

ENSafrica tax in brief

Below, please find issue 74 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **Tax Court | Commissioner for the South African Revenue Service v FP (Pty) Ltd (19 October 2021)**
 - The South African Revenue Service (“SARS”) raised an additional assessment against the taxpayer for the 2014, 2015 and 2016 years of assessment, accompanied by a Notification of Adjustment to Assessment. The taxpayer did not elect to submit a request for reasons in terms of Tax Court Rule 6(1) because this avenue never occurred to the tax advisors.
 - The taxpayer objected against the additional assessment, inter alia, on the basis that SARS raised the additional assessment in a procedurally unfair manner as it was raised without warning, issuing of a letter of audit findings nor providing the taxpayer with 21 business days to respond thereto, as required by section 42(2) of the Tax Administration Act, 2011 (the “TAA”).
 - Objections were disallowed by SARS and the taxpayer filed its appeals. The parties attempted alternative dispute resolution but to no avail.
 - It is only when SARS delivered its statement in terms of Tax Court Rule 31 that the taxpayer obtained legal advice that it may bring a review application setting aside the additional assessments raised by SARS on the basis of administrative non-compliance.
 - As a result the taxpayer launched the review application in term of section 118(3) of the TAA read with Tax Court Rule 51(2).
 - The Tax court considered, *inter alia*:
 - the application launched by SARS in terms of Rule 30 of the Uniform Rules of Court (“**Uniform Rule 30**”) for an order setting aside, as an irregular step, the legality review application brought by the taxpayer in the appeal proceedings pending in the Tax Court.
 - The Tax Court held that:
 - the taxpayer conceded that its review application in this court is neither an interlocutory application nor one in a procedural matter as envisaged in section 117(3) of the TAA;
 - the Tax Court held that the taxpayer's reliance on the judgment in *South Atlantic Jazz Festival (Pty) Ltd v C:SARS* (the “**South Atlantic Jazz Festival case**”) as authority for its proposition, was a stretch and provided the following as the differences from the present case:

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- the taxpayer in this case brought a ‘stand-alone’ review application in order to avoid having to exercise its right of appeal whereas in the South Atlantic Jazz Festival case, the taxpayer was exercising a right of appeal before the Tax Court and not the review and setting aside of an administrative decision; and
 - it was never contended by SARS in the South Atlantic Jazz Festival case that the administrative decision taken, was subject to objection and appeal whereas in the present case, this has been raised by SARS.
 - In relation to the taxpayer’s reference to the decision in ITC1921 which found inter alia that SARS’ non-compliance with section 42 of the TAA was a breach of the taxpayer’s section 33 rights which resulted in the invalidity of the subsequent assessment, the Tax Court held that the issue in that case was raised as a point in limine in the context of that tax appeal. The Tax Court elaborated by providing that SARS in that case had not contended that no objection and appeal lies against an administrative decision made in terms of section 42 of the TAA, and the review point was inherently raised to the appeal;
 - SARS was correct to invoke Uniform Rule 30 and the launching of a review application in appeal proceedings already before the Tax Court is an irregular step as envisaged in Uniform Rule 30;
 - the Tax Court appeal proceedings be stayed pending the determination of review application to be launched in the High Court by the taxpayer.
 - Find a copy of the judgment [here](#).
 - **The High Court of South Africa, Gauteng Division, Pretoria I CSARS v Samsung Electronics South African (Pty) Ltd I Case No. 35255/2018**
 - This is an interim application to the main application which concerns a tariff appeal in terms of section 47(9)(e) of the Customs and Excise Act, 1964 (the “**Customs and Excise Act**”). SARS sought relief in terms of rules 35(1), 35(2) and 3(13) of the Uniform Rules of Court (“**Provisions of Uniform Rule 35**”), alternatively section 4(4)(aC)(iii) of the Customs and Excise Act.
 - In this application SARS, prior to filing an answering affidavit, sought discovery of documents relating to products to the main tariff dispute between the parties.
 - The Court considered, *inter alia*:
 - The provisions of Uniform Rule 35
 - The Court held that discovery under Uniform Rule 35 will be ordered in exceptional circumstances only, especially when sought by a respondent before delivery of answering papers.
 - The factors to which a court will have regard when considering whether discovery should be ordered include the following:
 - principles of fairness and equity;
 - the stage in the proceedings at which discovery is sought;
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- the nature of the proceedings and the evidence that has been adduced;
 - the extent of the discovery sought; and
 - prejudice.
 - The Court further confirmed that the relevance requirement in Rule 35(1) should be ascribed a broad meaning;
 - The Court, quoting *Tickly and Other v Johannes NO and Others*, held that the fact that the main application is a tariff appeal is important, considering the nature of a tariff appeal being “a complete re-hearing of, and a fresh determination of the merits of the matter with or without additional evidence or information”.
 - The Court also held that the documentation is essential to allow the expert witness appointed by the Commissioner to properly consider the nature and characteristics of the products.
 - The application was granted in terms of Rule 35 of the Uniform Rules of Court as the Court held that it is in the interest of justice and to ensure openness and transparency, thereby giving effect to the values enshrined in the Constitution.
 - Find a copy of the judgement [here](#).
 - **The High Court of South Africa, Western Cape Division, Cape Town I CSARS v G W van der Merwe and Others I Case No. 7255/2019**
 - SARS, as the applicant, and the respondents sought orders striking out, in terms of Rule 6(15) of the Uniform Court Rules (“**Uniform Rule 6**”), certain material contained in the founding and answering affidavits filed in this matter.
 - The Court dismissed the respondents’ application to strike out, which was based on the confidentiality of information provisions contained in Chapter 6 of the TAA, in particular section 69(1), read with sections 67, 68 and 236 of the TAA.
 - SARS’ application was brought under Rule 6(15) of the Uniform Rules of Court. The Court held that an application to strike out any matter from an affidavit will succeed where an applicant has shown that the matter to be struck out is scandalous, vexatious or irrelevant and that he or she will be prejudiced if the matter is not struck out. The Court upheld SARS’ application to strike out on the basis that there was no evidence to support the serious allegations repeated throughout the paragraphs and it was “*patently clear that were such scandalous, vexatious and irrelevant material not to be struck out, SARS would suffer prejudice in its case*”.
 - The Court further held that for an order to be made against the respondents in terms of section 2(1)(b) of the Vexatious Proceedings Act, Act 3 of 1956 (the “**VPA**”), it should be determined whether the respondents had been shown to have “*persistently and without any reasonable ground instituted legal proceedings in any court or in any inferior court, whether against the same person or against different persons*”. Based history of the litigation in this matter, the Court held that the facts warranted an order to be made against the respondents under section 2(1)(b) of the VPA.
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- Find a copy of the judgement [here](#).

