

# ENSAfrica tax in brief

Below, please find issue 92 of ENSAfrica's tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- [Samsung Electronics SA \(Pty\) Ltd v The Commissioner for the South African Revenue Services 126](#) (28 September 2022)
  - This appeal relates to a tariff determination of a Samsung Galaxy S7 (the “product”), of which Samsung Electronics SA (Pty) Ltd (the “**Appellant**”), is the importer.
  - On 27 September 2017, the South African Revenue Service (the “**Commissioner**”; “**SARS**”) notified the Appellant that the product was to be classified under TH 8517.62.90 as “machines for the reception, conversion and transmission or regeneration of voice, images or other data” (the first determination).
  - The effect of the first determination meant that the product attracted no ad valorem duty upon importation.
  - Section 47(9)(d)(i)(bb) of the Customs & Excise Act, 1964 (“**Customs and Excise Act**”) empowers the Commissioner to amend or withdraw any determination, if it was made in error, and make a new determination.
  - On 20 November 2017, the Commissioner notified the Appellant that he was considering withdrawing the first determination with retrospective effect.
  - On 11 April 2018 SARS withdrew the determination and issued the second determination that the product would be classified under tariff heading TH8517.12.10 as “telephones for cellular networks or for other wireless networks, designed for use when carried in the hand or on the person.”
  - The Appellant unsuccessfully appealed against the second determination. Further appeal was granted to this court.
  - The matter was taken on appeal to the High Court which had to determine:
    - whether, prior to 1 April 2018, the product was correctly classifiable under 4 TH8517.62.90 (as contended by the appellant) or TH8517.12.10 (as contended by SARS)
  - The High Court considered:
    - Section 47(9)(a)(i)(aa) of the Customs and Excise Act
    - Section 47(9)(d)(i)(bb) of the Customs and Excise Act
  - The High Court held the following:
    - The fact that the product can connect to the Internet and browse the Internet like a computer, either over a cellular network or WLAN (Wireless Local Area Network) does not make it more like a traditional laptop or desktop computer with which it shares Internet browsing functionality.
    - the most appropriate heading at the time of the determination was TH8517.12.10.
    - the court held that the conclusion reached by the high court that the respondent's second determination is correct, is inescapable.
    - the appeal is dismissed with costs, including those of two counsels.

- Find a copy of the case [here](#).

## customs and excise

- Customs RLA: Required supporting documents when applying for a customs client type
  - Reminder of the required supporting documents when applying for a customs client type.
  - Find a copy [here](#).
- Customs and Excise Act 91 of 1964 (“**Customs and Excise Act**”) | Tariff Amendment Notice R.2605 as published in *Government Gazette*
  - the General Notes in Schedule No. 1, by the deletion of the references in Note O.1 pertaining to “Arab Republic of Egypt” and “Democratic Republic of Sao Tome and Principe”, the date of implementation and phasedown period applicable to these two countries (with retrospective effect from 1 January 2021).
  - Find copy of the notice [here](#).
- Customs and Excise Act | Tariff Amendment Notice R.2576 as published in *Government Gazette* 4725
  - Relates to the amendment to the rules under sections 44 and 120 – Amendment to rule 00.05, insertion of rule 44.05 and substitution of forms SAD 502 and SAD 505 in the Rules to the Customs and Excise Act, 1964 (DAR240)
  - Find a copy of the notice [here](#).
  - Find a copy of the SAD 502 [here](#).
  - Find a copy of the SAD 505 [here](#).
- Customs and Excise Act | Tariff Amendment Notice R.2575 as published in *Government Gazette*
  - Part 1 of Schedule no. 2 by the substitution of anti-dumping item 215.02/7324.10/03.06, in order to give effect to the name-change of the manufacturer/exporter excluded from the payment of anti-dumping duties on stainless steel sinks originating in or imported from the People’s Republic of China – ITAC Minute 06/2022 (with retrospective effect from 3 December 2021).
  - Find copy of the notice [here](#).
- Customs and Excise Act | draft amendment to schedule
  - Part 1 of Schedule no.1 – note 5 in chapter 22
  - The description of Additional Note 5(c)(i) is being amended to provide for the usage of grape juice in the manufacture of ciders as prescribed in the Regulations to the Liquor Products Act 60 of 1989.
    - Due date for comment is 1 November 2022
    - Find a copy of the Customs and Excise Tariff Amendments Comment Sheet [here](#).

