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TaxFocus | Newsletter

In this issue:

Tax Articles

Claiming Tax relief for future expenditure (Section 24C allowance)

2

Refinement of the Research and Development (R & D) Tax Incentive in South Africa

3

SARS Releases Draft Rules for South Africa's Bilateral APA Programme

5

Case Law

Henque 3935 CC t/q PQ Clothing outlet vs CSARS

7

SARS Updates

11

Recently Published Rulings

12

Claiming Tax relief for future expenditure (Section 24C allowance)

Businesses often receive income upfront while the costs to deliver on that income are only incurred in future years. This timing difference can create unnecessary tax pressure as the income is taxed before the related expenditure is incurred. Section 24C of the South African Income Tax Act ("the Act") provides relief by allowing taxpayers to claim an allowance for future expenditure that will be incurred in fulfilling contractual obligations in the future.

Section 24C(1) of the Act provides that future expenditure in relation to any year of assessment means an amount of expenditure which will be incurred after the end of that year, either in such a manner that such amount will be allowed as a deduction from income in a subsequent year of assessment; or in respect of the acquisition of any asset in respect of which any deduction will be admissible under the provisions of this Act.

Section 24C(2) further provides that where a taxpayer has received or accrued income in terms of a contract and will incur expenditure in a subsequent year of assessment in the performance of its obligations under that same contract, the Commissioner may allow a deduction in respect of such future expenditure. The Act explicitly states that to claim section 24C allowance, the income giving rise to the allowance must be received or accrued under a contract. The provision does not apply to income arising from informal arrangements or unilateral business practices.

The "same contract" requirement in section 24C was clearly explained in Constitutional Court of Appeal in *Big G Restaurants (Pty) Limited v Commissioner for the South African Revenue Service* [2020] ZACC 16. In this case, the taxpayer earned income from franchise agreements and tried to claim a section 24C allowance for future costs linked to a customer loyalty programme.

In conclusion Section 24C provides relief to taxpayers where income has been received in advance. However, it is very important to note that to successfully claim the allowance, the income received in advance must be received under a contract and there must be legal enforceable obligation to incur future expenditure where there is also a direct link between the income and the expenditure.

The court held that section 24C requires a contract in terms of which the income that is used to finance future expenditure is received or accrues must be the same contract under which the expenditure is incurred. So, there is a requirement of "sameness". The sameness requirement does not imply that there must, for example, in the case of a written contract, be one piece of paper stipulating for the earning of income and the imposition of future expenditure. Two or more contracts must be so inevitably linked that they may satisfy this requirement. The court therefore ruled that the section 24C requirements were not met, confirming that a business or economic link on its own is not enough to qualify for the allowance, there must be the required contractual identity or "sameness" between the relevant contracts.

The importance of a legally enforceable obligation to incur future expenditure under section 24C is emphasised in ITC 1697 (1999) 63 SATC 146(N). In this case, the taxpayer argued that it would inevitably incur future costs in order to continue its operations and therefore sought an allowance under section 24C. The court rejected this argument, finding that the anticipated expenditure did not arise from a binding contractual obligation. The judgment confirmed that section 24C applies only where the taxpayer is obliged, by virtue of the contract under which income was received, to incur future expenditure.

Section 24C(3) further requires the allowance that was previously claimed to be included in the taxable income in the subsequent year of assessment, increasing taxable income.

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Refinement of the Research and Development (R & D) Tax Incentive in South Africa



Background

The Research and Development (R & D) tax incentive in section 11D (hereafter s 11D) was incorporated into the Income Tax Act (Act No. 58 of 1962) in 2006, succeeding the former section 11B (hereafter s 11B). Since its beginnings, s 11D has experienced significant amendments, designed to enhance the R & D tax incentive to encourage ongoing research and development in South Africa.

In 2024 budget speech several legislative enhancements were introduced, with the primary objective of encouraging private sector investment in R & D. Furthermore, amendments to s 11D were made and came into effect on 1 January 2024. These changes were designed to simplify the definition of qualifying R&D, align the incentive with international standards, and broaden its scope to include a wider range of activities and business models.



Description of the law

These changes were driven by the need to simplify the application process, enhance clarity around qualifying activities, and align the incentive with international best practices – particularly the principles outlined in the Organisation for Economic Co-operation and Development (OECD) Frascati Manual. The amended definition includes the following key changes:

1

Prominence of “scientific or technological”: This term has been made more prominent in the definition, emphasizing the importance of these fields in R & D activities.

