

ENSafrica tax in brief

Below, please find issue 65 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **Tax Court of South Africa | SARSTC 13395 (IT) [2021] Johannesburg (23 April 2021)**
 - The taxpayer appealed against the disallowance of his objection to a revised assessment imposed by the South African Revenue Service ("SARS"), which included an additional capital gain accrued to the taxpayer during the 2009 tax year, which he purportedly omitted to disclose.
 - The taxpayer had disposed of shares in two related companies that formed part of the same group. The taxpayer included the capital loss realised from the sale of shares in one of the companies, but failed to disclose the capital gain in respect of the other.
 - Consideration for the shares in question was to be paid in three tranches, and was subject to suspensive conditions. The court had to determine whether the proceeds from the sale of shares in 2009 had accrued in the same tax year as the disposal. The court held that the first of the three payments would not have been made had there been outstanding suspensive conditions and as such, the full proceeds had accrued to the taxpayer in the 2009 tax year and should have been included in the taxpayer's 2009 returns.
 - The court had to further determine the base cost of the shares disposed of by the taxpayer, and found that the base cost should be determined in accordance with the fair value of the shares at the time that they were acquired. This resulted in a larger base cost than the commissioner had included in the assessment.
 - The court concluded that while the taxpayer had understated its capital gain, this understatement was not to the extent indicated by SARS in the assessment. To this end, the tax court (a court of revision) altered the assessment in terms of section 129(2)(b) of the Tax Administration Act, 2011 ("TAA") to include the correct capital gain and the corresponding interest.
 - On the basis that the taxpayer was genuinely under the impression that the suspensive condition had relieved him of the obligation to report the accrual of the capital gain in the 2009 tax year, penalties were remitted.
 - Find a copy of the judgment [here](#).
- **Tax Court of South Africa | SARSTC IT 13178 (IT) [2021] Johannesburg (31 March 2021)**

- The taxpayer appealed against the partial disallowance of his objection to an additional assessment imposed by SARS, relating to the under declaration of income from the appellant's various businesses and interest thereon for the 2005, 2006 and 2007 years of assessment.
- The taxpayer's attorney and counsel withdrew on the day of the hearing of the appeal. The taxpayer had postponed the matter many times for various reasons and the hearing of the appeal therefore proceeded in the absence of the appellant.
- Held the onus to prove the assessments are incorrect rested on the appellant. Accordingly, the appeal failed and judgment was granted against the appellant in default.
- Find a copy of the judgment [here](#).
- **Tax Court of South Africa | SARSTC VAT 1999 (VAT) [2021] Bloemfontein (30 March 2021)**
 - The applicant sought to amend its Statement of Grounds of Appeal, filed in terms of Rule 32 of the Rules ("Rule 32 Statement") promulgated under section 103 of the TAA (the "Rules").
 - On 29 January 2021, the applicant filed a supplementary affidavit. On 2 March 2021, the respondent filed a notice of irregular proceedings in terms of Rule 30 of the Uniform Rules of Court.
 - The applicant contended that Rule 32(1) of the Rules does not prescribe a form in which a Statement of Grounds of Appeal must be in and since Rule 35 of the Tax Rules is silent in dealing with an affidavit, the Uniform Rule 6(5)(e) applies to regulate the filing of a supplementary affidavit or a further affidavit.
 - The court held that according to Rule 42(1) of the Rules, the Uniform Rules may only be used where the Rules do not provide for the procedure or matter; since Rule 35 deals with amendments, Uniform Rule 6(5)(e) cannot be relied on.
 - The court held that the failure to seek an amendment in terms of the Rule 35 is fatal to the applicant's case and dispositive of the issue of amendment.
 - Find a copy of the judgment [here](#).
- **Tax Court of South Africa | SARSTC IT 24606 (IT) [2021] Johannesburg (25 February 2021)**
 - The taxpayer appealed against the disallowance of its objection to an additional assessment imposed by SARS in relation to the taxpayers prospecting operations for the 2013 and 2014 year of assessments.
 - The dispute between the parties ultimately crystallised into the interpretation of section 15(b) of the Income Tax Act, 1962 ("ITA") and whether the taxpayer was entitled to deduct the purchase price for the acquisition of its prospecting rights.
 - The court held that the purchase of prospecting rights is being claimed in circumstances that go beyond the policy intent of prospecting activities. Therefore, the prospecting rights can only be regarded as a capital asset of the taxpayer and the deduction of the purchase price of such prospecting rights is not allowable in terms of section 15(b) of the ITA.

