

Consolidated Index

FOR VOLUME 1, ISSUE 1, 2010

to

VOLUME 16, ISSUE 2, 2025

of

SELIGSON, KRUGER, RUDNICKI & BLUMBERG

BUSINESS TAX & COMPANY LAW

QUARTERLY



juta

Index

This index covers volume 1, issue 1 to volume 16, issue 2.

In the page references below, the volume number is followed by the issue number in brackets, and then by the page numbers. For example 16(2): 11 refers to volume 16, issue 2, 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): 6
 - 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

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
- number of shares ... 16(1): 14–20
 - basic asset-for-share transaction ... 16(1): 14–15
 - multiple assets disposed of under asset-for-share transaction ... 16(1): 15–17
 - pre-valuation date assets ... 16(1): 17–18
 - value for value ... 16(1): 18–19
- 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

Banks Act 94 of 1990 (*cont*)

- 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
 - 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
 - definition ... 15(3): 2–3
 - direct or indirect ultimate ownership of trust property ... 15(3): 4–7
 - natural person exercising effective control ... 15(3): 6
 - persons referred to by name ... 15(3): 6–7
 - disclosure ... 15(3): 1–8
 - trustees’ compliance obligations under Trust Property Control Act 57 of 1988 ... 15(3): 2
- 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

Board

- decision making ... 16(1): 1–6
 - basic democratic principle ... 16(1): 2–3
 - 2008 Companies Act ... 16(1): 3–4
- round-robin resolutions ... 16(1): 1–2
- tension between democratic principle and round-robin decision making ... 16(1): 4–5
 - reconciling ... 16(1): 5–6
- votes at board meeting or written consent of majority of directors ... 16(1): 1–2

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
- 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

Business rescue (*cont*)

- 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

Capital gains tax (CGT) (*cont*)

- 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/participation 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
- 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

Circular cash flows ... 15(2): 15–23

- black box ... 15(2): 21
- due diligence, lack of ... 15(2): 21–22
- equal and opposite debt or quasi debt instruments ... 15(2): 16
- inflated values, impossible or unrealistic returns on investment, and domestic tax arbitrage ... 15(2): 17–18
- irrelevancy of timing, source and means and manner ... 15(2): 18–20

Circular cash flows (*cont*)

- pre-tax loss; profit after tax ... 15(2): 16–17
- risk elimination ... 15(2): 22–23
- special-purpose vehicles ... 15(2): 20–21
- CIS attribution rules ... 4(4): 19
- Close Corporations Act 69 of 1984 ... 1(2): 2; 3(2): 6; 4(2): 5
- Co-debtors and co-sureties, right of recourse between ... 15(4): 9–20
 - co-debtors ... 15(4): 14–20
 - co-sureties ... 15(4): 11–13
- 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 companies ... 1(2): 2–3
- court proceedings and orders ... 1(2): 9

Companies Act 71 of 2008 (*cont*)

- deeming provisions ... 1(2): 4
- distribution defined — s 1(a) ... 9(1): 3
- draft Companies Regulations (2008) ... 1(2): 6
- duties of board and directors ... 15(3): 10
 - breach of duty, consequences ... 15(3): 11
 - s 77 ... 15(3): 14–17
 - s 162 ... 15(3): 17–19
- 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 curatorship ... 6(1): 1–10
 - inconsistent with s 69 of Banks Act ... 6(1): 6
 - requirements for provision of financial 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

Companies Act 71 of 2008 (*cont*)

- s 48: share buy-back, Acquired company ... 9(2): 11
 - s 48: share repurchases, share redemptions excluded ... 9(4): 7
 - s 135 ... 6(1): 9–10
 - s 135 (post-commencement finance) ... 5(3): 20
 - s 164 ... 7(4): 1–12
 - ‘obscure,’ seldom invoked ... 7(4): 11–12
 - provisions of ... 7(4): 4–8
 - purpose of ... 7(4): 3–4
 - sale of business ... 16(2): 2–3
 - 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
 - ss 77 and 162, time-barring regime ... 15(3): 9–22
 - legislative solution *see* Companies Second Amendment Act 17 of 2024
 - 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
- Companies Second Amendment Act 17 of 2024
- time-barring regime under ss 77 and 162 ... 15(3): 9–22
 - see also* Companies Act 71 of 2008:
 - ss 77 and 162, time-barring regime s 77 ... 15(3): 20–22
 - s 162 ... 15(3): 19–20
- 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
 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
 Continuation fund ... 15(4): 1–8
 disposal ... 15(4): 6
 monetising partner interests ... 15(4): 6–7
 move to, tax position ... 15(4): 6–8
 partnership, legal construct ... 15(4): 3
 reinvestment in continuation fund ... 15(4): 7–23
 what is it? ... 15(4): 2–3
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
 Contract: early termination of, tax implications (*cont*)
 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 consequences ... 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
 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
 couterparty ... 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

