

ENSafrica tax in brief

Below, please find issue 33 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

High Court of South Africa, Kwazulu-Natal Division, Pietermaritzburg | *Acti-Chem SA (Pty) Ltd v C:SARS*

- the taxpayer appealed, in terms of section 47(9)(e) of the Customs and Excise Act, 1964 ("CEA"), a determination letter issued by the SARS which asserted that goods imported by the taxpayer had been used "otherwise than in accordance with the item under which entry was intended for".
- the court considered whether it was sufficient, in terms of Note 1 to Schedule 3 of the CEA, which provided that "[the] imported goods ... shall ... be admitted for use in connection with the production or manufacture of goods in the industries specified", read together with section 75(2)(a) of the CEA, that the product manufactured by the taxpayer was capable of being used in the relevant industry, and that actual use is therefore not required.
- the court considered whether the words "in connection with" required that the goods ultimately be used in the production or manufacture of goods in the relevant industry.
- the court considered whether it was sufficient that the predominant use of the products produced and manufactured by the taxpayer was in the relevant industry, or whether exclusive use for the prescribed purpose was required by a rebate registrant.
- find the full case [here](#).

SARS publications

withdrawal of practice note 2 of 1996 | income tax: determination of taxable income where financial assistance has been granted by a non-resident of the Republic to a resident of the Republic

- withdrawn on 5 August 2019 with effect from years of assessment commencing on or after 1 April 2012.
- section 31 of the Income Tax Act, 1962 was substituted by the Taxation Laws Amendment Act, 2011 with effect from years of assessment commencing on or after 1 April 2012. As this practice note and its addendum of 17 May 2002 gave guidance on section 31(3) before it was substituted, they are not applicable from the date of

substitution and are accordingly withdrawn for years of assessment commencing on or after 1 April 2012.

- find a copy of the practice note [here](#).

tax guide for small businesses 2018/19

- the information in the guide concerning income tax relates to –
 - natural persons for the 2019 year of assessment commencing on 1 March 2018 and ending on 28 February 2019;
 - trusts in respect of years of assessment commencing and ending during the period commencing on 1 March 2018 and ending on 28 February 2019; and
 - companies and CCs with years of assessment ending during the 12-month period ending on 31 March 2019.
- find a copy of the guide [here](#).

customs and excise

rule amendment notice R.1042 | Government Gazette 42621

- amendment to the schedule to the Rules under the Customs & Excise Act, 1964, by the substitution in item 202.00 for form DA 1.
- find a copy of the notice [here](#) and form DA1 [here](#).

tariff amendment notice R.1075 | Government Gazette 42640

- amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 7210.11, 7210.12.10, 7210.12.90 and 7212.10, to increase the rate of customs duty on tinplate from free of duty to 10% – ITAC Report No. 606
- find a copy of the notice [here](#).

international

OECD | Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “MLI”)

- Ukraine deposited its instrument of ratification for the MLI on 8 August 2019, with the effective date of the application being 1 December 2019.
- find the list of the signatories and parties to the MLI [here](#).

OECD | Inclusive Framework on Base Erosion and Profit Shifting (the “Inclusive Framework”)

- Albania and Namibia joined the Inclusive Framework.

- find a list of the members of the Inclusive Framework [here](#).

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