

ENSafrica tax in brief

Below, please find issue 46 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **High Court, Gauteng Division, Pretoria | *SIP Project Managers (Pty) Ltd v C:SARS***
 - Moneys paid to the South African Revenue Service ("SARS") by the taxpayer's bank, under third party notice in terms of section 179 of the Tax Administration Act, 2011 ("TAA").
 - Application made by taxpayer for a declaratory order setting aside SARS' third party notice.
 - Requirements for a valid third party notice, considered.
 - Requirements for delivery of electronic communications in terms of the rules under section 255 of the TAA, considered.
 - Held that a third party notice delivered prior to the existence of a tax debt is premature and unlawful.
 - Find a copy of this judgment [here](#).
- **High Court, Gauteng Division, Pretoria | *C:SARS v Public Protector***
 - Commissioner for SARS seeking a declaratory order that SARS is prevented from disclosing confidential taxpayer information to the Public Protector by section 69(1) of the TAA.
 - Whether section 69(1) constitutes "just cause" in terms of the Public Protector Act, 1994, considered.
 - Held that the Public Protector's subpoena powers do not extend to taxpayer information protected under section 69(1).
 - Find a copy of this judgment [here](#).
- **United Kingdom Supreme Court | *Fowler v HMRC (Appellant)***
 - South African resident employee deriving income from diving work in United Kingdom ("UK") territorial waters.
 - Such income treated as income of a self-employed person in terms of UK domestic law and therefore held by the court below to be taxable only in South Africa in terms of the Double Taxation Agreement between South Africa and the UK ("DTA").
 - Whether Article 3(2) of the DTA, which requires terms not defined in the DTA to have the meaning that they have under applicable domestic law, extends to deeming provisions, considered.
 - Held that Articles 7 and 14 of the DTA are required to be applied to the real world rather than to the fictional world created by the deeming provisions.
 - Find a copy of this judgment [here](#).

legislation and draft legislation

- **Proposal to introduce export tax on scrap metal**
 - Following the announcement, in the 2020 Budget Review, of a proposed export tax on scrap metal, National Treasury has published a media advisory on the proposed accreditation process.
 - Find a copy of the document [here](#).
- **Reviewing the tax treatment of excessive debt financing, interest deductions and other financial payments**
 - The deadline for submission of comments on this discussion paper has been further extended until 30 September 2020.
 - Find a copy of the discussion paper [here](#).

advance tax rulings

- **binding private ruling 343 | donations tax implications of subscribing for shares at a discount**
 - This ruling determines the donations tax implications resulting from a broad-based black economic empowerment trust subscribing for shares at a discount.
 - The ruling relates to section 55(1) and 58 of the Income Tax Act, 1962.
 - Find a copy of the ruling [here](#).

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