

ENSafrica tax renewals

Below, please find issue 20 of ENSafrica's tax renewals, a snapshot of the latest tax developments in South Africa.

case law

- **Tax Court, Johannesburg | XYZ (Pty) Ltd v CSARS (ITC 14189)**
 - whether a receipt by the appellant taxpayer in respect of a lease premium was of a revenue nature or a capital nature, considered.
 - alternative argument of the taxpayer that if the receipt was not of a capital nature, the taxpayer should be entitled to a deduction in terms of section 11(h) of the Income Tax Act, 1962 (the "Act"), considered.
 - whether the appellant earned the amount of the lease premium as a result of the lease agreement, considered.
 - taxpayer's substance over form argument that the intention of the parties was a sale of rights, and not a lease, considered.
 - find a copy of this judgment [here](#).

legislation and draft legislation

- publication of Explanatory Summary of the Customs and Excise Amendment Bill
 - the Minister intends to introduce the Bill in the National Assembly shortly.
 - find a copy of the summary [here](#).
- budget tips
 - Minister Mboweni invites South Africans to share their views about economic conditions and other issues they would like government to highlight in the Budget on 20 February 2019.
 - find a link to the invite [here](#).

advance tax rulings

- **binding private ruling 316 | amalgamation of companies in terms of business rescue plan**
 - section 44 of the Act and section 8(25) of the Value-Added Tax Act, 1991 (the "VAT Act").

- this ruling determines the income tax and value-added tax effect of an amalgamation transaction for consideration involving the assumption of liabilities only.
- find a copy of this ruling [here](#).
- **binding private ruling 317 | disposal of business by way of asset-for-share transaction**
 - sections 7B; 11(a) read with 23(g); and 42 of the Act.
 - sections 1(1) – definition of “vendor”; 8(25); and 16(3) of the VAT Act.
 - this ruling determines the income tax and VAT consequences of the disposal of a business by way of an “asset-for-share transaction” as envisaged in paragraph (a) of that definition in section 42(1).
 - find a copy of this ruling [here](#).
- **binding private ruling 318 | corporatisation of a collective investment scheme in property by way of an asset-for-share transaction followed by an amalgamation transaction**
 - sections 42 and 44 of the Act.
 - section 8(1)(a)(ii) of the Securities Transfer Tax Act, 2007.
 - this ruling determines the tax consequences arising out of the conversion of a collective investment scheme in property to a corporate REIT in accordance with the procedure set out in Notice 42 of 2014 issued by the Registrar of Collective Investment Schemes under the Collective Investment Schemes Control Act, 2001.
 - find a copy of the ruling [here](#).

SARS publications

- **interpretation note 109 | lease premiums**
 - sections 1 – paragraph (g) of the definition of “gross income”; and 11(f) and (h) of the Act.
 - this note provides guidance on the application of paragraph (g) and the related deductions under section 11(f) and (h) of the Act.
 - find a copy of the interpretation note [here](#).
- **interpretation note 110 | leasehold improvements**
 - sections 1 – paragraph (h) of the definition of “gross income”; and 11(g) and (h) of the Act.
 - this note provides guidance on the application of paragraph (h) and the related deductions under section 11(g) and (h) of the Act.
 - find a copy of this interpretation note [here](#).
- **interpretation note 43 (issue 7) | circumstances in which certain amounts received or accrued from the disposal of shares are deemed to be of a capital nature**
 - section 9C of the Act.
 - this note provides clarity on the interpretation and application of section 9C, which deems the amount derived from the disposal of specified shares held for a continuous period of at least three years to be of a capital nature.
 - find a copy of this updated interpretation note [here](#).
- SARS publishes the latest register of all interpretation notes

- find a copy of the register [here](#).
- SARS publishes the following response documents
 - the Final Response Document on the Taxation Laws Amendment Bill, 2018 and the Tax Administration Laws Amendment Bill, 2018
 - find a copy of the document [here](#).
 - the Final Response Document on the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018
 - find a copy of the document [here](#).

