

# ENSafrica tax renewals

Below, please find issue 18 of ENSafrica's tax renewals, a snapshot of the latest tax developments in South Africa.

## case law

- **Supreme Court of Appeal | *Sasol Oil (Pty) Ltd v CSARS***
  - whether certain back-to-back supply transactions entered into by a number of entities constituted simulated transactions, considered.
  - whether, if the transactions were not simulated, the transactions fell within the ambit of section 103(1) of the Income Tax Act, 1962 (the "ITA"), considered.
  - the correct interpretation of the test for simulation enunciated in *CSARS v NWK Ltd*, discussed.
  - whether, in terms of section 103(1) of the ITA, the Commissioner of SARS had shown that the transactions had the effect of avoiding liability for tax, considered.
  - find a summary of the important findings in relation to the doctrine of simulation/"substance over form" [here](#).

## legislation and draft legislation

- National Treasury publishes Draft Regulations on the Carbon Offset in terms of the Draft Carbon Tax Bill for a second round of public comment and further consultation. Written comments should be submitted by close of business on 14 December 2018.
  - the expected date of implementation of the carbon tax is 1 June 2019.
  - find the media statement [here](#).
  - find the draft regulations [here](#) the and the explanatory note [here](#).
  - find an ENSafrica ENSight regarding the implications of the draft regulations [here](#).
- SARS publishes public notice listing the non-submission of returns as required in terms of the Diamond Export Levy (Administration) Act 14, 2007, as an incidence of non-compliance by a person in terms of section 210 of the Tax Administration Act, 2011 ("TAA"), subject to a fixed amount penalty in accordance with sections 210(1) and 211 of the TAA.
  - find a copy of the notice [here](#).

- SARS publishes draft public notice on incidences of non-compliance by a person in terms of section 210(2) of the TAA that are subject to a fixed amount penalty in accordance with section 210 and 211 of the TAA.
  - due date for comments: 31 October 2018.
  - find the draft notice [here](#).

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## advance tax rulings

- **binding private ruling 313 | foreign share buyback**
  - this ruling determines the income tax effect of a share buyback by a non-resident company from a resident trust.
  - section 1(1) of the ITA – definitions of “foreign dividend” and foreign return of capital”.
  - section 10B(2)(a) of the ITA.
  - paragraphs 20(1)(a), 20(3)(a) and 64B(4) of the Eighth Schedule to the ITA.
  - find a copy of this ruling [here](#).
- **binding private ruling 312 | tax implications of the variation of employment contracts**
  - this ruling determines the tax consequences of payments made pursuant to the cancellation of a profit share agreement entered into between an employer and certain of its employees.
  - section 1(1) of the ITA– definition of “gross income”
  - sections 11(a) and 23(g) of the ITA.
  - sections 11(cA), 11(nA), and 23H of the ITA.
  - find a copy of this ruling [here](#).
- **binding general ruling 20 (Issue 3) | interpretation of the term “substantially the whole”**
  - this ruling provides clarity on the interpretation of the expression “substantially the whole” as referred to in:
    - section 10(1)(cN)(ii)(aa)(B), section 10(1)(cO)(ii)(bb) and section 10(1)(cQ)(ii)(aa)(B) of the ITA
    - section 30B(2)(b)(iv), (vi) and (ix) and section 30C(1)(d)(v) of the ITA
    - paragraphs 63A(b) and 63B(1)(b) of the Eighth Schedule to the ITA
    - section 9(1)(c) of the Transfer Duty Act.
    - find a copy of this ruling [here](#).

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## SARS publications

- **Interpretation Note 64 (Issue 4) | Income tax exemption: Bodies corporate, share block companies and associations of persons managing the collective interest common to all members**
  - this interpretation note provides clarity on the interpretation and application of section 10(1)(e).
  - find a copy of interpretation note 64 [here](#).

- **Interpretation Note 10 (Issue 3) | Skills development levy exemption: Public Benefit Organisations (“PBOs”)**
  - this interpretation note provides guidance on the interpretation and application of section 4(c) of the Skills Development Levy Act, which exempts any PBO contemplated in section 10(1)(cN) from the payment of a skills development levy, provided the PBO solely carries on qualifying PBAs or solely provides funds to PBOs that solely carry on qualifying PBAs.
  - find a copy of interpretation note 10 [here](#).
- SARS publishes updated *ABC of Capital Gains Tax for Individuals* (Issue 10)
  - find a copy of the updated guide [here](#).
- SARS publishes updated *Tax Guide for Share Owners* (Issue 6)
  - find a copy of the updated guide [here](#).
- SARS publishes updated *Guide on Valuation of Assets for Capital Gains Tax Purposes* (Issue 4)
  - find a copy of the updated guide [here](#).
- SARS publishes the *Brochure on the Special Economic Zone Tax Incentive*, which tax incentive was introduced to promote investment, growth and job creation in the South African manufacturing sector and the development of designated regions
  - find a copy of the brochure [here](#).
- SARS publishes trade statistics for September 2018, click [here](#).

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## international

- **Government Gazette 42021, 9 November 2018 | notice no. 1219**
  - South Africa and the Turks and Caicos Islands agree to the exchange of information relating to tax matters.
  - the effective date of the treaty is 21 September 2018.
  - find a copy of this government notice [here](#).

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## customs and excise

- SARS publishes Tariff Amendment Notice relating to the amendments to Part 1 of Schedule No.1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to increase rate of customs duty on wheat and wheaten flour
  - find Notice R.1134 [here](#).

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## exchange control

- **Exchange Control Circular 16/2018**
  - WorldRemit South Africa (Pty) Limited added as an Authorised Dealer in foreign exchange with limited authority.
  - find a copy of the circular [here](#).

## international

- the third edition of *Revenue Statistics in Africa* (a joint initiative of the African Tax Administration Forum, the African Union Commission, and the Organisation for Economic Co-operation and Development's Development Centre) shows that African countries have made sustained gains in domestic resource mobilisation since 2000, by providing internationally comparable data for 21 participating countries, including South Africa.
  - find the media release [here](#) and a copy of the report [here](#).

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