- Find a copy of the judgment [here](#).
- **SCA | *Commissioner for the South African Revenue Services v Tourvest Financial Services (Pty) Ltd [2021] ZASCA 61 (25 May 2021)***
 - This appeal concerns the VAT liability of the respondent, Tourvest Financial Services (Pty) Ltd. The question before the Supreme Court of Appeal (“SCA”) was whether Tourvest, in conducting its enterprise of the exchange of currency through its branch network, made both taxable and exempt supplies (as SARS contended) or whether it only made taxable supplies (as Tourvest contended), and as such, whether Tourvest was required to apportion its input entitlements in terms of section 17 of the VAT Act, 1991 (“VAT Act”).
 - Although Tourvest had initially apportioned its inputs, it changed its views in this respect and therefore adjusted its historic returns by way of claiming certain amounts in its September 2013 VAT return. SARS disallowed these adjustments and Tourvest successfully appealed to the Tax Court of South Africa, Johannesburg, which set aside SARS’ additional assessment and ordered SARS to pay Tourvests’ costs.
 - The SCA considered, inter alia:
 - section 2(1) of the VAT Act and;
 - 39(7)(a) of the VAT Act.
 - On appeal, the SCA held that:
 - By virtue of the proviso to section 2(1) of the VAT Act, what would otherwise have been an exempt financial service was to an extent treated as a taxable supply (so that the commission carried VAT).
 - The effect of the proviso in the present context was merely to add a taxable element to what was, and at its core remained, an exempt financial service. It turned the activity into a partly exempt and a partly taxable supply. That being so, any tax paid on goods and services acquired by the Tourvest must have been apportioned and only the part attributable to the taxable supply would be deducted as input tax. Therefore, the respondent's attempt to claim the entire VAT charge as deductible input tax had to fail.
 - Accordingly, Tourvest's deduction in the September 2013 VAT return of the full unclaimed VAT expense over the past five years was impermissible. The inputs ought to have been apportioned and on this basis, the appeal to the SCA was upheld with costs including those of two counsel.
 - Find a copy of the judgment [here](#).
- **SCA | *Commissioner for the South African Revenue Services v Toneleria Nacional RSA (Pty) Ltd [2021] ZASCA 65 (1 June 2021)***
 - The Commissioner for SARS appealed against a judgment and declaratory order granted by the High Court (Western Cape Division) in respect of a dispute arising in terms of Part 1 of Schedule 1 to the Customs and Excise Act, 1964.
 - The taxpayer, the South African subsidiary of a Chilean company, is involved in the manufacture of traditional wooden barrels for use in the wine industry and also manufactures planks made of oak (“Items”), which are imported

into South Africa and sold to wine producers as a cheap alternative to traditional wooden barrels.

- The taxpayer contended that the Items should be classified under tariff heading 44.16 (along with casks, barrels etc.), which would attract no duty. SARS disagreed and contended that the items should be classified under tariff heading 4409.29.90 (other wood and articles of wood) and were thus subject to duties.
- The SCA examined the three-stage process to classification, dealing with:
 - section 47(8)(a)(i) of the Customs Act; and
 - the explanatory note to tariff 44.16.
- The SCA noted that the first stage of the classification process involves the determination of the meaning of the tariff heading. The second stage involves considering the nature of the products in issue to determine in the third stage, whether they fall within the class of products identified in the tariff heading.
- The court held that while the Items performed similar functions to that of a barrel or vat (as contemplated in tariff heading 44.16), they did not perform all of these functions. In particular, the Items cannot be used for storage purposes and their manufacture does not form part of the traditional tasks of a cooper, nor does their production require an application of the skill or expertise of a cooper.
- The appeal was upheld with costs.
- Find a copy of the judgment [here](#).

