TAX SHOCK, HORROR NEWSLETTER

On the basis that if you don't know this, you're a goner.

A CALL TO WORRY
- by Costa Divaris

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Tax Shock, Horror newsletter by Costa Divaris Issue # 80 Database items: 6 394 Subscribers: 6 896.

His Excellency, Comrade the rev Dr Francois 'Papa Doc' Duvalier-Leckett, spokesperson in the Office of Costa Divaris:

'Bsp On Track To Meet 5 m Job-Target By 2014'

—Economy will lose 5 001 680 jobs over same period, so it won't make any difference, says Divaris, 'but the poor will benefit'.

In this issue: Monthly listing ❋ Monthly tax notebook ❋ Cases ❋ Briefing ❋ Davey's Locker ❋ Evidence corner ❋ Shortcut keys in Word

MONTHLY LISTING

Latest Legislation & Legislative Material To Emerge Or To Be Found Since Issue # 79

Unless otherwise indicated, everything listed here is cumulatively included in the *Tax Shock, Horror Database,* which is available monthly, quarterly or individually on DVD by post for R140 per month inclusive of VAT at 14%.

EMS	1962–95: Duncan McAllister has now contributed electronic versions of explanatory memoranda to all the tax bills over this period for inclusion in the *TSH Database.* Some hard work, generously shared with other serious tax scholars. Thank you.
EU agreement	12 April 1999: Agreement on trade, development & co-operation between the EU & its member states & the RSA. Adoption of agreement & protocols 1 ('originating products' & administrative co-operation) & 2 (mutual administrative assistance in customs matters). Also 'agreement in the form of an exchange of letters'. I recently had to consult this agreement to solve a VAT problem.
EU agreement	29 July 1999: Agreement on trade, development & co-operation between the EU & its member states & the RSA. Council decision.
Customs agreement	01 June 2000: On mutual administrative assistance with the UK.*
Customs agreement	01 August 2001: On mutual administrative assistance with the USA.*
Customs agreement	01 April 2003: On mutual administrative assistance with the Netherlands.*
Customs agreement	12 January 2006: On mutual administrative assistance with Mozambique.*
Customs agreement	01 February 2007: On mutual administrative assistance with China.*
Updated IN	19 February 2007: Interpretation Note 9 (Issue 4) on SBCS.*
Customs agreement	01 July 2007: On mutual administrative assistance with the France.*
Intnl agreement	17 October 2007: On customs & tax administration co-operation with India & Brazil.*
Tax treaty	28 December 2007: Termination of the limited tax treaty with Spain, says SARS.*
Customs agreement	01 October 2008: On mutual administrative assistance with India.*
Tax treaty	22 October 2008: The limited tax treaty was terminated on this date, says SARS.*
New form	01 August 2009: VCC 001, application for approval of a venture capital company.*
VCC list	01 August 2009: The official list of approved VCCs, with contact details. Right now it is populated with a single entry, pertaining to Olivewood Resources Ltd.*
High Court case	17 September 2009: *JJ Grundlingh v CSARS* A33/2008. Someone pointedly but anonymously sent me a copy of *Webber Wentzel Tax Practice Group e-Alert,* to prove, I suppose, that this case really wasn't a good ad for the firm—or to reprimand me for not knowing of the tax practice. No matter. There is a far more famous case on record showing that tax advisers don't always give themselves the best advice.*
GN R 943 *GG* 32609	29 September 2009: Amendment of the rules under ss 18, 18A & 120 of the Customs & Excise Act (DAR/61).*
Updated guide	October: 'Guide on the tax incentives for learnerships agreements'. Whoever wrote this persists (in the face of 76 *TSH* 2009) in claiming that a learnership is 'considered to be' completed only if it is *successfully* completed. Have I got news for you, Bozo! The completely revised s 12H of the Income Tax Act now *requires* successful com-

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	pletion (proving, at least in my book, that I was right under the old law).*
GN 962 *GG* 32615	09 October 2009: Rates & charges levied under the Water Research Fund.
GN 1344 *GG* 32615	09 October 2009: Application for the continuation of the current statutory measures in the wine industry, including four levies.
GN R 954 *GG* 32616	09 October 2009: Levies on broiler chickens & packed eggs.
GN R 966 *GG* 32622	09 October 2009: Rules of procedure for the judicial review of administrative action.
Updated IN	14 October 2009: Interpretation Note 9 (Issue 5) on SBCs.*
BCR 009	16 October 2009: A CFC indirectly owned by a local trust does a share buyback. Is it a 'dividend', & does it qualify for the s 10(1)(*k*)(ii)(*dd*) exemption? Well, why not?*
BPR 054	21 October 2009: Amalgamation of two co-operatives under s 44(13) of the Income Tax Act, given the failure of s 41(4) to mention co-operatives. Nice one, this.*
BPR 055	22 October 2009: Redemption of a participatory interest by a foreign collective scheme as a taxable 'foreign dividend'. Nary a word of explanation. Poor show.*
BPR 056	22 October 2009: Income & capital gains in the hands of 'vesting' resident & non-resident beneficiaries of a trust. The dead-trust-bounce-brigade needn't set their pulses racing. This was a *bewind,* pure & simple. Thus: Duh.
BCR 010	23 October 2009: Distribution of pension fund surplus to former members, pensioners & their beneficiaries. Tax free under para 2C of the Second Schedule. Duh.*
BPR 057	26 October 2009: Interest on a loan obtained to acquire the business of a company through the acquisition of its shares. Bravo! Brilliant! Author! Author! I have often conjured with this principle but would probably have lacked the courage to back it.*
BPR 058	26 October 2009: Acquisition of shares under corporate restructuring, & interest on a loan created in the process.*
BCR 011	27 October 2009: Accrual of a conditional employment award. Duh.*
BCR 012	27 October 2009: Vesting of a restricted 'equity instrument' under s 8C listed on a foreign stock exchange. The scheme involved the sale of treasury shares to global employees. Yuck! Which idiot decided to invoke s 7(1) of the Income Tax Act? This provision is a dead letter.*
The Times	27 October 2009: SARS fraud: three in court.
GN 1409 *GG* 32663	28 October 2009: Draft Public Service Broadcasting Bill, 2009. This merrily appropriates 'personal income tax' (what that?) collected under the Income Tax Act as well as other sources of income, including 'contributions from business' to finance a proposed Public Service Broadcasting Fund. A cap is placed on some of these sources of 1% of the 'total income & annual turnover per annum for persons identified as determined' by two ministers. SA is truly a nutter's paradise.§
GN R 1024 *GG* 32664	30 October 2009: Commencement of ss 1(1) & 108(1)(*a*) of the Revenue Laws Amendment Act 60 of 2008 (insofar as these provisions amend s 11(1)(*s*) & (*t*) of the Value-Added Tax Act) on 31 October 2009. The reference to s 1(1) is rubbish. According to the '*Gazette* log' in my *Amendments to Amendments,* what is happening here is the insertion of s 11(1)(*s*) and (*t*) of the Value-Added Tax Act (applies to fixed property acquired on or after that date). These zero-ratings cover acquisitions & supplies of fixed property under the Provision of Land & Assistance Act.*
GN 1446 *GG* 32665	30 October 2009: BEE: Draft codes of good practice in chartered accountancy. At 7 megs, this adds considerably to what amounts to an entirely separate legal system. But, Hey! If it weren't for BEE, poverty, AIDS & crime would be awful.§
Draft rules	30 October 2009: Draft amendment of rules under s 119A of the C&E Act.*
BPR 059	30 October 2009: Transfer of assets of sole trader's businesses to companies & close corporations under s 42 of the Income Tax Act. A *sole trader*? You gotta be kidding. He paid personal taxes rather than corporate? Well, as I often like to say, even the Mob eventually had to go straight.*
BPR 060	30 October 2009: Short-sale transactions & securities lending arrangements. Here's another bleeding *bewind.* Can't understand the attraction of the things. A useful job of work, nevertheless.*
BPR 061	30 October 2009: Application of the definitions of a 'company' & 'controlled foreign company' to a foreign limited partnership. Nice one.*
SARS release	30 October 2009: Mutual administration assistance agreement in customs matters signed between SA & Canada.*
SARB statement	31 October 2009: Of gold & foreign exchange reserves.
SARB release	02 November 2009: On meetings of the MPC.
Business Day	02 November 2009: Tough new penalties. SARS advertisement.
Business Day	02 November 2009: New tax bill aims 'to provide a single body of law'.
Business Day	02 November 2009: Draft Public Service Broadcasting Bill provides for a tax to finance a new Public Service Broadcast Fund.
Business Day	02 November 2009: Treasury in dark over SABC tax plan.