binding general rulings

- **Binding General Ruling (VAT) 57 |**
 - Section 1(1) definition of “Consideration” and paragraph (b) of the definition of “input tax” read together with section 16(3)(a)(iiA) or 16(3)(b)(i)
 - Ruling: The term “consideration” as defined in section 1(1) does not include any transfer duty imposed under section 2 of the Transfer Duty Act. As a result, the amount of transfer duty paid or payable by a vendor to acquire second-hand fixed property for taxable purposes cannot be included in the calculation of any notional input tax deduction which may be available to that vendor under section 16(3)(a)(iiA) or 16(3)(b)(i).
 - A copy of the ruling can be found [here](#).

exchange control

- **Currency and exchanges manual for Authorised Dealers (“Manual”)**
 - The Financial Surveillance Department of the South African Reserve Bank (“SARB”) issued an updated copy of the Manual on 28 October 2021.
 - Find a copy [here](#).
- **Exchange Control Circular No. 21/2021**
 - This circular relates to the deletion of CIB Operations - Port Elizabeth from section G.(A)(iii)(k) of the Manual under the heading of Absa Bank Ltd.
 - Find a copy of the circular [here](#).
- **Exchange Control Circular No. 22/2021**
 - This circular relates to the deletion of the branch name ‘Forex Operations, Port Elizabeth’ under the heading of Absa Bank Ltd in section B.10(K) of the Manual.
 - Find a copy of the circular [here](#).

customs and excise

- **Customs and Excise Act, 1964 | Notice R1090 published in Government Gazette No.45378 of 22 October 2021**
 - Amendment to Part 1 of Schedule No. 1, to give effect to the phase down of the rates of duty for 2022, in terms of the Economic Partnership Agreement (EPA).
 - Find a copy of the Notice [here](#).
- **Customs weekly list of unentered goods**
 - Find a copy of the list [here](#)
- **Customs and Excise Act, 1964 | Harmonized System (HS) 2022**

