

ENSAfrica tax in brief

Below, please find issue 84 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 | *Commissioner for the South African Revenue Service v Louis Pasteur Investments (Pty) Ltd and Others (Mia Intervening)* (12194/2017) [2022] ZAGPPHC 321 (23 May 2022)**
 - This is an application to the High Court for leave to appeal an order which was granted placing Louis Pasteur Investments (Pty) Ltd (the "**First respondent**") under final winding up.
 - Held leave to appeal dismissed on the basis that "simply because a legal argument which is advanced, whatever its merit, has not been litigated and pronounced upon through every level of the judiciary, does not militate in favour of the granting of leave to appeal on its own".
 - Find a copy of the judgment [here](#).
- **The High Court of South Africa, Gauteng Division, Pretoria | *Lueven Metals (Pty) Ltd v the Commissioner for the South African Revenue Service* (31356/2021) [2022] ZAGPPHC 325 (19 May 2022)**
 - This is an application for a declaratory order to be issued for the zero-rating of gold with respect to the interpretation of section 11(1)(f) of the Value Added Tax Act, 1991 (the "**VAT Act**").
 - In terms of section 11(1)(f) of the VAT Act, the supply of gold to the South African Revenue Bank ("**SARB**"), the South African Mint Company (Pty) Ltd ("**MintCo**") or any registered bank (the "**Listed Entities**") in certain unwrought forms is zero-rated.
 - The applicant, Lueven Metals (Pty) Ltd sources gold from coins, second-hand jewellery and other similar sources which it supplies to the Listed Entities after the gold has been refined (the "**Applicant**").
 - The Commissioner for SARS (the "**Respondent**") argued that the gold supplied by the Applicant is not subject to zero-rating as a result of the proviso in section 11(1)(f) of the VAT Act, and in particular that the gold supplied by the Applicant should not have undergone a refining or manufacturing process other than the refining or manufacturing process for purposes of supply to the Listed Entities.
 - Held section 11(1)(f) of the VAT Act contains the following jurisdictional requirements for the supply of gold to be zero-rated for VAT purposes:
 - a supply to the SARB, Mintco or any bank registered under the Banks Act;
 - of gold;

- in the form of bars, blank coins, ingots, buttons, wire, plate, granules or in solution;
- which gold has not undergone any manufacturing process other than:
 - the refining thereof; or
 - the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution, and
 - the vendor has obtained and retained such documentary proof as the Commissioner may require to substantiate the vendor's entitlement to apply the zero-rate.
- The supply of gold that is derived from gold that had previously been refined and subsequently undergone any manufacturing process before being refined or manufactured in the prescribed eight unwrought forms for purposes of supply to the Listed Entities, is excluded from zero-rating.
- Held the Applicant's interpretation of section 11(1)(f) of the VAT Act is incorrect, and the application was dismissed with costs, including the costs of senior and junior counsel.
- Find the full article on this topic [here](#).
- Find a copy of the judgment [here](#).

legislation and draft legislation

- **Tax Administration Act, 2011 ("TAA") | Notice regarding persons to submit income tax returns for the 2022 tax year**
 - The public notice, scheduled for publication in the *Government Gazette* on 3 June 2022, relates to the notice in terms of section 25 of the TAA, read with section 66(1) of the Income Tax Act, 1962, specifying the persons to submit income tax returns for the 2022 tax year and the periods for submission.
 - Find a copy of the notice [here](#).

tax rulings

- **Binding Private Ruling 373 | STT Treatment of the Proposed Transfer of Listed Shares to the Applicant in order to Hedge its Exposure under Over-the-Counter Derivative Transactions**
 - This ruling determines whether the transfer of the beneficial interest in listed shares, to the applicant to hedge its exposures under intra-group over-the-counter derivative transactions entered into directly with the foreign broker, will be exempt from securities transfer tax.
 - Find a copy of this ruling [here](#).
- **Binding Private Ruling 374 | Determination of Group of Companies**
 - This ruling determines the manner in which the definition of "group of companies" in terms of the Income Tax Act should be applied.
 - Find a copy of this ruling [here](#).
- **Binding Class Ruling 079 | Cancellation of Share Exchange**

- This ruling determines the tax consequences for former investors in one investment vehicle, who exchanged their participating shares for participating shares in another, who now wish to cancel the original share exchange and to be restored to the position they would have been in, had the share exchange not happened.
- Find a copy of this ruling [here](#).

