ... 7(1): 7
- obligation to respect taxpayers' constitutional rights ... 10(1): 3
- obligations under Bill of Rights ... 10(1): 3–4
- Practice Notes ... 1(3): 28; 1(4): 1, 4–6, 9, 14; 2(3): 2, 9
- public administration, an organ of state within ... 10(1): 2
- Short Guide to the TAA* ... 3(3): 1, 5, 6; 4(2): 4, 5, 7, 9; 4(3): 9–11, 12, 15, 16, 20; 5(2): 30
- tax administration
 - s 195 of Constitution ... 10(1): 7–9
 - s 237 of Constitution ... 10(1): 9
- value-conscious tax administration ... 10(1): 1–10

Schemes of arrangement ... 1(1): v; 2(1): 11, 12; 2(3): 20, 21, 27, 28; 4(4): v, 1–12; 5(3): 35

- minority protection ... 4(4): 1–12
- regulation of ... 4(4): 1–12

Secondary Tax on Companies (STC) (now replaced by dividends tax) ... 1(1): 9; 1(2): 23, 31; 1(4): 6; 2(1): 7; 2(2): 2; 3(3): 23; 5(3): vi, 21, 22–23

Securities Services Act 36 of 2004 ... 4(2): 15

Securities transfer tax, intra-group transfers, exemption under s 45 Income Tax Act ... 9(4): 1–6

Securities Transfer Tax Act 25 of 2007 ... 9(4): 2

- s 8(1): exempt transactions ... 9(4): 2

Security by interest-bearing debt instruments ... 4(3): 2–3

Self-assessment taxes ... 5(3): 2

Set-off ... 9(2): 14

Share

- adequate consideration ... 1(2): 23, 24, 30–31; 3(3): 22, 23; 5(3): 23
- buy-backs ... 1(1): v; 1(2): 23–24, 31–32; 2(1): 1–15; 9(2): 9; 9(4): 8–11
- misnomer ... 9(4): 10–11
- personal rights ... 9(4): 8–9
- vs redemption ... 9(4): 7–12
- distinction ... 9(4): 11–12

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Share: buy-backs (*cont*)
- shares held *qua* shareholder ... 9(4): 10
 - certificates ... 1(2): 5–6
 - defined ... 9(1): 11–14
 - elements of ... 9(1): 12
 - part of, sale of ... 9(1): 12
 - of pre-existing company ... 1(2): 5
 - preference *see* Preference shares
 - redemption, vs buy-backs ... 9(4): 7
 - repurchase *see* Share: buy-backs
- Shareholder loans (interest-free or low-interest loans) ... 5(3): vi, 21–30
- dividends-tax implications ... 5(3): vi
 - treated as dividend *in specie* ... 5(3): vi
- Shareholders, classification of rights ... 1(2): 29–30
- ‘Short sales’ ... 1(1): 1
- Simulated transactions principle ... 4(1): 16, 19, 20, 21, 22, 23, 24, 25; 5(4): 3, 17, 23
- test for ... 4(1): 22, 25
- Six-year anti-avoidance rule *see* anti-avoidance rules; two-year anti-avoidance rule ... 2(1): 18–20
- Skills-development levies ... 5(3): 1, 7, 19
- Small Business Tax Amnesty ... 1(4): 27
- Source and the remote worker ... 13(1): 1–6
- South African National Energy Development Institute (SANEDI) ... 6(2): 4–6
- South African Reserve Bank (SARB) ... 1(3): 27; 1(4): 28
- South African Revenue Service *see* SARS
- South African Revenue Service Act 34 of 1997 ... 10(1): 3
- s 2 ... 10(1): 2
- SST *see* Securities transfer tax
- Statutory interpretation ... 13(4): 15–27
- Subject to tax ... 6(1): 17–18
- Substance over form: *X (Pty) Ltd v CSARS* ... 8(4): 16
- Suspension of payment ... 5(2): 27–35
- amount of tax involved ... 5(2): 29–30
 - compliance history of taxpayer ... 5(2): 29
 - dissipation of assets, risk of ... 5(2): 30–31
 - failure to furnish information ... 5(2): 33–35
 - fraud involved in dispute ... 5(2): 33
- Suspension of payment (*cont*)
- irreparable financial hardship for taxpayer ... 5(2): 32–33
 - liquidation proceedings ... 5(2): 33
 - provision of adequate security ... 5(2): 31–32
 - relevant legislation ... 5(2): 28–35
 - rules for ... 5(2): 27–35
 - sequestration proceedings ... 5(2): 33
- ## T
- ### Tax
- see also* (among others) income tax, Income Tax Act 58 of 1962, PAYE, self-assessment taxes, Tax Administration Act 28 of 2011, UIF, Value-Added Tax Act 89 of 1991, VAT
- definition ... 6(1): 17
- Tax Administration Act 28 of 2011 (TAA) ... 3(3): v–vi, 1–13; 3(4): v; 4(1): 26; 4(2): v, 1–11; 4(3): v, 9–23; 4(4): v, 23–32; 5(2): vi, 27–35; 5(3): 2, 8, 11; 10(1): 3, 5–7
- 164(1) ... 10(1): 3–4
 - 172(1) ... 10(1): 3
 - administrative non-compliance penalties ... 4(3): 10–16
 - Chapter 9 — dispute resolution ... 9(2): 20–22
 - Chapter 9 — period for lodging appeal ... 9(1): 16
 - Chapter 16 — understatement penalty ... 7(3): 1–28
 - contents of the ... 3(3): 5–13
 - corporate tax administrators ... 4(2): v, 1–11; 4(3): v, 9–23; 4(4): 23–32
 - fixed-amount penalty ... 4(3): 21
 - gross negligence ... 4(3): 11–14
 - impact of the structure and contents ... 3(3): 5–13
 - information-gathering by SARS under ... 7(1): 1–12; 7(2): 6–16
 - cases decided under repealed s 79 of Income Tax Act ... 7(2): 10–11
 - document retention, taxpayer’s obligations ... 7(2): 12
 - field audits outside SA ... 7(2): 16
 - interviews by SARS
 - former employees and directors ... 7(2): 13–14
 - persons outside SA ... 7(2): 16
 - representation at ... 7(2): 14–15