Corporate residence (*cont*)

- 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
 - 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)

Debt (*cont*)

- 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
- 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

- Debt reduction: rules under s 19 and para 12A of Eighth Schedule of the Income Tax Act 58 of 1962 (*cont*)
- 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
- 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
- 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
- Dividend-stripping and interaction with rollover relief provisions ... 14(4): 22–30
- claw-back rule ... 14(4): 27–30
 - deferral transactions ... 14(4): 24
 - extraordinary dividends ... 14(4): 24–29
- Dividends ... 2(1): 7
- see also* Dividend-stripping; Hybrid equity instruments
- acquired by virtue of cession agreement ... 3(1): 7

Dividends (*cont*)

- 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
 - 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

Dividends tax (*cont*)

- 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
 - tax risk management and governance ... 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 perspective) ... 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

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

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

- current climate ... 14(3): 18–22
- regularisation applications, ambiguity ... 14(3): 18–22
- promise yet to be fulfilled ... 14(3): 16–18

EExchange difference *see* Unrealised

- foreign exchange gains and losses: deferral rules: exchange difference

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 Compliance 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

- 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

Financial assistance (*cont*)

- iro 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 instruments ... 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

- foreign precedent ... 4(2): 14–15

- 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

Financial instruments (*cont*)

- 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
- 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

Foreign business establishment: how foreign is it? (*cont*)

- 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 pension schemes ... 14(3): 30–50; 14(4): 1–21

contributions paid to trust, subject to donations tax? ... 14(4): 4–5

contributions subject to donations tax? ... 14(3): 33–35

income tax and capital gains tax implications

- accumulations by fund ... 14(3): 35–42; 14(4): 5–8

death of member: estate duty or capital gains tax implications ... 14(3): 44–50; 14(4): 15–21

distributions by the foreign pension scheme ... 14(4): 8–13

double taxation ... 14(3): 42–43; 14(4): 14–15

Foreign pension schemes (*cont*)
 vested and discretionary member rights to income and capital ... 14(4): 3–4
 vested vs discretionary member rights to income and capital ... 14(3): 32–50
 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
 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

Franchise: SARS Draft Guide on the Taxation of Franchisors and Franchisees (*cont*)
 summary ... 7(2): 19–20
 Foreign 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
 ‘broad-spectrum,’ not beneficial to UK ... 3(4): 2
 s 80G ... 14(3): 9
 ;iGallager;d judgment ... 14(3): 11–12
 purpose ... 14(3): 11
 considering both connotations of ... 14(3): 12–13
 text and context ... 14(3): 9–11
 SARS, challenges ... 14(3): 8–9
 South African GAAR ... 4(2): 20–25
 subjective vs objective ... 14(3): 1–50
 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
 pretense ... 14(3): 7–8
 complexity ... 14(3): 5–6
 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
 Going concern
see also Sale-of-business transaction
 meaning ... 16(2): 5–8

Going concern: meaning (*cont*)

case law ... 16(2): 5–6

International Accounting Standards
... 16(2): 6–7

recommendations ... 16(2): 7–8

sale of ... 16(2): 1–8

in sale-of-business agreements ...
16(2): 7

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

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: Recogni-
tion 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

OECD Commentaries in interpreta-
tion of, VAT, vs ... 9(3): 23–26

secured ... 3(2): 9

transfer duty, sale subject to suspen-
sive 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

Income Tax Act 58 of 1962 (ITA) (*cont*)

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
 para 12A, settlement of disputed debts *see* Disputed debts: application 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

