

ENSafrica tax in brief

Below, please find issue 86 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **Supreme Court of Appeal | *Commissioner for the South African Revenue Service v Capitec Bank Limited (94/2021) [2022] ZASCA 97***
 - The appellant, the Commissioner for the South African Revenue Service (“**Commissioner**” or “**SARS**”), appealed the judgment and order of the Tax Court, Cape Town, which upheld an appeal to it by the respondent, Capitec Bank Limited, against the additional value-added tax (“**VAT**”) assessment raised by SARS for the November 2017 VAT return. In terms of the assessment, SARS disallowed an amount of ZAR71 520 811.85 (“**Amount**”) claimed by Capitec as a notional input tax deduction.
 - On 15 February 2018, SARS issued a VAT assessment in terms of which it disallowed the Amount claimed by Capitec on the basis that it did not qualify for a deduction in terms of section 16(3)(c) of the VAT Act, 1991 (“**VAT Act**”). Additionally, SARS also levied a 10% late payment penalty for the resultant understatement of Capitec's VAT liability.
 - The input tax deduction that Capitec had claimed related to its unsecured lending business, in terms of which Capitec advanced credit in the form of personal loans to customers under term loan contracts. In terms of clause 13 of a standard loan contract entered between Capitec and its customers, Capitec provided its customers with loan cover, the proceeds of which were applied to settle or reduce the outstanding loan amount due to Capitec in the event of the customer's death or retrenchment.
 - During the VAT period from November 2014-2015, Capitec claimed ZAR71 520 811.85 as a deduction, which constituted the tax fraction of the total insurance pay-outs (ZAR582 383 753.66) recovered by Capitec from its insurers and which Capitec used to settle the outstanding loans owed by its customers with respect to the loan cover.
 - The main issue in this appeal was whether the tax fraction of the loan cover pay-outs qualified for a deduction in terms of section 16(3)(c) of the VAT Act. The determination of this issue was largely dependent on whether the loan cover was a taxable supply, ie, whether it was supplied in the course or furtherance of an enterprise.
 - According to SARS, the loan cover payments did not qualify for an input tax deduction in terms of section 16(3)(c) of the VAT Act because the supply of the loan cover did not constitute a “taxable supply”. SARS contended that since Capitec did not charge any consideration for the loan cover, and

because the loan cover was supplied during Capitec's business of providing credit to its customers, it was an "exempt supply".

- In contrast, Capitec contended that since the borrower had to pay interest and fees, consideration was provided for the loan cover, and alternatively that, even if the loan cover was for no consideration, it still levied a fee, termed a "taxable supply", in terms of section 10(23) of the VAT Act. Furthermore, Capitec contended that although it does not charge a distinct fee for its loan cover, the loan cover was integral to its unsecured lending business, and thus generating both interest income and fee income and that the cost of providing the loan cover was recovered through that income.
- Capitec was driven to concede that the customers of Capitec did not pay any consideration for the loan cover. Capitec made an exempt supply of credit available to its clients, which was not deductible, and all other activities involved in doing so were incidental to the supply of credit because the supply of the loan cover was not a taxable supply in terms of section 16(3)(c) of the VAT Act. On this basis, the Supreme Court of Appeal ("SCA") held that the tax fraction of the loan cover pay-outs did not qualify for the deduction. Consequently, the main question in this appeal was answered in favour of SARS.
- The SCA also dealt with the matter of the penalty levied on Capitec. In terms of section 213 of the TAA, read with section 39(1) of the VAT Act, SARS levied a 10% penalty on Capitec for the underpayment of VAT arising from the deduction of notional input tax in respect of the loan cover pay-outs. Section 217(3) of the TAA provides for the remission of penalties if certain requirements are met. It was the first time a penalty had been imposed by SARS on Capitec in the three years preceding the relevant VAT return. The SCA was of the view that there were reasonable grounds for Capitec claiming the deduction. Capitec had obtained a favourable opinion from a senior counsel, and the only way that Capitec could reasonably test the issue was to claim the deduction in its tax return. The SCA held that in such circumstances, the penalty should be remitted, as it cannot be said that the contesting of the amount was unreasonable.
- The appeal was dismissed with costs.
- Find a copy of the judgment [here](#).
- **SCA | *Rennies Travel (Pty) Ltd v SARS (207/2021) [2022] ZASCA 83***
 - The appellant, Rennies Travel (Pty) Ltd, conducts a travel agency enterprise. Part of its business is to make arrangements for the international travels of its clients, including the sale of airline tickets for international flights. The appellant derives income in respect of this part of its business from three contractual sources, namely: a service fee charged to the client; a flat rate charged to the relevant airline in respect of the sale of an international airline ticket ("**standard commission**"); and additional or increased commission charged to the airline in the event of the appellant reaching targets of international airline ticket sales agreed with the airline ("**supplementary commission**").
 - The respondent, SARS, determined that the appellant was liable for the payment of VAT on the supplementary commission that it had earned during the period from February 2012 to December 2016 and accordingly issued additional VAT assessments to the appellant.

