

ENSafrica tax in brief

Below, please find issue 59 of the ENSafrica tax in brief, a snapshot of the latest tax developments in South Africa.

legislation and draft legislation

- **Income Tax**
 - Income Tax Act, 1962 | Notice 173 published in *Government Gazette*. 44229 of 5 March 2021
 - The notice relates to determining the daily amount in respect of meals and incidental costs, under section 8(1) of the Income Tax Act.
 - Find a copy [here](#).
 - Income Tax Act | Notice 174 published in *Government Gazette*. 44229 of 5 March 2021
 - The notice relates to fixing the rate per kilometre in respect of motor vehicles, under section 8(1)(b)(ii) and (iii) of the Income Tax Act.
 - Find a copy [here](#).

Exchange control

- **Exchange control circular no. 05/2021 (back dated to 26 February 2021)**
 - The South African Reserve Bank (“SARB”) has advised that it will continue to develop a new legislative framework based on the Currency and Exchanges Act, 1933 in respect of the new capital flow management framework introduced in the 2020 Budget Speech.
 - The term emigration as recognised by SARB is being phased out. Following consultation with relevant stakeholders, all new emigration applications from 1 March 2021 onwards will be processed by SARS based on a new dispensation of confirming that the taxpayer has ceased to be a resident for tax purposes.
 - With effect from 1 March 2021, the historic terms and conditions for South African corporates with a primary listing offshore including dual-listed corporate structures, will be aligned to the current foreign direct investment policy.
 - Find a copy of the circular [here](#).

- **exchange control circular no. 06/2021 (back dated to 26 February 2021)**
 - Further to the phasing out of the concept of emigration as recognised by the SARB (contemplated in circular no.05/2021), all applications by individuals in excess of the single discretionary allowance threshold, require a Tax Compliance Status (“TCS”) from SARS.
 - Private individuals who transfer more than ZAR10-million offshore will be subjected to a more stringent verification process. Such transfers will trigger a risk management test that will, inter alia, include verification of the tax status and the source of funds, as well as risk assess the private individual in terms of the anti-money laundering and countering terror financing requirements, as prescribed in the Financial Intelligence Centre Act, 2001.
 - Under the new framework, natural person emigrants and natural person residents will be treated identically. The current process of controlling or blocking an emigrant’s remaining assets in a special ‘blocked funds account’ will fall away and all transfers from these accounts will be handled as normal fund transfers in line with any other foreign capital allowance transfer.
 - For the detailed process going forward and the corresponding amendments to the Manual which have been implemented, find a copy of the circular [here](#).
- **exchange control circular 07/2021 (back dated to 26 February 2021)**
 - Further to exchange control circular no. 05/2021 and the announcement made by the Minister of Finance in Annexure F of the 2021 Budget Review, wherein it was mentioned that with effect from 1 March 2021, specific conditions for South African corporates with a primary listing offshore, including dual-listed corporate (“DLC”) structures, will be aligned to current foreign direct investment (“FDI”) policy as outlined in the Currency and Exchanges Manual for Authorised Dealers.
 - In view of the unique historic conditions of approval applicable to each primary listing, including DLC structures on foreign stock exchanges, the Financial Surveillance Department will engage with the affected corporates.
 - The alignment to the current FDI policy has no impact on the ‘inward listed’ status of dual-listed companies.
 - Find a copy of the circular [here](#).

customs and excise

- **Customs and Excise Act, 1964 | tariff amendment notice number R.190 published in *Government Gazette*. 44251 of 10 March 2021**
 - Amendment to 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 reduce the rate of customs duty on wheat and wheaten flour from 10,27c/kg and 15,41c/kg to Free respectively, in terms of the existing variable tariff formula – Minute 11/2020.
 - A copy of the notice can be found [here](#).
- **Customs and Excise Act, 1964 | tariff amendment notice number R.181 published in *Government Gazette*. 44230 of 5 March 2021**

- Amendments to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to reduce the rate of customs duty on sugar from 527,75c/kg to 414,85c/kg in terms of the existing variable tariff formula – Minute M09/2020.
 - Find a copy [here](#).
- **Customs and Excise Act | tariff amendment notice number R.166 published in *Government Gazette*. 44220 of 3 March 2021**
 - Amendments to Schedule No. 1 to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement.
 - Find a copy [here](#).
- **Customs Clearance Declaration (“CCD”)**
 - The current Customs Procedure Codes provide for a change of ownership CCD, when goods in a customs warehouse are sold. Change of ownership information has been added to the policy to define obligations.
 - Find a copy of the CCD Policy [here](#).