SARS publications

- **SARS has published its Filing Season 2021 dates which are as follows:**
 - 1 July to 23 November 2021:
 - Taxpayers who file via eFiling; and
 - Taxpayers who cannot file online can do so at a SARS branch by appointment only.
 - 1 July to 28 January 2022:
 - Provisional taxpayers including Trusts may file via eFiling or SARS MobiApp.
- **Tax Directive Functionality Guide | Updated to request previous years' tax directives**
 - On 23 April 2021, SARS implemented the IBIR-006 revision 6.105 Interface Specifications changes to the Tax Directives. The Guide to the Tax Directive functionality on eFiling has been updated with the Tax Directive functionality to request previous years' tax directives.
 - This guide was designed to assist fund administrators/long-term insurers/employers/tax practitioners and/or individuals with the tax directive administrative functions on eFiling.
 - Find the updated guide [here](#).
- **SARS has published its latest Tax Practitioner Connect newsletter**

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- The latest Tax Practitioner Connect newsletter has tips for employers, the latest on employer filing season, corporate income tax news, information on the tax types transfer process, and more.
 - Find the newsletter [here](#).
 - **SARS published a media release in relation to the 9th meeting of the Africa Initiative**
 - The Africa Initiative was launched in partnership with the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes in 2014, to ensure that African countries are equipped to use the improvements in global transparency and exchange of information to better tackle tax evasion.
 - Find a copy of the media release [here](#).
 - **SARS published an update to the list of prohibited and restricted imports and exports**
 - Find a copy of the list [here](#).
 - **ITA | Notice 474 published in *Government Gazette* 44640 of 28 May 2021**
 - Amount for purposes of paragraph (b)(x)(cc) of the proviso to the definition of “retirement annuity fund” in section 1 of the ITA determined, and all previous notices withdrawn with effect from 1 March 2021.
 - Find a copy of the notice [here](#).
 - **Unemployment Contributions Act, 2002 (“Unemployment Act”) | Notice 475 published in *Government Gazette* 44641 of 28 May 2021**
 - Determination of limit on amount of remuneration for purposes of determination of contribution in terms of section 6 of the Unemployment Act.
 - Find a copy of the notice [here](#).

exchange control

- **Exchange Control Circular No. 8/2021**
 - This circular relates to the phasing out the concept of emigration as recognised by the South African Reserve Bank. As a result of representations made in Exchange Control Circular No. 6/2021, amendments/additions have been made to section B.2(J)(iii), B.2(J)(iv), B.2(J)(v), B.2(J)(ix), B.2(J)(x), B.2(J)(xi), B.2(J)(xii), B.2(J)(xiii), B.2(J)(xv), B.2 (J)(xvi) of the Currency and Exchanges Manual for Authorised Dealers (“**Manual**”).
 - **Exchange Control Circular No. 9/2021**
 - Section A.3 (F) has been deleted from the Financial Surveillance Department forms.
 - **Exchange Control Circular No. 10/2021**
 - This circular relates to income due to non-residents and private individuals who ceased to be residents for tax purposes in South Africa. Amendments/additions have been made to sections B.3 (A), B.3(B)(iv)(c) and B.3(B)(x) of the Manual.
 - **Exchange Control Circular No. 11/2021**
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- This circular relates to pension and provident schemes. Additions have been made to section B.10(J)(ii) of the Manual.