SARB speech	03 November 2009: By A D Mninele, deputy governor.
SARB speech	03 November 2009: By Dr M Mnyande, chief economist & executive general manager.
New IN	04 November 2009: Interpretation Note 51 on pre-trade expenditure & losses. It is a pleasure to read this fine exposition of the law.*
SARS release	04 November 2009: First venture company approved by SARS.*
Online tools	04 November 2009: Survey on SARS service charter. Ha! Ha! Giggle. Choke. Gasp.
Business Day	04 November 2009: Lesetja Kganyago, National Treasury DG, on 'Charting course of exchange controls reform'. I love the part where he denies the influence of 'the advocates of unfettered free markets'. Man, we South Africans are used to being governed by fascists, & we all know how scared witless you all are by freedom.
Business Day	04 November 2009: Sanlam's Jac Laubscher on fiscal discipline. Some sobering facts, succinctly marshalled.
GN R 1057 *GG* 32690	05 November 2009: Amendment of the regs under the Administration of Estates Act.
Treasury speech	05 November 2009: By Deputy MOF, Nhlanla Nene, on how governments should respond to economic crises. I suppose, had it been solely about the SA government's response, it would have been a very short speech: 'Hi! Bye!'
Business Day	05 November 2009: How to bail out—sorry! shell out state funds in order—to save BEE transactions, by Tshidi Madima. Why not? SA is also a looter's paradise.
Business Day	05 November 2009: More than 3 m tax returns not yet submitted.
GN R 1047 *GG* 32606	06 November 2009: Imposition of provisional payment (PP/135). Corrected, below.
GN 1032 *GG* 32673	06 November 2009: TDCA between the EC & SA—management of tariff quota for imports of cheese into SA.
GN 1478 *GG* 32691	06 November 2009: Collection of Master's prescribed fees under various acts.
Draft IN	06 November 2009: Production of cold air & chilling or freezing of perishable products. This hurts me, although not as much as it is going to hurt mass retailers producing cold air & ice. I was privileged to be an observer in an early case on this issue, & find SARS's *volte face* surprising. Legitimate expectations are here being ferociously terminated. But it's a jolly well-done IN, even so.*
Discussion document	06 November 2009: Proposed policy resulting from noncompliance with s 11(3) of the Value-Added Tax Act. A major change in the treatment of improperly documented zero-rated exports.*
Business Day	06 November 2009: SARS opens mining royalties register.
Sake24	06 November 2009: Is this a coincidence? We've just had BPR on a lease of property subject to a ninety-nine- year lease (*79 TSH 2009*) & here is an item on the Waterfall development in Woodmead, where you hire, not buy, the land.
Naweek-Beeld	07 November 2009: According to the MOF, the Treasury employs twenty-six workers with criminal records. I am outraged. These people should be in Parliament.
Mail&Guardian	8 November 2009: Levies paid to the SA Council of Educators 'wasted' on R12 m building. In fact, what is involved here is a compulsory registration fee sketchily adumbrated in the South African Council for Educators Act. Are such registration fees taxes or user fees? I treat them as user fees.
Updated tsatske	10 November 2009: FIN–RA–L01, still dated 22 November 2006 & marked 'rev 5' but allegedly updated, on acceptable payment instruments for non-core taxes.
Treasury speech	10 November 2009: By Deputy MOF, Nhlanla Nene, on a search for values.
The Times	10 November 2009: Public works minister says the government is on track to deliver on President Zuma's promise to create 500 000 job opportunities by year-end.
Business Day	10 November 2009: SARS looks into drug-search complaints.
Sake24	10 November 2009: SA's bilateral investment treaty with Zimbabwe slated to be signed soon.
Modified IN # 47	11 November 2009: SARS continues to tie itself in knots over changes it made to Interpretation Note 47 on the depreciation allowance (see 79 *TSH* 2009). This is a notice of modification of a binding general ruling. There could well be a big-picture-appreciation I am missing, but are all amendments to INs now to be similarly dealt with? On second thoughts, if you work for SARS, *don't* answer that question.*
Updated IN # 47	11 November 2009: That's entertainment! Tell 'em what's going to happen & then let it happen. Interpretation Note 47 (Issue 2) on the depreciation allowance.*
The Times	11 November 2009: Health minister gives SA life-expectancy as 47 years. That's the figure I an familiar with, yet it does not gel with the figure used in minister Trevor Manuel's brilliant 'Development indicators 2009' (78 *TSH* 2009).
Business Day	11 November 2009: A valuable article by Malcolm Langford, Jason Brickhill & Mary Munyembate on SA's bilateral investment treaties (78 *TSH* 2009).
Business Day	11 November 2009: Edward Kieswetter fails to make the cut for Commish & leaves.
GN 1078 *GG* 32711	12 November 2009: Recommendations on salaries, allowances & benefits of public

	office bearers for the fiscal year commencing on 1 April 2009. An 8% increase is recommended on all remuneration packages. And then… For the national executive, deputy ministers, the national parliament & the provincial executives & legislatures, the basic salary comprises 60% of the package & is pensionable. An amount of R120 000 is 'determined' as the amount to which s 8(1)(*d*) of the Income Tax Act applies (constituency allowances). This is included in the basic salary component, so that, despite being tax free (on account of being 'spent' for 'qualifying' purposes), it is pensionable! The employer's contribution to pension benefits is a whopping 22,5% of pensionable salary, then another 32% 'of the recommended employer pension benefit' is injected in cash by the state into the pension fund. What remains is the 'flexible portion'. (The President's package differs.) For local government, everything is the same, except for pension fund contributions. For magistrates (& judges), the cash component is 72,24%, while the balance represents a motor allowance & employer's medical aid contributions. Pension benefits are separately regulated by the Judges' Remuneration & Conditions of Employment Act. For traditional leaders, the basic salary component is 60%, to which are added an employee's pension benefit contribution & a flexible portion. They receive, over & above their total remuneration, either pension or risk benefits. You want to know whether these recommendations were accepted? Read on.
Business Day	12 November 2009: State gem trader wants to ditch profit model for state aid.
GN R 1062 *GG* 32695	13 November 2009: Amendment of the rules under ss 96 & 120 of the Customs & Excise Act (DAR/64).*
Business Day	13 November 2009: Peter Leon on SA's bilateral investment treaty with Zimbabwe.
Business Day	13 November 2009: Business Day's 'Press-Release Peggy' buys into some bullshit from the cipher whose image adorns the SARS website (previously known as 'the Commish') on future tax returns, completed by SARS in full. You just sign. Yeah.
Sake24	13 November 2009: Two-page SARS advertisement on eFiling.§
Business Day	13 November 2009: SA's bilateral investment treaty with Zimbabwe 'excludes expropriated farms'.
Sunday Times	15 November 2009: I didn't want the job, anyway, says Edward Kieswetter.
SARS release	16 November 2009: SARS will not extend the 20 November tax season deadline.*
SARS release	16 November 2009: Office hours extended ahead of the tax season deadline.*
SARB release	16 November 2009: On the MPC's press conference.
SARB release	16 November 2009: On the webcast of the MPC's press conference.
Sake24	16 November 2009: SARS'S Logan Wort on the establishment of the African Tax Administration Forum (ATAF). HOW SA likes to show off before our northern neighbours!
Business Day	16 November 2009: Trade & industry minister says R20 b of investments in motor manufacturing will qualify for 'the state's new investment scheme'. Which one?
Business Day	16 November 2009: Tim Cohen searches for reasons for the decline of gold mining. He politely neglects to mention rule-of-law & sanctity-of-property issues. Without checking his arithmetic, I especially liked his point that BEE requirements mean that 'investors have to increase the profitability 25% for any given level of viability'.
Business Day	16 November 2009: Investec's Michael Power makes the strangest economic proposal I have ever read, on debauching the rand.
SARB statement	17 November 2009: Of the MPC.
SARS release	17 November 2009: New operational procedures for the tax season deadline week.*
Business Day	17 November 2009: Annabel Bishop, Investec's chief economist, without mentioning Michael Power, warns of the dangers of continued rand devaluation.
Sake24	17 November 2009: On a tax court defeat for a NPO claiming VAT inputs. This report appears to reveal information that is ordinarily confidential.
GN 1084 *GG* 32727	18 November 2009: Allocations to metropolitan municipalities of general fuel levy revenue.
SARB review	18 November 2009: Monetary policy review for November.
Treasury release	18 November 2009: Provincial 2009/10 budgets & midterm provincial budgets & expenditure report.
Business Day	18 November 2009: MOF lowers handout-expectations of the 'creative industry'. I was gobsmacked by this passage: Gordhan drew attention to tax provisions that could allow artists to register as small businesses—rather than claim rebates as individuals—or form nongovernmental organizations that qualified for tax breaks. He said the government also provided subsidies for pension funds & retirement annuities.
Proc 75 *GG* 32730	19 November 2009: Remuneration of magistrates.
Proc 76 *GG* 32730	19 November 2009: Remuneration of constitutional court judges & judges.

Updated pubs	19 November 2009: Allegedly updated, by what is now called 'SARS updates', although not necessarily in any obvious way, are the following publications: —A quick guide to binding private rulings. —FIN–RA–L01 on acceptable payment instruments for non-core taxes (Yes, again). —AS–CGT–02 on the withholding tax on payments to nonresident sellers of immovable property. —AS–CGT–02–S1, the SOP on the same subject. —AS–SDL–01, quick reference guide on SDL. Also AS–SDL–01–A03 AS–SDL–01–A05; —AS–SDL–01–A07; AS–SDL–01–A10; AS–SDL–01–A18; AS–SDL–01–A19; AS–SDL–01–A21. —SETA classification codes. —SDL 10, guidelines for skills development levies. —What is the small retailer's VAT package? (What, indeed? And who gives a toss?) —GN R 287 OF 1 April 2205 on the small retailers, VAT package. (Hold on, here! How do you update a regulation passed by Parliament?) —Valuation of assets for CGT purposes. —Travelling schedule to substantiate your claim. (Shum mishtake here. This is old.) —Schedule for investment income. —The ABC of CGT for individuals. —Taxation of film owners. (Oh dear! The clod doing this 'updating' has worked—if that is what it was—on the 2004 rather than the 2008 version. In any event, I rather suspect that said clod is updating nothing more esoteric than contact details.) —Guide on tax dispute resolution. —Tax brochure for nonresidents. —SC–SE–04–FR1, bond for imports; item 470.03 & note 7(*d*) of Part 4 of Sch 1. —Ring fencing of assessed losses arising from certain trades carried on by individuals. —IT 12S, IT 12SB, IT 12SS, IT 12TR, 2005 information on income tax. (Why would these historical documents require updating?) —List of amendments to *Comprehensive Guide to CGT* of 12 December 2007. (If you have any idea what's going on here, call me in the loony bin.) —Briefing note on the release of the CGT *Guide* on 12 December 2007. (Huh? By this stage my curiosity, after the investment of many wasted hours, could stand it no longer, & I compared the 'old' & 'new' briefing notes. Not a comma differs! If you ask me, said clod hasn't the faintest idea what he is supposed to be doing but presents a list of 'updated material' to his hugely chuffed 'manager', an arsehole no doubt pulling down R1,5 m a year or more.)
SARS release	19 November 2009: SA to chair new African tax forum, the African Tax Administration Forum (ATAF). The cipher whose picture adorns the SARS website is the Big Man, duly 'humbled' (Bah! Humbug!), & the SA taxpayer gets to bankroll yet another excuse for a continental booze-up & free laptops. Might there be a connection?*
Business Report	19 November 2009: More from Annabel Bishop, Investec's chief economist, on the dangers of rand devaluation. Still no specific mention of Michael Power.
Beeld	19 November 2009: Long queues of taxpayers submitting returns with pic as proof.
Sake24	19 November 2009: The new SARB governor cancelled the December MPC meeting purely for practical reasons. I can't say I like the implications of her decision to revert to bimonthly meetings. According to her, the economic crisis is over.
Business Day	19 November 2009: The cipher whose image adorns the SARS website writes another piece for the press, on the 'political pluses of efficient revenue collection'.
BPR 062	20 November 2009: Settlement of a loan by an offshore holding company in favour of its SA subsidiary with no *quid quo pro.* This was probably a good call.*
Online tools	20 November 2009: Notice # 30/2009 (where are ## 27 to 29? Can't these tools count?) on the 2009 filing season & administrative penalties.
The Star	20 November 2009: Rush to file tax returns expected.
Beeld	20 November 2009: Phalaborwa—another shitty municipality & its tax boycotters.
Mail&Guardian	20 November 2009: Airlines' fuel levies disguised as taxes.
Saturday Star	21 November 2009: Fines from Monday for tax laggards.
Proc 77 *GG* 32739	23 November 2009: Determination of total remuneration of the deputy president, ministers & deputy ministers.
Proc 78 *GG* 32739	23 November 2009: Determination of salaries of members of the national assembly & permanent delegates to the NCOP.
Proc 79 *GG* 32739	23 November 2009: Determination of salaries of premiers, members of executive councils & members of provincial legislatures.
Proc 80 *GG* 32739	23 November 2009: Amendment of salaries of the majority party chief whip & com-

