

ENSafrica tax in brief

Below, please find issue 91 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **High Court of South Africa, Western Cape Division, Cape Town | *Forge Packaging (Pty) Ltd v The Commissioner for the South African Revenue Service* | Case No. 21634/2021**
 - Forge Packaging (Pty) Ltd (the "**Applicant**") applied for leave to appeal against a judgement made by the court a quo, wherein the court refused its application for the review and setting aside of additional assessments, issued by the South African Revenue Service ("SARS") in respect of its 2014, 2015 and 2016 years of assessment.
 - The Court considered the following provisions:
 - Sections 103 to 107 of the Tax Administration Act, 2011 (the "**TAA**")
 - Sections 6 and 9 of the Promotion of Administrative Justice Act, 2000 ("**PAJA**")
 - The Court held that there is no compelling reason why an appeal against this court's judgment should be entertained and that there is nothing in the judgment of the court a quo that prevents the applicant from pursuing all its objections to the challenged decisions in the already pending appeal in the Tax Court.
 - The Court refused the application with costs.
 - Find a copy of the judgement [here](#).

legislation and draft legislation

- **Preparation of Legislation | Draft Documents for Public Comment**
 - Amendment to rules relating to the SAD 502 and 505 customs declaration forms.
 - SAD 502 – Customs Declaration Form (Transit control and transport for examination)
 - SAD 505 – Customs Declaration Form (Bond, transit control and transport for examination)
- The due date for public comment was 09 September 2022.

SARS publications

- **Media Release | New legislative tool targeting unexplained wealth to be piloted**
 - An initiative, being piloted by a number of government departments and agencies in law enforcement and prosecution, will make it more cost effective, faster and easier to investigate and recover assets acquired through suspected unlawful activities such as corruption, fraud, tax evasion and money laundering.
 - The National Prosecuting Authority, Directorate of Priority Crime Investigation, Department of Justice and SARS, led by the Financial Intelligence Centre and operating under the auspices of the Anti-Corruption Task Team, are collaborating on the joint project to deprive those who support their lifestyles with ill-gotten gains from their unexplained wealth.
 - This will better enable South Africa to confiscate criminal proceeds in line with the Financial Action Task Force recommendation in this regard.
 - The law enforcement agencies will use existing asset recovery legislation to secure appropriate orders issued by our courts to confiscate unexplained wealth, thereby enabling the South African authorities to recover suspected ill-gotten gains.
 - The provision in our existing asset recovery legislation that targets unexplained wealth is a legislative tool that requires the State to prove that a defendant's legitimate sources of income are not sufficient to justify assets that the defendant owns. This puts the onus on the defendant to prove that the source of the funds for the assets owned is legitimate and that the assets were not acquired from the proceeds of criminal activities.
 - A court can therefore make an order to confiscate unexplained wealth on the basis that the wealth of a person or entity is disproportionate to the lawful income derived or declared by the person or entity and that the defendant is unable to justify or explain how the wealth was lawfully acquired, this is known as an Unexplained Wealth Order ("**UWO**"). This approach will enable law enforcement agencies and SARS to act even in cases where such unlawful activity cannot be proven beyond reasonable doubt.
 - Internationally, the UK, Australia, Ireland, Mauritius and Kenya are examples of countries that have adopted the concept of UWOs as legislative tools and have successfully recovered such assets.
 - South Africa's inter-agency initiative aims to strengthen and supplement the use of existing legal frameworks to preserve and forfeit assets by targeting unexplained wealth. The initiative seeks to determine whether existing legislation can be effectively used or if it should be augmented further with a standalone UWO legislative framework.
 - It also aims to practically test how inter-agency cooperation can be operationally achieved to expand the limits of the current legislation by creating case law through court proceedings.
 - The initiative was started in November 2020 to test the feasibility of a UWO asset recovery regime in South Africa under Chapter 6 of the Prevention of Organised Crime Act, 2004 and through inter-agency collaboration. A project steering committee has been established and a task team was set up to

conduct research and bench marking and make recommendations on a way forward.