exchange control

- exchange control circular no. 2/2019
 - Kawena Exchange (Pty) Ltd appointed as an Authorised Dealer in foreign exchange with limited authority to operate as a value transfer service provider.
 - find a copy of the circular [here](#).
- exchange control circular no. 3/2019
 - Cassava Fintech (Pty) Ltd appointed as an Authorised Dealer in foreign exchange with limited authority to operate as an Independent Money Transfer Operator.
 - find a copy of the circular [here](#).

customs and excise

- draft rule amendments | rules under section 110 for tobacco product counter
 - find copy of the draft rule amendments [here](#) and a link to the comment sheet [here](#).
 - due date for comments: 6 March 2019.
- Customs Control Act, 2014, and Customs Duty Act, 2014
 - as a consequence of the rewrite of the Customs and Excise Act, 1964, which will be replaced with the new Customs Duty Act, 2014 and the Customs Control Act, 2014, find below links to the documents for consideration and comments:
 - [correlation table](#);
 - [general notes to the customs tariff](#);
 - [schedule no. 2 to the custom tariff](#);
 - [schedule no. 3 to the customs tariff](#);
 - [schedule no. 4 to the customs tariff](#); and
 - [schedule no. 5 to the customs tariff](#).
 - due date for comments: 9 March 2019.
- amendments to the rules under section 75 | keeping of a register by rebate users of excisable goods
 - find the return in respect of spirits (DA133) [here](#) and find notice R.122 in *Government Gazette* 42218 [here](#).

- amendment to the rules in terms of the Customs and Excise Act, 1964 to enhance the administration and enforcement in respect of stills, agricultural distillers and manufacture of excise goods for own use
 - find the application form for the registration and licensing of customs and excise clients (DA185) [here](#).
 - find the application form for a registered still (DA185.4A14) [here](#).
 - find the application form for the manufacture of excisable goods solely for own use (DA185.4A15) [here](#).
 - find the application form for distillation of spirits by an agricultural distiller (DA185.4B11) [here](#).
 - find the application form to own, possess, or keep stills (DA185.4B12) [here](#).
 - find the application form to manufacture or import stills for sale, or to repair stills for reward (DA185.4B13) [here](#).
 - find notice R.121 in *Government Gazette* 42218 [here](#).
- the Customs & Excise Rules, 1995 (as amended) have been updated, and now include rule amendments up to and including 8 February 2019.
 - find a copy of the rules [here](#).
- tariff amendment notice R.176 is published in *Government Gazette* 42232
 - amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from 369.57c/kg to 401.79c/kg in terms of the existing variable tariff formula – Minute M13/2018.
 - implementation date: 15 February 2019.
 - find a copy of the notice [here](#).
- tariff amendment notice R.177 is published in *Government Gazette* 42232
 - amendment to Part 3 of Schedule No. 2, by the insertion of safeguard item 260.03/7318.15.39/01.08, to implement safeguard duty of 50.54% on other screws fully threaded with hexagon heads – ITAC Report 596.
 - implementation date: retrospective effect from 3 August 2018 up to and including 2 August 2019.
 - find a copy of the notice [here](#).

international

- Armenia joins the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (“**BEPS**”), bringing the total number of countries and jurisdictions participating to 128.
 - find a list of the participating members [here](#).
- Guernsey deposits its instrument of ratification for the Multilateral Convention to Implement Treaty Related Measures to prevent BEPS (the “**MLI**”).
 - find a list of signatories and parties to the MLI, as of 12 February 2019, [here](#).
- as part of the ongoing work of the Inclusive Framework on BEPS, the OECD is seeking public comments (by 1 March 2019) on key issues identified in a public consultation document on possible solutions to the tax challenges arising from the digitalisation of the economy.

- find a copy of the media release [here](#) and a copy of the public consultation document [here](#).
- the OECD releases additional peer review reports assessing countries' efforts to implement BEPS Action 6 (treaty abuse) and Action 14 (dispute resolution) minimum standards.
 - find the media release [here](#), the first Action 6 peer review [here](#), and the stage 1 Action 14 peer reviews [here](#).

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