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Tax Administration Act 28 of 2011 (TAA): information-gathering by SARS under: interviews by SARS (*cont*)
- status of records ... 7(2): 14
 - taxpayer's rights and obligations ... 7(2): 12–13
 - legislative background ... 7(1): 7–11
 - Memorandum on the Objects of the Tax Administration Bill, 2011* ... 7(1): 7–11
 - OECD Model Tax Convention ... 7(1): 11–12
 - offshore companies, information held by ... 7(2): 15
 - powers of SARS ... 7(1): 2–7
 - chapter 5 of the TAA ... 7(1): 3–6
 - prescribed years of assessment ... 7(2): 7–9
 - revisiting ... 7(2): 9–10
 - intentional tax evasion ... 4(3): 21–23
 - legislative purpose of the ... 3(3): 3–5
 - no reasonable grounds for tax position ... 4(3): 20–21
 - procedures for imposing penalties ... 4(3): 15–16
 - reasonable care not taken ... 4(3): 20
 - records ... 4(2): 6–7
 - registration particulars ... 4(2): 2–3
 - relevant material ... 7(1): 6–7
 - definition (s 1 of the TAA) ... 7(1): 6
 - remittance remedies ... 4(3): 17–18
 - reportable arrangements ... 4(2): 8–11
 - reportable arrangements (ss 3437) ... 13(1): 27–34
 - representative taxpayer, ss 153–154 ... 8(3): 32
 - request for remittance of penalty ... 4(3): 16–17
 - returns ... 4(2): 3–4
 - s 7 ... 10(1): 5
 - s 33(1) ... 10(1): 5
 - ss 34–39 ... 13(1): 27–34
 - s 40 ... 7(2): 7
 - s 42A
 - extent of ambit ... 12(1): 19–20
 - legal privilege under ... 12(1): 13–24
 - basic principles of statutory interpretation ... 12(1): 16
 - legal process prescribed by s 42A ... 12(1): 17–19
- Tax Administration Act 28 of 2011 (TAA): s 42A: legal privilege under (*cont*)
- material over which taxpayers may claim legal professional privilege ... 12(1): 20–23
 - s 44(1) ... 10(1): 5
 - s 45(2) ... 10(1): 6
 - ss 46–48 ... 7(2): 7
 - s 61(5) ... 10(1): 6
 - s 61(8) ... 10(1): 6
 - s 62(2) ... 10(1): 6
 - s 63(4) ... 10(1): 6
 - s 69(1) ... 10(1): 7
 - s 99(1)(a) ... 7(2): 7
 - s 99(1)(a) ... 7(2): 7–9
 - s 99(2)(a)–(d) ... 7(2): 7
 - s 100(1) ... 7(2): 8, 8–9
 - s 107(2) — period for lodging appeal ... 9(1): 17
 - SARS Legislative Overview of the TAA* ... 3(3): 1
 - SARS Short Guide to the TAA* ... 3(3): 1, 5, 6; 4(2): 4, 5, 7, 9; 4(3): 9–11, 12, 15, 16, 20; 5(2): 30
 - statement re: accounts ... 4(2): 4–6
 - structure of the ... 3(3): 5–13
 - Tax Ombud ... 3(3): 5, 6
 - third party returns ... 4(2): 7–8
 - understatement penalty ... 4(3): 18–23; 4(4): 23–32
- Tax administration by SARS
- democratic principles underpinning ... 10(4): 1–16
 - moral ... 14(3): 23–29
 - national taxes ... 10(4): 3–6
 - rule of law ... 10(4): 6–16
 - legality ... 10(4): 13–16
 - vagueness in tax legislation ... 10(4): 10–13
 - tax immorality ... 14(3): 25–27
 - transforming society through taxation ... 14(3): 23–25
 - value conscious ... 10(1): 1–10
- Tax amendments 2016, application ... 7(4): 25–32
- Tax avoidance ... 5(4): v, 1–24
- see also* doctrine of substance over form
 - alleged bias ... 5(4): 13–17
 - anti-avoidance provisions in ITA ... 5(4): 1, 3