	mittee chairpersons of the legislature.
Tariff changes	23 November 2009: Explanatory memorandum on the draft amendment to the SA HS tariff 2010. Encompassed are decreases under the free-trade agreement with the EU & EFTA & under the MIDP. Other decreases are included. For all of which, I say: Hallelujah! Then follow what are alleged to be requested 'technical amendments'.*
Tariff changes	23 November 2009: Lists of insertions & substitutions.§
Treasury invite	23 November 2009: Public Enemy # 1, Keith Engel, sends out an invitation for a workshop on 'income tax: business & international'. Although the Treasury refuses to set up a register of lobbyists, it does not know how to suppress the addressees of its e-mails. So, as usual, I have preserved this particular list in the *TSH Database* under 'personal collection'.
BPR 063	24 November 2009: Interest incurred on loans obtained to acquire the shares of a company, as opposed to acquiring its business. Similar facts to those in BPR 57.*
Treasury invite	24 November 2009: The lobbyists, keen as mustard, are so numerous that the date & venue have to be changed.
Sake24	24 November 2009: More on the tax court defeat for a NPO claiming VAT inputs. Again, seemingly confidential information is bandied about. Tell the judge, someone.
Treasury release	25 November 2009: Local government 2009/10 budgets & Q1 local government s 71 report. This comes with copious data (§).
Proc 74 *GG* 32724	26 November 2009: Amendment of Schedule 1 to the South Africa Revenue Service Act 34 of 1997. This simply updates the list of legislation administered by the cipher whose image adorns the SARS website.*
Treasury invite	26 November 2009: Fresh list of lobbyists, including *moi* (well, sort of). On the Treasury precept 'Another day, another cock-up', the original date is restored.
Beeld	26 November 2009: Farmers hope that the High Court will derail SA's bilateral investment treaty with Zimbabwe.
GN R 1085 *GG* 32732	27 November 2009: Correction notice on the imposition of a provisional payment (PP/135) under GN R 1047 *GG* 32606 of 6 November 2009.
BPR 064	27 November 2009: Annuity payments from one long-term insurer to another & PAYE. Another *ex cathedra* declaration. Poor show.*
SARS release	27 November 2009: Tax season 2009 sets phenomenal new records!*
SARB release	27 November 2009: Dr Monde Mnyande & Brian Kahn appointed as advisers to the governor, with effect as from 1 December 2009. Dr Mnyande also appointed as head of the research department.
Business Day	27 November 2009: Investec's Michael Power finds his Moses in the bulrushes & proclaims: 'I am the Prophet of exchange rates. Trust in me.'
Business Day	27 November 2009: North Gauteng High Court ruling paves way for signing of SA's bilateral investment treaty with Zimbabwe.
Naweek-Beeld	28 November 2009: Sannieshof & its continuing shitty saga. Tax is a dirty business.
Naweek-Beeld	28 November 2009: Record numbers of taxpayers submit returns.
Sunday Times	29 November 2009: Patricia de Lille on the propensity of MPs to use their cars for long-distance travel, and so benefit from the R3,69/km allowance. Would these include, I wonder, those MPs who have chosen to devote a portion of the 'flexible portion' of their (generous) remuneration to a car allowance?
Sunday Times	29 November 2009: Interview with the cipher whose image adorns the SARS website.
Draft rules	30 November 2009: Draft rule amendments under s 59A, 60 & 120 of the C&E Act.*
Draft form	30 November 2009: Draft DA 185, application for the registration or licensing of customs & excise clients. Plus security & bond details or cash deposit annexure.*
Sake24	30 November 2009: SA's bilateral investment treaty with Zimbabwe signed.
Business Day	30 November 2009: SA's bilateral investment treaty with Zimbabwe signed.
New form	01 December 2009: From this date 'all applications for tender-related TCCs must be accompanied by a Tender or Bid Number to be considered.' The accompanying form, TCC 001, is an application for a tax clearance certificate for tenders.*

* On the SARS website. § Not included in *Tax Shock, Horror Database.*

LOST & FOUND

TSH Database	This month 218 items were added to the *Tax Shock, Horror Database.*
Tax tables	Since 2007 the Commish has failed to gazette the annual tax tables.
Provisional tax tables	Since forever the Commish has failed to gazette the annual provisional tax tables.
Exempt grants & scrapping payments	Since 1 February 2006 the MOF has neglected to issue the *Gazette* notice required to make s 10(1)(*y*) effective. Don't tell the taxi industry.
Amendments in abeyance	My *Amendments to Amendments* shows about seventy-two provisions awaiting presidential proclamation & fourteen provisions awaiting ministerial gazetting.

MONTHLY TAX NOTEBOOK

Treated worse than dogs by SARS officials

Here is an account of what happened when a company tried to rectify its failure to pay taxes. In reading it, keep in mind this central point: SARS has yet to raise an assessment in the matter.

> We had a meeting at the SARS office. The following is a summary of what was said:
>
> Legal action can be taken against the directors, both criminal and civil for gross noncompliance. Criminal, owing to the fact that the VAT and PAYE money is trust money, and it can be seen as fraud if the money is not paid over to SARS. Civil, because of the outstanding debt.
>
> The settlement that we proposed according to s 91A was inapplicable to us, and we could not apply for it because the case had been flagged as 'noncompliant, default status'.
>
> The full amount needs to be paid, and interest and penalties cannot be waived in our case.
>
> The directors must relook at all their options for funding and give feedback by no later than [a fixed date]. This includes getting funds from the bank, family, other investors, etc. Then a new proposal must be made, to the maximum of what funds all related parties can come up with. Proof is needed from the bank, if a loan was declined, with reasons.
>
> Payments needs to made weekly on the outstanding debt, in order for SARS to see our commitment.
>
> A stop order can be put on our bank account to deduct a certain percentage of the payments that we receive every week.
>
> According to the legal lady that sat it in the meeting, she is given a three-month time span to negotiate and try and settle the outstanding debt of the applicable company, before legal action is taken.
>
> Some suggestion was also made by [another official] that we are in a game of liquidating companies, and that they are on to us. Apparently, we would have no case if this went to court, and it could lead to a prison sentence. A certain case was mentioned.

Wouldn't you rather owe money to the Mob? Research shows (*vide* the Sopranos TV show) that the Mob at least has a sense of humour.

When to let sleeping dogs lie

Regular correspondent **Carl Nielsen** writes:

> A taxpayer, who has pretty much lived in the same house all his life, fell behind on his returns and also on paying his tax. We phoned SARS recently to get an update on his status. With the new penalty regime coming in, he thought perhaps it was a good time to get his affairs up to date.
>
> SARS confirmed that he owes approximately R62 000 on assessed account, and that the last return submitted was 2004.
>
> Why then, you might wonder, have they not been hounding him? Well, apparently, they couldn't get hold of him, so they de-activated his account.

—CNI

You can't argue with SARS logic

Andre De Jager asks 'How do we save the nation?' when your objection is met with a response like this:

> Your notice of objection dated 15 September 2008 [actually 2009, but who's counting?] refers.
>
> Take note Section 10(1)(*e*) of the Act provides that levies and income from other sources [of a body corporate], to the extent that the income from other sources does not in total exceed R50 000, received by or accrued to the following bodies from members or shareholders are exempt from tax.
>
> The total income received from other sources, being interest of R68 072 in this case exceeds R50 000. Consequently this full amount is regarded as taxable.
>
> Practice note 8 includes all investment income and penalty levies in the calculation of the taxable income.
>
> In terms of Practice note 8, only a proportionate share of accounting, audit and bank charges will be allowed in the calculation of the taxable income.
>
> Trusting you find this in order.
>
> Yours faithfully

eFiling downtime

Here's a letter Richard Conry sent to the online tools:

> I hereby express my strongest unhappiness as a tax practitioner to [the unavailability of the eFiling system]. It is two weeks before the deadline for the submission of tax returns, and SARS now decides it needs to have downtime. This is absolutely crazy and unacceptable.
>
> On one hand you are advising us of the new punitive penalties for late submission, and now you take away the means to comply. I had planned a weekend of preparation and submission of tax returns, and this morning, on my trying to access the system, a message advises that it will be down from midnight Friday 6th to 6 am Monday the 9th. I accept that the system requires urgent upgrading, but this should have been foreseen and planned months ago, not now, two weeks before the submission deadline.
>
> SARS has to do better than this in aiding taxpayers to meet their obligations.

