

# ENSafrica tax in brief

Below, please find issue 31 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, Johannesburg | *Wingate-Pearse v C:SARS & Others***
  - the taxpayer disputed, *inter alia*, the correctness of additional estimated assessments issued by SARS.
  - the taxpayer's argument that the additional assessments ought to be set aside on the basis that he was investigated by the SARS' High Risk Investigation Unit ("**HRIU**") ("*rogue unit*") and that the operations of the HRIU infringed his constitutionally protected rights, considered.
  - the application of the *Plascon-Evans* rule in these motion proceedings and the effect thereof on the alleged operations of the HRIU, considered.
  - whether a declaratory order that the establishment by SARS of the HRIU was without statutory authority, unlawful, inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid, would lead to the conclusion that all information gathered by the HRIU had been obtained illegally and therefore could not be used by an organ of state against a person, considered.
  - the roles of the High Court of South Africa and the Tax Court, established in terms of the Tax Administration Act, 2011, where matters involve administrative law and tax law aspects, considered.
  - whether the taxpayer's application to review and set aside SARS' decisions to issue the additional assessments on the basis that, as argued by the taxpayer, the jurisdictional requirement (ie, that the Commissioner be "*satisfied*" that the non-assessment was caused by the taxpayer's fraud, misrepresentation, or non-disclosure of material facts following the Constitutional Court's decisions in *Walele* and *Bato Star Fishing*) for the issuing of additional assessments had not been met and that the requirements of natural justice had not been satisfied prior to the issuing of the assessments, considered.
  - whether a declaratory order that, insofar as the taxpayer seeks the review of SARS' impugned actions and decisions under the principle of legality, the delay in the initiation of the review application was not unreasonable, or if such delay were found to be unreasonable, that condonation should be granted in the interests of justice, considered.
  - whether the court ought to have departed from the general rule that costs follow the suit or the rule that unsuccessful litigants who seek, in good faith, to vindicate constitutional rights ought not to have costs awarded against them, considered.

- find the full case [here](#).

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## legislation and draft legislation

- the [draft Taxation Laws Amendment Bill, 2019](#) (“**draft TLAB, 2019**”) and the [explanatory memorandum on the draft TLAB, 2019](#).
- the [draft Tax Administration Laws Amendment Bill, 2019](#) (“**draft TALAB, 2019**”) and the [explanatory memorandum on the draft TALAB, 2019](#).
- the [updated draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2019](#).
- find the media statement [here](#).
- due date for public comments: **23 August 2019**.

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## advance tax rulings

- **binding private ruling 322 | equity linked note**
  - sections 1(1) – definition of “gross income” – 11(a), 23(g), and 24J of the Income Tax Act, 1962 (the “**Act**”).
  - paragraphs 1 – definitions of “disposal” and “base cost” - 20(1), and 35(1) of the Eighth Schedule to the Act.
  - this ruling determines the nature of an amount received or that accrues as a redemption amount of an equity linked note (“**ELN**”), as well as the nature of the amount paid to acquire the ELN. It further determines that the ELN is not an instrument as defined in section 24J(1).
  - find a copy of this ruling [here](#).
- **binding private ruling 323 | debt reduction by means of set-off**
  - section 19 of the Act and paragraph 12A of the Eighth Schedule to the Act.
  - this ruling determines the tax consequences for the applicant of a proposed settlement of a shareholder’s debt and the subsequent issue of ordinary shares.
  - find a copy of this ruling [here](#).

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## exchange control

- **exchange control circular 14/2019**
  - the appointment of Ace Currency Exchange (Proprietary) Limited to operate as a Bureau de Change, which can also offer money remittance services in partnership with external money transfer operators, has been cancelled with effect from 1 March 2019.

- Ace Currency Exchange (Pty) Ltd is deleted from the list of Authorised Dealers with limited authority.
- find a copy of the circular [here](#).
- **exchange control circular 15/2019**
  - notification of the name change of Tourvest Financial Services (Pty) Limited trading as American Express Foreign Exchange Services (Tourvest) with effect from 30 June 2019.
  - find a copy of the circular [here](#).

## customs and excise

- **tariff amendment notice R.984 | *Government Gazette 42577***
  - amendment to Part 1 of Schedule No. 1 of the Customs and Excise Act, 1964 (“CEA”) by the substitution and insertion of various items under Chapter 73 to increase the rate of customs duty on certain tubes, pipes and hollow profiles, seamless, of iron (excluding cast iron) or steel – ITAC report 601.
  - implementation date: **12 July 2019**.
  - find a copy of the notice [here](#).
- **tariff amendment notice R.985 | *Government Gazette 42577***
  - amendment to Part 1 of Schedule No. 1 of the CEA by the substitution of tariff subheading 8511.30.30 in order to reduce the rate of customs duty on distributors and ignition coils identifiable for use solely or principally with motor vehicles, engines – ITAC report 568.
  - implementation date: **12 July 2019**.
  - find a copy of the notice [here](#).
- **tariff amendment notice R.986 | *Government Gazette 42577***
  - amendment to Part 1 of Schedule No. 2 of the CEA by the substitution of anti-dumping items 215.11/8201.10.10/01.08; 215.11/8201.30.03/01.08; 215.11/8201.30.90/01.08 and 215.11/8201.90.20/01.08 to review the rate of anti-dumping duty on garden spades and shovels, rakes and picks originating in or imported from the People’s Republic of China (PRC): Final Determination – ITAC Report 602.
  - implementation date: **12 July 2019**.
  - find a copy of the notice [here](#).
- **draft rule amendment notices concerning:**
  - draft rules under section 49 of the CEA
    - these draft rules relating to trade agreements are being amended to improve the administration of trade agreements.
    - due date for public comments: **22 July 2019**.
    - find the draft notice [here](#).
  - draft rules under section 38 of the CE
    - the unique consignment reference (“UCR”) is a unique reference number assigned to a consignment of goods for the purpose of tracking the goods throughout the supply chain from origin to destination

- the current UCR is being amended to a Southern African Customs Union UCR, which will create a platform for exchange of customs information between SARS customs and the customs administration of Botswana
  - due date for public comments: **22 July 2019**.
  - find the draft notice [here](#).
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- **draft tariff amendment notice**
    - provides for circumstances where a refund or drawback of duty, as contemplated in section 75(1)(c), 54D or 54J, may be granted if the customs procedure code applicable to the export as specified in the list published on the SARS website referred to in rule 00.06 and the relevant refund or drawback item are not reflected on the export bill of entry or other export clearance declaration.
    - the draft amendment to Note 8 of schedule No. 5 was published for comment on 10 April 2019 up to and including 8 May 2019 and the draft is being published for further comment as changes made to the original draft are considered to be significant.
    - due date for public comments: **16 August 2019**.
    - find a copy of the draft notice [here](#).

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[info@ENSafrica.com](mailto:info@ENSafrica.com) | [ENSafrica.com](http://ENSafrica.com)

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