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- SARS updated the Harmonized System (HS) 2022 landing page to incorporate the tariff amendment notices.
 - Find the landing page [here](#).
 - **Customs and Excise Act, 1964 | Explanatory Memorandum**
 - SARS published the explanatory memorandum in respect of the implementation of HS 2022
 - Find a copy [here](#).
 - **Customs and Excise Act, 1964 | Notice R1084 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to rules under section 120 – Substitution of the Automotive Production and Development Programme (APDP) quarterly accounts (DAR223).
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1088 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 1 to Schedule No. 1, to implement the recommendations made by the WCO, in order to implement HS 2022 on a 6-digit international level as well as the consequential amendment on a national (8-digit) level
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1089 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 1 to Schedule No. 1, by the insertion, substitution and deletion of various notes, to implement the recommendations made by the WCO in order to implement HS 2022.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1087 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 2A to Schedule No. 1, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1086 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 2B to Schedule No. 1, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1085 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 3D to Schedule No. 1, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1082 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 3E to Schedule No. 1, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
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- **Customs and Excise Act, 1964 | Notice R1083 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 1 to Schedule No. 3, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1081 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 2 to Schedule No. 4, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1080 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Part 3 to Schedule No. 5, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).
 - **Customs and Excise Act, 1964 | Notice R1079 published in *Government Gazette* No.45378 of 22 October 2021**
 - Amendment to Schedule No. 6, as a consequence of the implementation of HS 2022 in Part 1 of Schedule No. 1.
 - Find a copy of the Notice [here](#).

SARS

- **SARS published | External Guide: *How to submit a dispute via eFiling***
 - The guide has been updated with the extension of Covid-19 PAYE and ETI information.
 - Find a copy [here](#).
 - **Media release | Physical Impairment or Disability Expenditure Prescribed by the Commissioner**
 - SARS issued the Amended List of Physical Impairment or Disability Expenditure Effective 1 March 2020.
 - Further details can be found [here](#).
 - See the full media statement [here](#).
 - **Trade Statistics for September 2021**
 - SARS released trade statistics for September 2021:
 - recording a preliminary trade balance surplus of R22.24 billion attributable to exports of R157.02 billion and imports of R134.78 billion;
 - exports decreased by R1.57 billion (1.0%) between August and September 2021; and
 - imports increased by R18.47 billion (15.9%) over the same period.
 - A copy of the full media release can be found [here](#).
 - Or visit the Trade Statistics webpage [here](#).
 - **e@syFile Employer | Version 7.1.9**
 - SARS upgraded e@syFile Employer. The following changes have been implemented:
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- warnings when duplicate certificate numbers are used for different employees;
 - updated EMP501 form to include and display the reason provided for over or understatement; and
 - adjustment to calculations on the EMP501 declaration page to include cents in amount fields.
 - Find a copy of the full Release Notes [here](#).
 - **SARS Mobile Tax Unit | November 2021**
 - SARS published the updated November 2021 schedules for the mobile tax unit.
 - Find the schedule [here](#).
 - **SARS Annual report**
 - SARS published its annual report for 2020 – 2021.
 - Find a copy of the Report [here](#).
 - **Scam warning**
 - SARS published a warning to taxpayers in respect of a new phishing scam involving possible refunds
 - The link to the scam warning can be found [here](#).
 - **Tax Directives**
 - SARS published an update regarding the enhancements to the Tax Directive process, including an updated interface specification version (6.203).
 - Find a copy of the latest interface specification version [here](#).
 - **Income Tax Act and PAYE | Notice of Registration for Companies and Trusts - Income Tax and PAYE**
 - SARS published the updated a guide on How to Complete the Registration Amendments and Verification Form RAV01, with the latest information on the inclusion of Notice of Registration for Companies and Trusts Income Tax and PAYE (inclusive of SDL and UIF).
 - The guide can be found [here](#).
 - **Income Tax Act | Draft Guide to the Voluntary Disclosure Programme published for comment**
 - The voluntary disclosure programme (VDP) was introduced as a method to promote voluntary taxpayer compliance in the interest of good management of the tax system and the best use of the SARS resources. The VDP is aimed at encouraging taxpayers to voluntarily disclose tax defaults. The draft guide provides general guidance on the VDP.
 - The due date for public comment is 10 December 2021
 - The draft guide can be found [here](#).
 - **Estate Duty | Update on share valuations for Estate Duty**
 - The Commissioner must approve the valuation of shares held by the deceased person in unlisted companies/close corporations or shareblock companies at the time of death.
 - For the valuations to be done, valuation packs together with the Valuation Pack Checklist, must be provided to the Share Valuations Team
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- The requirements for each type of valuation pack for Ordinary shares/ Member's interest, Preference shares and Loan accounts can be found on the [Estate Duty webpage](#).
 - **Tax Practitioner | The latest Tax Practitioner Connect Newsletter issue 26**
 - The Newsletter addresses a few topics including:
 - Request to non-compliant practitioners to become compliant
 - Task team established to combat fraudulent alterations of taxpayer eFiling profiles
 - SARS to commence with reporting unlawful use of trademark
 - Posting of VAT201 returns discontinued
 - PAYE non-compliance
 - See the Tax Practitioner Connect Newsletter [here](#).
 - **eFiling | Notice of Registration functionality on eFiling enhanced**
 - More information on eFiling features is on the [eFiling system webpage](#).
 - **Media Release | New director of unit for High Wealth Individuals**
 - SARS welcomed Ms Natasha Singh as Director: High Wealth Individual Segment.
 - The media release statement is [here](#).
 - **e@syFile | A new e@syFile™ Employer version was released**
 - The release notes and changes are:
 - Enhancement to the Summary Report to distinguish between active and cancelled certificates
 - Updated wording on the Declaration page from Tax Year to Period of Reconciliation for relevant drop-down menus
 - Adjustment to the Notification Centre to allow more than one instance of a letter type per Tax Year
 - Adjustment to validation for source code 3020 to align with the SARS PAYE BRS
 - Adjustment to validation for source code 3263 to align with the SARS PAYE BRS