Interest rates—right of reply

I have so often caricatured the views on interest rates of my *quondam* tutor and friend, **Brian Kantor,** that I have engineered this opportunity to give his current position, expressed in Investec's *daily-view* of 11 November 2009 (and *Business Report* 17 November 2009), a fair shake. I do so with a ringing in my ears of the probable response of the new SARB governor, Gill Marcus, to his literary conceit of offering her unsolicited advice: 'We are not amused.'

He says (and I shamelessly truncate, edit, elaborate, plunder and paraphrase):

Up to 80% of our economy is accounted for by the spending of households and privately owned firms. While our growth depends upon this spending, there is little sign of its imminent recovery. What is needed, then, are lower interest rates and 'quantitative easing' (an increase in the money supply). What we have received from recent SARB MPC meetings, including the latest one, is zip.

Probably, what the SARB'S failure to respond is down to are the ideas that (1) SA real interest rates are already very low, (2) that inflation is high, and (3) that inflationary expectations will drive inflation even higher.

> Ms Marcus would do well to question the validity of such arguments. It was such arguments that helped raise interest rates to recession-producing levels in the first place, and restrained their reversal long after it was clear that the growth in spending by households, particularly on interest-sensitive durable goods, was falling sharply. The damage caused to the economy is there to be seen. As we have argued before, the weakness in the SA economy was of our own making. The global credit crisis made it more difficult to escape from recession.

[I agree. We engineered our own recession, in several ways, including our disdain for structural impediments, and the manner in which we both conceived of and introduced the National Credit Act. But then we have always been our own worst enemy.]

The 'real' interest rate is defined as the difference between borrowing costs and inflation. SA producers face not inflation but dramatic deflation, in the sense that the prices for their output are falling. Consumers are thus in no hurry to buy goods or services. Increasing their reluctance to spend is the certainty that they are facing higher 'taxes' in the form of increasing costs of electricity and other municipal services. For producers, then, real rates of interest are rising, forcing them to run down inventories, working capital and, most regrettably, workers employed.

At the same time, their own municipal 'taxes', as well as the cost of unionized workers, are increasing, while the strong rand makes it more difficult for them to compete both locally and internationally. The resulting pressure on their operating profits causes them to invest less and employ fewer workers and managers.

In such circumstances, no producer in his right mind would expect *to more than recover in higher prices the extra costs they are facing*. The demand-pressure is simply not there. And, on the supply side, increased municipal 'taxes' will simply reduce output and employment rather than push up prices in general. [Inflation involves not individual increases in prices, no matter how dramatic, but an increase in prices in general.]

What should the SARB do? First, distinguish demand-led inflation, over which it can have some influence, from supply-side shocks, over which it has no direct influence. Secondly, recognize that interest rates influence spending decisions of SA households without necessarily having a predictable influence on the supply side of the economy and therefore on prices. And, thirdly, know that the problem *for now* is to focus on weak demand, not the rate of inflation.

—BKA

Words & phrases—'contingent interest'

The once hugely controversial definition of a 'beneficiary' reads like this:

ITA s 1 sv 'beneficiary'

> **'[B]eneficiary'** in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust;

A person with a 'vested' right—I prefer this usage to indicate property under the common law—is a beneficiary under a *bewind* or the *nudum praeceptum* rule, or, if a minor, who, in his guise as a beneficiary, is a trust creditor.

What, really, is a 'contingent interest'? There are only eighteen references to the term in the *SALR* from 1977 to date. My guess is that it was plucked for this particular tax service from the judgment of Centlivres J in *In re Estate Scholtz* 1937 CPD 146 at 147.

My other guess is that its meaning is to be found in this quotation by Streicher J, in *Minister of Environmental Affairs and Tourism and Others v Atlantic Fishing Enterprises (Pty) Ltd and others* 2004 (3) SA 176 (SCA), of Watermeyer JA in *Durban City Council v Association of Building Societies* 1942 AD 27 at 33:

> In the large and vague sense any right to which anybody may become entitled is contingent so far as that person is concerned, because events may occur which create the right and which may vest it in that person; but the word 'contingent' is also used in a narrow sense, 'contingent' as opposed to 'vested', and then it

> is used to describe the conditional nature of someone's title to the right. For example, if the word 'contingent' be used in the narrow sense, it cannot be said that I have a contingent interest in my neighbour's house merely because my neighbour may give or bequeath it to me; but my relationship to my neighbour, or the terms of a will or contract, may create a title in me, imperfect at the time, but capable of becoming perfect on the happening of some event, whereby the ownership of the house may pass from him to me. In those circumstances I have a contingent right in the house.

Thus a contingent interest is a formal capability, but not an immediate right, of acquiring property, such as that of a so-called discretionary beneficiary of a trust.

As already indicated, I myself try to distinguish between 'contingent interests' and 'vested rights'.

In s 25B of the Income Tax Act, 'vested rights' are seemingly contrasted with 'contingent rights'. A 'contingent right' is also referred to in para 80(3)(*a*) of the Eighth Schedule to the Act. A 'contingent right' in property is referred to in the Transfer Duty Act, in the definitions of the terms 'fair value', 'property', 'residential property company' and 'transaction' in s 1.

My guess is that, in the tax statutes, a 'contingent interest' is an aberrant, elegant variation of 'contingent right', the term otherwise used exclusively, although, in my opinion, not so as to indicate anything different.

The same database of reported cases yields 100 hits for the term 'contingent right'. The most interesting one appears in the judgment of Cloete J, In *Reede v Softline Ltd and Another* 2001 (2) SA 844 (W):

> The difference between a vested right and a contingent right in the narrow sense in which the latter concept is used in law is succinctly stated in two judgments of the Appellate Division given by Watermeyer JA. In *Jewish Colonial Trust Ltd v Estate Nathan* 1940 AD 163 at 175–6, the learned Judge of Appeal said:
>
> > Unfortunately the word 'vest' bears different meanings according to its context. When it is said that a right is vested in a person, what is usually meant is that such person is the owner of that right—that he has all rights of ownership in such right including the right of enjoyment. If the word 'vested' were used always in that sense, then to say that a man owned a vested right would mean no more than that a man owned a right. But the word is also used in another sense, to draw a distinction between what is certain and what is conditional; a vested right as distinguished from a contingent or conditional right. When the word 'vested' is used in this sense Austin (*Jurisprudence,* vol 2, lect 53), points out that in reality a right of one class is not being distinguished from a right of another class but that a right is being distinguished from a chance or a possibility of a right, but it is convenient to use the well-known expressions vested right and conditional or contingent right.

The second judgment of Watermeyer JA to which he referred is that in *Durban City Council v Association of Building Societies,* in fact, the very extract already quoted.

Another term for a contingent interest is a *spes*—a hope of acquiring property (although not according to Eloff J in *P E Bosman Transport Works Committee and Others v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 801 (T)).

So who is a 'beneficiary' of a trust under the Income Tax Act? Anyone who currently or in future might benefit under the deed.

Bequests to public benefit organizations—a dog's breakfast

My esteemed colleague David Cudlipp raises an interesting issue when he says:

> You may wish to investigate whether the s 4(*h*)(i) deduction [under the Estate Duty Act] is applicable only to bequests made to PBOs that are *actually* registered by SARS as being exempt from tax in terms of s 10(1)(*c*N) of the Income Tax Act, or whether the deduction would also apply to bequests to PBOs that are *capable of being* so exempted by SARS, were they to apply.

At last! A chance to blow off some steam about the poor identification of qualifying PBOs by the idiot draftsperson. Once again, the fault lies principally in an inability to use definitions properly.

The Estate Duty Act exempts

> (*h*) the value of any property included in the estate which has not been allowed as a deduction under any other provision of this section [s 4] which accrues or accrued to—
>
> (i) any public benefit organization which is exempt from tax in terms of section 10(1)(*c*N) of the Income Tax Act, 1962….

The indicated provision of the Income Tax Act in fact no longer exempts anyone. Instead, these days it offers a partial exemption from the so-called income tax for

> (*c*N) the receipts and accruals of any public benefit organization approved by the Commissioner in terms of section 30(3), to the extent that the receipts and accruals are derived….

And s 30(3) starts out in this fashion:

> (3) The Commissioner shall, for the purposes of this Act, approve a public benefit organization which….

Now comes the part that completely flummoxes legions of otherwise intelligent professionals, not to mention the SARS exemption unit, which in my view is a total shambles. After reading the Minister of Finance's advice to small business to use exempt status as a commercial tool (see the 'Monthly Listing'), I am no longer surprised by what I encounter in practice.

What stands for *approval* (registration) under s 30(3) is a 'public benefit organization', a definition (in s 30(1)) that unwisely includes a raft of strict qualifying attributes. Before an entity may be ap-

proved, then, it must qualify as a 'public benefit organization'.

It gets worse. In order so to qualify, a candidate organization must exclusively carry on 'public benefit activities', which are profusely but nevertheless strictly listed in the Ninth Schedule to the Income Tax Act.

I call this style of drafting 'massively parallel'. Good law—and good contracts—should, by contrast, be strictly linear. Here is what is required:

> If we meet the 'activities' test & pass the 'PBO' test & pass the 's 30(3)' test & (easy peasy) get approval, we are a PBO approved under s 30(3).

So what ought we best be called? A s 10(1)(*c*N) organization? A s 30(3) entity? A s 30 organization? An outfit carrying on s 10(1)(*c*N) activities? The Income Tax Act uses all these cross-references, and more, when the idiot draftsperson ought to have allowed us to speak simply of a 'public benefit organization', in the sense of an entity not only meeting all the requirements smeared across the entire Act but one approved by the Commissioner.

As things stand, he gets the salary, while you and I do the work. Since he has insanely depreciated the value of the term 'public benefit organization', what we should speak of is a *qualified public benefit organization.*

Now that I have reclaimed an ability to address this branch of the tax law in ordinary language—as opposed to a blaze of meaningless alpha-numerical cross-references—I can answer my friend David's apparent question:

> The estate duty deduction for charitable and similarly publicly spirited bequests is available only for bequests to a *qualified public benefit organization.*

But he's too smart to be satisfied with that answer.

When does a bequest *accrue?* To cut a very long story short, it accrues when, the targeted beneficiary having adiated under the will, the accounts (whether interim or final) have lain for inspection over the requisite period.