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Tax avoidance (*cont*)
improvements scheme ... 5(4): 3–6
premium scheme (also known as
Ladysmith scheme) ... 5(4): 6–13
simulated transactions ... 5(4): 17–19
- Tax consequences for creditor ... 1(1): 1,
2, 8–13
- Tax Court
administrative review in ... 9(2):
19–29
jurisprudence ... 9(2): 23–27
- Tax debts, rank in business rescue ...
11(4): 16–22
income tax liability arises on assess-
ment only ... 11(4): 19–20
judgments ... 11(4): 17–19
PAYE liability triggered by payment of
remuneration ... 11(4): 20
VAT liability triggered by supply ...
11(4): 20
- Tax due diligence *see* Due diligence
- Tax evasion ... 3(3): 4, 11, 12; 4(1): v, 20,
23, 25, 222; 4(3): 11
intentional ... 4(3): 21–23; 4(4): 32
- Tax exemptions in debt-waiver rules ...
5(4): 55–63
donations exemption ... 5(4): 55–61
group-of-companies exemption ...
5(4): 55–57
liquidation/deregistration exemption
... 5(4): 61–62
- Tax implications (business rescue) ...
5(3): 1–20
- Tax implications (CGT) ... 2(4): 11–16
- Tax implications (debt discharge/reduc-
tion) ... 1(1): 1
- Tax implications (deferred delivery share
incentive schemes) ... 4(1): 23
- Tax implications (disposal of assets) ...
2(1): 16; 2(3): 15, 16
- Tax implications (dividends tax) ... 3(3):
22
- Tax implications (improvements on
land) ... 2(1): 23
- Tax implications (issuing shares in
exchange for negotiable instrument) ...
3(3): v, vi–vii
- Tax implications (reduction/cancellation
of loan debt – mining companies) ...
5(1): vi–vii
- Tax implications (share incentive trust
scheme) ... 2(4): 1, 2, 3
- Tax implications (unincorporated joint
venture agreement) ... 4(1): 19–20
- Tax incentives ... 5(2): 1–7
description of ... 5(2): 2
eligible employers ... 5(2): 2–3
hiring young and less experienced
people ... 5(2): 1–7
wage-regulating measure ... 5(2): 3–4
- Tax legislation ... 1(1): v, 1; 1(3): 2; 4(2):
v, 23; 4(3): v; 4(4): 16; 5(1): 18
administering ... 3(3): v
compliance with ... 1(4): 32
dividend tax ... 3(4): 9
domestic test for residence ... 1(3): 2
exemptions on dividends ... 3(1): 1–2
fringe benefits (Seventh Schedule) ...
2(2): 15
mining industry ... 3(1): vi
retrospective ... 5(1): vi, 19
- Tax liability ... 5(3): 1–2
- Tax Ombud ... 3(3): 5, 6
- Tax relief, within group ... 2(1): 16–22
- Tax residence
companies in UK and SA ... 1(3): vi,
1–13
DTA test ... 13(2): 12–19
assets and wealth ... 13(2): 15–16
family ... 13(2): 13–14
Health service providers, Trading
stock ... 13(2): 17
hobbies ... 13(2): 16
homes ... 13(2): 15
political, philanthropic, cultural,
business involvement ... 13(2): 16
significant events and friendships
... 13(2): 16
time spent ... 13(2): 15
work ... 13(2): 14–15
mobile South Africans ... 13(2): 9–17
ordinarily resident ... 13(2): 9–11
physical presence test ... 13(2): 11–12
statutory ... 13(2): 9
- Tax return, belated submission ... 5(3): 1
- Tax returns ... 5(3): 1
belated submission of ... 5(3): 1
- Tax treaties, OECD Commentaries in
interpretation of ... 8(2): 5–28
- Tax treatment under ITA ... 1(1): 1
- Taxable income, meaning of ... 8(4):
9–10
- Taxation Law Amendment Act 15 of
2016