- The participating agencies have entered into an inter-agency memorandum of agreement to formalise their collaboration and the practical implementation of the initiative in the cases to be selected; and to regulate the confidentiality of information to be shared amongst the agencies.
- Preparatory activities for the next phase are currently in progress in order to select an appropriate case to test the existing provisions that target unexplained wealth in the courts
- The Organisation for Economic Cooperation and Development has expressed keen interest and supports the outcomes of the project as a means of deepening inter-agency collaboration and combating unlawful activities such as corruption, fraud, tax evasion, money laundering and illicit financial flows.
- **Media Release | Trade Statistics for July 2022**
 - SARS released trade statistics for July 2022.
 - Find more information [here](#).
- **Media Release | Mobile tax unit**
 - SARS has published updated [Mobile tax unit](#) schedules for Qwaqwa to Free State.
 - Find more information [here](#).
- **Media Release | SARS to appeal judgement**
 - SARS has noted an appeal against the Labour Court judgement of 22 August 2022 on the matter between *Mashilo and Seremane v the Commissioner of SARS*.
 - Find a copy of the media release statement [here](#).
- **Legal Counsel Publications | Value- Added Tax**
 - *SARS has published VAT Reference Guide for Foreign Donor Funded Projects (Issue 2)*.
 - Find the guide [here](#).
- **SARS has published *Guide for Vendors (Issue 14)*.**
 - Find the guide [here](#).
- **Media statement on Gold Leaf Tobacco**
 - SARS welcomes an order by the North Gauteng High Court granting a preservation order in terms of section 163 of the TAA against Gold Leaf Tobacco Corporation and its directors.
 - SARS has been investigating and clamping down on the illicit economy focusing on tobacco, gold and fuel industry over the last year, and this is one of the many enforcement steps executed by SARS.
 - SARS is harnessing its capabilities to make non-compliance with legal tax obligations hard and costly to those who are engaged in this criminal pursuit.
 - SARS Commissioner, Mr. Edward Kieswetter made the following statement: “The conduct of non-compliant taxpayers is depriving Government of legitimate resources to the prejudice of both the State and the South African public. In aggressively addressing this scourge, SARS will continue to pursue its mandate without fear, favour or prejudice,”.
- **Third Party Data Bi-Annual Submissions 2023**
 - The SARS Third Party Data Bi-Annual Submissions process for the period 1 March 2022 – 31 August 2022 opens on 01 September 2022 and will close on 31 October 2022.

- Find more information [here](#).
- **Corporate Income Tax**
 - From 16 September 2022 SARS will no longer require you to submit the Supplementary Declaration for Companies or Close Corporations (IT14SD) when identified for a verification.
 - Find more information [here](#).
- **Tax Exempt Institutions Segment**
 - The Tax Exempt Institutions Segment website content has been updated to make navigating through the different types of exempt categories more user friendly.
 - Information has also been expanded to cover the rights and obligations of exempt institutions across the different tax products, including income tax, VAT and PAYE.
 - Find the link to the website here.
- **Beware of the latest scam**
 - The latest scam is an SMS purporting to be from SARS, asking unsuspecting taxpayers to click on a link to view "correspondence".
 - Find more information [here](#).
- **Converted forms**
 - The [Notice of Objection \(ADR1\)](#) and the [Notice of Appeal \(ADR2\)](#) forms were converted from Adobe to an online format for ease of use.
 - Find more information [here](#).
- **Legal Counsel Publications | Average Exchange Rates**
 - Table A – A list of the average exchange rates of selected currencies for a year of assessment as from December 2003.
 - Table B – A list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months.
 - Find more information [here](#).
- **Legal Counsel Advisory | Binding Class Rulings 081, published on 8 September 2022 ("BCR 081")**
 - This ruling determines whether a participatory interest held by a class member in a collective investment scheme in securities, constitutes a "hybrid equity instrument" or a "third-party backed share" as defined in the Income Tax Act, 1962 ("ITA").
 - This is a ruling on the interpretation and application of the following provisions in the ITA:
 - section 8E; and
 - section 8EA.
 - Find the Ruling [here](#).
- **Legal Counsel Advisory | Binding Private Rulings 377, published on 8 September 2022 ("BPR 377").**
 - This ruling determines the dividends withholding tax consequences resulting from the declaration of a dividend
 - This is a ruling on the interpretation and application of the following provisions in the ITA:
 - section 64D; and
 - section 64G(3).
 - Find the ruling [here](#).

