

# ENSAfrica tax in brief

Below, please find issue 79 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) | *L'Avenir Wine Estate (Pty) Ltd v Commissioner for the South African Revenue Service* (16112/2021) [2022] ZAWCHC 28 (11 March 2022)**
  - This is an application brought by L'Avenir Wine Estate (Pty) Ltd, a wine producer (the "**Applicant**"), on an urgent basis.
  - The application was for the court to grant the Applicant orders permitting it to submit an income tax return for the period 1 April 2009 to 31 December 2009 and for the South African Revenue Service ("**SARS**"; "**the Respondent**") to thereafter assess it for that period.
  - The relevant factual background is as follows:
    - The Applicant applied to the Registrar of Companies twice to change the end of its "current financial year", firstly in 2006 to March ("**First Approval**"), and secondly in 2010 ("**Second Approval**") to December. Both applications were approved in the respective years.
    - According to the Applicant, the Second Approval took effect retrospectively for its 2009 tax year. According to SARS, however, the Second Approval applied only to the Applicant's 2010 tax year ("**Disputed Period**").
    - The Applicant adopted the position that SARS is obliged to assess the Disputed Period in the 2009 tax year, and SARS maintained that the Disputed Period should have been included in the 2010 tax year.
    - SARS would not agree to the Applicant either submitting a separate return for 2009 or to issuing reduced assessments for the 2009 and/or 2010 years.
    - Given the "refusal" by SARS to assess it for the Disputed Period, the Applicant asked for what its counsel described as a two-fold mandamus, ie, it does not seek a finding on the merits of its return, only that it be received and assessed by SARS.
    - The Applicant approached this court on an urgent basis for orders permitting it to submit an income tax return for the period 1 April 2009 to 31 December 2009 and for SARS to thereafter assess it for that period.
    - SARS submitted that there are fatal defects in the procedure adopted by the Applicant in approaching the court for a final, mandatory interdict.
  - The court had to determine:

- whether there are fatal defects in the procedure adopted by the Applicant in approaching the court for a final, mandatory interdict.
- The Tax Court considered, *inter alia*:
  - section 93(1)(a)(ii) of the Tax Administration Act, 2011 (“TAA”);
  - section 93(1)(d)(i) of the TAA; and
  - section 105 of the TAA.
- The Tax Court found in favour of SARS. In particular, the Tax Court supported SARS’ assertion that the parties are obliged to define the nature of the dispute in their papers, and that the court is duty bound to determine that dispute alone. The Tax Court also accepted that the relief sought as well as the factual foundation laid by the applicant is substantially dissimilar to that of a review.
- The application was dismissed with costs, including all reserved costs orders.

## customs and excise

- **Customs and Excise Act, 1964 | Tariff Amendment Notice R. 1888 published in *Government Gazette* No. 46054 of 17 March 2022**
  - Amendment to Part 1 of Schedule No. 2, by the insertion of various anti-dumping items under item 204.04, in order to impose anti-dumping duties on pasta originating in or imported from Egypt, Latvia, Lithuania and Turkey classifiable under tariff heading 1902.11 1902.19 – ITAC Report 669
    - Find a copy of this notice [here](#).
- **Customs and Excise Act | Tariff Amendment Notice R.1894 published in *Government Gazette* No. 45056 of 18 March 2022**
  - Imposition of provisional payment in relation to anti-dumping duties against the alleged dumping of laminated safety glass, classifiable under tariff subheading 7007.29, originating in or imported from the People’s Republic of China – ITAC Report 687
    - Find a copy of this notice [here](#).
- **Customs and Excise Act | Tariff Amendment Notice R.1893 published in *Government Gazette* No. 45056 of 18 March 2022**
  - Amendment to Part 3 of Schedule No. 6, by the substitution of Note 6, to give effect to the review of the diesel refund system
    - Find a copy of this notice [here](#).
- **Customs and Excise Act, 1964 | Rule Amendment Notice**
  - Amendment to rules under sections 7, 59A, 75 and 120 – Review of diesel fuel refund tax system (DAR230)
    - Find a copy of this notice [here](#).
- **Customs and Excise Act | Unentered Goods**
  - SARS published the customs weekly list of unentered goods
    - Find a copy of the list [here](#).
- **Customs and Excise Act | Prohibited and Restricted Goods List**
  - New tariffs were added to the existing list for Department of Mineral Resources and Energy.
    - Find the additional tariffs [here](#).