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Taxation Law Amendment Act 15 of 2016 (*cont*)
retrospective operation ... 8(1): 21–30
s 15(2), interpretation of ... 8(1): 26–28
- Taxation Laws Amendment Act 7 of 2010 ... 1(4): v, 1, 2, 9, 13, 14, 15
amendment of s 31 of ITA ... 1(4): 1–16
- Taxation Laws Amendment Act 22 of 2012 ... 4(2): 15; 4(3): 1, 24, 25; 5(1): 10
Explanatory Memorandum ... 4(2): 13
- Taxation Laws Amendment Act 24 of 2011 ... 3(1): v, 1, 2; 3(3): 15; 4(3): 1; 4(4): 32
- Taxation Laws Amendment Act 31 of 2013 ... 5(1): 6, 10; 5(2): 16
- Taxation Laws Second Amendment Act 8 of 2010 ... 1(4): vi, 27–34
- Taxation of financial instruments from 2014 ... 4(2): 12–19
- Taxation of hedge funds ... 4(4): 13–22
- Taxation of insolvent estates ... 3(2): 4
- Temporary Employer/Employee Relief Scheme (TERS) ... 11(2): 4–6
see also Covid-19 tax relief
- Termination of personal rights, CGT disposal? *see* Capital gains tax (CGT): termination of personal rights, CGT disposal?
- TERS *see* Temporary Employer/Employee Relief Scheme (TERS)
- Thin-capitalisation practices ... 1(4): 1–16
- Thin-capitalisation rules (new) ... 1(4): 11–12
- Third-party backed shares (TPBS) (ITA s 8EA) ... 3(1): 1, 3–5; 4(3): v, 1, 6
definition of ... 3(1): 4
enforcement rights ... 3(1): 4–5
exemption criteria ... 3(1): 5
obligations ... 3(1): 4–5
tax consequences ... 3(1): 3–4
- Time-of-disposal rules ... 1(1): 28; 5(2): v
- Time-of-supply rules ... 1(1): 21, 22
- Tokens, stamps and vouchers
VAT and the issue and redemption of ... 13(1): 16–26
analysis ... 13(1): 20–21
- Mobile Telephone Networks (Pty) Limited v CSARS Gauteng High Tokens, stamps and vouchers: VAT and the issue and redemption of (cont)*
Court, Case No 79960/2019 ... 13(1): 17–26
time of supply ... 13(1): 22–26
- TPBS *see* third-party backed shares (TPBS)
- Trade, meaning ... 13(3): 9–10
- Trading stock ... 1(1): 26–27; 1(3): 14, 16, 17, 18; 1(4): 19, 21; 2(1): 7, 17; 2(2): 21; 2(3): 12; 3(1): 7; 5(1): 22, 27; 5(2): 12; 5(3): 33, 34, 35; 5(4): 54
- Transactional net-margin method (transfer pricing) ... 2(3): 4
- Transfer pricing ... 1(4): 1–16
Chevron Australia Holdings (Pty) Ltd v the Commission of Taxation ... 8(3): 26–30
comparable uncontrolled-price method (CUP) ... 2(3): 4
cost-plus method ... 2(3): 4
exemption of financial assistance by HQ company to foreign subsidiary ... 1(4): 13–14
Explanatory Memorandum (to the Taxation Laws Amendment Act 7 of 2010 (SARS)) ... 1(4): v, 1, 3, 6, 7, 8, 11, 13, 14
international context ... 2(3): 3–9
methods ... 2(3): 4
OECD Guidelines ... 2(3): 3–5
OECD Model Tax Convention ... 1(4): 7, 8, 10–11; 2(3): 3
Practice Notes ... 1(4): 3–4
profit-split method ... 2(3): 4, 5
regimen ... 1(4): 12; 2(3): v, 1–2, 1–10
resale-price method ... 2(3): 4
rules ... 1(4): 4–6, 8–9
rules (new) ... 1(4): 8–9
- Secondary Tax on Companies (STC) (now replaced by dividends tax)
Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations *see* *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* and *OECD Guidelines* (above)
- Treasury shares ... 1(2): 5–6
- True intention ... 4(1): 18–19