Income Tax Act 58 of 1962 (ITA) (*cont*)

‘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
 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

Income Tax Act 58 of 1962 (ITA): s 8C:
qualifying criteria (*cont*)

- 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
- 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 12C ... 15(2): 26–30
- 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

Income Tax Act 58 of 1962 (ITA) (*cont*)

- 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 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

- Income Tax Act 58 of 1962 (ITA): s 23M: interest (*cont*)
- 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
- 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
- Income Tax Act 58 of 1962 (ITA) (*cont*)
- 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
 - 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 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

- Income Tax Act 58 of 1962 (ITA) (*cont*)
- 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
- 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
- Interest (*cont*)
- 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, going concern, meaning ... 16(2): 6
- 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

Labour Relations Act 66 of 1995, sale of business ... 16(2): 3–4

Lease

early termination, tax implications in hands of lessor ... 15(4): 21–32

base cost of lease agreement for

CGT purposes ... 15(4): 31–32

income tax analysis ... 15(4): 23–29

termination fee, receipt of, legal

principles ... 15(4): 29–31

VAT ... 15(4): 32

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, 23

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

value-added tax (VAT) ... 2(1): 30–33; 5(4): v, 25–51

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

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 Development (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 subsidiary ... 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
- 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

- Organisation for Economic Co-operation and Development (OECD) (*cont*)
- 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
 - dissolution ... 15(4): 5
 - interest for tax purposes ... 15(4): 5–6
 - legal construct of partnership ... 15(4): 3–6
 - dissolution of partnership ... 15(4): 5
 - generally ... 15(4): 3–4
 - interest for tax purposes ... 15(4): 5–6

- Partnerships/joint ventures: legal construct of partnership (*cont*)
 - ownership of partnership assets ... 15(4): 4–5
 - members conducting enterprise ... 3(4): 23–24
 - ownership of partnership assets ... 15(4): 4–5
 - 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 scheme, foreign *see* Foreign pension schemes
- Pension schemes, foreign *see* Foreign pension schemes
- 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
- Piercing of corporate veil ... 15(1): 1–8
 - The Butcher Shop and Grill* ... 15(1): 5–8
 - facts ... 15(1): 5–6
 - findings ... 15(1): 6–8
 - common-law position previously ... 15(1): 2–3
 - Companies Act ... 15(1): 3–4
 - reverse piercing ... 15(1): 4–5
- Pillar Two ... 16(2): 9–15
 - application, concerns ... 16(2): 10–12
 - current status in Africa ... 16(2): 9–10
 - measures in globe rules that could shield SA tax incentives ... 16(2): 12–15
- 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
 - OECD MTC article 4 — resident ... 6(2): 17–20
 - Place of effective management (*cont*)
 - 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 authorised 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 redemption amount ... 9(2): 1–8
 - standard commercial preference share terms ... 9(2): 2–3
 - Preferential loans ... 5(3): vi
 - Private equity
 - partnership
 - structure ... 10(4): 18
 - co-ownership ... 10(4): 20
 - profit sharing ... 10(4): 19–20
 - tax treatment ... 10(4): 20–21
 - and Venture Capital Association ... 8(1): 14
 - Private equity fund formation *see* Continuation fund
 - Pro-*fiscus* ... 13(4): 24–26
 - Process of manufacture, interpretation of: *Enviroserv Waste Management (Pty) Limited v The Commissioner for the South African Revenue Service* 2023 JDR 4809 (SCA) ... 15(2): 24–30
 - dispute ... 15(2): 26

Process of manufacture, interpretation of: *Enviroserv Waste Management (Pty) Limited v The Commissioner for the South African Revenue Service* 2023 JDR 4809 (SCA) (*cont*)
 facts ... 15(2): 25–26
 Income Tax Act 58 of 1962, s 12C ... 15(2): 26–30

Profit-split method (transfer pricing) ... 2(3): 4, 5

Q

Qualifying percentage interest (ITA and VAT Act) ... 1(1): 16
 ‘Qualifying purpose’ exemption, purposive 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

Reduction of debt, and taxation (*cont*)
 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