customs and excise

- **Customs and Excise Act, 1964 (“Customs and Excise Act”) | Rule Amendment Notice R.2415 as published in Government Gazette 46789**
 - SARS published Rule Amendment Notice R.2415, as published in *Government Gazette* 46789 on 26 August 2022, relating to amendments to rules under sections 59A, 60 and 120 – Miscellaneous amendments (DAR237).
 - Find a copy [here](#).
- **Customs and Excise Act | Tariff Amendment Notice as published in Government Gazette 46839**
 - SARS published Tariff Amendment Notice R.2435 which relates to Part 1 of Schedule No. 1, by the insertion of Additional Notes 5 and 6 to Chapter 87 in order to provide for an incomplete bicycle having the essential character of a complete bicycle of heading 87.
 - Find a copy [here](#).
- **Customs and Excise Act | Tariff Amendment Notice as published in Government Gazette 46874**
 - SARS published Tariff Amendment Notice R.2467 which relates to the imposition of provisional payments in relation to anti-dumping duties against the alleged dumping of new pneumatic tyres of rubber, classifiable in tariff heading 40.11, originating in or imported from the People’s Republic of China – ITAC Report No. 700.
 - Find a copy of the notice [here](#).
- **Letter to trade | Updating of registration or licensing details of existing customs clients on RLA System**
 - It is a legislative requirement that all Customs and Excise registrants and licences update their company or individual details, whichever the case may be, captured on the SARS Customs and Excise register.
 - For more information see the SARS letter to Trade [here](#).
- **Customs Weekly List of Unentered Goods**
 - Find the list [here](#).
- **Legal Counsel Publications | Guide**
 - SARS has published *Guide for VAT* levied on the importation of goods into South Africa.
 - Find the guide [here](#).
- **Prohibited and Restricted Imports and Exports list**
 - Importation of new or used goods as classified under customs tariff heading 4911.99.90, 4905.90, 4911.91 and 4910.00 is not subject to ITAC import control measures and may therefore be imported without an ITAC import permit.
 - Find the list [here](#).

International

- OECD releases public input on the Progress [Report](#) on Amount A of Pillar One

- On 11 July 2022, as part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the OECD invited public comments on the Progress Report on Amount A of Pillar One to assist members in further refining and finalising the relevant rules.
- Find the comments [here](#).
- **OECD releases a practical guide to assist tax administrations in designing and carrying out tax capacity building programmes for developing countries**
 - This report sets out considerations that administrations might want to take into account in establishing a capacity building strategy and describes the main diagnostic tools available to help understand a partner jurisdiction's level of maturity and identify possible needs.
 - Find more information [here](#).
- **OECD releases report on building mutual trust and improving communications between tax administrations and business is critical for improving voluntary compliance**
 - According to the new report from the OECD, effective taxation of large businesses would benefit from increased efforts to build trust and improve communication between tax administrations and multinational enterprises.
 - Find more information [here](#).

Other

- Information notice on the official gold and foreign exchange reserves of the South African Reserve Bank as at 31 August 2022
 - The notice provides detail of the US dollar equivalent of the level of the South African Reserve Bank's official gold and foreign exchange reserves, Special Drawing Rights and foreign currency deposits received from customers.
 - Find the notice [here](#).

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