Updates regarding strike action at SARS

- **Media Statement | Negotiations between SARS and Organised Labour**
 - The leadership of SARS met with the Organised Labour represented by the National Education Health and Allied Workers Union (NEHAWU) and Public Servants Association of South Africa (PSA) to find a resolution to the matters on which the unions declared a dispute.
 - Find the media statement [here](#).
- **Announcement | Impact on Traders and Travellers – SARS Wage Negotiation Dispute and Declared Industrial Action**
 - SARS and its recognised trade unions, ie, National Education Health and Allied Workers Union and the Public Servants Association of South Africa, are in dispute on its 2022/23 wage negotiations process.
 - The high impact for traders and travellers will likely be felt at the following ports:
 - Limpopo
 - Beit Bridge
 - Groblers Bridge
 - Mpumalanga
 - Lebombo
 - Oshoek
 - Free State
 - Maseru
 - Northern Cape
 - Vioolsdrift
 - North West
 - Kopfontein
 - KwaZulu Natal
 - Golela
 - Find a copy of the announcement [here](#).
- **Announcement | SARS strike impact on customs will be updated daily at 8:00, 12:00 and 17:00**
 - Find the customs and excise landing page [here](#).
- **Media Release | SARS remains operational despite strike**
 - SARS has noted that Organised Labour has opted to embark on an industrial action.
 - SARS appeals to labour to remain peaceful in their protest and to respect picketing rules as specified in the CCMA Picketing Rules issued.
 - Find the media release [here](#).

- **Email to RCBs | Contact centre Update**
 - SARS has opened all contact centre queues and is servicing practitioners and SMME queries.

General

- **Invitation to the PAYE webinar for SMMEs | PAYE webinar for SMME taxpayers and traders**
 - SARS hosted a PAYE webinar with Small, Medium and Micro Enterprises (SMMEs) taxpayers and traders on Thursday, 26 May 2022.
 - To watch the webinar, click [here](#).
- **Legal Counsel | Tables of interest rates in respect of rates at which interest-free or low-interest loans are subject to income tax**
 - The Tables of Interest Rates in Respect of Rates at Which Interest-free or Low-Interest Loans are Subject to Income Tax have been published.
 - Find a copy [here](#).
- **Announcement | Filing season**
 - In preparation for the opening of the Personal Income Tax Filing Season in July 2022, between the period of 4 June 2022 until the opening of Filing Season, there is a possibility that the prepopulated data reflected within Personal Income Tax or Provisional Tax returns requested via eFiling, the SARS Mobi application or via a SARS Branch Office during this period, will pre-populate but may not be comprehensive until Filing Season is officially opened to the public.
 - Find the announcement [here](#).
- **Announcement | Mobile tax units**
 - The June Western Cape schedule for mobile tax units has been published.
 - Find a copy of the schedule [here](#).
- **Media Release | SARS reminds trusts of their duty to register for income tax purposes**
 - SARS advises representative taxpayers of trusts of their duty to register trusts for income tax purposes.
 - Find the media release [here](#).
- **Media release | Trade statistics for April 2022**
 - SARS released trade statistics for April 2022 recording a preliminary trade balance surplus of R15.49 billion attributable to exports of ZAR151.79-billion and imports of ZAR136.30-billion.
 - Find the link to the full trade statistics media release [here](#).
- **Third-party data submissions for the 2022 recording period closed**
 - Third-party data submissions for the 2022 reporting period of annual third party data returns that includes associated data files and declarations (IT3(b), IT3(c), IT3(s), MED, INS, FTI) closed on **31 May 2022**.
 - Third-party data providers are urged to make timely submissions, as incomplete, late or non-submission may be liable for penalties and would impact respective clients. Data submissions must be complete and accurate as this data is directly input into the SARS processes that include pre-population and auto-assessments of tax returns.
 - If any third-party data provider's data submissions are still outstanding, third-party data providers are urged to urgently submit the respective data files

and declarations without further delay, as incomplete, late or non-submission may be liable for penalties and would impact respective clients.