customs and excise

- **Customs and Excise Act | Publication for public comment of proposed amendments to rules under sections 59A and 60 of the Customs and Excise Act**
 - SARS has published draft amendment to rules under sections 59A.01A and 60.01.A – Registration and Licensing
 - The amendments are in respect of the rules under 59A and 60 of the Customs and Excise Act were promulgated in April 2020 making provision for the electronic submission of applications for registration and licensing concerning certain activities regulated by the Customs and Excise Act. The development and implementation of the electronic system for the submission of applications is taking place in phases. Further amendments constituting the next phase in this development were promulgated on 30 April 2021 with retrospective effect from 23 April 2021. The amendments now published for public comment enables a further development in this process.
 - Find the draft amendment [here](#).
 - The draft amendment includes proposed amendments to following forms:
 - DA 8 – Application for registration to submit reporting documents.
 - Find the application and the proposed amendments [here](#).
 - DA 185.4A3 – Registration Client Type 4A3 – Rebate user (Schedule No’s 3, 4 and 6).
 - Find the form and the proposed amendments [here](#).
 - DA 185.4B9 – Licensing Client Type 4B9 – Storage warehouse (Customs Controlled Area Enterprise) – (Sections 19A, 21, 21A, 60, 61 and Rule 21A.10).
 - Find the form and the proposed amendments [here](#).
 - DA 185.4B10 – Licensing Client Type 4B10 – Manufacturing warehouse (Customs Controlled Area Enterprise) – (Sections 19A, 21A, 27, 59A and Rule 21A.10).
 - Find the form and the proposed amendments [here](#).
 - DA 185.4B14 – Licensing Client Type 4B14 – De-grouping Depot – (Section 64G and its rules and item 850.00 of Schedule No. 8).
 - Find the form and the proposed amendments [here](#).
 - DA 185.4B16 – Licensing Client Type 4B16 – Container Depot.
 - Find the form and the proposed amendments [here](#).
 - Due date for public comment was 4 June 2021.
 - **Customs and Excise Act, 1964 | Notice R442 published in *Government Gazette* 44601 of 21 May 2021**
 - SARS has published an amendment notice which relates to the substitution in item 202.00 of the Schedule to the Rules of the DA 260 tobacco products accounts (DAR212)
 - Find the amendment notice [here](#).
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- Find the DA 260 Excise Account: Tobacco Products (VM) form [here](#).
 - Find the DA 260 Excise Account: Tobacco Products (SOS) form [here](#).
- **Customs and Excise Act, 1964 | Notice R441 published in *Government Gazette* 44601 of 21 May 2021**
 - SARS has published an amendment to Part 1 of Schedule No. 1, by the insertion of tariff subheading 8479.89.50, in order to increase the rate of customs duty on foot-operated grease guns from free of duty to 10%.
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1964 | Notice R460 published in *Government Gazette* No.44635 of 28 May 2021**
 - Amendment to the General Notes to Schedule No. 1, to change the reference from “EU” to read as “EU / UK” in order to clarify the applicability of good imported from the EU to also be applicable to goods imported from the UK and Ireland as per the SACU-M UK EPA agreement.
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1964 | Notice R461 published in *Government Gazette* No.44635 of 28 May 2021**
 - Amendment to Part 1 of Schedule No. 1, to amend the rate of duty column headed “EU” to read as “EU/UK” in order to clarify the applicability of good imported from the EU to also be applicable to goods imported from the UK and Ireland as per the SACU-M UK EPA agreement.
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1964 | Notice R459 published in *Government Gazette* No.44635 of 28 May 2021**
 - Amendment to Part 6 of Schedule No. 1, to amend the rate of duty column headed “EU” to read as “EU/UK” in order to clarify the applicability of good imported from the EU to also be applicable to goods imported from the UK and Ireland as per the SACU-M UK EPA agreement.
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1964 | Notice R458 published in *Government Gazette* No.44635 of 28 May 2021**
 - Amendment to the Schedule No. 10, to change the reference from “EU” to read as “EU/UK” in order to clarify the applicability of good imported from the EU to also be applicable to goods imported from the UK and Ireland as per the SACU-M UK EPA agreement
 - Find a copy of the notice [here](#).
- **Customs and Excise Act, 1964 | Notice R457 published in *Government Gazette* No.44635 of 28 May 2021**
 - Amendment to Part 1 of Schedule No. 3, by the insertion of rebate item 320.01/6005.3/01.05 in order to create a rebate facility for warp knit fabrics classifiable in tariff heading 60.05, for use in the manufacture of upholstered furniture – ITAC Report No. 647.
 - Find a copy of the notice [here](#).

- **The Organisation for Economic Co-operation and Development (“OECD”) has published a new batch of BEPS Action 14 peer review monitoring reports for Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey. The review relates to the implementation of a minimum standard to improve the resolution of tax-related disputes between jurisdictions.**
 - Find more information on the peer reviews [here](#).
- **The OECD published comments on proposed changes to the commentaries on Article 9 and related articles of the OECD Model Tax Convention**
 - Find a copy of the comments [here](#).

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