

# ENSAfrica tax in brief

Below, please find issue 85 of ENSAfrica's tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- **The Supreme Court of Appeal | The Commissioner for the South African Revenue Service and Others v Dragon Freight (Pty) Ltd and Others (751/21) [2022] ZASCA 84 (7 June 2022)**
  - The main issue in this appeal concerns the lawfulness of a decision taken by the Commissioner for the South African Revenue Service (the “**Commissioner**” or “**SARS**”), to seize 19 containers of clothing (the goods), in terms of section 88(1)(c) of the Customs and Excise Act, 1964.
  - The goods were seized on the basis that the respondents had under-declared the price actually paid for the goods when sold for export to South Africa.
  - The respondents alleged that the decision to detain the goods was reviewable on “**any and all the grounds**” in section 6(2) of the Promotion of Administrative Justice Act, 2000 (“**PAJA**”).
  - A related issue is whether the respondents complied with section 96(1) of the Customs and Excise Act, which prohibits the institution of legal proceedings against the Commissioner, unless the litigant delivers a written notice setting out its cause of action at least one month before instituting those proceedings.
  - The court considered, *inter alia*:
    - sections 65, 66, 88(1)(a) and 96(1) of the Customs and Excise Act; and
    - sections 5 and 6(2) of PAJA.
  - The court noted that once the impugned decision had been taken, the separate issue of detention was rendered moot. Thus, the only relevance of the detention relief concerns the question of costs, but in the present case, there is no basis for a separate costs award in relation to that relief.
  - The court found that the challenge to the impugned decision on the grounds that the Commissioner was biased or that the decision was taken for an ulterior purpose, has no basis in the evidence. The decision is one that any reasonable decision-maker could reach.
  - With regards to the related issue of the section 96(1) notice, the respondents did not deliver a section 96(1) notice of their intention to review the impugned decision. Instead, they relied on a notice by Dragon Freight to SARS dated 17 February 2020 (the “**February notice**”), of its intention to bring legal proceedings against SARS.

- The court held that the February notice did not comply with s 96(1)(a)(i) of the Customs and Excise Act, in that it did not, and could not, explicitly set out a cause of action because the impugned decision had not yet been taken.
- The appeal was thus upheld with costs.
- Find a copy of the judgment [here](#).

## SARS publications

- **Media release | SARS seizes 11 falsely declared containers**
  - SARS, through its Customs & Excise National Rapid Response Team, seized 11 falsely declared consignments made up of clothing that were presented as shoes with a total prejudice to the fiscus to the value of ZAR3-million.
  - Find the link to the media release [here](#).
- **Media release | SARS and the Department of Trade Industry and Competition (“DTIC”) donate tonnes of seized clothing, blankets and footwear to flood victims**
  - SARS and the DTIC have joined forces to donate tonnes of seized clothing, blankets and footwear to flood victims in KwaZulu-Natal, Eastern Cape, North West, and the Free State provinces.
  - Find the link to the media release [here](#).
- **Legal Counsel | Legal Counsel Publications | Average Exchange Rates**
  - SARS has published a list of the average exchange rates of selected currencies for a year of assessment as from December 2003 and a list of the monthly average exchange rates to assist a person whose year of assessment is shorter or longer than 12 months.
  - Find the link to the lists [here](#).
- **Legal Counsel | Preparation of Legislation | Draft Documents for Public Comment**
  - SARS has published a draft Interpretation Note on persons not eligible to register as a tax practitioner and deregistration of registered tax practitioners for tax non-compliance.
  - The due date for public comment is 1 July 2022.
  - Find the link to the draft interpretation note [here](#).
- **Invitation to a webinar on activation of Registered Representatives**
  - SARS hosted a webinar on 9 June for recognised Controlling Bodies and tax practitioners, on the registered representative function as it applies to taxpayers whose tax affairs are managed by tax practitioners.
  - The following subjects were discussed:
    - Registered representative functions on eFiling
    - Updating and correcting registered representative information on eFiling
    - Personal information about who can be a registered representative

