

ENSafrica tax in brief

Below, please find issue 52 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **High Court of South Africa (Western Cape Division, Cape Town) | CSARS and Joint Liquidators of Greenbridge Group (Pty) Ltd (in Provisional Liquidation) v Van Zyl (16604/2019)**
 - There are two applications concerned:
 - an interlocutory application for discovery in terms of Rule 35 of the Uniform Rules of Court; and
 - a return day to confirm an interim order of sequestration against the Respondent, Mr Van Zyl who had been placed on provisional sequestration on 2 July 2020.
 - The respondent, prior to the extended *rule nisi* had filed an application requesting, *inter alia*, that:
 - the rules of discovery as they relate to actions is declared *mutatis mutandis* applicable to the application in terms of Rule 35(13);
 - the Intervening Applicant be ordered to comply therewith in terms of the rules relating to discovery; and
 - the main application be postponed and the provisional order extended pending the return of the documents requested by the Respondent from the Intervening Applicant
 - The court considered, *inter alia*:
 - Rule 35(13) of the Uniform Rules of Court.
 - whether exceptional circumstances existed or whether the respondent's interlocutory application was a delaying mechanism
 - The court found that the interlocutory application was purely a mechanism to delay the matter as no exceptional circumstances existed for the court to exercise its discretion in favour of the respondent.
 - Find a copy of this judgment [here](#).

legislation and draft legislation

- On 7 October 2020, the National Treasury and the South African Revenue Service ("SARS") presented to the Standing Committee of Finance (the "SCoF"), a draft response to public submissions made on, *inter alia*, the 2020 Draft Taxation Laws

Amendment Bill (“**Draft TLAB**”) and the 2020 Draft Tax Administration Laws Amendment Bill (“**Draft TALAB**”) which were published on 31 July 2020.

- The key issues raised during the public consultation process and during the SCoF public hearings were the following:
 - 2020 Draft Rates Bill
 - Increase on excise duty on tobacco
 - 2020 Draft TLAB
 - Introduction of export taxes on scrap metals
 - Employment, Individuals and Savings
 - Addressing an anomaly in the tax exemption of employer provided bursaries
 - Withdrawing from retirement funds upon emigration
 - Amending the 183 day rule to the foreign remuneration exemption, in light of 2020 travel restrictions
 - Business Tax (General)
 - Clarifying the rollover relief for unbundling transactions
 - Business Tax (Incentives)
 - Addressing the tax treatments of allowable mining capital expenditure
 - Changing the Minister of Finance discretion in lifting ring-fencing of capital expenditure per mine
 - 2020 Draft TALAB
 - Tax Administration Act, 2011 (the “**TAA**”)
 - Raising of assessments based on an estimate
 - Grace period to determine if a payment in excess of an assessment was erroneous
 - Provision that a refund need not be authorised where a matter is under criminal investigation
 - Income Tax Act, 1962 (the “**Act**”), the Value Added Tax Act, 1991 (the “**VAT Act**”) and the TAA
 - The removal of the requirement to prove intent from certain statutory tax offences.
- A copy of the draft response has not been published on the National Treasury website as yet however, feel free to contact us should you be interested

advance tax rulings

- **Binding private ruling 354 | Cash grants to an employee incentive trust and the transfer of share awards to qualifying employees**
 - Definition of “gross income” in terms of section 1(1) of the Act.
 - Section 23H of the Act.
 - Paragraph 11(1)(d) of the Eighth Schedule to the Act.
 - Paragraph 64E of the Eighth Schedule.
 - This ruling determines the income tax and capital gains tax consequences arising from cash grants made by an employer to an employee share

incentive trust and the receipt thereof by the share incentive trust, and the vesting of shares in qualifying employees.

- Find a copy of the rulings [here](#).

SARS publications

- **SARS released an updated mineral and petroleum resources royalty return**
 - Find a copy of the return [here](#).
- **SARS released a letter dated 30 September 2020 to all external stakeholders regarding the opening of ports of entry for international movement of persons and goods**
 - Find a copy of the letter [here](#).
- **TAA | regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the TAA.**
 - The regulations specify the changes to the OECD standard for automatic exchange of financial account information in tax matters.
 - Effective date: 1 June 2021 except for paragraph B of Section XI which takes effect from 1 March 2023.
 - Find a copy of the regulations [here](#).
- **VAT Act | amendment of paragraph 8 of Schedule 1 to the VAT Act was amended in terms of section 74(3)(a)**
 - The amendment is to insert item 406.00 in consequence of the insertion of rebate item 406.04 in Schedule No. 4 of the Customs and Excise Act, 1964 (the “Customs Act”)
 - Find a copy of the notice [here](#).
- **SARS released a Request for Proposal for the appointment of a Service Provider for one-on-one executive coaching services.**
 - Find a copy of the briefing presentation [here](#).
- **SARS updated and released the External Policy on Submission of Accounts>Returns to include Carbon Tax and make provision for the Promotion of Administrative Justice Act, 2000 (“PAJA”).**
 - Find a copy of the updated policy [here](#).

exchange control

- **Exchange control circular no. 10/2020**
 - An update in relation to the position paper which outlined the views of the Financial Surveillance Department with regard to offshoring and cloud computing by Authorised Dealers and reporting, initially published for comments during June 2019.
 - Find a copy of the circular [here](#).
- **Exchange control circular no. 11/2020**
 - The appointment of Goldman Sachs International Bank, Johannesburg Branch, to operate as an Authorised Dealer in foreign exchange.

- The appointment permits GSIB to deal with Government and corporate debt (listed and over-the-counter OTC), currency derivatives (listed and OTC), interest rate products including interest rate swaps (listed and OTC), repurchase agreements, loan products and other asset-backed instruments and retail deposits.
- Find a copy of the circular [here](#).

customs and excise

- **SARS issued a letter dated 25 September 2020 to all external stakeholders on the enforcement of section 64D of the Customs Act - Bonded Goods to be in sealed containers**
 - Find a copy of the letter [here](#).
- **SARS released the trade statistics for August 2020**
 - Find a summary thereof [here](#).
- **Customs and Excise Act, 1964 | tariff amendment notice R.1068 in Government Gazette 43781**
 - Amendment to Part 1 of Schedule No. 4, by the insertion of rebate item 406.04/00.00/01.00, in order to provide for a rebate of duty on goods imported for official use by an institution or organisation that has an agreement with the Republic of South Africa.
 - Find a copy of the notice [here](#).
- **SARS extended the due date for public comment to 30 October 2020 for the draft rules amended under section 49 and 120 – (“AfCFTA”) rules.**
 - Find a copy of the draft rules [here](#).

international

- Botswana, Namibia and Eswatini signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 29 September 2020 (the “**Convention**”). The Convention is the primary instrument for the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (or the “**CRS**”).
 - Find the media release [here](#).
- The Global Forum Secretariat held the 8th annual meeting of the Africa Initiative. The discussions focused on the challenges stemming from COVID-19, the importance of exchange of information and other forms of administrative co-operation in supporting domestic resource mobilisation in these challenging times.
 - Find the media release [here](#).

other

- **SARS will no longer accept cheque payments after 31 December 2020**
 - Find other options for payments to SARS [here](#).

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