4

New scientific or technological knowledge: The requirement for non-obviousness implies that the scientific or technological knowledge generated through R & D activities must be new and not previously known.

2

Systematic investigative or experimental activities: The definition now specifies that R & D activities should involve “systematic investigative or experimental activities” aimed at resolving scientific or technological uncertainty.

5

Revised purpose of conducting R & D activities: The purpose of conducting R & D activities has been simplified to: “creating or developing new or significantly improved products, processes or services.” Reference to various types of intellectual property has been deleted and replaced with the quoted passage.

3

Explicit requirement for non-obviousness: The definition now explicitly excludes R & D activities “if the outcome of the uncertainty can be readily deduced by a person skilled in the relevant scientific or technological field.” This means that R & D activities must be non-obvious and not readily deducible experts in the field.

6

Removal of exclusion on internal business processes: The exclusion of internal business processes has been removed from the definition, making R & D activities applicable to internal business processes eligible for consideration under the tax incentive.



R&D Qualifying Activities

In order for R&D activities to be considered eligible, they must be systematic investigative or experimental endeavours with the goal of resolving scientific or technological uncertainty.

The activities should be undertaken for one or more of the following purposes:

- Discovering new scientific or technological knowledge.
- Creating or significantly improving products, processes, or services.
- Developing multisource pharmaceutical products in accordance with World Health Organisation guidelines and South African regulations.
- Conducting clinical trials as defined by the Department of Health's guidelines and relevant regulations.



Section 11D tax benefit

For qualifying R&D expenditures, companies certified under section 11D are eligible for a **150%** income tax deduction. This applies to costs directly and solely incurred in the production of income and in the carrying on of a trade.

Additionally, on a **50:30:20** schedule spread over three years, taxpayers may claim an accelerated capital allowance on capital assets utilized in authorized R&D activities. It is significant to note that in July 2024, SARS withdrew Interpretation Note 50, which had previously offered clarity on the incentive. Businesses should now refer directly to the Department of Science and Innovation's (DSI) legislation and new updated guidelines to ensure compliance with the requirements and eligibility criteria applicable to the R&D tax incentive.

Conclusion

The revised R & D tax incentive will be extended for a period of 10 years and apply until 31 December 2033. The refinements to Section 11D represent a strategic shift toward a more inclusive, efficient, and innovation-friendly R&D tax incentive. They not only reflect government's commitment to fostering a dynamic R&D ecosystem but also position South Africa more competitively on the global innovation stage.

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SARS Releases Draft Rules for South Africa's Bilateral APA Programme

The South African Revenue Service (SARS) has taken a major step towards introducing a formal bilateral Advance Pricing Agreement (APA) programme by releasing six draft notices for public comment. The proposed framework provides the clearest indication yet of how South Africa intends to manage transfer pricing certainty for multinational groups operating across borders.

The draft notices outline key aspects of the proposed APA system, including eligibility requirements, application procedures, fees, information requirements, timelines, and the circumstances under which SARS may reject an application. While the programme is a positive development for tax certainty in South Africa, the draft rules suggest that access will initially be limited to a relatively small group of very large taxpayers.

Eligibility to Apply for a Bilateral APA

Although the programme is welcome, the draft rules indicate that SARS intends to limit participation to very large multinational groups with substantial cross-border transactions.

To qualify, taxpayers would generally need to meet a minimum annual turnover threshold of more than ZAR 50 billion in the year preceding the request for a pre-application consultation. In addition, anticipated transaction values must exceed:

ZAR 1 billion

annually for distribution or manufacturing arrangements; or

ZAR 300 million

annually for imported intragroup services.

These thresholds are exceptionally high and suggest that the APA programme will initially be reserved for the largest and most complex taxpayers.

Scope of Eligible Transactions and Substance Review

The scope of eligible transactions also appears intentionally narrow. The draft notices focus primarily on distribution arrangements, manufacturing activities, and imported intragroup services. Notably, certain high-risk and technically complex areas such as financial assistance transactions and arrangements involving intangibles appear to be excluded for now. This cautious approach may reflect SARS' desire to manage administrative capacity during the early stages of implementation. The draft rules also demonstrate that SARS intends to apply a rigorous substance-focused review process when evaluating applications.

