

ENSafrica tax renewals

Below, please find issue 15 of ENSafrica's tax renewals, a snapshot of the latest tax developments in South Africa.

case law

- **The Supreme Court of Appeal | *CSARS v Pieters and others***
 - paragraph 2(1)(a) of the Fourth Schedule to the Income Tax Act, 1962 (“ITA”) considered in the context of employment contracts that are terminated in terms of section 38(9)(b) of the Insolvency Act, 1936 (“Insolvency Act”).
 - whether the liquidators of an insolvent company are the representative employers and therefore liable to deduct PAYE on severance packages paid to employees.
 - further, if payments made in terms of section 98A of the Insolvency Act are subject to PAYE in terms of the ITA.
 - at the end of the relevant tax year, PAYE is payable by the employees and the liquidators are liable to deduct all PAYE amounts.
 - a copy of this judgment is available on request.
- **The Supreme Court of Appeal | *CSARS v Digicall Solutions (Pty) Ltd***
 - whether the Commissioner was properly satisfied, for the purposes of disallowing the set-off of an assessed loss against income, as provided for in section 103(2) of the ITA, that a change in the shareholding of the taxpayer had resulted directly or indirectly in income being received by, or accruing to, the taxpayer during any year of assessment and that the change in shareholding was concluded for the sole or main purpose of utilising the taxpayer's assessed loss to avoid liability for the payment of tax on income, considered.
 - the correct interpretation of section 103(2) of the ITA, not as a taxing measure, but as a widely cast remedy to suppress the mischief against which the section is directed, considered.
 - the purpose of section 103(2) of the ITA to curb the trafficking in the shares of companies with assessed losses, considered.
 - whether the purpose requirement of section 103(2) of the ITA (to utilise an assessed loss to avoid liability for the payment of tax on income) may be satisfied by reference to any year of assessment, considered.
 - whether principles of causation, as developed in criminal law and delict, applicable in determining whether the change in shareholding directly or indirectly resulted in income being received by the taxpayer, considered.
 - a copy of this judgment is available on request.

SARS publications

- **Interpretation Note 104 – Exemption of Foreign Pensions and Transfers**
 - this interpretation note provides clarity on the interpretation and application of section 10(1)(gC)(ii) to a lump sum, pension or annuity received by or accrued to any resident from a source outside South Africa.
 - find a copy of interpretation note 104 [here](#).
- **other drafts for comment**
 - draft list and form in respect of qualifying physical impairment or disability expenditure in respect of individual tax affairs.
 - find the drafts for comment [here](#).

customs and excise

- **Government Gazette 41915 Notices R981, R982, and R983**
 - Schedule No. 5, by the substitution of Note 3 to allow for a drawback of safeguard duty on certain hot-rolled steel products in terms of drawback item 521.00.
 - Part 3 of Schedule No. 2, by the substitution of various safeguard items to exclude rebate items 470.03/00.00/01.00 to 470.03/00.00/03.00 in order to exempt certain hot-rolled products from safeguard duties (21 September 2018 up to and including 10 August 2019).
 - Part 3 of Schedule No. 2, by the substitution of various safeguard items to exclude rebate items 470.03/00.00/01.00 to 470.03/00.00/03.00 in order to exempt certain hot-rolled products from safeguard duties (11 August 2019 up to and including 10 August 2020).
 - find the notices here: [R981](#), [R982](#) and [R983](#).
- **Government Gazette 41939 Notices R1007, R1008, R1009, R1010, and R1011**
 - Part 1 of Schedule No. 1, to reduce the rate of customs duty on wheat and wheaten flour from 64,06c/kg and 96,09c/kg to 29,85c/kg and 44,77c/kg, respectively.
 - Part 3 of Schedule No. 2, to implement safeguard duty of 35.3% on frozen bone-in chicken portions of fowls of the species *Gallus domesticus*.
 - Part 3 of Schedule No. 2, to implement safeguard duty of 35.3% on frozen bone-in chicken portions of fowls of the species *Gallus domesticus*.
 - Part 3 of Schedule No. 2, to phase down safeguard duty from 30% to 25% on frozen bone-in chicken portions of fowls of the species *Gallus domesticus*.
 - Part 3 of Schedule No. 2, to phase down safeguard duty from 25% to 15% on frozen bone-in chicken portions of fowls of the species *Gallus domesticus*.
 - find the notices here: [R1007](#), [R1008](#), [R1009](#), [R1010](#) and [R1011](#).
- **Government Gazette 41960 Notice R1081**
 - Part 1 of Schedule No. 1 to increase the rate of customs duty on sugar from 419.52c/kg to 460.86c/kg in terms of the existing variable tariff formula.
 - find the notice [here](#).

- SARS publishes draft rules for public comment relating to section 8 for trains – reporting of conveyances and goods.
- find the draft rules [here](#).
- The International Trade Administration Commission (“ITAC”) publishes Amended Export Control Guidelines on the Exportation of Ferrous and Non-Ferrous Waste and Scrap.
 - International Trade Administration Commission of South Africa: Export Control: Extension of the Price Preference System on the Exportation of Ferrous and Non-Ferrous Waste and Scrap: Price Preference System.
 - Initiation: Sunset Review of the anti-dumping duties on garden tools originating in or imported from The People's Republic of China.
 - Customs Tariff Applications: List 07/2018.

international

- **Zambia to abolish VAT and reintroduce sales tax**
 - Zambia’s Minister of Finance has announced, in the 2019 Budget Address, the intention to abolish value-added tax (“VAT”) and reintroduce a non-refundable sales tax.
 - Government has undertaken to settle all verified VAT refunds prior to implementation of sales tax and will finalise outstanding VAT audits in order to collect any unpaid tax.
 - find a copy of the Budget Address [here](#).

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