



# **TAX & EXCHANGE CONTROL**

*"The lawyers have a heightened commercial awareness. They are known industry specialists who are constantly involved in current matters."*

CHAMBERS GLOBAL 2023

We advise clients on exchange control implications of separate local and offshore interest

## PRACTICE OVERVIEW

**In a complex environment, our specialist lawyers and practitioners provide clear and practical business solutions.**

Tax & exchange control is a highly regulated area, carefully monitored and strictly enforced by the authorities. In this environment, planning, implementing and reporting on significant business transactions is best undertaken with a clear understanding of the tax consequences and under the protection of legal professional privilege.

Our Tax & Exchange Control practice provides advice on a wide variety of tax and exchange control matters, both in the local and international context.

We provide tax planning as well as tax structuring and transaction related services.

We are also actively involved in tax dispute resolution and we assist clients in resolving their disputes with the South African Revenue Service (SARS). A number of our client disputes have recently been heard and settled favourably in the Tax Court and the Supreme Court of Appeal.


We also keep our clients informed of anticipated changes in tax laws and practice to help them manage and take advantage of developments on the tax front.

We work on tax matters on an individual basis, or as part of a team of lawyers from across our firm's practice areas in corporate transactions. We are therefore able to provide a commercially integrated service in order to ensure efficiency from inception to implementation.

We are actively involved in obtaining advance tax rulings, including binding private rulings and binding class rulings, and also customs/excise tariff, valuation and origin determinations for clients. We are also able to move quickly and seamlessly on cross-border transactions as well as in coordinating information and resources to achieve your corporate objectives in the most tax efficient manner, wherever you do business.

Numerous applications have also to date been submitted to regularise clients' exchange control positions, while we have also assisted clients in SARS investigations and to obtain exchange control approval from the SARS for various transactions.





*"The professionals involved make this practice unique – the team is focused and keeps abreast of all current legislation changes. The team seems to be expanding and is attracting like-minded insightful individuals. Their expertise is unique and thus cannot be compared to other firms."*

THE LEGAL 500 EMEA 2022

*"The team at Cliffe Dekker Hofmeyr is aware of industry constraints and able to think outside the box to provide possible solutions."*

CHAMBERS GLOBAL 2023

## SECTOR EXPERTISE

Industry expertise is essential in order to advise clients effectively.

Our clients include banking and financial institutions, equity investment companies, import and export companies, property developers and investors, government departments and public sector institutions, non-profit organisations and high net-worth individuals. These clients are from a wide range of industries and market sectors, including long-term and short-term insurance, mining, retail, construction, energy, telecommunications, aviation, and hospitality and leisure.

Our advice takes into account the specific requirements of each industry sector. With this information we exercise our extensive sector knowledge and experience to develop pragmatic and tailored solutions to your tax issues.

## OTHER INVOLVEMENT

We have a sound understanding of how the National Treasury and SARS operate, as we often directly interface with officials when dealing with tax and exchange control matters.

Our team is actively involved in lobbying the National Treasury and SARS around tax amendments, reforms and exchange control policy. We also frequently make submissions to the Portfolio Committee on Finance, and have recently compiled a technical report for the Davis Tax Committee.

*"The team provides, swift, clear, practical, and business-focused advice and guidance to all tax queries raised. This is highly valuable as it provides us with an extremely easy-to-use guide to implement all change and institute any risk factors."*

THE LEGAL 500 EMEA 2023

## SPECIALIST SERVICES



Tax  
Training



Advance Tax  
Rulings



Voluntary Disclosure  
Programme



Tax Management  
Advisory



Tax Dispute  
Resolution



Independent Tax  
Reviews  
and Tax Due  
Diligence



International Tax  
Advisory



Exchange  
Control



Indirect Tax  
Consulting



Customs and  
Excise

## SPECIALIST SERVICES

### TAX ADVISORY

We provide advice on the direct and indirect tax consequences of all business activities:

- Mergers and acquisitions
- Disposals and acquisitions of business or assets
- Black economic empowerment (BEE) transactions
- Remuneration structuring
- Group analysis and restructuring
- Financial services taxation
- Employee share incentive schemes
- New business operations
- Capital allowance reviews
- Private equity

We assist clients by providing detailed tax opinions relating to all direct and indirect tax queries that are associated with the ongoing tax advice required by businesses.

### ADVANCE TAX RULINGS

To provide certainty regarding the tax treatment of proposed transactions, we compile and submit applications to the Advance Tax Ruling Unit at SARS on behalf of clients. We also liaise with SARS throughout the process.

