

# ENSAfrica tax in brief

Below, please find issue 58 of ENSAfrica's tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- ***Tax Court of South Africa I ABC Bank Limited v Commissioner for the South African Revenue Service SARSTC VAT 1904 [2020] (26 November 2020)***
  - The appellant claimed a deduction under section 16(3)(c) of the VAT Act, 1991 (the “**VAT Act**”) for their unsecured lending business in which they would, upon the retrenchment or death of their clients, settle their outstanding loans up to a specified amount.
  - ABC does not charge any fees for the loan cover but does charge an initiation fee, service fees and interest.
  - The South African Revenue Service (“**SARS**”) contends that the loan cover payments do 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” in that: (1) the loan cover was provided for no “consideration” and accordingly the supply of the loan cover had no “value”, and (2) the loan cover constituted, alternatively was in respect of, an exempt supply.
  - The court had to determine whether the loan cover is a “taxable supply” as required by section 16(3)(c) of the VAT Act.
  - The court held that the fact that the supply of the loan cover is not charged for in a separate fee would not disqualify it from being a taxable supply.
  - Furthermore, because the supply of loan cover advances the entire business of advancing credit and this includes a taxable supply, the loan cover advances a taxable supply for consideration.
  - The requirements of section 16(3)(c) of the Vat Act are thus satisfied and ABC qualifies for the deduction provided for therein.
  - Find a copy of this judgment [here](#).
- ***Medtronic International Trading SARL v CSARS (33400/2019) [2020] ZAGPPHC (15 February 2021)***
  - The applicant seeks to review two decisions taken by the respondent, SARS, in terms of the Promotion of Administration of Justice Act, 2000 (“**PAJA**”),

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alternatively on the principle of legality, the common law and section 33 of the Constitution of the Republic of South Africa.

- This review essentially involves two interrelated decisions, the first being the review of the decision taken by the respondent refusing to consider the applicant's request for remission in terms of section 39(7)(a) of the VAT Act. Additionally, the decision not to withdraw such aforesaid decision in terms of section 9 of the Tax Administration Act.
- The court held that the applicant has shown that the impugned decisions taken by the respondent were pertinently swayed by errors in law, they were not authorised by any empowering provision and lastly important considerations were not considered whilst irrelevant considerations were.
- The applicant thus succeeded in demonstrating grounds for the review and setting aside of the decisions made by the respondent in terms of PAJA.
- Find a copy of this judgment [here](#).

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## legislation and draft legislation

- **Draft Notice on amounts for purposes of definition of retirement annuity funds**
  - Due for comment 31 March 2021.
  - Find a copy of the Notice [here](#).
- **Draft Notice on UIF remuneration limits**
  - Due for comment 31 March 2021.
  - Find a copy of the Notice [here](#).
- **Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill**
  - Due for comment 31 March 2021.
  - Find a copy of the Bill [here](#).

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## SARS publications

- **SARS published General Note 16 (Issue 2) which is a replacement of the content of the original General Note 16 and all its addenda.**
    - It concerns Commutation of Small Annuities.
    - Find a copy of the general note [here](#).
  - **SARS offices have opened on 17 February 2021**
    - SARS has re-opened its branch offices to serve the public.
    - Bookings can only be made via the SARS website or the SARS MobiApp.
    - All virtual bookings via the SARS site will continue to be honoured via a virtual engagement (MS Teams or telephonic engagement).
    - The SARS Contact Centre will continue to service any queries from members of the public.
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- All South African Ports of Entry manned by SARS customs officials will continue to operate during this lockdown period.
- COVID-19 protocols must be followed in all SARS buildings.
- **SARS published the Estate Duty implications on key man policies external guide**
  - Find a copy [here](#).
- **SARS published Public notice 101 in terms of section 25(7) of the Tax Administration Act, 2011 (“TAA”) extending the deadline to file Country-by-Country Report returns by persons as specified in the notice**
  - Find a copy [here](#).
- **SARS published tender documents in respect of request for proposal (RFP) 26/2020: Appointment of a Qualified Service Provider for the Provision of Auctioneer Services for SARS Nationally**
  - Find a link to the documents here.
  - SARS published an updated list of tender bids received.
  - Find a copy [here](#).
- **SARS published the 2021 National Budget and associated documentation**
  - Find copies [here](#).
- **SARS published an Income Tax Notice | Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1) of the Income Tax Act, 1962 (“ITA”)**
  - Find a copy of the Notice [here](#).
- **SARS published an updated Employers Guide to the Third Party Appointment Process**
  - Find a copy [here](#).
- **SARS published the trade statistics for January 2021**
  - Find a copy [here](#).

