

ENSafrica tax in brief

Below, please find issue 54 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **High Court of South Africa (Gauteng Division, Pretoria) | *Van der Merwe CSARS (A322/2019)***
 - The Appellant sought to appeal, in terms of section 133(1) of the Tax Administration Act, 2011 ("**TAA**") against the decision of the Tax Court dismissing the Appellant's application for default judgment against the Respondent in terms of rule 56 of the tax court rules, read with section 129(2) of the TAA. In the Tax Court, the Appellant sought the following:
 - that the respondent be ordered to alter the additional assessment raised in respect of the 2014 tax period and refund the Appellant ZAR44 177 895.20 plus interest paid in respect of that additional assessment;
 - The ultimate reason for the appeal against the decision in the Tax Court was the fact that the matter was heard without the South African Revenue Service ("**SARS**") applying for condonation of the late filing of its opposing affidavit and with regard to the striking out application, the appellant alleged that certain paragraphs of SARS' answering affidavit constituted unmitigated hearsay evidence and that no confirmatory affidavits were filed. The appeal to the High Court was thus against certain decisions in the Tax Court pertaining to the interlocutory relief sought by the Applicant.
 - The High Court considered, *inter alia*:
 - section 117(3) of the TAA
 - Rule 49(4) of the Uniform Rules of Court.
 - whether the rulings and orders made by the Tax Court in respect of (i) the application for condonation of the late filing of opposing papers by SARS and (ii) the striking out of certain inadmissible evidence, are appealable;
 - whether granting of the condonation to SARS was, on the facts, justified;
 - whether the failure to have the striking out application properly ventilated vitiated the proceedings.
 - The court confirmed the considerations relevant in determining whether an interlocutory order is appealable, when a court should exercise its discretion

in favour of granting a condonation for the late filing of, *inter alia*, opposing papers and the key considerations in striking out proceedings.

- The majority of the court allowed the appeal.
- Find a copy of this judgment [here](#).

legislation and draft legislation

- **Division of Revenue Bill Second Amendment Bill No. 24 of 2020**
 - Find a copy of the Bill [here](#)
- **Secondary Adjustments Appropriation Bill No. 25 of 2020**
 - Find a copy of the Bill [here](#)
- **Rates and Monetary Amounts and Amendment of Revenue Laws Bill No. 26 of 2020**
 - Find a copy of the Bill [here](#)
- **Taxation Laws Amendment Bill No. 27 of 2020**
 - Find a copy of the Bill [here](#)
- **Tax Administration Laws Amendment Bill No. 28 of 2020**
 - Find a copy of the Bill [here](#)
- **Disaster Management Tax Relief Act, 13 of 2020**
 - Find a copy of the Act [here](#)
- **Disaster Management Tax Relief Administration Act, 14 of 2020**
 - Find a copy of the Act [here](#)

SARS publications

- **Updated list of tender bids received for 2019/2020**
 - Find a copy of the list [here](#).
 - **Updated list of tender bids received for 2020/2021**
 - Find a copy of the list [here](#).
 - **SARS published the 2020 medium term budget policy statement | 28 October 2020**
 - Find a copy of the speech [here](#).
 - Find a copy of the presentation [here](#).
 - Find a copy of the explanatory note [here](#).
 - Find a copy of the adjusted estimates of national expenditure [here](#).
 - **SARS published a Request for Proposal (“RFP” 22/2020**
 - SARS requested tender proposals in relation to the appointment of contractors for the supply and installation of light fixtures at Pretoria, SARS.
 - Closing date for tender proposals is **27 November 2020 at 11:00am**.
 - Find a link with copies of all tender documents [here](#).
 - **SARS published the updated Venture Capital Companies (“VCC”) list with three new companies**
 - Find a list of approved VCCs [here](#).
 - **SARS released the trade statistics for September 2020**
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- Recording a trade surplus of ZAR33.51-billion attributable to exports of R135.75 billion and imports of ZAR102.24-billion.
 - Find a copy of the full statement [here](#).
 - **SARS published an updated summary table**
 - This contains (i) all double taxation agreements (“DTA”) that have been entered into by South Africa and (ii) an overview of the status of the Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting (“MLI”) in each jurisdiction with which South Africa has a DTA.
 - Find a copy of the summary table [here](#).
 - **SARS published a document with clarification notes for the Automatic Exchange of Information (FATCA and CRS)**
 - These are aligned with the following upgrades that the Organisation for Economic Cooperation and Development OECD will implement from 1 January 2021: CRS user Guide Version 3.0, XML Schema Version 2.0, CRS Status Message XML Schema Version 2.0, XML Status Schema Version 2.0.
 - The purpose of the document is to clarify the application of certain data fields and to effect minor changes required.
 - Find a copy of the document [here](#).
 - **SARS published Issue 9 of the Comprehensive Guide to Capital Gains Tax on 5 November 2020**
 - Find a copy of the guide [here](#).
 - **SARS released Issue 19 of the Tax Practitioner Connect electronic newsletter**
 - Find a copy of the newsletter [here](#).