## SARS publications and other relevant info

- **Media Release | Launch of SARS multilingual tax terminology publication**
  - The Commissioner of SARS, Mr Edward Kieswetter, has committed the organisation to promoting the use of historically marginalised official languages in the tax and customs environment.
  - He was speaking at the launch of the SARS multilingual tax terminology publication which contains 450 terms in our all official languages (English already existing), namely Sesotho, Setswana, Sepedi, Tshivenda, Xitsonga, IsiNdebele, Siswati, IsiZulu, IsiXhosa and Afrikaans.
  - This list covers the wide spectrum of the financial terminology, such as tax, wills, and general financial business practices.
    - To see the full media statement, click [here](#).
- **Legal Counsel Publications | Tables of Interest Rates**
  - SARS updated the Tables of Interest Rates relating to outstanding taxes and tax refunds, as well as interest rates payable on credit amounts.
    - Find the updated Tables [here](#).
- **Employees' tax**
  - The Guide for Employers in respect of Employees Tax for 2023 has been updated to include the new table of rates per kilometre.
    - Find a copy of the guide [here](#).
- **SARS' eLogbook**
  - SARS' eLogbook for 2022/23 was published on 15 March 2022.
    - Find a copy of the Travel eLogbook [here](#).
- **Employees' allowances for 2023 year of assessment**
  - The Guide for Employers in respect of Fringe Benefits and the Guide for Employers in respect of Allowances have been updated in accordance with the 2022 National Budget Speech
    - Find a copy of the Guide for Employers in respect of Fringe Benefits [here](#).
    - Find a copy of the Guide for Employers in respect of Allowances [here](#).
- **e@syFile | Latest e@syFile version released**
  - The latest e@syFile version was released on Friday, 11 March 2022. The changes include an adjustment to manual capture validation where commas are present in demographics fields to align with import validation and the SARS PAYE BRS, an adjustment to EMP501 submission file structure to align Tax Directive field(s) with the SARS PAYE BRS and an adjustment to validation for source code 7007 in respect of tax years 2015, 2016, 2017 to align with the SARS PAYE BRS.
    - Find further detail [here](#).
- **Clarification document for AEOI (FATCA) Reporting TIN Codes**
  - The purpose of this document is to clarify the application of the supplied codes for the Taxpayer Identification Number (TIN) data fields for [Automatic Exchange of Information](#) (AEOI) and Foreign Account Tax Compliance Act (FATCA) submissions.
    - Find a copy of the document [here](#).
- **Government Connect newsletter | The latest Government Connect Newspaper Issue 3 is now available**

- The latest Government Connect Newsletter includes items on Budget 2022/2023, the revised SARS revenue estimate, the new once-off admin penalties for PIT, ETI values from 1 March 2022 and many more.
  - Find the latest issue [here](#).
- **Tax Practitioners' Connect | The latest Tax Practitioners Connect issue 30 is now available**
  - Find the latest issue [here](#).
- **Procurement | SARS Preferential Procurement Policy**
  - A new document, detailing SARS' Preferential Procurement Policy, was published on 23 March 2022.
  - The Policy has been developed to enable SARS to comply with section 217 (2) and (3) of the Constitution that makes it incumbent on organs of state to apply a system of preferential procurement and to do so in terms of national legislation (ie, the Broad-Based Black Economic Empowerment Act, 2003).
    - Find a copy of the Policy [here](#).

## international | OECD

- **Publications**
  - **Working paper regarding the taxation of part-time work in the OECD.**
    - This working paper presents new calculations of the effective tax rates on part-time work including those for male and female part-time workers and for different household types, based on the OECD's well-established Taxing Wages models.
      - Find the working paper [here](#).
  - **Report regarding Prevention of Tax Treaty Abuse**
    - Under the BEPS Action 6 minimum standard on treaty shopping, members of the OECD/G20 Inclusive Framework on BEPS have committed to strengthen their tax treaties by implementing anti-abuse measures. This report reflects the outcome of the fourth peer review of the implementation of the BEPS Action 6 minimum standard on treaty shopping.
      - Find the report [here](#).
  - **Press release regarding new results on the prevention of tax treaty shopping**
    - Outcomes from the latest peer review assessing the actions taken by 139 countries and jurisdictions to prevent tax treaty shopping show that progress continues with the implementation of international tax avoidance measures and that countries are respecting their commitments to implement the minimum standard on treaty shopping under Action 6 of the OECD/G20 BEPS Project.
      - Find the full press release [here](#).
- **Invitation for public input**
  - **New global tax transparency framework**
    - Public comments are invited on a new framework to provide for the reporting and exchange of information with respect to crypto-assets, as well as proposed amendments to the Common Reporting Standard for the automatic exchange of financial account information between

countries. The purpose of the consultation is to inform policy makers' decisions on the possible adoption of any such framework and its related design components.

- Deadline for input: **29 April 2022**
  - Find more information [here](#).

- **Events**

- **The 2022 OECD Global Anti-Corruption and Integrity Forum – A country perspective from South Africa**
  - Examining tax-related illicit financial flows and efforts to combat them: A country perspective from South Africa: Recent multilateral action has been a game changer in the fight against tax-related IFFs, with more than EUR112-billion of additional revenues collected. However, the broader IFF space is still poorly understood, and IFFs as a whole are poorly measured.
  - Drawing on current work between the OECD and the South African National Treasury, this session will discuss how countries can continue to fight IFFs, through information exchange and better use of data, improved interagency co-operation, and by improving the availability of data and analysis.
  - The event will take place on **1 April 2022**.
    - To register for this event, click [here](#).
- **Workshop | statement of outcomes**
  - Tax Inspectors Without Borders
  - Experts roundtable and stakeholders workshop: Tax administrations, experts, donors, and regional and international partners came together this month to discuss the initiative's progress to date, namely the expansion of activities into effective use of automatic exchange of financial account information, and the digitalisation of tax administrations programmes.
    - To view the statement of outcomes, click [here](#).

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