

ENSafrica tax in brief

Below, please find issue 60 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **The High Court of South Africa (Gauteng Division, Pretoria) | *ABSA Bank Limited and Another v CSARS (2019/21825) (11 March 2021)***
 - Absa Bank Ltd and its wholly owned subsidiary United Towers (Pty) Ltd (the “**applicants**”) sought to have two decisions of the Commissioner for the South African Revenue Service (“**SARS**”), reviewed and set aside.
 - SARS had issued to each of the applicants notice in terms of section 80J of the Income Tax Act, 1962 (“**ITA**”), believing that the general anti-avoidance regime (“**GAAR**”) provisions may apply to a transaction.
 - Each of the applicants addressed a request to SARS in terms of section 9 of the Tax Administration Act, 2011 (the “**TAA**”), requesting that the relevant section 80J notice be withdrawn on various grounds.
 - SARS failed to comply with such request and instead determined a tax liability for the applicants, per section 80J(3)(c) of the ITA (the “**first decision**”).
 - SARS subsequently issued letters of assessment to each of the applicants in respect of a tax liability imposed on the applicants, in terms of section 80B in respect of the alleged arrangement (the “**second decision**”).
 - The court considered, *inter alia*:
 - section 9 of the TAA.
 - section 105 of the TAA.
 - section 80J of the ITA
 - whether a refusal to withdraw a section 80J notice is reviewable, and if so, on what jurisprudential basis.
 - whether the Applicant was a party to an “impermissible arrangement” as contemplated by GAAR.
 - whether the applicant procured a “tax benefit” as contemplated by GAAR.
 - The court held that the decision to refuse to withdraw the section 80J notices and the issue of the letters of assessment is reviewable and accordingly, the decision was set aside.
 - Find a copy of this judgment [here](#).
- **The High Court of South Africa (Gauteng Local Division, Johannesburg) | *Nyhonyha and Others v Venter N.O and Others (35508/20)***

- The applicants sought to have the winding-up order placed on Regiments Capital (Pty) Ltd set aside on the basis that it is factually solvent. Reliance was based on Regiments concluding a restructuring or unbundling transaction with other applicants.
- SARS, as a potential creditor, opposed the relief sought on the basis that it is still auditing the company and had as yet an undetermined liability. In addition, SARS intended to audit the unbundling transaction.
- The court considered, *inter alia*:
 - section 354 of the Companies Act, 2008
 - whether Regiments Capital (Pty) Ltd was solvent and should be taken out of final winding up.
- The court held that the winding up of Regiments is set aside and gave SARS 15 calendar days to issue its assessments and to preserve assets to pay SARS and other listed creditors.
- Find a copy of this judgment [here](#).
- **The Tax Court of South Africa, Gauteng I *ABC Trust v CSARS* IT 24918 (18 March 2021)**
 - The appellant taxpayer, the ABC Trust, appealed the decision of SARS to disallow the taxpayer's objection against the additional assessments raised by SARS in respect of its 2014 to 2016 years of assessment, in terms of which SARS assessed the taxpayer for capital gains tax ("**CGT**"), understatement penalties and interest.
 - During the 2014 to 2016 years of assessment, the taxpayer, a vested beneficiary of various vesting trusts, became entitled to distributions pursuant to the various vesting trusts disposing of certain capital assets. The taxpayer, in turn, distributed to its beneficiaries the amounts vested in the taxpayer in the same year of assessment in which the vesting in the taxpayer and the taxpayer's entitlement thereto arose.
 - The taxpayer submitted that no capital gain arose in its hands as it did not receive or accrue the amounts in respect of the distributions made by the various vesting trusts to the taxpayer and that the taxpayer's beneficiaries received or accrued the relevant amounts in respect of the distributions.
 - Pursuant to additional assessments issued by SARS in respect of the taxpayer's 2014 to 2016 years of assessment, SARS assessed the taxpayer for CGT in respect of the distributions made by the various vesting trusts to the taxpayer.
 - The court considered, *inter alia*:
 - whether the disposal of the appeal only requires the application of law to the agreed facts with reference to sections 118(3) and 118(4) of the TAA.
 - the words "any amount" in section 25B of the ITA.
 - the determination of the liability for tax in respect of capital gains with reference to the Eighth Schedule to the Act and other applicable law in light of section 26B of the ITA.