## legislation and draft legislation

- Preparation of legislation – draft documents for public comment
  - Section 11D of the Income Tax Act, 1962 – draft refinements to the research and development tax incentive.
  - Find copy [here](#).
- Draft Explanatory Memorandum – refinements to the research and development tax incentive

- Find copy [here](#).
- Due date for comment for both: 7 November 2022

## advance tax rulings

BPR 382 – Rebate in respect of foreign taxes.

- This ruling determines the tax consequences of a capital gain arising from the disposal of shares in a resident company, which shares derive their value principally from immovable property situated in a foreign jurisdiction.
- Find a copy of the Binding Private Ruling (“BPR”) [here](#).
- BPR 381 – Beneficial ownership in respect of back-to-back share transfers.
  - This ruling determines the securities transfer tax consequences of the transfer of listed shares from a client to the applicant and by the applicant to an authorised user or vice versa.
  - Find a copy of the BPR [here](#).
- BPR 380 – Transfer of shares in resident company to non-resident holding company.
  - This ruling determines the tax consequences of the transfer of ordinary and preference shares by a South African resident company (the applicant) to a non-resident, indirect subsidiary (Foreign Company) of the applicant.
  - Find a copy of the BPR [here](#).
- BPR 379 – Qualifying purpose.
  - This ruling determines the tax consequences of a dividend declared by the issuer of a preference share which was issued for a qualifying purpose after the shares in an operating company financed by the preference share funding are disposed of by the shareholder in the operating company.
  - Find a copy of the BPR [here](#).

## SARS publications

- Interpretation Note 123 | Section 8E of the Income Tax Act, 1962 (“ITA”)
  - Effect on the date of issue of a share arising from a change in the redemption features
  - Find a note [here](#).
- Interpretation Note 124 | Paragraph 3(c) in Part I of the Ninth Schedule of the ITA
  - Public benefit organisations: Provision of residential care for retired persons.
  - Find a note [here](#).
- Auto-registration for Personal Income Tax
  - From October 2022, individuals who are not registered yet, could be automatically registered for Personal Income Tax if SARS detects 3rd party data that indicates economic activity.
  - If the auto-registered taxpayer is a sole proprietor, he or she may still have to register for other tax products like Pay as you earn (“PAYE”) for an employer, Value Added Tax (“VAT”) for a vendor, and Customs and/or Excise if they are a trader in that field. SARS will send an SMS and a letter to such an individual, officially welcoming them as a registered taxpayer and informing them of how to access our services and what their rights and obligations are.

- It is important for newly registered taxpayers to register for eFiling, as this is the most efficient way to file a tax return, view assessment results, make payments, and manage many other tax matters.
- Legal Counsel Publications | Tables of Interest Rates
  - Issue of rates at which interest-free or low interest loans are subject to income tax.
  - The South African Reserve Bank changed the “repo rate” on 22 September 2022, effective 1 October 2022.
  - Find table 3 [here](#).
- Tax guide for small businesses.
  - Find a copy of the guide [here](#).
- Venture capital companies
  - See updated list of the approved venture capital companies [here](#).

## exchange control

- Exchange Control Circular No. 22/2022
  - Amendment of the name of Travelex Africa Foreign Exchange (Pty) Limited to Travel Forex (Pty) Limited as an Authorised Dealer in foreign exchange with limited authority (28 September 2022).
  - Find copy of the circular [here](#).

## International

- OECD | 14th meeting of the OECD/G20 Inclusive Framework on BEPS
  - The 14th Meeting of the OECD/G20 Inclusive Framework on BEPS will take place from 6 to 7 October 2022 at the OECD Conference Centre in Paris.
  - The public sessions considered critical issues being addressed by governments around the world such as climate change and the global energy crisis, fighting offshore tax evasion and avoidance, capacity building for developing countries and the future of tax administration and digitalisation. This will also be the last Inclusive Framework meeting of Pascal Saint-Amans, the outgoing director of the OECD Centre for Tax Policy and Administration.
- OECD | Countries making substantial progress towards implementation of the two-pillar international tax reform
  - A year after the international community reached a landmark agreement on a two-pillar solution to reform the international tax rules to address the tax challenges arising from globalisation and digitalisation, strong progress continues towards its implementation.
  - Find article [here](#).
- OECD | Mongolia signs landmark agreement to strengthen its tax treaties and South Africa deposits an instrument for the ratification of the Multilateral BEPS Convention
  - On 6 October 2022, Mongolia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the BEPS Convention), at a signing ceremony held in Paris at the 14th meeting of the Inclusive Framework on BEPS.
  - Find article [here](#).

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