On one reading of s 4(*h*)(i) of the Estate Duty Act, a beneficiary capable of qualifying by the critical moment of accrual will satisfy the requirements of the deduction, even if it failed to do so at the time of death.

More on dividend-income funds

Prudential Portfolio Managers (South Africa) (Pty) Ltd (PPM) is, according to its website, 75% owned by Prudential plc, listed on the London stock exchange. An enquiry logged on to its website elicited an immediate response from Hamilton van Breda. What I was following up on was an article by well-known journalist Bruce Cameron on 'dividend-income funds'. And what I cover here exclusively are Mr Van Breda's remarks about the fund of this nature managed by Prudential.

The fund, he says, does 'not invest in preference share structures *at all'* (his emphasis). It has, rather, something to do with the worldwide practice of 'lending scrip and selling dividend streams'.

In response to some comment from a SARS official quoted by Cameron, he has this to say:

> SARS *approved the tax structure* we use and issued a tax ruling accordingly. Based on this ruling the FSB then approved the *product* [his emphasis].

Then follows this passage:

> The taxation consequences for the Dividend Income Fund in terms of the Income Tax Act as confirmed by SARS in a Ruling remain as follows:
> 1. The Dividend Fund will receive tax-exempt dividends in terms of section 10(1)(*k*);
> 2. The Dividend Fund will not be subject to any tax on its receipts;
> 3. The Dividend Fund will not fall foul of the provisions of the initial or the recently amended section 103(5).
>
> Furthermore, Collective Investment Schemes ('CIS') do not meet the definition of 'hybrid equity instrument' as contained in section 8E of the Act.

Okay. I am going to stick my neck out here and conclude that the Prudential dividend fund is a collective investment scheme in securities under the Collective Investment Schemes Control Act, and that PPM is its registered manager under that Act.

The mention of a SARS 'ruling', on the other hand, has me stymied. SARS does not issues rulings, unless under the new advance tax rulings system, and I cannot find anything apposite in the rulings published thus far.

Does SARS suffer from any general obligation towards collective investment schemes? My version of the very latest Income Tax Act records fifty-six hits for the string 'collective investment scheme' but nary a one requiring approval by SARS. Nor can I find any reference at all to SARS in the Collective Investment Schemes Control Act.

I am sorry Mr Van Breda but I am going to have to conclude that, perhaps as layman in tax matters, you are confusing some other administrative procedure with a SARS ruling approving the 'tax structure' you use. But nothing stops you from sending me a copy of the thing, and I'll reverse myself from here until next week.

Next, on the information extracted so far, how would one expect the Income Tax Act to work, for *all* collective investment schemes in equities? The law in this area has just been refined, so the exercise is doubly useful:

- ☐ A participatory interest in a CIS is a 'financial instrument' (s 1).
- ☐ A 'person' includes a portfolio of a CIS in securities.
- ☐ A 'portfolio of a CIS in securities' is defined in terms of Part IV of the Collective Investment Schemes Control Act.
- ☐ An amount deemed by s 25BA(*b*) to have been derived by a holder of a participatory interest in

a portfolio of a CIS in securities by way of a distribution from that portfolio is exempt (s 10(1)(*i*B)). (The reason is that the CIS will itself have paid tax on this portion.)

- ☐ The revenue earnings of a portfolio of a CIS in securities distributed to its holders of participatory interests within twelve months of receipt is deemed to have accrued directly to them; otherwise these lie with the portfolio (s 25BA). (The outgoing portion is taxed in the hands of holders of participatory interests; what remains is taxed in the CIS.)

Staying focused purely on the information to hand, I assume that the fund purports to derive 'dividend streams'. On that basis, whether it on-distributes in time or not, it cannot pay tax, since timely distributions accrue to its holders of participatory interests, while anything remaining will be derived as (local) 'dividends' and therefore exempt from tax under s 10(1)(*k*)(i).

What's this, then, about s 103(5)? Aha! It covers swaps of income-streams!

What it contemplates is the *cession* of a right to receive an amount in exchange for an amount of dividends. In tax law, such a cession is very difficult to accomplish, since it must kick in *before* any accrual to the party ceding an income-stream.

What triggers its application, and thus the fiscal annihilation of the transaction? The cession must save tax for the cedent taxpayer or for any other party to the transaction.

Mr Van Breda, do you know an extremely interesting fact? Section76G(2)(*a*) expressly forbids the Commissioner from giving any ruling on the application or interpretation of s 103.

You really ought to let me have a look at the 'ruling' upon which you rely. More, soon.

Words & phrases—'income' of a deceased estate

Section 25 of the Income Tax Act:

> Any income received by or accrued to or in favour of any person in his capacity as the executor of the estate of a deceased person,

'Income'—must allow the deemed recipient to qualify for exemptions.

> and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime,

'Income'—must allow for the inclusion of trading stock in 'taxable income', proceeds of its sale in 'gross income' and a recoupment in 'income' and thus (via para (*n*) of the definition of the term 'gross income' in s 1) in 'gross income', but it must exclude exempt income.

> shall, to the extent to which such income or amount has been derived for the immediate or future benefit of any ascertained heir or legatee of such deceased person,

'Income'—must allow the deemed recipient to qualify for exemptions.

> be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent to which such income or amount is not so derived, be deemed to be income of the estate of such deceased person.

'Income'—must allow the deemed recipient to qualify for exemptions.

So what does the term 'income' mean in this provision? Its defined meaning, as given in s 1? 'Income' in the old-fashioned accounting sense? 'Income' in the economist's sense?

Repudiation of an inheritance

I am indebted to Duncan McAllister for a citation of a beautiful case, which offers the solution to one of the most interesting legal and tax questions of all time, the nature of the interest of what I call a beneficiary under a will.

The case is *Durandt NO v Pienaar NO and Others* 2000 (4) SA 869 (c), the judge was Comrie J, and counsel for the applicant was D Meyerowitz SC (with him L W Olvier).

Two years before her sequestration, one of the beneficiaries under her father's will formally repudiated her inheritance, with the effect that her mother benefited. Was the repudiation a disposition without value and thus capable of being set aside under s 26(1) of the Insolvency Act?

The leading case, said Comrie J, is *Van Schoor's Trustees v Executors of Muller* (1858) 3 Searle 131, from which this quotation may be extracted:

> A child may decline to adiate an inheritance, or may repudiate it, with the very object that the amount which otherwise would go into his estate should be lost to his creditors. This is not considered in law an alienation in fraud of creditors; as there can be no alienation of what is omitted to be acquired (Voet 42.8.16).

He showed how this view was still respected 135 years later, in *Kellerman NO v Van Vuren and Others* 1994 (4) SA 336 (T).

Politely disposing of the mistaken judgment in *Boland Bank Bpk v Du Plessis* 1995 (4) SA 113 (T), he moved on to quote from Melunsky J's judgment in *Klerck and Schärges NNO v Lee and Others* 1995 (3) SA 340 (SE):

> I am therefore of the opinion that *Kellerman's* case, supported as it is by the authorities mentioned above, was correctly decided. In my view it is untenable to hold that a person who refuses to accept a benefit—whether it be a donation or an inheritance—thereby disposes of his property. And the definition of ''disposition' in the Insolvency Act, wide as it is, does not cover

> the instant case. Counsel for the plaintiffs submitted that a renunciation of an inheritance was an abandonment of rights to property in terms of the aforementioned definition. It appears to me, however, that a repudiation of an inheritance is merely a refusal to accept a right to property.

Now enjoy a lesson in law from Comrie J himself:

> In a straightforward case the law of succession is sufficiently clear. An inheritance or legacy vests in the heir of legatee on the death of testator. It is not the *dominium* which vests, but a personal right to claim the testamentary benefit from the executor in due course. But the benefit comes with a choice: an election…by the beneficiary either to adiate (to accept) or to repudiate. The latter is not presumed. If the beneficiary dies or is declared insolvent before making a choice, the right (and with it, the choice) passes to his deceased estate or trustee in insolvency. If the beneficiary chooses to repudiate, the underlying right is taken in law never to have vested….
>
> …. For the aforegoing reasons my conclusion in the present case is that the insolvent's repudiation of her inheritance, prior to her sequestration but while she was in insolvent circumstances, did not amount to a disposition of property and accordingly that it is not liable to be set aside under s 26 of the Insolvency Act as a disposition without value.

Artificial persons & tax—starting with VAT

After decades of buying into the propaganda on this topic, of late I find the scales falling from my eyes, encouraging me to reject the findings in some famous cases.

The ranks of legal persons are firmly shut to trusts and the estates of deceased and insolvent persons. (Companies in liquidation belong to a different class, since they retain their legal status until the very end.) How, then, do these constructs operate within society? The answer is simple, in that manage very well, thank you, via their legal administrators, whom I shall collectivize as 'trustees'. The trustees either own or control the assets under administration, and gain their powers contractually (trusts), quasi-contractually (deceased estates) or by statute (the lot).

The trustees act neither beneficially nor as agents but in a fiduciary capacity. There is no legal duty or advantage that cannot be imposed or bestowed upon one of these constructs that cannot be mediated via their trustees. In fact, there is no other way for society to interact with them other than through their trustees.

A minor fiscal inconvenience attaches to the legal personalities of the trustees themselves, that is, in their own right, since they might be either natural persons or incorporated entities. Yet all it takes to overcome this supposed obstacle are a few additional words in the tax code—as the illustrations below demonstrate. Historically, however, the problem and its solution were seen in a different light, and, over time, all three constructs were deemed, by definition, to be fiscal 'persons', mainly so as to attach both a liability for and a rate of tax to them.

Those entrusted with the task sometimes understood and sometimes misunderstood what they were doing. Fortunately, some fiscal archeology readily reveals the jagged orbit that was followed. (What I should truly love to know, and no amount of archeology, fiscal or otherwise, will ever reveal, is whether the draftsperson who defined a 'trust' under the Income Tax Act and a 'trust fund' under the Value-Added Tax Act understood that he was targeting both valid and invalid trusts under our law; for that is what he did.)