SARS publications

- **Employers annual reconciliation declarations**
 - SARS published two notices calling employers to ensure that they are ready to submit their annual reconciliation declarations with the latest and most accurate payroll information about their employees and the tax they have deducted. SARS has also reminded third parties to prepare data for the annual filing season.
 - The data that must be submitted to SARS from employers should cover the Monthly Employer Declarations submitted, payments made and Tax Certificates (IRP5/IT3) as generated, covering the full tax year from 1 March 2020 to 28 February 2021. Information submitted by third parties must cover the same tax period.
 - Employers and third parties have from 1 April 2021 to 31 May 2021 to submit their data to SARS.
 - Employers who fail to submit payroll data on time may become liable for late submission penalties of up to 10% of the value of their payroll.
 - Find a link to the SARS media releases [here](#) and [here](#).
- **SARS released a media statement advising property owners who host fee-paying guests that the rental income they receive must be declared in their income tax return.**
 - SARS also noted such property owners are required to register as VAT vendors with the accompanying obligations, if the short-term rental income exceeds ZAR1-million in a 12-month period.
 - A copy of the media release can be found [here](#).
- **African Continental Free Trade Area**
 - SARS published the process for registration under the Agreement establishing the African Continental Free Trade Area.
 - The registration process can be found [here](#).
- **Income Tax General Notes**

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- Income Tax Act | the following general notes have been withdrawn:
 - General Note (not numbered) – Stop order against benefits transferred from a pension fund to a provident fund;
 - General Note 1 – Transfers from pension to provident funds in terms of the 14 September 1990 arrangement;
 - General Note 13 – Retirement from employment;
 - General Note 14 (Issue 2) – Housing loans and guarantees (section 99);
 - General Note 15 – Funds registered in the former TBVC states;
 - General Note 17 (Issue 2) – Standard rules;
 - General Note 21 (Issue 2) – Application for tax directives (benefits that include pre- 1 March 1998 vested rights);
 - General Note 26 – Deductibility of administration costs;
 - General Note 27 – Amendments and revised rules; and
 - General Note 28 – Group life benefits provided by provident funds.
 - **Tax Directives**
 - SARS is in the process of enhancing the Tax Directives process and trade testing for Independent Software Vendor submissions. To prepare for the implementation of these enhancements, trade testing will start on 24 March 2021 until 22 April 2021.
 - Find a copy of the SARS communication [here](#).
 - **Retirement funds**
 - On 1 March 2021 several amendments to the tax treatment of retirement funds were promulgated and became effective.
 - Find a breakdown of the amendments [here](#).
 - **TCS changes in respect of Foreign Investment Allowance (“FIA”) applications, emigration and retirement fund withdrawals.**
 - As part of the modernisation of South Africa’s exchange control system as outlined in Annexure E of the 2020 Budget Review, TCS requests in respect of FIA applications, emigration and the withdrawal of retirement funds will be amended as follows:
 - As taxpayers may be aware, the issuing of printed Tax Clearance Certificates was stopped from 2 November 2019. The enhanced TCS system now issues a TCS PIN that enables taxpayer’s to authorise any third party to view their tax compliance status online via eFiling.
 - The concept of emigration and the SARB approval process by way of the MP336(b) form will be terminated. Thereafter, for tax purposes, only the event of an individual ceasing to be a resident for tax purposes in South Africa will be relevant. Accordingly:
 - All applicants, where the applicant had their MP336(b) form attested to by an Authorised Dealer on or before 28 February 2021, must submit a TCS request in terms of the current procedure dealing with emigration for exchange control purposes.
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- All TCS requests for individuals ceasing to be tax resident on or after 1 March 2021 will be processed by SARS based on a new dispensation in terms of which SARS will confirm that the taxpayer has ceased to be a resident for tax purposes. No MP336(b) form will be required as part of the process. Taxpayers must still lodge applications under cover of the SARS TCR01 “Emigration” Application.
 - From 1 March 2021, taxpayers will be able to access their retirement benefits if (1) the taxpayer can prove to the fund that they have been non-resident for tax purposes for an uninterrupted period of three years, and (2) a Tax Directive is issued to the fund by SARS. Before any transfers may be effected, taxpayers must provide their TCS to an Authorised Dealer, as well as documentation from the fund that indicates or confirms the final amount to be paid to the taxpayer.
 - The process of controlling or blocking an emigrant's remaining assets in a special “blocked funds account” will fall away and all transfers from these accounts will be handled as normal fund transfers in line with any other FIA transfer.
 - A taxpayer’s TCS in respect of FIA applications will be required for all transfers of listed securities from a securities register in South Africa to a securities register outside South Africa. The effective date of this process will be communicated by the SARB.
- Find a link to the SARS source page setting out this process [here](#).
 - Find a link on how to request your TCS [here](#).
 - Find a link relating to managing your TCS [here](#).

International

Platform for Collaboration on Tax Launches Tax Treaty Negotiations Toolkit

- The Platform for Collaboration on Tax (“PCT”) – a joint initiative of the IMF, OECD, UN and World Bank Group – released the final version of the Toolkit on Tax Treaty Negotiations along with its web-based, interactive edition.
 - The PCT's Toolkit on Tax Treaty Negotiations is an effort to provide capacity-building support to developing countries on tax treaty negotiations, building on existing guidance, particularly from the UN Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries.
 - The PCT’s Toolkit can be found [here](#).

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