In practice, taxpayers seeking an APA will likely need robust transfer pricing documentation supported by detailed functional analyses. SARS is expected to closely examine, among other things, value creation, decision-making authority, and whether profits are aligned with actual business activities performed in South Africa. This signals that obtaining an APA will involve far more than simply presenting a pricing methodology. Taxpayers will need to demonstrate that their structures and arrangements are commercially defensible and supported by operational substance.

Fees and Cost of Participation

SARS' proposed APA fee structure is substantial and reflects a clear cost-recovery approach. Taxpayers would face an upfront non-recoverable fee of ZAR 100,000, together with ongoing charges, including processing fees of at least ZAR 1W,000,000, annual maintenance fees, ancillary costs, and interest on late payments. In practice, these costs are likely to restrict participation to larger taxpayers with high-value transactions.

Administrative Capacity and Practical Concerns

One of the more notable aspects of the draft framework is SARS' discretion to reject applications based on available administrative resources. This raises practical concerns about processing capacity, turnaround times, and the potential for selective approvals during the programme's early years. Bilateral APAs are resource-intensive and require coordination not only within SARS but also with foreign tax authorities under applicable tax treaties.

The success of the programme will therefore depend heavily on SARS' ability to build specialist transfer pricing expertise and manage negotiations efficiently with treaty partners. Without adequate capacity, taxpayers may face lengthy delays that could reduce some of the certainty benefits the programme is intended to provide.

Conclusion

Despite its limitations, the proposed APA programme represents important progress for South Africa's international tax framework. The draft notices signal a clear commitment by SARS to align with global tax administration standards while providing multinational groups with a mechanism to proactively manage transfer pricing risk.

At the same time, the high thresholds, strict substance requirements, significant costs, and broad administrative discretion suggest that the programme will initially remain accessible only to a narrow segment of taxpayers.

Ultimately, the programme's long-term success will depend on effective implementation, administrative efficiency, and SARS' ability to strike the right balance between rigorous oversight and practical accessibility for taxpayers.

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Case Law

Henque 3935 CC t/q PQ Clothing outlet vs CSARS

1 Introduction

The court judgement as ruled by the Supreme Court of Appeal of South Africa (herein referred to as “SCA”) between Henque 3935 CC t/q PQ Clothing outlet vs Commissioner for the South African Revenue Service (846/2023) [2025] ZASCA 56 (12 May 2025) has become a sentimental court case on the treatment of tax liabilities for entities that are undergoing business rescue. The court ruling provides much needed clarity on when do tax debts arise and SARS’ authority to apply setoffs during business rescue proceedings.


2 Background and relevant facts of the case

Henque Clothing 3935 CC t/q PQ Clothing outlet (herein referred to as “Henque Clothing”) is a close corporation with interests in the retail of apparel and beauty products. In the 2017 year of assessment, Henque Clothing submitted its income tax return to SARS reflecting an assessed loss amounting to R46 000. Subsequent to the filing of the income tax return, SARS on the 29th of November 2017 issued a notice of original assessment and informed Henque Clothing that the 2017 income tax return will be subject to a SARS audit. During the tax period January 2018, Henque Clothing has submitted its VAT return reflecting a liability. Accordingly, the VAT liability arose as and when the supplies were made throughout the same period in terms of section 7(1) of the VAT Act.

Henque Clothing entered into business rescue proceedings on 31 January 2018 and a business rescue practitioner (herein referenced as “BRP”) was appointed on the same day. SARS and other key stakeholders of Henque Clothing were informed about the commencement of the business rescue. Subsequent to the announcement of the business rescue proceedings, on 14 February 2019, SARS lodged a claim against the BRP relating to the 2017 assessment and informed the BRP that it had offset the 2017 income tax additional assessment and January 2018 VAT liability against Henque Clothing’s VAT refund amounting to R1 018 320.80.

3 High Court ruling

On 3 November 2020, an application was brought forward to the High Court by Henque Clothing to seek declaratory relief regarding the approach taken by SARS to offset the pre business rescue VAT liability against the post business rescue VAT refund. The application was subsequently dismissed on the basis that such debt constitutes as a post business rescue debt and could be offset against any VAT refunds amounts that are due to Henque Clothing during the business rescue proceedings.



The court ruling provides much needed clarity on when do tax debts arise and SARS’ authority to apply setoffs during business rescue proceedings.