### VOLUNTARY DISCLOSURE PROGRAMME

We compile and submit applications under the permanent Voluntary Disclosure Programme contained in the Tax Administration Act to assist clients in dealing with historical non-compliance with tax legislation.

### TAX MANAGEMENT ADVISORY

We advise on tax management and governance:

- Tax governance reviews and assessments
- Chairing and serving on tax committees
- Tax risk and control identification workshops
- Tax strategy and tax policy formulation
- Outsourced tax management functions



## SPECIALIST SERVICES...continued

### TAX DISPUTE RESOLUTION

We assist in dispute resolution for all direct and indirect taxes:

- Responding to SARS queries and liaising with SARS to efficiently and effectively resolve matters
- Management of a SARS audit process
- Drafting of objections and appeals
- Representation in alternative dispute resolution reviews
- Tax litigation with the relevant expertise in preparation for hearings of matters
- Administration and constitutional tax-related matters

### INDEPENDENT TAX REVIEWS AND TAX DUE DILIGENCE

We perform comprehensive independent reviews:

- Tax due diligence reviews in respect of all direct and indirect taxes
- Income tax risk identification and assessments
- Pay As You Earn (PAYE) risk identification and assessments
- International tax risk reviews and assessments
- Capital gains tax (CGT) risk identification and assessments

### INTERNATIONAL TAX ADVISORY

We provide advice on international transactions:

- Inbound and outbound investment
- Treatment of foreign exchange differences
- Thin capitalisation
- Transfer pricing
- Permanent establishments
- Controlled foreign companies
- Foreign tax credits
- Double taxation agreements

### EXCHANGE CONTROL

We provide advice and assist clients in complying with exchange control rules, including those contained in the Exchange Control Regulations, 1961:

- Liaising with the authorised dealers and the Financial Surveillance Department of the South African Reserve Bank
- Obtaining approval for various inbound and outbound transactions (eg foreign share schemes, private equity funds, royalty and license agreements and foreign financial assistance)
- Regularising the ownership of unauthorised foreign assets by way of voluntary disclosure applications for exchange control relief to the Financial Surveillance Department of the SARB

*The team is "always able to deliver within a short period," with clients further praising its ability to "provide accurate tax advice."*

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## SPECIALIST SERVICES...continued

### VALUE-ADDED TAX

We advise clients and assist in value-added tax (VAT) services:

- Advice and opinions on all aspects of VAT, including local and cross-border transactions
- Advising on the maximising of VAT recovery and cash flow planning
- Application for binding private rulings and binding class rulings
- VAT dispute resolution and litigation
- VAT accounting system reviews and advice
- VAT due diligence and compliance reviews

### MINING AND ENVIRONMENTAL TAXES

- We advise and assist clients in complying with carbon tax and royalty tax legislation
- Advice regarding provisions in Income Tax Act applicable to mining in South Africa
- Advice and opinions regarding compliance with the newly introduced Carbon Tax Act, including the regulations thereto
- Advice on compliance with and application of the Mineral and Petroleum Resources Royalty Act
- Application for binding private rulings and binding class rulings
- Resolution of disputes regarding the abovementioned mining and environmental taxes

### TAX TRAINING

- We can provide practical, tailor-made training in all tax areas, including:
- Tax law updates
- CGT
- VAT
- International tax
- PAYE
- Share incentive schemes
- Tax management and governance
- Corporate restructuring rules
- Taxation of insurance companies
- Carbon tax

### CUSTOMS AND EXCISE

- Assistance with tariff, valuation, origin and other customs and excise disputes
- Assistance with drawing and submission of tariff, valuation and origin determinations
- Assistance with excise and ad valorem excise disputes
- Assistance with obtaining release of goods from customs detentions and return of goods after seizure and/or forfeiture
- Assistance with interdicting customs collecting alleged revenue due
- Assistance with all customs and excise applications for registrations or licenses
- High level due diligence audits conducted to ensure correct application of the customs legislation
- Application for creation of duty free tariff headings and/or rebate items on dutiable tariff headings in terms of the International Trade Administration Act
- Training of staff in relation to customs and excise legislation, procedures and processes
- Provision of advice in relation to the above

*"The team works very well together," say sources, appreciating that the group "include their client's opinion in the process."*

CHAMBERS GLOBAL 2022



## OUR RECENT EXPERIENCE

Our Tax & Exchange Control team advises a wide range of clients from various industries. To protect the confidentiality of our clients we have highlighted the types of transactions that we have been involved in.

