

# ENS tax in brief

Below, please find issue 133 of ENS' Tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- *TALT v CSARS (A2023/077887) [2024] ZAGPJHC 827*
  - The taxpayer noted an appeal to the Tax Court against the decision of the South African Revenue Service (“**SARS**”) to disallow its objection. The basis of the taxpayer’s appeal was that SARS was time-barred from raising the additional assessments (i.e. the years of assessment had prescribed), and for the first time in its Rule 32 statement also objected to the ‘merits’ of the capital of the additional assessment.
  - SARS averred that the taxpayer had impermissibly raised new grounds of objection, and the Tax Court found in favour of SARS on this point and therefore dismissed the additional grounds raised by the taxpayer.
  - The taxpayer appealed the findings of the Tax Court to the High Court where the appeal was upheld with costs.
  - The High Court confirmed that in terms of Rule 32(2), the new ground of objection should be allowed on the basis that the taxpayer had objected to the entire amount set out in the additional assessments and because not doing so would inter alia mean that (i) the true issue between the parties would not be ventilated, and (ii) could result in SARS exacting tax which is not due to it.
  - Find a copy of the judgement [here](#).
- *Turners Shipping (Pty) Ltd v CSARS (2022/059481) [2024] ZAGPPHC 709*

- The taxpayer acted as a clearing agent for Shell and BP, submitting export documents for fuel consignments to Zimbabwe. SARS conducted an audit and found irregularities, including that the fuel was not exported as claimed.
  - The taxpayer objected to SARS' attempt to hold the taxpayer principally liable for amounts in lieu of forfeiture.
  - The court examined the taxpayer's role in facilitating the alleged fraudulent exports, including false invoices and export declarations, and whether the taxpayer was liable under the Customs and Excise Act 91 of 1964 ("**Customs and Excise Act**").
  - The court dismissed the application, concluding that the taxpayer was liable as alleged by SARS due to its involvement in misrepresentations and its responsibility as an agent.
  - Find a copy of the judgment [here](#).
- Naraidu v The State (894/2023) [2024] ZASCA 139
    - The Supreme Court of Appeal ("**SCA**") overturned the conviction of Mr Naraidu, a tax practitioner, initially found guilty under section 59(1) of the Value-Added Tax Act 89 of 1991 ("**VAT Act**"), read with section 269(9) of the Tax Administration Act 28 of 2011 ("**TAA**"), of fraud related to VAT refunds claimed on behalf of his client, Serghony's Shoes Fashion ("**SSF**"). Although the Regional Court and High Court had previously found that Mr Naraidu knowingly submitted false documents to SARS, the SCA ruled there was insufficient evidence to prove beyond reasonable doubt that he intended to commit fraud.
    - The SCA held that the charges entailed complexity because section 59 of the VAT Act was repealed by section 271 of the TAA, and it was doubtful that the statutory charges were valid in law because the TAA commenced on 1 October 2012 and the statutory offences with which Mr Naraidu was charged are alleged to have occurred in 2013 and 2014. In any event, the SCA held that while Mr Naraidu sought to secure a refund for SFF, the State did not discharge its onus to prove that he intended to do so knowing that SFF was not entitled to the refund and thus, could not be convicted on the statutory charges.
    - The SCA acquitted Mr Naraidu of all charges, setting aside the previous High Court and Regional Court judgments.
    - Find a copy of the judgment [here](#).

- *CSARS v Shabangu and Another* (121282/2023; 121275/2023) [2024] ZAGPPHC 1014 (15 October 2024)
  - SARS applied for the sequestration of the estates of Mr and Mrs Shabangu, as well as the Roux Shabangu Family Trust (the “**Trust**”) due to unpaid tax debts and acts of insolvency.
  - The taxpayers’ main argument against sequestration was that it would not benefit creditors since SARS could use other means under the TAA (including the existing preservation orders on the assets of both Mr Shabangu and the Trust) to recover debts, and SARS should first exhaust those recovery options before the order was granted.
  - The court found that there was a significant advantage to creditors in granting the sequestration orders despite the existence of the preservation orders, due to Mr Shabangu’s disregard for the orders and ongoing financial mismanagement. The court emphasised the need to protect the interests of creditors and the legal consequences of allowing an insolvent individual to continue operating.
  - The provisional sequestration of Mr Shabangu and the Trust was granted and the application for intervention by the beneficiaries of the Trust was postponed *sine die*.
  - Find a copy of the judgment [here](#).

## legislation and draft legislation

- Publication of Explanatory Summaries (Other Notices)
  - Publication of Explanatory Summary of the Tax Administration Laws Amendment Bill, 2024. Please find the notice [here](#).
  - Publication of Explanatory Summary of the Global Minimum Tax Administration Bill, 2024. Please find the notice [here](#).
  - The Minister intends introducing these Bills in the National Assembly in the near future.

## advance tax rulings

- Binding Private Ruling (“BPR”) 412 | Tax consequences of the issue of a long-term loan for the issuer and holder
  - This ruling determines the tax consequences attendant upon the issue of 30-year interest-bearing loan by the Applicant to the Co-Applicant, particularly the re-characterisation of interest as dividends *in specie*.
  - Find a copy of the BPR [here](#).