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 Reportable arrangements under the TAA (ss 34–39): qualifying features: elements that have the effect of off-setting or cancelling each other (*cont*)
 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
- Retrospective operation of statutory amendments (*cont*)
 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
- Round-robin resolutions *see* Board: decision making
- 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
 assumption of liabilities ... 1(4): 18–23, 29–30
 value-added tax *see* value-added tax (VAT)
- Sale-of-business transaction ... 16(2): 1–8
 see also Going concern
 Companies Act 71 of 2008 ... 16(2): 2–3
 Labour Relations Act 66 of 1995 ... 16(2): 3–4
 Value-Added Tax Act 89 of 1991 ... 16(2): 4–18
- 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 General Ruling 16 (BGR 16) ... 16(2): 16
- Binding Private Ruling 101 ... 9(4): 2
- 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
- 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
- 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
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

moral ... 14(3): 23–29
problem ... 14(3): 25–27
SARS Commissioner, process for appointing ... 14(3): 27–29

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
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

Tax Administration Act 28 of 2011
(TAA) (*cont*)

- 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
 - 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

Tax Administration Act 28 of 2011
(TAA) (*cont*)

- 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
 - 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
 - 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
 - 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 assessment 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/reduction) ... 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
 Tax residence (*cont*)
 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, transforming society through ... 14(3): 23–25
 Taxation Law Amendment Act 15 of 2016
 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 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
- Transfer pricing (*cont*)
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
- Trust Property Control Act 57 of 1988 ... 4(1): 26
 s 11A ... 15(3): 1–8
- 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
 beneficial ownership disclosure ... 15(3): 1– disclosure

Trusts (*cont*)

- 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; 15(1): 9–19
 - basic rules ... 7(3): 2–3
 - bona fide* inadvertent error ... 15(1): 12–16
 - burden of proof ... 15(1): 16–19
 - determining amount ... 15(1): 11
 - imposition of ... 15(1): 10–11
 - legal opinion, reliance on to reduce penalties ... 15(1): 20–27
 - analysis ... 15(1): 25–27
 - CSARS v Coronation Investment Management SA (Pty) Ltd* (1269/2021) [2023] ZASCA 10 (7 February 2023) ... 15(1): 21–22
 - Implications of SCA finding in ... 15(1): 23–25
 - CSARS v The Thistle Trust* (516/2021) [2022] ZASCA 153 (7 November 2022) ... 15(1): 21

Understatement penalty (*cont*)

- remission, objection and appeal ... 15(1): 11–12
- SARS errors ... 7(3): 3–4
- Unrealised foreign exchange gains and losses
 - deferral rules ... 16(1): 7–13
 - exchange difference
 - defined (s 24I) ... 16(1): 9
 - generic tax consequences ... 16(1): 9
 - when dealt with between related parties ... 16(1): 9–13
 - exchange item, defined (s 24I) ... 16(1): 8
- 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, sale of business ... 16(2): 4–18
- 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

Value-Added Tax Act 89 of 1991 (VAT Act): s 16 (*cont*)

- 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 16(3)(c)

- contract of insurance ... 15(2): 9–14
- taxable supply ... 15(2): 7–9

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

- 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; 15(2): 5–6; 15(3): 25–28

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

apportionment

- Binding General Ruling 16 ... 16(2): 16–24
- binding effect of ... 16(2): 17–18
- conduit principle ... 16(2): 19–23
- distribution from trusts ... 16(2): 18–24
- turnover-based method ... 16(2): 18

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

Value-added tax (VAT): corporate transactions (*cont*)

- 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
- 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

Value-added tax (VAT) (*cont*)

- 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
- indemnity payments: *Capitec Bank Limited v Commissioner for the South African Revenue Service* [2024] ZACC 1 ... 15(2): 1–14; 15(3): 23–30
- apportionment ... 15(3): 28–29
- capitalisation of receipts ... 15(3): 29–30
- Constitutional Court ... 15(2): 6–7
- contract of insurance ... 15(2): 9–14
- provision of loan cover for no consideration — taxable supply? ... 15(3): 25–28
- Supreme Court of Appeal ... 15(2): 6
- Tax Court ... 15(2): 5–6
- taxable supply ... 15(2): 7–9
- 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
- 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

Value-added tax (VAT) (*cont*)

- 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 associated 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 deduction 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