In the listing that follows, in the interests of illustrating the point I am making, I list every substantive mention of a 'trust fund' in the Value-Added Tax Act (that is, outside of its definitions), since that is the better-drawn act in relation to this fine point of law. In fact, the principal, original draftspersons of this act, which was largely taken from a New Zealand exemplar, clearly knew exactly what I am currently on about.

A due

Here it is, plain as the nose on the end of your face. In the provisions that follow, the VAT law explicitly recognizes that the trustee is an economic and fiscal actor, while a 'trust fund' is not:

VATA s 15(2)(*b*)

> (*b*) the vendor is a natural person (other than the trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons and—

VATA s 15(5)

> Provided that where a vendor changes from a payments basis to an invoice basis for the sole reason that such vendor is not a natural person (other than a trustee of a trust fund) or an unincorporated body of persons of which all the members are natural persons,

Da capo, con brio

Here is the same recognition, albeit it in different, more sophisticated forms:

VATA s 30

> **30.** In addition to any return required under any other provision of this Act, the Commissioner may require any person, whether or not that person is a vendor, to furnish on his own behalf or as an agent or trustee, to the Commissioner such further or other return, in a form prescribed by the Commissioner, as and when required by the Commissioner for the purposes of this Act.

VATA s 32(*a*)(v)

> (v) in terms of section 43(5) and (6) notifying a member, shareholder or trustee of a vendor that he is required to provide surety in respect of the vendor's liability for tax from time to time; or

VATA s 43(5)

> (5) Notwithstanding the provisions of subsection (1),

the Commissioner may, having regard to the circumstances of any vendor which is not a natural person, require of any or all of the members, shareholders or trustees involved in the management of such vendor to enter into a contract of suretyship in respect of the vendor's liability for tax which may arise from time to time.

VATA s 43(6)

(6) Such suretyship shall be for such amount and for such period as the Commissioner may direct and for the duration thereof, the said members, shareholders or trustees may jointly and severally with the vendor be held liable for paying the tax imposed on the vendor.

VATA s 46(*h*), (*i*)

46. The natural person who is a resident of the Republic responsible for the duties imposed by this Act—

(*h*) on an insolvent person or his estate shall be the trustee or administrator of such estate;

(*i*) on any trust fund shall be the person administering the fund in a fiduciary capacity;

VATA s 46(*h*), (*i*)

46. The natural person who is a resident of the Republic responsible for the duties imposed by this Act—

(*h*) on an insolvent person or his estate shall be the trustee or administrator of such estate;

(*i*) on any trust fund shall be the person administering the fund in a fiduciary capacity;

VATA s 48(1)(*a*)

48. (1) For the purposes of this section '**representative vendor'** means—

(*a*) in relation to any company, public authority, municipality, body, trust fund or person referred to in section 46, the person who is in terms of that section responsible for performing the duties imposed under this Act on such company, public authority, municipality, body, trust fund or person; and

VATA s 49

49. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as he would have against the property of any person liable to pay any tax, additional tax, penalty or interest chargeable under this Act and in as full and ample a manner.

VATA s 53

53. (1)(a) Where, after the death of any vendor or the sequestration of his estate, any enterprise previously carried on by the vendor continues to be carried on by or on behalf of the executor or trustee of his estate or anything is done in connection with the termination of the enterprise, the estate of the vendor, as represented by the executor or trustee, as the case may be, shall for the purposes of this Act be deemed to be a vendor in respect of the enterprise.

Ad lib

How curious! There is only one exception to be found in the entire act, where a 'trust fund' itself is personalized. From long experience of cruddy drafting, my immediate suspicion is confirmed; this represents a recent addition to the law, while the other provisions are either original or were added before the end of 1999.

VATA s 27(4A)(*b*)

(*a*) the vendor is a company or a trust fund;

A fresh look at VAT input claims

Tammy Dibben asks an interesting question: Can a dormant company claim an input tax deduction when it has no output tax against which to set it off?

I have so often repeated the mantra that a vendor has five years to claim an input tax deduction that I have come to believe it myself—without checking the actual law too closely.

Which are the relevant provisions of the Value-Added Tax Act, and exactly what do these say?

Section 44

The most obvious place to look is s 44(1):

Refunds

44. (1) Any amount of tax which is refundable to any vendor in terms of section 16(5) in respect of any tax period shall, to the extent that such amount has not been set off against unpaid tax in terms of [s 44(6)], be refunded to the vendor by the Commissioner: Provided that—

(i) the Commissioner shall not make a refund under [s 44(1)] unless the claim for the refund is received by the Commissioner within five years after the end of the said tax period; or

(ii) where the amount that would be so refunded to the vendor is determined to be less than R100, or less than such other amount as the Commissioner may determine by notice in the *Gazette*, the amount so determined shall not be refunded in respect of the said tax period but shall be carried forward to the next succeeding tax period of the vendor and be accounted for as provided in section 16(5).

The drafting is, as usual, execrable. The wording is jargon-choked; the 'proviso' is nothing of the sort; there are four cross-references; the 'or' is mad; and the R100 rule is not made subject to the five-year rule. Where *do* they find their draftspersons? Or is it the University of Pretoria that excretes them?

On the substantive issue to hand, though, an amount refundable during a particular tax period may be claimed within five years after the end of that period, finish and Selebian *klaar.*

Section 16

But hold on a mo. The amount has to be refundable in the first place, and its refundable qualification is clearly to be earned under s 16(5). Stand by for even cruddier drafting:

(5) If, in relation to any tax period of any vendor, the aggregate of the amounts that may be deducted under

> [s 16(3)] from the sum referred to in [s 16(3)], the amount (if any) refundable to the vendor under section 15(8), the amount (if any) brought forward from the tax period preceding the first-mentioned tax period as provided in [s 44(1)(ii)] and the amount (if any) credited under section 44(4) to the vendor's account during the first-mentioned tax period, exceeds the said sum, the amount of the excess shall, subject to the provisions of this Act, be refundable to the vendor by the Commissioner as provided in section 44(1).

Do you see how you're being violated here? Section 44(1) claims to govern s 16(5), yet s 16(5) cannot function without running a bit of code in s 44(1)(ii), which actually sends amounts back to s 16(5), which cannot function…. It's a bloody loop!

Finally, to complete the 'handshaking' exercise, s 16(5) proclaims itself to be governed by s 44(1)—which you knew already, from s 44(1)—creating another loop.

Back to the substantive issue: The immediate task is to discover which *amounts* 'may be deducted under [s 16(3)]' and what is the *sum* 'referred to in [s 16(3)]'. Here are the opening words of s 16(3):

> (3) Subject to the provisions of [s 16(2)] and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under [s 16(4)], and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(*b*) and (*c*) and 7(3)(*a*), the following amounts, namely—

The *sum* referred to might merely be of the amounts of output tax attributable to the tax period under s 16(4) but, *pace* the comma, is more likely to include as well amounts received during the period by way of refunds of tax charged under s 7(1)(*b*) and (*c*) and 7(3)(*a*).

The *amounts* deductible are 'the following amounts' listed as s 16(3)(*a*) to (*n*).

There is nothing in the wording to suggest that, without the *sum,* no *amounts* may be deducted. On the contrary, a simple arithmetical exercise is called for, in the sense that the *sum* may be either positive or zero, the *amounts* will always be a sum of negative values, and the outcome may be positive, zero or negative.

A similar outcome is not contested under the Income Tax Act, which, about twenty times, uses the formulation 'deduction from income' to signify either a positive or a negative 'taxable income'.

In any event, are start-ups not every day being refunded input tax claims before deriving any outputs? (Well, not really, but that is because SARS is either bloody-minded about refunds or is actually running out of cash, as an FD struggling to be paid a large refund due has recently suggested to me.)

But the story she is not yet *finito,* since s 16(3) is also graced with a so-called proviso. In fact, there are two such provisos. I spare you the second, nevertheless, please, don your hardhat:

> Provided that—
> (i) where any vendor is entitled under [s 16(3)] to deduct any amount in respect of any tax period from the said sum, the vendor may deduct that amount from the amount of output tax attributable to a later tax period which ends no later than five years after the end of the tax period during which—
> (*aa*) the tax invoice for that supply should have been issued as contemplated in section 20(1);
> (*bb*) goods were entered for home consumption in terms of the Customs and Excise Act;
> (*cc*) second-hand goods were acquired or goods as contemplated in section 8(10) were repossessed;
> (*dd*) the agent should have notified the principal as contemplated in section 54(3); or
> (*ee*) in any other case, the vendor for the first time became entitled to such deduction, notwithstanding the documentary proof that the vendor must be in possession of in terms of [s 16(2)]; and
> (ii) the said period of five years contemplated in [s 16(3)(i)] shall be limited to six months prior to the tax period in which the deduction is made, where the Commissioner is satisfied that the deduction was not permissible in accordance with the practice generally prevailing,
> and to the extent that it has not previously been deducted by the vendor under [s 16(3)]:

I recognize the drafting style of the last phrase. It is that of a recent, male draftsperson, remuneration R500 000 a year, every cent of it wasted, whose sentence-structure is as addled as his logic. Where is it meant to fit in, and how many times?

This five-year period differs from the five-year period for a claim for a refund, in that it allows for a delayed deduction of input tax, which may or may not have the result that a refund is claimed.

As I now understand the overall picture, you have five years to claim an input tax deduction, starting from the various dates specified. Should that claim put you into a refund position in a particular tax period, you will not be paid unless the Commissioner *receives* your claim within five years of the end of that period. It sounds nutty to me, since you will have longer to claim a deduction as long as you do not go over to claiming a refund.

In any event, as far as I am concerned, the answer to Tammy's question is Yes, provided that the other requirements for a deduction are fulfilled. For example, an 'enterprise' must be carried on by the vendor, but in the light of this 'proviso' to the definition of an 'enterprise' in s 1:

> Provided that—
> (i) anything done in connection with the commencement or termination of any such enterprise or activity shall be deemed to be done in the course or furtherance of that enterprise or activity;

In other words, the dormant company must at least be engaged in the termination of its enterprise.