- Negotiated settlements with SARS in respect of significant transfer pricing and VAT disputes
- Advised clients on the structuring and implementation of BEE transactions and associated corporate restructurings
- Advised clients on assessments from SARS based on simulation and the general anti-avoidance rules, and settled disputes in respect thereof
- Advised clients on 'black box' transactions and settled disputes in respect thereof
- Advised clients on real estate investment trust (REIT) legislation and made submissions to the National Treasury and SARS in respect of REITs
- Advised clients on tax allowances and obtained SARS rulings pertaining to the renewable energy sector
- Advised clients on tax and exchange control implications of South African and offshore investments
- Prepared the technical report on the OECD Base Erosion and Profit Shifting (BEPS) Action 2: Mismatch Arrangements, at the invitation of the Davis Tax Committee for submission to the Minister of Finance – which report was acknowledged in the compilation of the Davis Tax Committee Interim Report on BEPS released in December 2014
- Advised clients on the tax efficient utilisation of hybrid debt and hybrid equity instruments in funding transactions
- Challenged the 'pay now argue later' rule in the High Court
- Advised clients on the tax implications of implementing dividend income schemes and settlement of disputes in respect of these schemes
- Advised clients on the conclusion of cross-border intellectual property transfer agreements
- Advised clients of the tax implications of implementing various exchange traded note products
- Advised on the establishment, implementation and amendment of share incentive schemes (eg share appreciate rights schemes and broad-based empowerment schemes)
- Advised local and international private equity funds on the formation of their private equity fund and carried interest arrangements; in particular, private equity funds considering making investments in sub-Saharan Africa
- Settled various mining tax and VAT disputes with SARS
- Advised clients on exchange control implications of separate local and offshore interest
- Assisted clients in making voluntary disclosure of unauthorised foreign assets
- Advice and assistance with the full range of customs and excise issues and disputes, including licensing and registration within the customs and excise environment
- Assisted various clients to obtain favourable VAT apportionment rulings

## MARKET RECOGNITION

Our Tax & Exchange Control team is externally praised for its depth of resources, capabilities and experience.

*Chambers Global 2018–2023* ranked our Tax & Exchange Control practice in Band 1 for Tax. *Chambers Global 2011–2017* ranked our Tax & Exchange Control practice in Band 2 for Tax. *The Legal 500 EMEA 2009–2022* recommended us in Tier 2, and Tier 1 in 2023 for tax. *The International Tax Review 2011* ranked our practice in Tier 3 for tax. *World Tax 2011–2012* ranked our practice in Tier 3 for tax. *The Tax Directors Handbook 2012 and 2014* ranked our practice in Tier 2 for tax. *World Finance Legal Awards 2012* awarded our practice the Best Tax Firm accolade.

The way we support and interact with our clients attracts significant external recognition.

**Emil Brincker** is the Practice Head of the Tax & Exchange Control team. *Chambers Global 2003–2023* has consistently ranked him in Band 1 for tax. *The Legal 500 EMEA 2017–2023* recommended Emil as a leading individual for tax and named him Lawyer of the Year for tax in 2021.

**Sammy Ndolo** is the Kenya Managing Partner. *Chambers Global 2021–2023* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2023* ranked him in Band 4 for banking & finance. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2022* ranked Sammy as a notable practitioner.

**Gerhard Badenhorst** was awarded an individual Spotlight Table ranking in *Chambers Global 2022–2023* for tax: indirect tax. *Chambers Global 2009–2021* ranked him in Band 1 for tax: indirect tax. *The Legal 500 EMEA 2012–2022* recommended Gerhard for tax. *The Legal 500 EMEA 2023* recommended him as a leading individual for tax.

*The Legal 500 EMEA 2022* recommended **Jerome Brink** for tax. *The Legal 500 EMEA 2023* recommended Jerome as a Next Generation Lawyer for tax.

*The Legal 500 EMEA 2023* recommended **Petr Erasmus** for tax.

*The Legal 500 EMEA 2017–2018, 2020* recommended **Dries Hoek** for tax.

*The Legal 500 EMEA 2021–2023* recommended **Howmera Parak** for tax.

*Chambers Global 2019–2022* ranked **Stephan Spamer** in Band 3 for tax. *The Legal 500 EMEA 2021–2023* recommended him for tax.





## OUR TEAM

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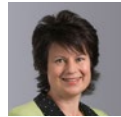
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**BBBEE STATUS: LEVEL ONE CONTRIBUTOR**

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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