

## ENSafrica tax in brief

Below, please find issue 57 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

### case law

- **High Court (Gauteng Division, Pretoria) | *PriceWaterhouseCoopers Inc and Another v Minister of Finance and Another* (2 February 2021)**
  - PricewaterhouseCoopers Inc. ("PwC") levied with interest in respect of late Value-Added Tax ("VAT") payments.
  - Constitutional law challenge brought by PwC and PwC Partnership in respect of section 39(7) of the Value-Added Tax Act, 1991 which regulates the remittal of interest on late VAT payments but does not provide for the remittal of interest where, having regard to the output tax and input tax relating to the supply in respect of which interest is payable, the failure to make payment within the prescribed period did not result in any financial loss (including any loss of interest) to the fiscus and/or the State.
  - Held that section 39(7) of the VAT Act is not irrational and does not offend the principle of legality, on the basis that the right to seek a remittal is excluded if the failure to pay VAT timeously is within the control of the taxpayer.
  - Held that an obligation to pay tax, or interest thereupon, does not constitute deprivation of property as contemplated in section 25(1) of the Constitution.
  - On the basis that the dispute, although commercial, raised a constitutional matter, the court declined to make an order as to costs.
  - Find a copy of the judgment [here](#).

### SARS publications

- **Estates**
  - SARS added a new subheading to the webpage, *Estates, Update of the Estate's Representative Taxpayer details*
  - The purpose of this reference guide is to provide certainty to taxpayers on the VAT treatment of FDFPs implemented by an implementing agency.
  - Find a link to the updated webpage [here](#).
- **Foreign Employment Income Exemption**

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- SARS added a new subheading to the webpage, Foreign Employment Income Exemption, *Temporary relief in respect of the 2020 and 2021 years of assessment*
  - Find a link to the updated webpage [here](#).
  - **Tax Directives**
    - Update on trade testing: SARS is in the process of enhancing the Tax Directives process and trade testing for Independent Software Vendor (ISV) submissions. To prepare for the implementation of these enhancements, trade testing will start on 22 March 2021 until 22 April 2021, in line with their intention to go-live within the first quarter of the 2021/22 financial year.
    - More detail regarding the submission of test files can be found [here](#).
  - **Interpretation note 47 (issue 5) | wear-and-tear or depreciation allowance | issue 4 replaced**
    - this note deals with the wear-and-tear or depreciation allowance under section 11(e) of the Income Tax Act, 1962 and provides guidance on the circumstances under which the allowance may be claimed as a deduction.
    - find the new interpretation note [here](#).
  - **new binding general ruling (“BGR”) 7 (issue 4) | wear-and-tear or depreciation allowance | issue 3 replaced**
    - this BGR reproduces the parts of Interpretation Note 47 (issue 5) “Wear-and-Tear or Depreciation Allowance” that comprise a BGR under section 89 of the Tax Administration Act, 2011.
    - find the new BGR [here](#).
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## exchange control

- **exchange control circular no. 03/2021**
  - Authorised Dealers are advised that the name “Link Investor Services (Pty) Ltd” has been deleted and replaced with “JSE Investor Services CSDP (Pty) Ltd” in section G.(A)(iii)(l) of the Currency and Exchanges Manual for Authorised Dealers.
  - The Manual has been updated accordingly.
  - find a copy of the circular [here](#).

## customs and excise

- **Customs and Excise Act, 1964 | tariff amendment notices scheduled for publication in the Government Gazette**
    - Part 1 of Schedule No. 3, by the insertion of rebate item 311.40/00.00/01.04, in order to create a rebate facility for yarns and textiles for use in the manufacture of apparel – ITAC Report No. 641.
      - find a copy of the draft notice [here](#).
    - Part 2 of Schedule No. 4, by the insertion of various items under rebate item 460.15, in order to create a rebate facility for the importation on tinplate – ITAC Report No. 640
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- find a copy of the draft notice [here](#).
    - Part 1 of Schedule No. 1, by the substitution of Note 5 in Chapter 98 of Section XXII, in order to implement the policy directive for the inclusion of semi-knocked down vehicles kits as eligible products under the automotive production and development programme – ITAC Minute M03/2020.
      - find a copy of the draft notice [here](#).
    - Part 1 of Schedule No. 1, by the insertion of tariff subheadings 3002.20.11; 3002.20.19 and 3002.20.90, in order to provide for vaccines for human medicine for inoculation against Coronavirus and its variants as well as other vaccines.
      - implementation date is 12 February 2021.
      - find a copy of the draft notice [here](#).
    - Schedule No. 1, to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement
      - implementation with **retrospective effect** from 1 September 2020 up to and including 31 December 2020.
      - find a copy of the draft notice [here](#).
  - **Customs and Excise Act | tariff amendment notice published in Government Gazette No. 44151**
    - 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 54,42c/kg and 81,63c/kg to 10,27c/kg and 15,41c/kg respectively, in terms of the existing variable tariff formula.
      - implementation date is 12 February 2021.
      - find a copy of the notice [here](#).
  - **Customs and Excise Act | draft rule and schedule amendments in respect of the diesel refund scheme**
    - second drafts of the diesel refund rules, forms and notes to the Customs and Excise Act have been published for public comment:
      - amendments have been proposed to rules under sections 75A, 59A, 119A and 120 – find a copy [here](#).
      - amendments have been proposed to Note 6 to Part 3 of Schedule No. 6 – find a copy [here](#).
      - amendments have been proposed to form DA 185 – find a copy [here](#).
      - amendments have been proposed to form DA 185.4A18 – find a copy [here](#).
      - amendments have been proposed to form DA 185.4A19 – find a copy [here](#).
      - amendments have been proposed to the DSL 201 refund return – find a copy [here](#).
    - the updated draft amendments incorporate comments and technical inputs received from stakeholders in response to the first drafts that were published for comment in 2020.
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- reforms to the administration of the diesel refund may be further informed by industry-specific consultations during the course of the year.
- due date for comments is **24 March 2021**.
- find a copy the diesel refund comment sheet on the SARS website [here](#).
- **Letter to traders**
  - published to remind to all clients who are deferment account holders to adhere to the 13th deferment payment requirement, which is due no later than 15:00 on 31 March 2021.
  - find the letter [here](#).

## international

- **OECD report**
  - The OECD Secretariat released updated guidance on tax treaties and the impact of the COVID-19 crisis. The guidance considers the interpretation of tax treaty articles on the creation of permanent establishments, tax residence of companies and individuals, and taxation of income from employment. The guidance revisits and updates earlier guidance published by the OECD Secretariat in April 2020.
  - find a copy of the guidance [here](#).
- **Inclusive Framework Membership**
  - Belarus and Samoa joined the Inclusive Framework on BEPS, bringing the total membership up to 139 jurisdictions worldwide
  - find an updated list of members [here](#).
- **new OECD self-assessment tool to assist tax administrations in managing operational risks**
  - a new diagnostic tool on enterprise risk management released will allow tax administrations to self-assess their capacity and capability to manage operational risks across their organisations and to identify possible areas of improvement.
  - find the article [here](#).
- **Webinar and publication of practical toolkit to support the successful implementation by developing countries of effective transfer pricing documentation requirements**
  - the practical toolkit is a proposed guidance sourcebook on transfer pricing documentation requirements. The toolkit compiles essential information on transfer pricing documentation and analyses policy choices and legislative options. Readers can also find sample legislation, practical examples and practices from over 30 countries.
  - find the toolkit [here](#).
  - register [here](#) for the webinar which will take place on 17 February 2021.

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