## customs and excise

- **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 notice published in *Government Gazette***
  - Part 1 of Schedule No. 2 by the deletion of item 205.01/2523.29/02.06 and substitution of items 205.01/2523.29/01.06 and 205.01/2523.29/05.06 in order to impose anti-dumping duty on Portland cement originating in or imported from Pakistan.
    - Find the notice [here](#).
  - Amendment to Part 3 of Schedule No. 6, as a consequence to the increase in the rate of the general fuel levy; the diesel refund provisions are adjusted accordingly.
    - With effect from 3 August 2022.
    - Find the notice [here](#).
  - Amendment to Part 5A of Schedule No. 1, by the increase in the rate of the general fuel levy from ZAR3.10/l to ZAR3.85/l for petrol and for diesel from ZAR2.95/l to ZAR3.70/l, respectively.
    - With effect from 3 August 2022.
    - Find the notice [here](#).
  - Amendment to Part 3 of Schedule No. 6, as a consequence to the increase in the rate of the general fuel levy; the diesel refund provisions are adjusted accordingly.
    - With effect from 6 July 2022 up to and including 2 August 2022.
    - Find the notice [here](#).
  - Amendment to Part 5A of Schedule No. 1, by the increase of 75 cents per litre in the rate of the general fuel from ZAR2.35/l to R3.10/l levy for petrol and from ZAR2.20/l to ZAR2.95/l for diesel, respectively.
    - With effect from 6 July 2022 up to and including 2 August 2022.
    - Find the notice [here](#).
- **Charter and Passenger Cargo**
  - Following further discussions with the South African Express Parcel Association, the South African Association of Freight Forwarders, and the Air Cargo Committee, SARS will make the following codes available for use in respect of Charter Cargo not transported under a Master Air Waybill or Master Bill of Lading as well as for Passenger Carried Cargo.
    - ZCH – Charter Cargo (No Master Air Waybill/Master Bill of Lading)
    - ZCP – Passenger Carried Cargo
  - For more information, see letter to the trade industry [here](#).

## international

- **OECD releases new transfer pricing profiles for Egypt, Liberia, Saudi Arabia and Sri Lanka**
  - These country profiles focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours and other implementation measures.

- The information contained in these profiles is intended to clearly reflect the current state of countries' legislation and to indicate to what extent their rules follow the *OECD Transfer Pricing Guidelines*.
- Find more information [here](#).
- **OECD workshop on the establishment and operation of effective exchange of information units**
  - The Global Forum Secretariat jointly organised a workshop on the establishment and operation of effective exchange of information (“EOI”) units from 23 to 25 May 2022, in collaboration with the *Cercle de Réflexion et d’Échange des Dirigeants des Administrations fiscales* and the *Office Togolais des Recettes*.
  - Participants discussed strategies for building effective EOI infrastructures, key steps in establishing and managing an EOI function, as well as insights from Global Forum peer reviews.
  - Find more information [here](#).
- **On 10 June 2022, the OECD announced that the ministers, on behalf of the OECD members, assembled on 9-10 June 2022 for the annual OECD Ministerial Council Meeting under the leadership of Italy as MCM Chair, and with Mexico and Norway as Vice Chairs, under the theme of “The Future We Want: Better Policies for the Next Generation and a Sustainable Transition”.**
  - The Ministerial Council Meeting is the OECD’s highest-level forum, attended by ministers of finance, economy, foreign affairs, trade and other government departments from the organisation’s members and partner countries, as well as by representatives of other international organisations.
  - Find a link to the final statement from the Ministerial Council meeting [here](#).
- **On 14 June 2022, the OECD announced that a new OECD report has been published, “Tax Transparency in Africa 2022”, which documents Africa’s latest progress in tackling tax evasion and other illicit financial flows through transparency and exchange of information (“EOI”) for tax purposes.**
  - Find a link to the OECD media release [here](#).
- **On 15 June 2022, the OECD announced that on 27 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 tax certainty aspects under Amount A of Pillar One to assist members in further refining and finalising the relevant rules, and the OECD has since published the public comments received, in this regard.**
  - Find a link to the OECD media release [here](#).

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