

ENSafrica tax in brief

Below, please find issue 69 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **The Supreme Court of Appeal of South Africa I Commissioner, South African Revenue Service v Glencore Operations SA (Pty) Ltd (Case no 462/2020) [2021] ZASCA 111 (10 August 2021)**
 - The South African Revenue Service (“SARS”) appealed against the decision of the Gauteng Division of the High Court in terms of which it overturned SARS’ decision to disallow the taxpayer’s (“Respondent”) claim for diesel rebates in terms of the Customs and Excise Act, 1964.
 - SARS disallowed the Respondent’s refund claim on grounds that the activities in respect of which the claim was submitted did not constitute “primary production activities” in mining within the ambit of Note 6(f)(iii) of Item 670.04 in Part 3 of Schedule 6 to the Customs Act, but rather related to “secondary activities in mining” – which do not qualify for a refund in respect to the fuel levy paid.
 - The Respondent contended that the activities concerned were squarely within the items listed in Note 6(f)(iii) of Schedule 6 to the Customs Act. In the alternative, the Respondent contended that on a proper interpretation of the word “include” located in Note 6(f)(iii), the list therein set out is not exhaustive.
 - The Respondent appealed against the determination made by SARS to the High Court which found in its favour. The High Court held that the activities in note 6(f)(iii) are non-exhaustive activities forming part of (ie, included in) "own primary production activities in mining".
 - On appeal from the High Court, the Supreme Court of Appeal (“SCA”) considered, *inter alia*:
 - whether the mining operations in which the diesel refunds were claimed in respect of had been carried on for the Respondent’s own primary production in mining as contemplated in Note 6(f)(ii) and (iii) of Schedule 6 to the Act, and therefore qualify for a refund of levies.
 - the interpretation of the word “include” located in Note 6(f)(iii) to determine whether the list of activities set out in Note 6(f)(iii) of Schedule 6 to the Act is exhaustive;
 - The SCA held that the purpose of having a comprehensive list of inclusions such as the one found in Note 6(f)(iii) was to avoid uncertainties.

Consequently, to hold that the list was meant to be non-exhaustive would lead to uncertainties in the implementation of the rebate item with which this case is concerned. In this regard, the SCA noted, to interpret the word “include” in the context in which it is used in Note 6(f)(iii) as indicative of a non-exhaustive list would not only be to ignore fiscal reality and the broader fiscal framework that informed the introduction of rebate Item 670.04 but also the object of the Act which, through the imposition of fuel levies, sought to broaden the government's revenue base.

- The SCA therefore upheld SARS’ appeal.
- Find a copy of the judgment [here](#).

SARS publications

- **SARS published a media release in respect of seizures of illicit cigarettes**
 - Find a copy of the media release [here](#).
- **SARS published a media release in respect of the implementation of emergency tax relief measures**
 - Find a copy of the media release [here](#).
- **SARS published an update to the list of prohibited and restricted imports and exports**
 - Find a copy of the list [here](#).
- **Unemployment Insurance Fund ceiling earnings**
 - SARS published the maximum earnings ceiling for the Unemployment Insurance Fund as documented in the *Government Gazette* no. 44641 of 28 May 2021.
 - Find a copy [here](#).
- **SARS published a media release in respect of updates to filing season for individuals and trusts**
 - Find the media release [here](#).
- **SARS issued Interpretation Note 79 (Issue 3) – Produce held by nursery operators**
 - Find a copy of the interpretation note [here](#).
- **SARS issued Interpretation Note 69 (issue 3) – Game farming**
 - Find a copy of the interpretation note [here](#).
- **SARS published draft Interpretation Note: Disposal of Assets by Deceased Person, Deceased Estate and Transfer of Assets between Spouses**
 - Find a copy of the draft interpretation note [here](#).
 - Due date for public comment is **10 September 2021**.
- **SARS published the following draft guides:**
 - *Draft Tax Exemption Guide for Institutions, Boards or Bodies*
 - Find a copy of the draft guide [here](#).
 - *Draft Tax Exemption Guide for Companies Wholly Owned by Institutions, Boards or Bodies*
 - Find a copy of the draft guide [here](#)
 - Due date for public comment is **8 October 2021**.
- **SARS published an update to: Guide to the SARS MobiApp**