## customs and excise

- Customs and Excise Act | Tariff amendments 2024
  - Tariff amendment notice R5475 published in GG 51432
    - Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to increase the rate of customs duty on wheat and wheaten flour from free of duty to 42,20c/kg and 63,29c/kg respectively, in terms of the existing variable tariff formula (ITAC Minute M07/2024).
    - Find a copy of the publication [here](#).
- Registration, Licensing and Accreditation
  - The facility codes used in Box 30 of Goods Declaration have been updated to include the details of the newly approved degrouping depot Savino Del Bene South Africa (Pty) Ltd (located in Kempton Park, OR Tambo International Airport).
  - This enables Customs to communicate the status of the consignment by transmitting electronic messages to these facilities.
  - Find a copy of the facilities code list [here](#).

## SARS publications and other relevant information

- Interpretation Note (“IN”) 135 | Sale and leaseback arrangements
  - The IN provides guidance on applying sections 23D and 23G of the Income Tax Act, 1962 (“ITA”) specifically to sale and leaseback arrangements involving fixed assets, focusing on income tax implications.
  - The IN outlines conditions under which deductions and allowances apply, aiming to prevent potential tax avoidance in these arrangements. Key criteria are provided for taxpayers to determine if their transactions fall within these sections, ensuring tax compliance and clarifying limitations on deductions related to these structures.
  - Find a copy of the IN [here](#).
- Updated Specification for the Two-Pot retirement system
  - Since the implementation of the Two-Pot Retirement System on 1 September 2024, SARS has noted the challenges that the industry has been experiencing. As such, another enhancement has been incorporated into [IBIR-006 Tax Directives Interim Interface Specification Version 6.708](#). The enhancement and change *inter alia* will address additional validations for the de minimis (minimum amount that can be taken as cash) rule.
  - Currently, if a taxpayer has more than one policy with the same retirement annuity fund, to calculate the de minimis, the SARS system uses the value on the total gross benefit on the retirement amount but ignores any total benefit amounts from previous directives against the Financial Sector Conduct Authority number, registration number/approved fund number, for accruals from 1 October 2007.
  - To calculate *de minimis*, all corresponding component values in previous directives (accruals from 1 October 2007) against the same FSCA registration number/approved fund number, in respect of Form A&D, must be considered.
  - This has been corrected on Retirement Annuity Funds on Form C. The additional validations will apply to Form A&D for retirement or retirement due to ill health from a pension fund, provident fund or pension preservation fund.
  - Find a copy of the directive [here](#).
- Latest SARS Annual Report 2023/24

- The latest SARS annual report is now available.
- Find a copy of the report [here](#).
- Temporary special permission to import kerosene fuel
  - On 14 October 2024, SARS responded to claims about a potential shortage of jet fuel (kerosene), asserting that delays in issuing licenses are not the cause. The importation and movement of aviation kerosene are regulated by the Customs and Excise Act.
  - On 15 October 2024, the Commissioner granted special permission for the importation of kerosene fuel from **21 October 2024 until 20 October 2025**. The special permission is granted to allow parties to attend to the complexities involved in the process of the deregistration of manufacturing warehouses and re-registration of storage facilities.
- Latest Monthly Tax Digest
  - The latest Monthly Tax Digest newsletter for October 2024 is now available.
  - Find a copy of the newsletter [here](#).
- Government Connect Issue 23
  - The October edition of the Government Connect Issue is now available and includes a reminder to taxpayers of the changes pertaining to the Employer Interim Reconciliation process which closes on **31 October 2024**, information relevant to companies registered for income tax, deregistration, the income tax return filing dates, and various tax workshops.
  - Find the issue [here](#).
- Tax Practitioner Connect Issue 57
  - The October edition of the Tax Practitioner Connect Issue is now available.
  - Find the issue [here](#).

- National Treasury agrees to parliamentary oversight of global minimum tax rules

- The National Treasury has agreed to amend the draft [Global Minimum Tax Bill](#) to ensure that Parliament will have to approve any amendments made to the global rules before they apply in SA. A Business Day report says this was one of the proposals made during public hearings on various tax Bills held recently by Parliament's Standing Committee on Finance. Treasury has said in its response to the comments at a committee meeting that any international updates would lapse unless approved by Parliament.
- Find the full report [here](#).
- Stocktaking and greenhouse gas mapping of transport policy instruments
  - This technical note presents a first stocktake of Swiss and Dutch road transport policy instruments, and a preliminary mapping of these policies to the emissions they cover. This exercise informs the Inclusive Forum on Carbon Mitigation Approaches' ("IFCMA") stocktaking and mapping work.
  - For the mapping, the note showcases an application of the novel concepts developed in the IFCMA paper, "*Proposal for a Greenhouse Gas Mapping Methodology of Climate Change Mitigation and Climate Change Mitigation-Relevant Policy Instruments*".
  - Find a copy of the policy paper [here](#).

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