- Find a link to more detail about third party data submissions [here](#).
- **PAYE annual reconciliation declaration submissions (EMP501) closed**
 - The annual reconciliation declaration (EMP501) submissions closed on **31 May 2022**.
 - Employers who have not yet submitted their annual reconciliation declarations can still submit their EMP501 declarations but must note that administrative penalties will be charged.
 - Find a link to more information on administrative penalties [here](#).
- **The May 2022 issue of the *Tax Practitioner Connect* (Issue 32) newsletter is now available**
 - Find a link to the latest *Tax Practitioner Connect* (Issue 32) [here](#).

customs and excise

- **Customs and Excise Act, 1964 | Customs weekly list of unentered goods**
 - SARS published the customs weekly list of unentered goods.
 - Find a copy [here](#).
- **Customs and Excise Act | Customs weekly list of unentered goods**
 - SARS published the customs weekly list of unentered goods.
 - Find a copy [here](#).
- **Customs and Excise Act | Tariff amendment notices published in *Government Gazette* 46465**
 - Notice R.2124 - Part 5A of Schedule No. 1, to extend the date of the reduction of R1.50 per litre of the general fuel levy for petrol from ZAR3.85/l to ZAR2.35/l and diesel from ZAR3.70/l to ZAR2.20/l, as announced by the Minister of Finance on 31 March 2022.
 - Find a link to the notice [here](#).
 - Notice R.2125 - Part 3 of Schedule No. 6, as a consequence of the extension of the date of the reduction of the general fuel levy, as announced by the Minister of Finance on 31 March 2022; the diesel refund provisions are adjusted accordingly.
 - Find a link to the notice [here](#).
 - The amendments are with effect **from 6 April 2022 up to and including 5 July 2022**.

international

- **OECD | Public consultation meeting on the crypto-asset reporting framework and amendments to the common reporting standard**
 - The OECD is seeking public input on the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard. This public consultation meeting focused on the key questions identified in the consultation document and issues raised in the written submissions received as part of the consultation process. This event was open to the public and

media (media accreditation was required for in-person participation). The interpretation was provided in English and French. The event was recorded.

- Find the recording [here](#).
- **OECD | Labour taxation rebounding as global economy recovers from COVID-19 pandemic**
 - Effective tax rates on labour rebounded in 2021 as the global economy recovered and many countries began withdrawing or scaling back measures implemented in response to the COVID-19 pandemic, according to a new OECD report.
 - Find more information [here](#).
- **OECD | Tax challenges arising from digitalisation: public comments received on the regulated financial services exclusion under amount A of Pillar One**
 - On 6 May 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 “Regulated Financial Services Exclusion” under Amount A of Pillar One to assist members in further refining and finalising the relevant rules.
 - Find more information [here](#).
- **OECD | China deposits an instrument for the approval of the Multilateral BEPS Convention**
 - China has deposited its instrument of approval for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers over 1 820 bilateral tax treaties, thus underlining its strong commitment to preventing the abuse of tax treaties and base erosion and profit shifting (BEPS) by multinational enterprises. China's instrument of approval also covers Hong Kong (China)'s bilateral tax treaties. The Convention will enter into force on 1 September 2022 for China.
 - On 1 June 2022, over 880 treaties concluded among the 76 jurisdictions which have ratified, accepted or approved the BEPS Convention will have already been modified by the BEPS Convention. Around 940 additional treaties will be modified once the BEPS Convention will have been ratified by all signatories.
 - Find more information [here](#).
- **OECD invited all interested parties to provide input on the tax certainty aspects of Amount A under Pillar One**
 - 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 is seeking public comments on two consultation documents relating to tax certainty: a *Tax Certainty Framework for Amount A and Tax Certainty for Issues Related to Amount A under Pillar One* (that can be found [here](#)).
 - To facilitate public comments, the Inclusive Framework on BEPS has agreed to release the public consultation documents on Tax Certainty Framework for Amount A (that can be found [here](#)).
 - The instructions for submitting comments can be found in each consultation document (referred to above). Commentators are asked to submit comments

separately for each consultation document, and not to combine them into a single submission.

- All interested parties are invited to send their written comments no later than **10 June 2022**.

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