- The appellant maintained that the supplementary commission had been earned in respect of a supply of services that attracted VAT at zero percent (zero-rated) under the VAT Act.
- The court considered, *inter alia*:
 - Sections 1; 7(1)(a); 10; 11(2)(a) and (d) of the VAT Act.
- In the Tax Court, it was submitted that the supplementary commission was an incentive for meeting certain sales targets. The SCA held, however, that the supplementary commission was earned for the same supply of services as the standard commission, being the arranging of the transport of international passengers. The fact that the same services gave rise to more than one type of consideration could not alter the nature of the services.
- Accordingly, the SCA held that the supplementary commission should be zero-rated under section 11(2) of the VAT Act.
- The appeal was upheld with costs.
- Find a copy of the judgment [here](#).
- **SCA | Commissioner for the South African Revenue Service v Candice-Jean van der Merwe (211/2021) [2022] ZASCA 106**
 - This is an appeal against the order and judgment of the majority of the full court of the Western Cape Division of the High Court, Cape Town, in terms of which the High Court upheld an appeal against a judgment of the Tax Court, Cape Town.
 - The taxpayer had approached the Tax Court under Rule 56(2) of the Tax Court rules published in terms of section 103 of the Tax Administration Act, 2011 (“Rules” and “TAA”) seeking a default judgment against SARS based on SARS’ alleged failure to file a statement disclosing its grounds for dismissing the taxpayer’s objection to the additional income tax assessment raised by SARS in February 2016 concerning the 2014 year of assessment.
 - The taxpayer also sought an order reducing the additional assessment to nil, and an order compelling SARS to repay amounts that the taxpayer had already paid to SARS.
 - The Tax Court dismissed the application for default judgment on the basis that the jurisdictional requirements for an application in terms of Rule 56(2) were not satisfied, insofar as the taxpayer’s Rule 56 application was not preceded by a valid objection and valid notice of appeal.
 - The taxpayer was successful in appeal to the High Court.
 - The SCA considered, *inter alia*:
 - Rules 31; 52; and 56(2);
 - Sections 9; 95(3); 103; and 129(2) of the TAA.
 - Held that the Tax Court’s finding that the taxpayer’s Rule 56 application was not preceded by a valid objection and valid notice of appeal is unassailable. The Tax Court was entitled to make that finding even on an unopposed basis.
 - The appeal was upheld with costs
 - Find a copy of the judgment [here](#).

- **Legal Counsel | Interpretation Note 121 in respect of the deduction of media lump sum payments**
 - Find the link to the Interpretation Note [here](#).
- **Legal Counsel | Regulations on domestic reverse charge relating to valuable metal, issued in terms of section 74(2) of the Value-Added Tax Act, 1991.**
 - Find the link to the Regulations [here](#).
 - Find the link to the Explanatory Memorandum [here](#).
- **Legal Counsel | VAT Notices**
 - The value-added tax notice, scheduled for publication in the Government Gazette, relates to the amendments to Paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, as a consequence of the amendment in Part 1 of Schedule No. 4 to the Customs Act, 1964, to include licensed customs and excise storage warehouses as places where diplomats may be able to obtain new motor vehicles.
 - Find a copy of the notice [here](#).
- **Income Tax Guides**
 - Guide on Income Tax and the Individual (2021/22).
 - Find a copy of the Guide [here](#).
 - Tax Exemption Guide for Companies Wholly Owned by Institutions, Boards or Bodies.
 - Find a copy of the Guide [here](#).
 - Tax Exemption Guide for Institutions, Boards or Bodies.
 - Find a copy of the Guide [here](#).
- **Tax Administration Act, 2011 | Public notice in terms of section 23(f) with regards to communication of changes in particulars**
 - Find a copy of the notice [here](#).
- **Value-Added Tax Act, 1991 | Publication details for VAT notice R2185, as published in *Government Gazette* 46589 on 24 June 2022**
 - Find a copy of the notice [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 | Tariff amendment notices published in the *Government Gazette***
 - Amendment to Part 3 of Schedule No. 6, in order to correct typographical errors to the Diesel Refund Notes published in the *Government Gazette* on 18 March 2022
 - Find the notice [here](#).
 - Amendment to Parts 1B and 1C of Schedule No. 6, by the substitution of the wording “under customs supervision” wherever it appears with “under the supervision of an officer”
 - Find the notices [here](#) and [here](#).
 - Amendment to Schedule No. 5 by the substitution of Note 13, in order to delete the reference to “refund of the customs duty specified in refund item

533.00”, as refund item 533.00 has been deleted and the reference to this item has become redundant