November 2009

Winners ☺ & Losers ☹ In That Other Beautiful Game

Current ☑ & Past ☒ Case Reports

by Julian Ware

Appointment of agent—
☹ Goldblatt & Others v
☺ Liebenberg & Another

Western Cape High Court (2009)—71 SATC 189 (judgment delivered by Louw J): In a most bizarre case, the directors of a company managed to convince the tax department of its auditors, PricewaterhouseCoopers, to influence SARS into appointing the directors as agents of its previous CEO, who, they alleged, had failed to withhold and pay over to SARS various statutory deductions on behalf of the company. The malevolent plan came to light because the directors owed the balance of a judgment debt to the previous CEO. Their argument that, once they were appointed agents, they were compelled to pay SARS part of the judgment debt by operation of law, came to naught, the court holding that the CEO could not, on the facts before it, have been personally liable for the payment. The directors also took it upon themselves to settle other alleged debts on behalf of the CEO, in flagrant disregard of the writ's prohibition of any deduction or set-off. The balance of the debt was held not to have been discharged, and they were obliged to honour it in full.

Liability for lost goods—customs & excise
☺ Faynaz Import & Export Enterprises CC v
☹ CCE & Others

Transvaal Provincial Division (2009)—71 SATC 205 (judgment delivered by Murphy J): In a somewhat lengthy judgment, the Minister of Safety and Security was held liable for damages when a SAPS inspector wrongly and negligently detained and lost the taxpayer's goods under his control. The police, acting under the Customs & Excise Act 91 of 1964, have a duty to take adequate steps to protect goods under their control. The taxpayer's goods were wrongly detained when a SAPS inspector detained, together with them, another importer's goods stored in the same bonded warehouse. Surprise! Surprise! The credibility and reliability of the SAPS inspector's testimony was suspect.

Search & seizure warrant—customs & excise
☺ CSARS & Others v
☹ Moresport (Pty) Ltd & Others

Supreme Court of Appeal (2009)—71 SATC 232 (judgment delivered by Tshiqi AJA; Nugent JA, Ponnan JA, Mlambo JA & Mhlantla JA concurring): On appeal from the Transvaal Provincial Division (2009 *TSH* 78), it was held that failure to disclose a respondent's defense under an *ex parte* application is not a relevant and material fact. On this basis, an application made by CCE for a warrant to seize, remove and detain alleged counterfeit goods was not fatally defective. When disclosure of a respondent's defense may influence a court's decision there may be an ethical duty upon the applicant to disclose it.

Characterization of levies—customs & excise
☹ Maize Board v
☺ Epol (Pty) Ltd

Durban & Coastal Local Division (2008)—71 SATC 236 (judgment delivered by Tshabalala JP): Twelve years after a claim arose, the Maize Board issued a summons and sought to recover general and special levies under the now-repealed Marketing Act 59 of 1968 and the Maize Marketing Scheme. Levies imposed by the Board were not a tax. The debt was extinguished by prescription after the lapse of three years—and not thirty years—from the date of its arising. The context of words used within legislation is of paramount importance to its interpretation.

DAVEY'S Locker

TAX SHOCK, HORROR NEWSLETTER

Davey's Locker

November 2009

Primary domestic residence tax relief

Part I

by Tony Davey

SARS Tax Exemption Division

In previous issues I have expressed appreciation of the courtesy, efficiency and professionalism of both the SARS Advance Tax Ruling (ATR) division, and the nonbinding ruling section. I had occasion recently to engage with the SARS Tax Exemption Unit in Hatfield, Pretoria on behalf of a client. Their professional and co-operative attitude deserves mention, and is certainly in accordance with the SARS Taxpayers Charter.

The tax relief introduced in this year's Taxation Laws Amendment Acts granting various tax exemptions to natural persons wishing to unwind their companies, close corporations and trusts holding their primary residences should be welcomed by taxpayers and especially their conveyancing attorneys.

Effective from 11 February this year, with a window period ending on 1 January 2012, tax relief is granted as follows:

An exemption from transfer duty.
An exemption from the STC.
A CGT deferral

The rationale behind these tax concessions is to enable an eligible natural person to hold a primary domestic residence directly in his or her own name and thus, first, qualify for the R1,5 m CGT primary residence exemption, which is unavailable to companies, close corporations and trusts, and, secondly, to benefit from a lower effective CGT rate.

The rate for a natural person is the marginal rate applied to 25% of the gain, resulting in an effective 4,5% to 10% rate, while the company/CC rate is 28% of 50%, namely 14%, plus STC on the dividend extracted, and a trust rate of 40% of 50%, equating to 20%.

The CGT relief upon transfer is a deferral of tax, as distinct from an exemption, in that, when a natural person ultimately sells the residence, the gain is calculated on the sale proceeds less the original acquisition cost (plus improvements) to the company, close corporation or trust.

It all seems too good to be true, so three words of warning:

First, if the residence is owned by a trust, you will forfeit the estate-planning relief upon transfer to yourself, in that the residence will constitute property in your estate and, as a general rule, estate-dutiable at 20%.

Secondly, any asset-protection you enjoyed by holding the residence in trust will no longer apply, and trade creditors, estranged spouses and other predators *a la* the John Grisham legal novels, might reintroduce themselves.

Thirdly, although most natural persons will qualify for these exemptions, there are certain nuances and niceties to be satisfied. These should be examined before any transaction. I shall examine them in the next issue, since they merit separate attention. Suffice it to say that this new legislation cross-references to the criteria contained in para 51 of the Eighth Schedule, the CGT legislation.

Briefing

TAX SHOCK, HORROR NEWSLETTER

Briefing

November 2009

Expats & estate duty

by Michael Stein

At a recent seminar on estate duty, we bemoaned the fact that our Estate Duty Act discourages people who have left South Africa and made their fortune abroad from returning to their country of birth.

Section 2 levies estate duty on the dutiable amount of the estate of a person, while s 3(1) provides that the estate of a person consists of all his or her property as at the date of death and of all property that, in accordance with the Act, is deemed to be his or her property at that date.

This charging provision and this statement of what constitutes an estate are not concerned with the residence of the person or the location of the property.

Section 3(2), which defines the term 'property', then effectively, albeit rather clumsily, excludes from property in the estate the local assets of a person who dies while not ordinarily resident in South Africa.

The relief for foreign property is less generous. It takes the form of a deduction from the total value of the estate of qualifying foreign property. This is to be found in s 4(*e*). It allows a deduction for the amount included in the total value of all foreign property of the deceased that was acquired by the deceased in certain ways.

Immigrants

First, it applies to foreign property acquired by the deceased before he or she became ordinarily resident in SA for the first time. The only person who can have acquired foreign property before becoming ordinarily resident in SA for the first time is someone who was born abroad and then relocated to this country, for example, an immigrant. This deduction is therefore available for an immigrant but not a person born in SA, who left to live abroad for a while, acquired foreign property while there, and then returned to this country. He or she would have acquired the foreign property *after* becoming ordinarily resident here for the *first* time (at birth).

Donees

Secondly, the deduction applies to foreign property acquired by the deceased by donation *after* he or she became ordinarily resident in SA for the first time, if at the date of the donation the donor was a person (other than a company) not ordinarily resident in SA.

Since this deduction is available for foreign property acquired *after* the deceased became ordinarily resident in SA for the first time, it applies to foreign property acquired by a person who was born here as well as to an immigrant. For the person born here, it would obviously apply to foreign property acquired from a foreign donor at any time, while, for an immigrant, it would apply to foreign property acquired after a move to SA.

If the immigrant acquired foreign property by donation (from anybody) *before* becoming ordinarily resident here, he or she would in any event qualify for the first deduction.

Heirs and legatees

Thirdly, the deduction applies to foreign property acquired by the deceased by inheritance *after* he or she became ordinarily resident in SA for the first time, if the foreign property was inherited from a person who at the date of his or her death was not ordinarily resident in SA.

Here, again, since this deduction is available for foreign property acquired *after* the deceased became ordinarily resident in SA for the first time, it applies to foreign property acquired by a person who was born here as well as to an immigrant. It would apply to foreign property acquired from a foreign donor at any time by a person who was born in SA and, for the immigrant, it would apply to foreign property acquired after a move to SA.

Again, as with a donation, if the immigrant inherited foreign property from anybody *before* becoming ordinarily resident here, he or she would qualify for the first deduction.

Replacement property

Finally, the deduction is available for foreign property acquired out of the profits and proceeds of any foreign property qualifying for any of these deductions. Thus foreign property acquired to replace foreign property that would have been deductible is also deductible.

Problem

While these deductions provide a measure of relief for certain foreign property of a deceased person, they do not go far enough. They do not provide relief to a person who was born in SA but moved

abroad and accumulated assets while working there and now wants to return home. Upon returning, he or she will have to pay estate duty on the foreign property acquired while he or she was abroad. This outcome discourages skilled or merely wealthy expatriates from returning to SA.

Solution

I suggest that a provision be inserted so as to allow a deduction for foreign property acquired by a deceased at any time from a trade carried on outside SA. A person who has acquired foreign assets while ordinarily resident outside SA will not then be penalized should he or she return to this country, since the foreign property would still remain outside his or her dutiable estate for estate duty purposes.

Current alternative

An alternative available under the current law is for the expatriate who wants to return to SA to donate his or her foreign property to a properly constituted trust before returning to take up ordinary residence in this country. A person who is not a resident of SA is not liable for donations tax, so the returning expatriate will avoid estate duty by donating his foreign property to a foreign trust while still a nonresident, and will not have to pay donations tax on the donation. He or she will also ensure that the foreign property falls outside the estates of his or her heirs if it belongs to a trust.

Evidence Corner
Evidence could make a welcome change to tax cases

TAX SHOCK, HORROR NEWSLETTER

November 2009

The curious case of the baby farmers

by Andrew Paizes

Assume that X is charged with murdering Y by poisoning her with arsenic over a period of six months. Would you, if you were a judge, admit evidence that X had, two years earlier, killed a business partner of his in a drunken brawl? Would you receive evidence that he had poisoned Z, to whom he had been married, after insuring her life heavily in his favour? Would it make a difference, in the second case, if Z was his wife, and if he had insured her life, too, in his favour? Would it make a difference if the evidence showed that X had, in fact, been married six times, and all six wives had met untimely and suspicious ends, all consistent with arsenical poisoning, and all in circumstances where X stood to gain financially from their deaths?