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Trust Property Control Act 57 of 1988 ... 4(1): 26
- Trustees ... 2(2): 14, 15; 2(4): 3, 4, 8, 9, 14, 15, 17; 3(1): 16, 17; 3(2): 1, 3, 4, 5, 6, 9, 12; 4(1): v, 26–29; 4(4): 22
see also trusts
common-law duties of ... 4(1): 27–28
distribution by ... 2(4): 4; 3(2): 5
duties and obligations of ... 4(1): v, 27–29
effect of distribution of assets/shares ... 2(4): 14–15
fiduciary capacity ... 3(1): 16; 3(3): vii, 30
independent ... 4(1): 29
of insolvent estate ... 3(2): 1, 3, 4, 5, 12
remuneration ... 3(2): 8
representative taxpayer (of insolvent estate) ... 3(2): 4
statutory duties of ... 4(1): 28
- Trusts ... 7(4): 26–27
see also off-shore trusts; trustees
bewind ... 9(1): 10–11
inter vivos ... 4(1): 26–29
legislation ... 4(1): 26
loans to ... 7(4): 26–27
non-resident beneficiaries of a local trust ... 9(4): 24–25
requirements for valid trust ... 4(1): 27
resident beneficiaries of a foreign trust ... 9(4): 25–27
statutory intervention in flow of benefits to beneficiaries ... 9(4): 21–24
application of ... 9(4): 27
taxation of
conduit-pipe principle ... 9(4): 20–30
explained ... 9(4): 21
- Two-year anti-avoidance rule ... 2(1): 21–22
see also anti-avoidance rules
- U**
- UK capital gains tax ... 1(3): 11
- UK Income and Corporation Taxes Act ... 2(3): 7
- UK-SA double taxation agreements ... 1(3): vi, 1
- UN Model Tax Convention* ... 1(4): 7, 8, 10–11; 2(3): 3
- Understatement penalty ... 7(3): 1–4
basic rules ... 7(3): 2–3
SARS errors ... 7(3): 3–4
- Unrestricted equity instruments ... 2(2): 13; 2(4): 6
- US double taxation agreement *see* double taxation agreement - SA-US
- V**
- Value-Added Tax Act 89 of 1991 (VAT Act) ... 1(1): 1, 11, 14; 1(2): 13–22; 1(4): 18, 23; 2(1): 30; 2(2): 19; 2(3): v, 21; 3(2): 16; 3(3): 1, 3; 3(4): 16; 4(3): 9, 14; 4(4): 25, 27, 32; 5(1): v, 10; 5(2): 14; 5(3): v, 2, 9
applicability of provisions ... 1(1): 1
'connected person' – definition ... 1(1): 14
consequences ... 2(1): 30
discharge of debt ... 1(1): 1
Electronic Services Regulations (GN R221 of 28 June 2014) ... 5(2): 23–26
enterprise, definition ... 6(3): 2
export of goods ... 1(2): 13–22
liability of creditor ... 1(1): 1
person, meaning of ... 8(4): 3–7
reduction of debt ... 1(1): 1
s 8(25) ... 11(2): 19–31
2009 amendments ... 11(2): 23–25
2019 amendments ... 11(2): 25–26
application when corporate rule not adopted for income tax and CGT purposes ... 11(2): 30–31
s 11(1)(e), sale of business zero rated ... 11(1): 18–35
s 16
payment of tax if output tax exceeds input tax ... 12(1): 5; 12(2): 5
refund due if input tax exceeds output tax ... 12(1): 5; 12(2): 5
s 22(3)
deemed output VAT in business rescue ... 11(4): 21–22
12 months, expiry of ... 11(4): 21
penalties and interest ... 11(4): 21–22
s 50, branches of foreign companies, possible application to ... 12(3): 28–29