-
- In terms of the update, taxpayers may now request a tax compliance status on the MobiApp, and request an eBooking appointment with SARS without having to login first.
 - Find a copy of the guide [here](#)
 - **SARS has announced that Release Notes were published for e@syFile™ Employer version 7.1.5. The changes include:**
 - an adjustment to the EMP501 submission process when “Own Values” is selected to accurately reflect certificate totals for liabilities;
 - additional validation added to the EMP501 submission process to correct misaligned information submitted previously that resulted in rejection; and
 - an update to the e@syFile Forms Viewer component (V1.2.7) in conjunction with the additional validation on EMP501 submission data.
 - Find the full Release Notes [here](#).
 - **The list of approved venture capital companies has been updated and published by SARS.**
 - Find the updated list [here](#).
 - **SARS has published the Tax Practitioner Connect Newsletter issue 23, which deals with topics including registered representatives, the enhanced tax compliance status system, administrative penalties for PAYE non-compliance, SARS concerns about the increase in complaints against tax practitioners and tax practitioners using the SARS call centre.**
 - Find the newsletter [here](#).

exchange control

- **Currency and exchanges manual for authorised dealers**
 - The Financial Surveillance Department of the South African Reserve Bank (“SARB”) issued an updated copy of the manual on 30 July 2021.
 - Find a copy [here](#).
- **Currency and exchanges manual for Authorised Dealers in foreign exchange with limited authority (“ADLA Manual”)**
 - The SARB issued an updated copy of the ADLA Manual on 30 July 2021.
 - Find a copy [here](#).

customs and excise

- **Customs and Excise Act | Notice R673 published in *Government Gazette No.44923 of 2 August 2021***
 - Amendment to Part 3 to Schedule No. 2, by the substitution of item 260.03/7318.15.39/01.08, in order to extend the safeguard measures on imports of screws fully threaded with hexagon heads made of steel at a rate of 25,61% – ITAC Report No. 668
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act | Notice R672 published in *Government Gazette No.44923 of 2 August 2021***
-

-
- Amendment to Part 3 to Schedule No. 2, by the substitution of item 260.03/7318.15.39/01.08, in order to extend the safeguard measures on imports of screws fully threaded with hexagon heads made of steel at a rate of 30,6% – ITAC Report No. 668
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act | Notice R671 published in *Government Gazette No.44923 of 2 August 2021***
 - Amendment to Part 3 to Schedule No. 2, by the substitution of item 260.03/7318.15.39/01.08, in order to extend the safeguard measures on imports of screws fully threaded with hexagon heads made of steel at a rate of 35,6% – ITAC Report No. 668
 - Find a copy of the Notice [here](#).
 - **Customs weekly list of unentered goods**
 - Find a copy [here](#).
 - **Customs and Excise Act**
 - The duty on the exportation of scrap metals is compulsory for imported, locally obtained or manufactured scrap metal effective, 1 August 2021. As of this date, certain ferrous and non-ferrous waste and scrap metals will be subject to an ad valorem duty rate.
 - Find a copy of the *Export Duty on Scrap Metal guide* [here](#).

international

- **The OECD published updated transfer pricing country profiles**
 - The updated profiles contain new information on countries' legislation and practices regarding the transfer pricing treatment of financial transactions and the application of the Authorised OECD Approach (AOA) to attribute profits to permanent establishments.
 - Find the updated profiles [here](#).
 - **The OECD published: New outcomes on the review of preferential tax regimes**
 - Find a copy of the report [here](#).
 - **On 11 August 2021, the Organisation for Economic Co-Operation and Development announced that Maldives, Papua New Guinea and Rwanda have signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters, bringing the total number of jurisdictions that participate in the Convention to 144.**
 - Find a link to the OECD media release [here](#).
 - **On 12 August 2021, the OECD announced that Barbados has joined the two-pillar plan to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate, bringing to 133 the total number of jurisdictions participating in the agreement.**
 - Find a link to the OECD media release [here](#).
-

The protection of your personal information is important to us

ENSafrica takes your privacy and the protection of your personal information very seriously and is committed to doing the right thing as underpinned by our [privacy policy](#) and values.

It is our understanding that you are receiving this communication because you are an esteemed client of our firm or have historically elected to opt-in to receive communications from us. If you no longer wish to receive communications from us, please [click here to unsubscribe](#) so we can ensure your details are removed from all our communication lists. Should you change your mind, you can subscribe to specific areas of interest using the following link <http://www.ensafrica.com/contact-us>.

We appreciate your ongoing support and interest.

ENS africa | Africa's largest law firm

info@ENSafrica.com | [ENSafrica.com](http://www.ensafrica.com)

[privacy statement](#) | [unsubscribe](#)