- whether paragraph 80(1) or 80(2) of the Eighth Schedule applied to the distributions made to the taxpayer by the various vesting trusts.
- The interaction between section 7(1) and section 25B of the ITA.
- *Armstrong v Commissioner for Inland Revenue* 1938 AD and *Secretary for Inland Revenue v Rosen* 1971 (1) SA 172 (A).
- The court held that, based on the *Rosen* case which established that the “conduit principle” is of general application in our system of taxation, such principle is equally applicable to the capital gains at issue in the appeal. The court therefore upheld the taxpayer’s appeal and accordingly set aside the additional assessments raised by SARS in respect of the taxpayer’s 2014 to 2016 years of assessment.
- Find a copy of this judgment [here](#).

advance tax rulings

- **Binding private ruling 357 | Donations to a foreign trust of property situated outside the Republic**
 - Section 56(1)(g)(iii);
 - This ruling determines the tax consequences of the donation by resident natural persons to a foreign trust of property situated outside the Republic originally acquired by donation from a foreign person.
 - Find a copy of this ruling [here](#).
- **Binding private ruling 358 | Amalgamation of short and long-term insurers**
 - Section 11(a) read with section 23(g);
 - Section 28;
 - Section 44;
 - This ruling determines the tax consequences of an amalgamation of life and nonlife reinsurers.
 - Find a copy of this ruling [here](#).
- **Binding private ruling 359 | Transfer of reinsurance business from a resident company to a local branch of a foreign company**
 - Section 1(1) – definition of “gross income”;
 - Section 11(a) read with 23(g);
 - Section 28;
 - This ruling determines the tax consequences, for a resident company that conducted reinsurance business, of the transfer of its business as a going concern to a local branch of the foreign holding company of the applicant.
 - Find a copy of this ruling [here](#)
- **Binding private ruling 360 | Internal restructure followed by a disposal of shares to a B-BBEE investor**
 - Sections 1(1) – Definition of “Contributed Tax Capital” and “Gross Income”, and definition of “Group of Companies” together with the definition of the same term in Sections 41(1), 24BA, 40CA, 42, 45, 55, 58 and Paragraphs 12A, 13(1)(a)(i), 20(1)(a), 32(3)(a), 35(1) and 39 of the Eighth Schedule to the ITA.
 - Section 8(1)(a) of the Securities Transfer Tax Act, 2007 (the “STT Act”).

- This ruling determines the tax consequences of an internal restructure aimed at consolidating the operating entities involved in a particular type of business (the target business) under a single intermediate holding company (company G) (the internal restructuring), as well as the sale of a 25% interest in company G by the ultimate holding company (the applicant) to a third party B-BBEE investor (the investor) (the B-BBEE transaction).
- Find a copy of this ruling [here](#).

SARS publications

- **SARS has published a list of enhancements to the Tax Type Transfer process which will come into effect at the end of April**
 - These changes provided the taxpayer with full control of their eFiling profiles. Furthermore, any transfer requests to access taxpayer profiles, now require the taxpayer or their appointed registered representative to approve or reject such requests.
 - Find the list of enhancements [here](#).
- **SARS has published its “Employer Annual Reconciliation: 1 April 2021 to 31 May 2021” letter to stakeholders**
 - Find the letter [here](#).
- **SARS has published an updated guide for booking an appointment at a SARS branch**
 - The authentication procedure, which validates whether SARS is engaging with accurate clients and validates the authenticity of the supporting documents, has been updated.
 - Find a copy of the updated guide [here](#).
- **SARS has released an updated list of approved Venture Capital Companies (“VCC”)**
 - Find the updated list of VCCs [here](#).
- **SARS published a draft interpretation note on the deduction of medical lump sum payments in terms of section 12M of the ITA on 23 March 2021**
 - Due date for public comment: 28 May 2021.
 - Find the draft interpretation note [here](#).
- **SARS published an “Updated Tax Directives Interface Specification (IBIR-006 Rev 6.104)” for enhancements to go-live within the first quarter of the 2021/2022 financial year**
 - Find the tax directive interface specification [here](#).
 - Find a letter to stakeholders [here](#).
- **SARS published a guide on how to complete and submit country-by-country information via eFiling**
 - Find the guide [here](#).

customs and excise

- **SARS has released draft excise forms, DA 260 Tobacco Products (SOS) and (VM), for public comment**
 - Due date for public comment: 31 March 2021

- Find the draft excise form - DA 260 Tobacco Products (SOS) [here](#).
- Find the draft excise form - DA 260 Tobacco Products (VM) [here](#).
- **SARS has published a letter to all customs clients who are deferment account holders to kindly adhere to the 13th deferment payment requirements which become due by the end of the financial year, 31 March 2021**
 - Find the letter [here](#).
- **SARS has published an updated external policy document in respect of the administration of trade agreements**
 - The updates pertain to the postponing of the implementation of paragraph 2.3(c)(i)(A)(I) of the policy document by extending the grace period until 31 May 2021. This will allow clients some time to prepare for the requirements when applying for export certificates at the customs branch office nearest to the exporter's, manufacturer's or producer's area of business.
 - Find the updated policy document [here](#).

international tax

- **The Organisation for Economic Co-Operation and Development has published the arbitration profiles of 30 jurisdictions applying Part VI on arbitration of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI")**
 - Find the arbitration profiles [here](#).
- **On 15 March 2021, the conference of the parties to the MLI approved an opinion that clarifies the interpretation and application of Article 35 of the MLI on the entry into effect of its provisions**
 - The opinion clarifies a question that had arisen with respect to the entry into effect of the MLI for taxes withheld at source where the latest of the dates of entry into force of the MLI for a pair of contracting jurisdictions is on 1 January of a given calendar year.
 - Find the opinion [here](#).

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