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Value-Added Tax Act 89 of 1991 (VAT Act) (*cont*)
waiver of debt ... 1(1): 1–13; 5(1): 27
- Value-added tax (VAT) ... 1(1): 1, 21–22; 1(2): 13; 1(4): 18, 23–26; 2(1): 30–33; 2(2): 28–30; 2(3): 20, 22; 4(3): 9, 14, 17; 4(4): 25, 27; 5(1): 7, 8; 5(2): 14, 21, 27; 5(3): v; 11(2): 26–30; 13(2): 18–28
see also mergers and acquisitions (M&A)
- IN 71: Interpretation Note – Value-Added Tax: Supplies Made for No Consideration* (iro leasehold improvements) ... 5(4): 30, 31, 38
- application to debt forgiveness ... 1(1): 11–13
- Commissioner for the South African Revenue Service v Capitec Bank Limited* (94/2021) [2022] ZASCA 97 (21 June 2022) ... 13(2): 24–28
- corporate transactions ... 11(1): 18–35; 11(2): 19–31
- disposal of a going concern ... 11(1): 22–23
- disposal of assets necessary for carrying on the enterprise ... 11(1): 26–35
- disposal of enterprise or part thereof as a going concern ... 11(1): 22
- disposal of goods and services held or utilised wholly for purpose of making non-taxable supplies ... 11(1): 20–21
- disposal of goods and services not held or utilised wholly for purpose of making non-taxable supplies ... 11(1): 21–22
- disposal of part of enterprise ... 11(1): 23–24
- erroneously zero-rated transactions ... 11(1): 28
- going-concern requirement, transactions under ss 44 and 47 of ITA ... 11(2): 26–30
- income-earning at date of transfer ... 11(1): 24–26
- sale of business ... 11(1): 19–26
- sale or issue of shares ... 11(1): 28–35
- directors' fees ... 6(3): 10–11
- Value-added tax (VAT) (*cont*)
Draft IN: Draft Interpretation Note – Value-Added Tax: Leasehold Improvements ... 5(4): v, 25, 26, 27, 28, 29, 36, 37, 47, 49
- employee ... 6(3): 5–6
- export of goods ... 1(2): 13–22
- foreign branches and *see* Foreign branches and VAT
- foreign companies, branches of ... 12(3): 16–30
- the law ... 12(3): 19–20
- Wenco International Mining Systems and another v CSARS* [2021] ZAPPHC 70 ... 12(3): 16–30
- analysis ... 12(3): 23–29
- grounds for registration as a vendor ... 12(3): 20
- grounds for review ... 12(3): 18–19
- judgment ... 12(3): 20–22
- SARS's argument ... 12(3): 20
- fringe benefits ... 6(3): 8–9
- implications ... 1(4): 23
- implications for foreign suppliers of electronics services ... 5(1): 7–14; 5(2): 15–26
- income tax, effect on ... 12(1): 4–5; 12(2): 4–5
- indemnity payment
- contract of insurance
- meaning ... 12(1): 8
- under, not the same as indemnity/guarantee under contractual relationship ... 12(1): 6–12
- meaning ... 12(1): 8
- supply of 'services contemplated by (the) contract (of insurance)' must be a taxable supply ... 12(1): 11–12
- independent contractor ... 6(3): 6–7
- input and output taxes ... 12(1): 1–7; 12(2): 1–7
- labour broker ... 6(3): 7–8
- leasehold improvements, VAT implications ... 2(1): 23–33; 5(4): v, 25–51
- liability of creditor to account for ... 1(1): 1
- M&A activity ... 2(3): 20–31; 3(2): 14–20
- non-executive directors' fees ... 6(4): 1–5; 8(1): 1–12
- partnership ... 8(4): 1–7