## customs and excise

- **Customs and Excise Act, 1964 (“Customs and Excise Act”) | tariff amendment notices published in Government Gazette 44169 of 5 February 2021**
  - Part 1 of Schedule No. 3, by the insertion of rebate item 311.40/00.00/01.04, in order to create a rebate facility for yarns and textiles for use in the manufacture of apparel - ITAC Report No. 641
    - Find a copy [here](#).
  - Part 2 of Schedule No. 4, by the insertion of various items under rebate item 460.15, in order to create a rebate facility for the importation on tinplate - ITAC Report No. 640
    - Find a copy [here](#).
  - Part 1 of Schedule No. 1, by the substitution of Note 5 in Chapter 98 of Section XXII, in order to implement the policy directive for the inclusion of semi-knocked down vehicles kits as eligible products under the automotive production and development programme - ITAC Minute M03/2020

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- Find a copy [here](#).
  - **Customs weekly list of unentered goods**
    - Find a copy [here](#).
  - **Customs and Excise Act | Taxation proposals as tabled by the Minister of Finance during the 2021 National Budget Review**
    - Please find a copy [here](#).
  - **Customs and Excise Act | tariff amendment notices scheduled for publication in the *Government Gazette***
    - Part 6 of Schedule No. 1, by the insertion of Note 4 as well as the substitution of various items under export tax item 193.00
      - Find a copy [here](#).
    - Part 6 of Schedule No. 1, by the substitution of the export tax rates under export tax item 193.00
      - Find a copy [here](#).

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## international

- **OECD report | OECD agrees new peer review process to foster transparency on tax rulings**
    - OECD/G20 Inclusive Framework on BEPS approved the process for the BEPS Action 5 peer review of the transparency framework for the years 2021 to 2025.
    - This includes enhanced Terms of Reference for assessing the implementation of the minimum standard and a streamlined Methodology, adopting a risk-based approach towards the peer reviews.
    - The new process builds on the first phase of peer reviews covering the years 2017 to 2020, with the most recent statistics gathered from the 124 peer reviewed jurisdictions showing that so far 36 000 exchanges on more than 20 000 tax rulings have taken place.
    - Find more information [here](#).
  - **OECD published its report entitled “Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes”.**
    - The explores the different strategies and actions that countries can take against those professional service providers who play a crucial part in the planning and pursuit of criminal activity, referred to in the report as professional enablers.
  - Find a copy of the report [here](#).
  - **OECD published its General Tax Report to G20 Finance Ministers and Central Bank Governors**
    - The report outlines the advances made in international taxation and multi-lateral co-operation between G20 countries. Particular emphasis is afforded to the implementation of the BEPS measures as well as the tax challenges arising from digitisation
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- Find a copy of the report [here](#).
- **OECD tax talks | Details for registration published**
  - OECD published a link to an upcoming tax talk webinar (4 March 2021)
  - Find a link to the registration page [here](#).

## other

- **SARS MobiApp Enhancements**
  - Updated [guide](#) to include the new SARS MobiApp look and feel.
    - Find the updated guide [here](#).
  - You can now access the SARS Online Query System (SOQS) via the MobiApp.
  - The SOQS allows one to:
    - Request your Tax Reference Number;
    - Submit supporting documents;
    - Report a new Estate case;
    - Request your Tax Compliance Status;
    - Submit a payment allocation via the Account Query functionality;
    - Update your registered tax representative.
    - Find the SOQS [here](#).

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