

ENSafrica tax in brief

Below, please find issue 64 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **The Constitutional Court of South Africa | *Clicks Retailers (Pty) Limited v Commissioner for the South African Revenue Service* (decided on 21 May 2021)**
 - Clicks Retailers (Pty) Limited ("**Clicks**") appealed the decision of the Supreme Court of Appeal ("**SCA**") in terms of which it upheld the appeal of the Commissioner for the South African Revenue Service ("**SARS**") against the decision of the Tax Court, Western Cape Town which found that Clicks was entitled to claim an allowance in terms of section 24C of the Income Tax Act, 1962 ("**ITA**") pertaining to its loyalty programme, the Clicks ClubCard programme.
 - In respect of the 2009 year of assessment, Clicks claimed an allowance for future expenditure in respect of its loyalty programme in terms of section 24C of the ITA, which SARS disallowed on the basis that the income and the obligation to finance future expenditure thereunder arose from different contracts (the contract of sale and the ClubCard contract), and not under the same contract as contemplated in section 24C.
 - Clicks appealed to the Tax Court which found in its favour on the basis that the contract of sale gave rise to both the income and the obligation to finance future expenditure. SARS appealed to the SCA which found in SARS' favour on the basis that the income received and the future expenditure sought to be deducted by Clicks arose from two separate contracts, namely the contract of sale (which creates the right to income) and the ClubCard contract (in terms of which Clicks incurs the relevant expenditure).
 - On appeal from the SCA, the Constitutional Court considered, inter alia:
 - whether Clicks can claim an allowance under section 24C in respect of income it earns in terms of its loyalty programme;
 - the decisions of the SCA and Constitutional Court in, respectively, *C:SARS v Big G Restaurants (Pty) Limited [2018]* and *Big G Restaurants (Pty) Limited v C:SARS [2020]* ("**Big G Cases**");
 - the three requirements for section 24C to find application;
 - whether the two contracts relied on to found Clicks' claim for a section 24C allowance function in tandem to give effect to the loyalty programme such that it may be said that the contracts meet the requirement for "contractual sameness" on the basis of being

inextricably linked or connected as per the formulation in the Big G Cases.

- The Constitutional Court held that the contract under which the income accrues (the contract of sale) and the contract under which the obligation to finance future expenditure arises (the ClubCard contract) are too independent of each other to meet the requirement of contractual sameness for purposes of section 24C.
- The Constitutional Court therefore dismissed Clicks' appeal.
- Find a copy of the judgment [here](#).

SARS publications

- **PAYE BRS Employer Reconciliation 2021/2022**
 - The Business Requirement Specification ("BRS") for Pay-As-You-Earn ("PAYE") 2021/2022, which is applicable to the 2022 Annual Employer Reconciliation, has been updated to version 20.0 with new source codes.
 - The BRS contains clarifications and amendments to the some of the validation rules and the descriptions for source codes.
 - The interim submission dates are 13 September to 31 October 2021.
 - Annual submission dates are 1 April to 31 May 2022.
 - A copy of the BRS can be found [here](#).
- **SARS published Interpretation Note 93 (Issue 3) on the taxation of foreign dividends on 17 May 2021.**
 - Find the interpretation note [here](#).
- **SARS published Interpretation Note 117 on the taxation of the receipts of deposits on 17 May 2021**
 - Find the interpretation note [here](#).
- **SARS published a draft interpretation on the deduction of medical lump sum payments in terms of section 12M of the ITA on 23 March 2021**
 - Due date for comments: 28 May 2021.
 - Find a copy of the draft interpretation note [here](#).

customs and excise

- **Customs and Excise Act, 1964 | Amendment notice R.408, as published in *Government Gazette No. 44546***
 - Amendment made to the rules under sections 76 and 120.
 - Deletion of rule 76.02 relating to the place of submission of general refunds (DAR213).
 - A copy of the notice can be found [here](#).
- **Customs & Excise Act | Tariff amendment notice R.409, as published in *Government Gazette No. 44546***
 - Amendment to Part 1 of Schedule No. 1 by the insertion of subheading 6506.10.20.
 - A copy of the notice can be found [here](#).
- **Customs & Excise Act | Tariff amendment to Part 1 of Schedule No. 1**

- Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91, 1001.99, 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to increase the rate of customs duty on wheat and wheaten flour from free of duty to 19,17c/kg and 28,76c/kg respectively, in terms of the existing variable tariff formula.
- A copy of the notice can be found [here](#).
- **SARS has published an updated Customs Trader Portal Manual which adds additional system functionalities pertaining to the second phase of the system enhancement to the Registration, Licensing and Accreditation system.**
 - Please find a copy of the manual [here](#)
- **Customs and Excise Act | Amendment notice R.408, as published in *Government Gazette No. R***
 - 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%;
 - A copy of the notice can be found [here](#).

International tax

- **On 3 May 2021, the conference of the parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”) approved an opinion that sets out a series of guiding principles for addressing questions about the interpretation and implementation of the MLI.**
 - Those principles, discussed and approved by the Conference of the Parties to the MLI, were drawn from public international law, the design of the MLI itself, and its drafting history.
 - Find the opinion [here](#).
- **On 19 May 2021, the Organisation for Economic Co-Operation and Development (“OECD”) released a new report entitled, “Tax Co-operation for Development: Progress report in the COVID-19 era”, looking back on the past year showing how developing countries have interacted with the OECD on a range of tax policy and administration issues.**
 - Find a copy of the report [here](#).
- **Inheritance taxation in OECD countries**
 - The new OECD report states that inheritance taxation can be an important instrument to address inequality, particularly in the current context of persistently high wealth inequality and new pressures on public finances linked to the COVID-19 pandemic.
 - The report highlights the high degree of wealth concentration in OECD countries as well as the unequal distribution of wealth transfers, which further reinforces inequality. On average, the inheritances and gifts reported by the wealthiest households (top 20%) are close to 50 times higher than those reported by the poorest households (bottom 20%).
 - The report points out that inheritance taxes, particularly those that target relatively high levels of wealth transfers, can reduce wealth concentration and enhance equality of opportunity. It also notes that inheritance taxes

have generally been found to generate lower efficiency costs than other taxes on the wealthy, and to be easier to assess and collect than other forms of wealth taxation.

- A majority of OECD countries currently levy inheritance or estate taxes – 24 in total. However, these taxes typically raise very little revenue. Today, only 0.5% of total tax revenues are sourced from inheritance, estate and gift taxes on average across the countries that levy them.
- Find the full report [here](#).

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