international

- **OECD COP26 Pavilion | No time to rest – Stepping up carbon pricing efforts to meet climate goals**
 - The presentation by Jonas Teusch can be accessed [here](#).
 - **Tax Inspectors Without Borders (“TIWB”) Annual Report 2021**
 - The Annual Report will cover all TIWB activities from July 2020 to June 2021.
 - The Report will be available on 9 November.
 - More information can be accessed [here](#).
 - **Save the date | 2021 plenary meeting of the Global Forum on Transparency and Exchange of Information for Tax**
 - The meeting will give participants the opportunity to, inter alia, take stock of recent developments in tax transparency.
 - The meeting will be held virtually from 17 – 19 November 2021.
 - More information can be accessed [here](#).
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- **OECD | Mexico and Rwanda join regional initiatives for tax transparency**
 - Mexico and Rwanda have joined the Punta del Este Declaration and Yaoundé Declaration, respectively.
 - Punta del Este Declaration
 - Initially signed by four ministers from Latin American countries in November 2018, the Punta del Este Declaration is a call for action to strengthen the region's efforts against tax evasion and other financial crimes, such as corruption and money laundering. With Mexico's adhesion, the Declaration now counts 14 signatories. The work and progress of this initiative are reflected in the Tax Transparency in Latin America annual report.
 - Find a copy of the declaration [here](#).
 - Find a copy of the Tax Transparency in Latin America annual report [here](#).
 - Yaoundé Declaration
 - The Yaoundé Declaration, originally signed by four countries in November 2017, encouraged the African Union to begin a high-level discussion on tax co-operation and illicit financial flows (IFFs) and their link to domestic resource mobilisation. Four years later, with Rwanda's support, 31 African ministers of finance and the African Union Commission now back the Declaration.
 - The goal is to ensure that African countries take ownership of the tax transparency agenda and promote it to serve the continent's interests in fighting tax evasion and IFFs, thus enhancing domestic resource mobilisation.
 - The Africa Initiative annual progress report, Tax Transparency in Africa, published since 2019, highlights developments and points to remaining challenges.
 - Find a copy of the declaration [here](#).
 - Find a copy of the Tax Transparency in Africa annual report [here](#).
 - **Country-by-Country reporting | The OECD published the latest outcomes of the implementation of BEPS Action 13 on the transparency of global operations of large MNEs**
 - The 2021 annual peer review report reflects the outcome of the fourth review which considered all aspects of implementation. It contains the review of 132 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS which provided legislation or information pertaining to the implementation of CbC Reporting.
 - The fourth annual peer review of BEPS Action 13 can be found [here](#).
 - **BEPS Action 14 | Mutual Agreement Procedure | 7 new peer reviews**
 - New peer review reports on improving tax dispute resolution mechanisms have been published for Brazil, Bulgaria, China, Hong Kong, Indonesia, Russia, and Saudi Arabia.
 - These reports can be accessed [here](#).
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- **OECD Taxation Working Papers | Jonas Teusch and Samuel Ribansky published paper on Greening international aviation post COVID-19 : What role for kerosene taxes?**
 - The paper can be found [here](#).
- **Platform for Collaboration on Tax | The OECD published the Platform for Collaboration on Tax Progress Report 2021**
 - The report can be found [here](#).
- **Carbon Pricing | The OECD published a report on the Carbon Pricing in Times of COVID-19: What Has Changed in G20 Economies?**
 - More information on the report is available [here](#).

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