

# ENS tax in brief

Below, please find issue 135 of ENS' Tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- **Supreme Court of Appeal | Commissioner for the South African Revenue Service v Diageo SA (Pty) Ltd (1063/2023) [2024] SCA 158**
  - The South African Revenue Service (“**SARS**”) appealed against an order of the full court of the Gauteng Division of the High Court, Pretoria, which reviewed and set aside the SARS’ determination concerning the correct classification of a liqueur product, manufactured by the respondent, for the purposes of excise duty under the Customs and Excise Act No. 91 of 1964 (“**Customs and Excise Act**”).
  - The respondent, a subsidiary of the British multinational Diageo Plc, produces a range of liqueurs marketed under the name “Cape Velvet”. The dispute arose due to the classification of one such product, “Cape Velvet Cream Original”. SARS had classified the product under Tariff Heading 2208.70.22 (and corresponding Tariff Item 104.23.22), which applied to liqueurs with added alcoholic ingredients. The respondent challenged this classification, contending that the product should fall under Tariff Heading 2208.70.21 (and Tariff Item 104.23.21), as it believed the product had a wine spirit base with “non-alcoholic ingredients” added, as provided for under Additional Note 4(b) to the Customs and Excise Act.
  - The main issue before the Supreme Court of Appeal (“**SCA**”) was whether the ingredients added to Cape Velvet Cream Original were “non-alcoholic” as defined under Additional Note 4 (including 4(b)) to Chapter 22 of Schedule 1 Part 1 of the Customs and Excise Act. The Respondent argued that the vanilla used in the product, which had an alcohol by volume (“**ABV**”) of 0.6% before mixing but reduced to 0.002% after dilution, qualified as “non-alcoholic”. The respondent based its argument on Note 3 to Chapter 22 of the Customs and Excise Act, which defines non-alcoholic beverages as those with an ABV not exceeding 0.5%.
  - Furthermore, the Respondent claimed that the vanilla, being diluted to an ABV of 0.002%, should be classified as “non-alcoholic” and that applying the principle of *de minimis non curat lex* (i.e. the law does not concern itself with insignificant matters or trifles) would support this interpretation.
  - The SCA upheld the SARS’ appeal, reaffirming the classification of Cape Velvet Cream Original under Tariff Heading 2208.70.22, i.e. the product had an “alcoholic ingredient”. The SCA found that the wording of Additional Note 4(b) was clear and unambiguous, requiring ingredients added to the wine spirit base to be entirely “non-alcoholic”. The SCA emphasised that “non-alcoholic” must be given its ordinary grammatical meaning, which means containing no alcohol at all. The SCA rejected the respondent’s reliance on Note 3, as it applies specifically to “non-alcoholic” beverages and not to liqueurs like Cape Velvet Cream Original. The SCA also

rejected the *de minimis* principle as a tool of statutory interpretation under South African law.

## legislation and draft legislation

- **International treaties and agreements**
  - The [Kuwait Protocol](#) entered into force on 2 October 2024.
- **Income Tax Act, 1962 (“ITA”) | Updated tables of interest**
  - [Table 1](#) - Interest rates on outstanding taxes and interest rates payable on certain refunds of tax.
  - [Table 2](#) - Interest rates payable on credit amounts.
  - [Table 3](#) - Rates at which interest-free or low interest loans are subject to income tax.

## tax rulings

- **Binding Private Ruling 413 | Application of proviso to section 8EA(3)**
  - This ruling determines that the proviso to section 8EA(3) of the ITA will apply where equity shares in an operating company acquired by a person through the direct or direct application of preference share funding are no longer directly or indirectly held by that person.
  - Find a copy of the ruling [here](#).
- **Binding Class Ruling 091 | Award of listed shares under share incentive schemes**
  - This ruling determines income tax and securities transfer tax consequences for employer companies and their employees participating in the proposed share incentive schemes.
  - Find a copy of the ruling [here](#).

## SARS publications

- **The latest Two-Pot withdrawals**
  - SARS has issued over 1.9 million tax directives, with a total gross value of ZAR35 billion, since the inception of the two-pot system.
  - A significant number of applications were declined due to errors or insufficient funds.
  - SARS urges taxpayers to use correct details and continue leveraging digital channels for convenience.
  - Find a link to the full media release [here](#).
- **Check the Two-Pot Directive Status via WhatsApp and USSD**
  - Taxpayers can now track the progress of their Two-Pot directive applications using WhatsApp or the SARS USSD channel.
  - Status options include In Progress, Declined, Finalised, or No Application Received.

- Simply initiate the request, provide your ID, and tax reference number, and receive updates via SMS.
- For more information, see [SARS Mobile Tax Services | South African Revenue Service](#).
- **Enhancements to the Two-Factor Authentication and eFiling Password criteria**
  - To protect taxpayer data, SARS now enforces Two-Factor Authentication for all individual eFiling profiles.
  - Users must provide a username, password, and a One-Time-Pin for access.
  - Enhanced password requirements include at least 8 characters, a mix of cases, numbers, and special characters, and exclude personal or repetitive details.
  - A password strength meter has also been introduced.
  - For more information, see the updated Guides:
    - How to Register for eFiling and Manage Your User Profile
    - How to register for the use of the SARS MobiApp
- **Government Connect Issue 24**
  - This edition deals with biometric verification that SARS is introducing for eFiling, the new Binding General Ruling 74 that is applicable to municipalities and the new Donations Tax declaration form.
  - Find a copy of the issue [here](#).
- **Tax Practitioner Connect Issue 58**
  - This edition deals with the release of new guides for Recognised Controlling Bodies and tax practitioners. It also includes information about the new Donations Tax declaration form and the new service channel offerings for Trust registration.
  - Find a copy of the issue [here](#).
- **VAT Connect Issue 18**
  - The latest [VAT Connect newsletter for November 2024](#) is now available.
- **Monthly Tax Digest – November 2024**
  - The [November issue of the Monthly Tax Digest](#) is now available.
- **Commissioner Kieswetter appointed as Vice Chair of the OECD Forum on Tax Administration**
  - SARS Commissioner Edward Kieswetter was appointed Vice Chairperson of the OECD Forum on Tax Administration during the 17th FTA Plenary in Athens, enhancing South Africa’s influence on international tax cooperation and promoting the interests of developing countries.
  - Find a link to the full media release [here](#).