- Find the notice [here](#).
- Amendment to Part 1 of Schedule No. 3, by the insertion and deletion of rebate items 320.04/5512.19.90/01.08 and 320.04/5512.19/01.06, respectively
 - Find the notice [here](#).
- Amendment to Part 3E of Schedule No. 1, by the deletion of environmental levy item 153.01.09/8701.30 and substitution of several items
 - Find the notice [here](#).
- Amendment to Part 2B of Schedule No. 1, by the substitution of the descriptions of item number 124.05/8415.10, to align the header description with the header description of subheading 8415.10 as it appears in Schedule No. 1 Part 1
 - Find the notice [here](#).
- Amendment to Part 1 of Schedule No. 1, by the substitution of certain Notes and insertions of new 8-digit tariff subheadings under several Chapters in Part 1 of Schedule No. 1, to implement technical and other miscellaneous amendments
 - Find the notice [here](#).
- Amendment to Part 1 of Schedule No. 1, to correct some minor errors that occurred during HS 2022 implementation
 - Find the notice [here](#).
- Amendment to Part 1 of Schedule No. 4, by the substitution of rebate items 406.02, 406.02/00.00/01.00, 406.03, 406.03/00.00/01.00, 406.04, 406.04/00.00/01.00, 406.05, 406.05/00.00/01.00, 406.07 and 406.07/00.00/01.00, to allow diplomats and other foreign representatives to purchase imported new motor vehicles from a customs and excise storage warehouse
 - Find the notice [here](#).
- Amendment to Part 2 of Schedule No. 6, by the substitution of rebate item 631.00 000.00.00 01.00 to allow diplomats and other foreign representatives to purchase new motor vehicles from a customs and excise manufacturing warehouse
 - Find the notice [here](#).
- **Customs and Excise Act | Registration and Licensing Designation**
 - The reference to SC-CF-23 has been removed since the manual has been withdrawn and SC-CF-19-A02 has been updated to insert the following two (2) facilities licensed:
 - V5 – Senator International Logistics (Pty) Ltd
 - AF – Trans-Med Shipping (Pty) Ltd.
 - The facility N6 for SG Agility (Pty) Ltd has been deleted since the facility has been cancelled.
 - Find the updated document [here](#).
- **Customs and Excise Act | Excise essential guide for small businesses**
 - Excise essential guide for Small Businesses is now available in all official languages:
 - Find a copy of the Excise Traders Leaflet [here](#).

- **Customs and Excise Act | Customs Letter to Trade | Discontinuation of General Codes | Extension**
 - It was previously advised that SARS, in consultation with the South African Express Parcel Association (SAEPA), the South African Association of Freight Forwarders (SAAFF), and the Air Cargo Operators' Committee (ACOC), have agreed to discontinue the Non-Registered Cargo Reporter Code "ZZZ99999" from 1 June 2022, and the Ex Courier-Code "000" from 20 June 2022.
 - To increase tax compliance, the expiry date in respect of both the above codes will be extended to 31 July 2022.
 - Find a copy of the letter to trade [here](#).
- **Customs and Excise Act | Rule Amendments 2022**
 - Customs and Excise Act, 1962: Rule amendment notice R2189, as published in *Government Gazette* 46589 on 24 June 2022, relating to amendments to rules under section 120 – Amendment to the official hours of attendance and the hours of business at Kosi Bay (DAR234).
 - Find a copy of the notice [here](#).
- **Customs and Excise Act | Publication details for Rule amendment notice R2188, as published in *Government Gazette* 46589 on 24 June 2022, are now available**
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1962: Publication details for Tariff Amendment notices R2186 and R2187, as published in *Government Gazette* 46589 on 24 June 2022, are now available**
 - Find a copy of the notice R2186 [here](#).
 - Find a copy of the notice R2187 [here](#).

international

- **OECD | Tax Administration 2022 – Comparative Information on OECD and other Advanced and Emerging Economies**
 - This report is the tenth edition of the OECD's Tax Administration Series. It provides internationally comparative data on global trends in tax administrations across 58 advanced and emerging economies. The report is intended to inform and inspire tax administrations as they consider their future operations, as well as to provide information on global tax administration trends and performance for stakeholders and policy makers. The report is structured around nine chapters that examine the performance of tax administration systems, using an extensive data set and a variety of examples to highlight recent innovations and successful practices.
 - This edition also provides a first glimpse of the impact of the COVID-19 pandemic on the work of tax administrations. The underlying data comes from the International Survey on Revenue Administration and the Inventory of Tax Technology Initiatives.
 - Find a copy of the Report [here](#).
- **OECD | Republic of the Congo joins international fight against tax evasion as 165th Global Forum member**
 - The Republic of the Congo ("Congo") joins the international fight against tax evasion by becoming the 165th member – and 34th African member – of the Global Forum on Transparency and Exchange of Information for Tax

Purposes. The country's decision to join the Global Forum was made public on the last day of the 11th meeting of the Africa Initiative, which was held in Nairobi, Kenya, from 14 to 16 June 2022.

- Find more information [here](#).

- **OECD | COVID-19 accelerated the digital transformation of tax administrations**
 - Tax administrations continued to deliver quality services for taxpayers during the COVID-19 pandemic, including in many cases delivering wider government support measures, while collecting EUR12.1-trillion in 2020, according to new data from 58 OECD and other advanced and emerging economies.
 - Find more information [here](#).
 - The pandemic accelerated the shift to digital services with a 30% increase in digital contacts in 2020. Digital channels are now dominating interactions with taxpayers, with around 1.3 billion contacts via online taxpayer accounts, and more than 30-million contacts via chatbots.
 - Find a copy of the Report [here](#).

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