The legal issues brought forward to the SCA focused on three central questions:

- Whether the High Court has jurisdiction to sit for applications relating to declaratory relief concerning the tax liability of a taxpayer that has commenced business rescue proceedings.
- Whether the liability arising from 2017 additional assessment and January 2018 VAT liability constitutes a pre business rescue debt; and
- Whether SARS is entitled to offset the VAT refundable amounts due to Henque Clothing post the commencement of the business rescue proceedings against the income tax and VAT liability pre the business rescue.

First issue: Jurisdiction of the High Court.

SARS argued that the High Court lacked jurisdiction to hear Henque Clothing's application for a declaratory order. According to SARS, a taxpayer who feels aggrieved by an assessment must follow the dispute resolution process set out in Chapter 9 of the Tax Administration Act (TAA) which sets out that the taxpayer must object to the assessment in terms of section 104(1) of the TAA. SARS further contended that only after the Tax Court has decided the matter, and if the taxpayer remains dissatisfied, may the taxpayer approach the High Court under section 105(1) of the TAA. In addition, SARS maintained that Henque Clothing was statutorily required to first obtain a section 105 direction before approaching the High Court.

To support its argument, SARS relied on *United Manganese of Kalahari (Pty) Ltd v Commissioner for the South African Revenue Service (United Manganese I)* where the judgement ruled that "the purpose of section 105 of the TAA is clearly to ensure that, in the ordinary course, tax disputes are taken to the tax court. The high court . . . does not have jurisdiction in tax disputes unless it directs otherwise."

Henque Clothing disputed SARS's position and submitted that it did not seek declaratory relief to set aside the 2017 tax assessment and 2018 VAT liability, but it sought declaratory relief to determine whether the resultant income tax and VAT liability was a pre or post business rescue liability.

¹United Manganese of Kalahari (Pty) Ltd v Commissioner for the South African Revenue Service [2023] ZASCA 29; 85 SATC 529 (United Manganese I).



The purpose of section 105 of the TAA is clearly to ensure that, in the ordinary course, tax disputes are taken to the tax court.

Second issue: When does a tax liability arise.

Henque Clothing argued that the tax liabilities are pre business rescue debts. In its contention, Henque Clothing relied on section 5 of the Income Tax Act, No. 58 of 1962 (herein referred to as “the Act”) in that the tax liability arises at the end of the relevant financial year or shorter period as taxable income can only be determined once the full year’s gross income and deductions are determined. Henrike Clothing further argued that it should follow suit that the 2017 tax liability is due at the end of the 2017 year of assessment and any additional assessment do not create a new liability and as a result, the nature of the additional should take form of a pre business rescue debt.

Secondly, Henque Clothing further submitted that the VAT liability for the January 2018 tax period arose as and when the supplies were made in terms of section 7(1) read with section 16 of the VAT Act. Henque Clothing argued that the VAT liability did not arise when it was due for payment in the subsequent tax period and it should follow suit that it is determined as a pre business rescue debt as it arose before the business rescue commenced on 31 January 2018.

SARS counter argued Henque Clothing’s submission in that a liability for income tax purposes only arises upon assessment by SARS with reliance on precedent set in *CSARS v Medtronic International Trading S.A.R.L (Medtronic)*, which ruled that “the liability to pay a tax debt does not arise except by assessment of the liability by SARS or by the taxpayer, in the form of self-assessment. In the absence of such an assessment, liability, and the concomitant duty to pay, do not arise, even though at law the underlying tax obligation subsists.”

In relation to the VAT liability, SARS argued that the debt is a post business rescue debt as the tax debt only arises upon self-assessment of which in this case, it was on 23 February 2023.

5 Supreme Court of Appeal’s reasoning

The SCA found the judgement ruled by the High Court to be incorrect in that the High Court had jurisdiction to consider the application made by Henque Clothing for declaratory relief. The SCA’s reasoning was that Henque Clothing was not challenging the additional assessment raised by SARS and the VAT liability due to SARS but to determine whether such liabilities should be settled in reference to the business rescue plan or its nature relates to a pre business rescue debt.

Relying on *Christoffel Hendrik Wiese and Others v CSARS*, the SCA held that both tax liabilities were pre-business rescue debts. The Court ruled that a tax debt arises when a taxpayer becomes chargeable to tax, while an assessment merely quantifies the amount payable and does not create a new liability. Since the tax obligations in question arose before Henque Clothing entered into its business rescue proceedings, it follows that those tax debts will relate to pre-commencement business rescue debts.