## customs and excise

- **Customs and Excise Act, 1964 | Draft Part 1 of Schedule No. 1 for public comment**
  - Draft Part 1 of Schedule No.1 has been published for public comment.
  - The draft deals with the deletion and insertion of various tariff subheadings, as well as the insertion of Additional Note 1 under Chapter 44 to provide for technical amendments for statistical purpose.
  - Due date for public comment is **2 December 2024**.
- **Tariff amendment notices**
  - Notice R.5580 | Part 2 of Schedule No. 5
    - By the substitution of Notes 1(a) and 1(d) to refund item 522.07 to add the reference to “licensed marine remover” and to provide for the Controller to exercise discretion on the goods to be sealed under supervision by an officer in order to facilitate the refunding of duties paid upon removal of “bonded fuel goods”.
    - Find a link to the notice [here](#).
  - Notice R.5581 | Part 4 of Schedule No. 5
    - By the substitution of Notes 1(a) and 1(d) to drawback item 541.01 to add the reference to “licensed marine remover” and to provide for the Controller to

exercise discretion on the goods to be sealed under supervision by an officer in order to facilitate the refunding of duties paid upon removal of “bonded fuel goods”.

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

- **Amendments | Schedule No. 5**

- Amendment to Part 2 of Schedule No. 5, by the substitution of Notes 1(a) and 1(d) to refund item 522.07 to add the reference to “licensed marine remover” and to provide for the Controller to exercise a discretion on the goods to be sealed under supervision by an officer in order to facilitate the refunding of duties paid upon removal of “bonded fuel goods”.
  - Find the amendment [here](#).
- Amendment to Part 4 of Schedule No. 5, by the substitution of Notes 1(a) and 1(d) to drawback item 541.01 to add the reference to “licensed marine remover” and to provide for the Controller to exercise a discretion on the goods to be sealed under supervision by an officer in order to facilitate the refunding of duties paid upon removal of “bonded fuel goods”.
  - Find the amendment [here](#).

- **Goods Declaration Policy**

- Clearance declaration references were substituted to goods declarations to align with the World Customs Organisation (“WCO”) terminology.
- The following paragraphs in the Goods Declaration Policy have been updated:
  - Exports;
  - Transfer of Liability;
  - Examination Without Prejudice;
  - Supporting Documents;
  - Provisional Payments;
  - Reduction of Duties and Taxes;
  - Bonded Movement of Goods;
  - Acquittal of Goods Declarations; and
  - Substitutions.
- The Supporting Document Codes list annexure (SC-CF-55-A11) has been updated. Declarants must use the codes when uploading the requested supporting documents to the Customs clearance declaration (CCD) case. Updated documents are the following:
  - SC-CF-55 – Goods Declaration – External Policy – please find [here](#);
  - SC-CF-55-A01 – Completion of Goods Declarations – External Annexure – please find [here](#);
  - SC-CF-55-A02 – Alphabetic District Office Codes – External Annexure – please find [here](#);
  - SC-CF-55-A03 – Combination Matrix – External Annexure - please find [here](#);
  - SC-CF-55-A04 – Procedure Measure Matrix – External Annexure – please find [here](#);
  - SC-CF-55-A05 – Alphabetic Country and Currency Codes – External Annexure – please find [here](#);
  - SC-CF-55-A06 – Supplementary Unit Codes – External Annexure – please find [here](#);
  - SC-CF-55-A07 – Countable Quantity Codes – External Annexure – please find [here](#);
  - SC-CF-55-A08 – Export Coding – External Annexure – please find [here](#);
  - SC-CF-55-A09 – Customs Status Response Messages – External Annexure – please find [here](#);
  - SC-CF-55-A10 – Acquittal and Proof of Export Requirements – External Annexure – please find [here](#);
  - SC-CF-55-A11 – Supporting Document Codes – External Annexure – please find [here](#);
  - SC-RO-02 – Administration of Trade Agreements – External Policy – please find [here](#);
  - SC-RO-02-A01 – Application for Determination or Verification – External Annexure – please find [here](#); and
  - SC-RO-02-A02 – Application for Export Origin Certificates – External Annexure – please find [here](#).

- **Draft Documents for Public Comment | Draft DA 5 – List of sealable goods on board ship**
  - Section 9 of Customs and Excise Act provide for sealing of goods on board ship. In terms of this section, the master and every crew member shall declare all sealable goods on board the ship which are unconsumed stores of such ship and all sealable goods which are his personal property or in his possession. The form has been amended to align with legislation.
  - The draft DA 5 form has been published for public comment by 25 November 2024 – please find [here](#).

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