Business Tax & Company Law Quarterly Index: 1(1)–14(3)

- Value-added tax (VAT) (*cont*)
personal service provider ... 6(3): 7–8
perspective ... 2(1): 24; 3(4): 17
provisions ... 1(1): 14
purpose(s) ... 3(2): 15; 5(2): 15
recoupment under s 8(4)(a) of ITA ...
12(1): 6–7; 12(2): 6–7
remuneration *see* Remuneration ...
6(3): 1–11
Rennies Travel (Pty) Ltd v CSARS [2022]
ZASCA 83 ... 13(2): 20–24
s 10(18), token, voucher or stamp ...
13(1): 18
s 10(19), token, voucher or stamp ...
13(1): 18
system ... 5(1): 8
time-of-supply rules ... 1(1): 21, 22
treatment ... 1(4): 18; 2(2): 20
value-of-supply rules ... 1(1): 21, 22
VAT taxes defined ... 12(1): 1–4; 12(2):
1–4
Value-of-supply rules ... 1(1): 21, 22
VAT *see* Value-added tax (VAT)
VATCOM Report ... 7(3): 9
Venture capital
defined and distinguished from
private equity ... 8(1): 14–15
incentive to invest ... 8(1): 13–20
qualifying requirements and associ-
ated tax consequences ... 8(1):
15–20
36-month deferral period ... 8(1):
19
acquisition by way of share
subscription ... 8(1): 16
Commissioner's right to
withdraw approval ... 8(1): 19
expenditure incurred as deduc-
tion from income ... 8(1): 15–16
limitation of deduction ... 8(1):
18
venture capital company (VCC) ...
8(1): 16–20
venture capital share (VCS) ... 8(1):
16–20
Vienna Convention on the Law of
Treaties
adoption of ... 8(2): 8–12
articles 31 and 32 ... 8(2): 5–40
legal status in South Africa ... 8(2):
12–15
overview ... 8(2): 11–12
Voluntary disclosure programmes
(VDPs) ... 1(4): vi, 27–34
agreement ... 1(4): 31
application for relief ... 1(4): 29
benefits of ... 1(4): 30–31
default ... 1(4): 29
other jurisdictions ... 1(4): 31–32
overview of ... 1(4): 28–31
purpose of ... 1(4): 28
qualification requirements ... 1(4):
29–30
relief ... 1(4): 30
success of amnesties and VDPs ...
1(4): 32–33
taxation ... 1(4): vi, 27–34
withdrawal ... 1(4): 29–30
Voting rights ... 1(2): 24–28; 2(4): 3
capital-gains tax ... 1(2): 23, 25, 28
change to/amendment of ... 1(2):
25–28
Companies Act ... 1(1): 15, 16, 25, 26;
2(3): 31; 2(4): 3, 27; 3(3): 24; 4(4): 7,
8, 10; 5(3): 24
change to/amendment of ... 1(2):
25–28
disposal ... 1(1): 26
extinction of ... 1(1): 26
majority ... 1(1): 15, 18
of shareholders ... 1(1): 16, 25
special resolution ... 1(1): 26
variation of ... 1(2): 28
Income Tax Act and VAT Act ... 1(1):
16, 24; 1(4): 4, 11, 12–16
conversion ... 1(1): 26
majority ... 1(4): 9
weighted, for directors in private
company ... 14(2): 8–12
case law ... 14(2): 10–12
decision-making organs of a
company and voting rights ...
14(2): 9–10
- ### W
- Waiver of debt *see* Debt, waiver of
Waiver of right, effect of ... 1(1): 2
Withdrawal of interest exemption for
non-residents ... 1(2): v
Withholding tax ... 1(2): v; 1(3): v; 3(1):
vi, 1, 8, 10; 3(2): v, 21, 22, 25; 3(4): 5;
4(3): 3, 30; 5(3): 35
rate ... 3(1): vi
- ### X
- X (Pty) Ltd v CSARS*, substance over form
... 8(4): 16–26