Issue 3: SARS authority to apply set offs.

The Court ruled that although SARS is allowed to set off a tax debt against a refund due to a taxpayer in terms of section 191 of the Tax Administration Act (TAA), the same section does not find application where the tax debt is subject to a business rescue plan. Tax debts that qualify as pre-business rescue debts are legally irrecoverable outside the terms of the approved rescue plan and are therefore excluded from the set-off rules in terms of section 191 of the TAA. It was on this basis that the court ruled that SARS cannot apply the set off rules to offset the tax liability owed by Henque Clothing with the amounts refundable to the same taxpayer.

The court further rejected SARS’ reliance on common-law set-off as it found that allowing it would undermine the statutory framework of the TAA and the Companies Act governing business rescue.

²CSARS v Medtronic International Trading S.A.R.L [2023] ZASCA 20; 2023 (3) SA 423 (SCA); 86 SATC 158; [2023] 2 All SA 297 (SCA) para 69.

³Christoffel Hendrik Wiese and Others v CSARS [2024] ZASCA 111; [2024] 4 All SA 108 (SCA); 2025 (1) SA 127 (SCA); 87 SATC 14.

6 Why these matters

The court case also underscores that SARS like any other creditor, is bound by the statutory framework governing business rescue and serves as an important reminder that SARS must not operate outside the confines of the business rescue law.

The Henque Clothing court judgement serves as a landmark for entities that are undergoing business rescue. The court case marks a decisive shift towards a substance over form approach with regards to the tax treatment of tax claims during business rescue proceedings.



7 Court Judgement

The SCA ruled in favour of Henque Clothing and ordered SARS to pay the legal costs.

8 Conclusion

- As a business rescue practitioner(s), it is of paramount to determine the tax debts which relates prior and post commencement business rescue date, in order to determine the correct tax debt that will be part of the approved business rescue plan.
- Where tax refunds that relates to post commencement business rescue date previously used to offset prior commencement business rescue date, business rescue practitioner(s) should be aware of the corrective measures that will assist in providing the correct tax debt that should be subjected to the business rescue plan.

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SARS Updates

The South African Revenue Service (SARS) has announced that, from 1 June 2026, all foreign-registered vehicles entering or leaving South Africa must be declared in advance through the SARS Traveller Management System (TMS).

According to SARS Commissioner Dr Johnstone Makhubu, the new requirement brings South Africa in line with international customs standards and forms part of SARS' broader efforts to modernise border and customs operations. The initiative is aimed at improving risk-based screening, enhancing coordination with other authorities, strengthening national security, and ensuring that goods, vehicles, and currency are properly declared before crossing the border.

Foreign vehicles that are temporarily imported into South Africa may qualify for temporary import permits valid for six months. These permits will allow multiple border crossings during the validity period without requiring a new application each time. Frequent travel for work, study, business, medical treatment, or other legitimate reasons will not invalidate the permit, provided it is renewed before expiry. SARS said the system is intended to simplify compliance while ensuring greater consistency and oversight at border posts.

Although travellers are encouraged to complete declarations online before arriving at the border to benefit from faster processing, SARS confirmed that assistance will still be available at ports of entry for those unable to use the online system. Dedicated officials will help travellers complete the required procedures. However, online declarations will not replace physical customs inspections, and all travellers must still report to customs officials for verification and possible inspection.

Dr Makhubu stressed that compliance with the new rules is mandatory. Vehicle owners who fail to declare foreign-registered vehicles, or who submit false or incomplete information, may face enforcement action and delays at border crossings. He added that travellers who comply fully with the legal requirements should experience a smooth process, while non-compliance could result in longer waiting times.

SARS has urged foreign vehicle owners and cross-border operators to consult official SARS platforms for accurate information and to familiarise themselves with the new declaration requirements before the system comes into effect on 1 June 2026.

Recently Published Rulings

Number	Date issued	Applicable legislation	Subject
Binding Private Ruling 425	31 March 2026	Income Tax Act, 1962 Value-Added Tax Act, 1991	Rehabilitation of mining property
Binding Private Ruling 426	31 March 2026	Income Tax Act, 1962	Residential accommodation
Binding Private Ruling 427	31 March 2026	Income Tax Act, 1962	Premium paid for right of use
Binding Private Ruling 428	14 May 2026	Income Tax Act, 1962	Delayed contribution equity investment structure

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