exchange control

- **exchange control circular no. 12/2020**
 - The appointment of South East Exchange Company (South Africa) (Pty) Ltd as Category Four Authorised Dealer in foreign exchange with limited authority in South Africa.
 - Southeast Exchange Company (South Africa) (Pty) Ltd will be removed from the Category Three group of Authorised Dealers.
 - Find a copy of the circular [here](#).
 - **exchange control circular no. 13/2020**
 - The appointment of Bank Zero Mutual Bank (“BZMB”) as a restricted Authorised Dealer in foreign exchange.
 - The appointment permits BZMB to issue debit cards to individual clients and local entities enabling such cards to be used in foreign jurisdictions for permissible foreign exchange transactions.
 - BZMB will be added to sections A.2(A) and A.2(B) of the Currency and Exchanges Manual for Authorised Dealers and Currency and Exchanges Manual for Authorised Dealers in foreign exchange with limited authority respectively.
 - Find a copy of the circular [here](#).
 - **exchange control circular no. 14/2020**
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- Authorised Dealers in foreign exchange with limited authority is drawn to the further exchange control reforms announced by the Minister of Finance in the 2020 Medium Term Budget Policy Statement (“**MTBPS**”).
 - Refer to point 1 of the *Explanatory Note on Financial Sector MTBPS announcements* outlining the measures to make investment easier in South Africa (see under SARS publications of this email).
 - Find a copy of the circular [here](#).
 - **exchange control circular no. 15/2020**
 - Authorised Dealers are advised that all the remaining foreign classified debt and derivative instruments as well as exchange traded funds referencing foreign assets, that are inward listed on a South African exchange, traded and settled in Rand, will be reclassified as domestic.
 - The classification of all inward listed shares on a South African exchange remains domestic.
 - The approval process in respect of the inward listing of all instruments on a South African exchange remains extant.
 - The outlay of Section H. of the Currency and Exchange Manual for Authorised Dealers (“**Authorised Dealer Manual**”) was deleted and replaced to, inter alia, highlight the application procedure, adjudication process, conditions applicable to inward listing approvals and reporting requirements.
 - The outlay of Section B.2(H) and B.2(I) of the Authorised Dealer Manual have been amended to, inter alia, clarify the meaning of foreign exposure and that Rand denominated assets may be acquired indirectly through investments with another domestic institutional investor.
 - Find a copy of the circular [here](#).
 - **exchange control circular no. 16/2020**
 - Authorised Dealers are advised that in support of the ongoing strategy to modernise the current capital flow management framework, South African corporates excluding state-owned companies, may borrow offshore by way of bond and/or note issuances with recourse to South Africa, without prior approval from the Financial Surveillance Department.
 - Recourse to South Africa include, eg, a guarantee from South Africa and issuance of shares in the South African entity.
 - Consequently, a new subsection (E) has been added to section I.3 of the Authorised Dealers Manual.
 - Find a copy of the circular [here](#).

customs and excise

- **Customs and Excise Act, 1964 | draft amendments published relating to the exemption of ship stores from the payment of duty**
 - Draft amendments to rules under sections 24 and 120 – Exemption of ship stores
 - Find a copy of the draft amendments [here](#).
 - Draft amendments to Part 1 of Schedule No. 4 – Rebate item 413.00
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- Find a copy of the draft amendments [here](#).

international

- **OECD | Releases new methodology for the peer review of BEPS Action 13**
 - The compilations include the terms of reference, which are unchanged from the original mandate in 2017 and set out the criteria for assessing the implementation of the minimum standard, and the methodology that sets out the procedural mechanism by which jurisdictions will complete the peer review from 2020 onwards.
 - This includes the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow-up process
 - Find a copy of the peer review documents [here](#).
- **OECD textbook publication | Revenue Statistics in Africa 2020**
 - The textbook is due to be released on **12 November 2020**.
 - Find a link to the cover page [here](#).
- **On 30 October 2020, Burkina Faso deposited its instrument of ratification for the MLI. The MLI will enter into force on 1 February 2021 for Burkina Faso.**
- **Panama has deposited its instrument of ratification for the MLI. For Panama, the MLI will enter into force on 1 March 2021.**

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