Before attempting to answer these questions, you must bear in mind certain important facts.

First, the reception of this kind of evidence—which is called 'similar fact evidence'—tends to be highly prejudicial to the accused. He comes to court prepared to meet a case on a specific charge—in this case, the murder of Y—and finds, in effect, that he has to defend himself against a number of other allegations, even though these are not part of the charge. The trial is made significantly more complex, more time-consuming, and, for the accused, more expensive.

But there is, too, an even greater source of prejudice: the reception of this evidence casts the accused in a very unfavourable light and creates a picture making it very easy for an untrained mind to think along this sort of line:

> X is obviously such a bad man that it is right to convict him irrespective whether the evidence is sufficient to warrant a conviction on the present charge.

Or this:

> A person who kills once is likely to kill again, so evidence that X killed before is enough to convince me that he killed Y as well.

Judges are trained to avoid such unscientific chains of reasoning and, for the most part, they do so. But people lacking legal training are vulnerable to such pitfalls. In countries where juries are employed, the dangers are greatest. But even in South Africa, where trial by jury is a distant memory, assessors are frequently used, and assessors do not necessarily have any legal training; although it is common for them to be drawn from the ranks of lawyers.

One thing seems clear. The greater the connection between the facts alleged in the charge and the facts contained in the 'similar fact evidence', the more cogent the case is for admitting that evidence. In the examples given, the 'nexus' between the two sets of facts becomes progressively greater in the three variations. But, then, so, too, does the prejudice caused to the accused.

How have the courts dealt with this issue? Is there any formula or test that can be used to determine the admissibility of this class of evidence?

The leading case is a decision of the Privy Council emanating from Australia in 1894. It is the famous case of the 'baby-farmers', *Makin v Attorney-General for New South Wales* ([1894] AC 57 (PC)). The accused were a husband and wife charged with the murder of an adopted baby whose body had been found buried in the garden of a house that had been occupied by them. It was shown that the bodies of at least twelve other babies had been found buried in the gardens of houses occupied by the Makins, and that each of these babies had been adopted by them. The prosecution case was that the Makins, who had received a sum of money for the care of each of these children, stood to make a financial gain from the alleged murders.

The Privy Council allowed the evidence to be received. But it laid down strict instructions: The evidence could *not* be received to support the prohibited line of reasoning that, because the Makins had a *disposition* to kill (and, in

particular, to kill babies), they were more likely to have killed this particular baby. But it could be used if it was 'relevant to an issue before the jury', and it may be so relevant, said Lord Herschell,

> if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.

In this case, the prohibited line of reasoning could safely be avoided. The evidence points to the statistical unlikelihood of all those babies having died from natural causes (even in 1894). The only reasonable inference is that they were murdered. That being so, the only reasonable inference is that the Makins killed them.

But there are problems with the application of the *Makin* rule. Sometimes the evidence has no real relevance other than in showing propensity. And yet it may be so damning of the accused that it would be an affront to common sense to exclude it.

Next month I shall consider relevant cases and how the courts have dealt with them. It will be shown that a broader, more nuanced approach is necessary to allow for a more scientific solution to this difficult and fascinating problem.

Shortcut Keys in Word by Duncan S McAllister

November 2009

Shortcut keys in Outlook

Listed here are some time-saving shortcut keys for use in Microsoft Outlook.

Many of the Word shortcut keys for editing text also work in Outlook.

For example, to format an outgoing email message: CTRL + A (select all) and CTRL + D (open font dialog box). As usual, the plus sign indicates a combination key, while commas indicate that keys must be pressed in sequence.

Some of these shortcuts may not work in Outlook 2003. I have indicated '(2003)' or '(2007)' for those keys that I understand will work only in one or the other version of Outlook.

This list is not exhaustive—there are many other specialized keys for use in the various Outlook views, such as the calendar and contacts views.

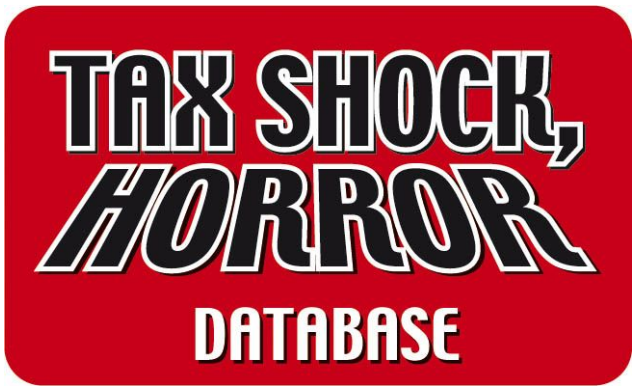
OUTLOOK SHORTCUT KEYS	
WINDOWS + R, enter outlook	Launch Outlook using the Run command (the windows key is between CTRL and ALT on the left hand side of the keyboard)
CTRL + 1	Switch to mail
CTRL + 2	Switch to calendar
CTRL + 3	Switch to contacts
CTRL + 4	Switch to tasks
CTRL + 5	Switch to notes
CTRL + 6	Switch to folder list in navigation pane
CTRL + 7	Switch to shortcuts
CTRL + period	Switch to next message (with message open)
CTRL + comma	Switch to previous message (with message open)
CTRL + B	Display send/receive progress dialog box
CTRL + D	Delete an email message, calendar item, contact or task
CTRL + E	Go to the search box (press esc to clear)
CTRL + ALT + A (2007)	Expand search to include all items in the module (eg—all mail items, all calendar items)
CTRL + ALT + F (2007)	Forward as attachment
CTRL + ALT + J	Mark a message as not junk
CTRL + ALT + K (2007)	Expand search to include the desktop
CTRL + ALT + M (2007)	Mark for download
CTRL + ALT + S	Define send/receive groups
CTRL + ALT + U	Clear mark for download
CTRL + ALT + W (2007)	Expand the search query builder
CTRL + F	Forward
CTRL + K	Check names
CTRL + M	Check for new mail
CTRL + N	Open new (blank) email message
CTRL + O	Open selected item
CTRL + P	Print
CTRL + Q	Mark as Read
CTRL + R	Reply

CTRL + S	Save
CTRL + T	Post a reply in this folder
CTRL + U	Mark as Unread
CTRL + Y	Open folder list
CTRL + Z	Undo
CTRL + enter	Send
ALT + B or ALT + left arrow	Go back to previous view in main Outlook window
ALT + right arrow	Go forward to next view in main Outlook window
ALT + I (2003)	Look for (places cursor in search box)
ALT + K	Remove last semi-colon from mail addressee
ALT + L	Reply to All
ALT + P	In a new email, open message options dialog box
ALT + R	Reply
ALT + S	Send
ALT + W	Forward
ALT + backspace	Undo
ALT + enter	Show properties for selected item
ALT, N, A, F (2007)	Attach file
ALT, I, L (2003)	Attach file
ALT, V, A, D	Arrange folder (eg—sent items) in date order
ALT, V, A, F, first letter of sender's name	Arrange inbox in 'from' order
ALT, V, A, T, first letter of recipient's name	Arrange sent items in 'to' order
ALT, V, A, S	Arrange folder in size order
ALT, P, 1, H (2007)	Convert message to HTML (use to convert a message you want to forward or reply to)
ALT, P, 1, L (2007)	Convert message to Plain Text
ALT, P, 1, R (2007)	Convert message to Rich Text
ALT, H, X, V (2007)	View email message in Internet Explorer
F3	Go to the search box
F4	Search for text within an email message
Shift + F4	Find next while searching in a message
F6	Move between the navigation pane, the main Outlook window, the reading pane and the to-do bar
F7	Spell check
F9	Send/receive
F11	Activate the 'find a contact' box
CTRL + Shift + A	Create new appointment in calendar
CTRL + Shift + B	Open address book
CTRL + Shift + C	Create contact
CTRL + Shift + D	Dial a new call
CTRL + Shift + E	Create folder
CTRL + Shift + F	Open Advanced Find dialog box
CTRL + Shift + G	Create flag for follow up
CTRL + Shift + H	Create new MS Office document
CTRL + Shift + I	Switch to inbox
CTRL + Shift + ((in a message)	Display blocked external content
CTRL + Shift + J	Create journal entry
CTRL + Shift + K	Create task
CTRL + Shift + L	Create distribution list
CTRL + Shift + M	Create new email message
CTRL + Shift + N	Create note
CTRL + Shift + O	Switch to outbox
CTRL + Shift + P	Create a new search folder
CTRL + Shift + Q	Create meeting request
CTRL + Shift + R	Reply All to a message
CTRL + Shift + S	Post to a folder
CTRL + Shift + U	Create task request
CTRL + Shift + V	Move an item
CTRL + Shift + W	Select the infobar and show the menu to download pictures, change automatic download settings, or add a sender to the safe senders list
CTRL + Shift + X	Create a fax

CTRL + Shift + Y	Copy an item
CTRL + Shift + Z	Clear formatting in an email message
Up / down arrow	Go to next / previous message

Have you ever wondered how to insert a web address in an email without displaying the full web address but only a hyperlink such as 'click HERE'?

This can make you look like a pro, and it's quite easy. First, copy the web address onto the clipboard. In order to do this, open the web page, highlight the web address in the address block (press ALT + D to do this quickly), and press CTRL + C to copy. Next, highlight the word you want to hyperlink (eg HERE), press CTRL + K, press CTRL + V to paste the web address into the address block of the hyperlink dialog box, and hit enter.



Compiled by Costa Divaris
'What goes into my database stays there—permanently.'

Over 6 300 public-access fiscal documents on DVD.
Over 1,23 gig of data, updated monthly.
Filenames and directory structure © C Divaris/The Electronic Publishing Corp CC.
Now available individually, quarterly and annually, at R140 per month inclusive of VAT at 14%.
Contact us: Lesley Byrne
Telephone: 011 234 2434 Cell & after-hours messages: 082 854 2238 Fax: 011 234 3373 Fax to e-mail: 086 515 0953 E-mail address: lesley@bspseminars.co.za