



Below, please find issue 169 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- Tax Court (Johannesburg) | *Taxpayer LE (Pty) Ltd v The Commissioner for the South African Revenue Service* (IT 77151) [2026] ZATC
  - The appeal arises from the South African Revenue Service's ("**SARS**") investigation into three locomotive supply agreements concluded between Taxpayer LE and Marshall SOC Ltd. SARS raised additional assessments for the 2013 to 2018 years of assessment on the basis that Taxpayer LE overstated its costs of sales to finance alleged "kickbacks" to several Hong Kong registered entities, and claimed impermissible deductions under the Income Tax Act, 1962 ("**ITA**"), which included an interest deduction and various consultancy and management fees.
  - The Tax Court was required to determine several interlocutory issues, including prescription, the duty to begin, the admissibility of Exchange of Information documents obtained from Hong Kong under the Double Taxation Agreement, and the continuation of the appeal in the taxpayer's absence under rule 44(7) of the Tax Court Rules.
  - The Tax Court upheld the additional assessments and made the following orders:
    - The interlocutory issues were dismissed;
    - Prescription did not apply to the additional assessments in terms of section 99(2) of the Tax Administration Act, No. 28 of 2011 ("**TAA**"), as Taxpayer LE had made misrepresentations and failed to disclose material facts;
    - The costs of sales were inflated by approximately 20-21% of contract value to fund "kickbacks", that the R225 million interest deduction was contrived, and the consultancy fees was correctly disallowed;
    - The 200% understatement penalties were upheld on the basis of intentional tax evasion; and
    - The interest under section 89quat of the ITA was confirmed.
  - Find a copy of the judgment [here](#).
- Tax Court (Johannesburg) | *Taxpayer EPP v The Commissioner for the South African Revenue Service* (IT 24852) [2026] ZATC
  - Taxpayer EPP, a licensed fuel distributor, had claimed a deduction in its 2015 return, representing excise duties paid during 2013 which were not refunded because the claims had prescribed under the Customs and Excise Act, 1964 ("**Customs and Excise Act**"), after its clearing agent failed to submit refund applications within the two-year limitation period. SARS disallowed the deduction, levied a 10% understatement penalty, and imposed interest under section 89quat of the ITA.
  - The Tax Court was required to determine whether Taxpayer EPP was entitled to deduct the amount as a "loss" under section 11(a) of the ITA in the 2015

year of assessment, rather than as expenditure incurred in the 2011 to 2013 years of assessment when the duties were paid.

- The Tax Court dismissed the appeal and held the following:
  - The excise duties constituted expenditure incurred in the 2011 to 2013 years of assessment when the fuel was purchased, and not in the 2015 year of assessment. The possibility of a later refund did not render the initial liability to incur the expenditure conditional.
  - The 10% understatement penalty was upheld as Taxpayer EPP deliberately claimed the deduction and the prejudice to the fiscus constituted a "substantial understatement".
  - The interest under section 89quat of the ITA was confirmed, as the circumstances were not beyond Taxpayer EPP's control.
- Find a copy of the judgment [here](#).
- Supreme Court of Appeal | *Commissioner for the South African Revenue Service v Bullion Star (Pty) Ltd* (894/2024) [2026] ZASCA 76
  - SARS obtained an ex parte search and seizure warrant under section 60 of the TAA against Bullion Star (Pty) Ltd relating to a VAT audit. The High Court reconsidered the search and seizure warrant in terms of Uniform Rule 6(12)(c) and set it aside on the basis that the warrant was overly broad and unlawful.
  - The Supreme Court of Appeal was required to determine, whether:
    - the overbroad portions of the warrant should have been severed rather than set aside entirely; and
    - paragraph 7 of a consent order between the parties constituted a self-standing agreement entitling SARS to use the seized documents for the VAT audit regardless of the reconsideration outcome.
    - The appeal was dismissed with costs.
    - The overbroad warrant was set aside in its entirety, and SARS was interdicted from utilising any information secured as a result of the search and seizure.
  - Find a copy of the judgment [here](#).
- High Court | *Aviwe Ntandazo Ndyamara NO and Others v CSARS* (51569/2020) [2026] ZAGPPHC
  - The liquidators of Swifambo Rail Leasing (Pty) Ltd ("**Swifambo**") sought an order that each of the value-added tax ("**VAT**") payments made by Swifambo to SARS be set aside as dispositions not made for "value" as contemplated in section 26(1) of the Insolvency Act, 24 of 1936 ("**Insolvency Act**").
  - The VAT payments were made pursuant to Swifambo's supply of locomotives to the Passenger Rail Agency of South Africa. The latter was reviewed and set aside by the High Court on the basis of material irregularities, including corrupt conduct in the tender process.
  - The Court held the VAT payments did not constitute dispositions not made for "value" as contemplated in section 26 of the Insolvency Act, and no portion of the VAT paid constituted an "excess" payment made without "value". At the time the payments were made, Swifambo was under a lawful statutory obligation to account for and pay VAT arising from taxable supplies made in the course or furtherance of an enterprise and therefore constituted "value" in law. The subsequent invalidation of the purchase agreement did not retrospectively extinguish the fiscal consequences that had already arisen under the Value-Added Tax Act, 89 of 1991.
  - Find a copy of the judgment [here](#).
- High Court | *Poseidon Operations (Pty) Ltd v CSARS and Others* (23278/2022) [2026] ZAGPPHC 453
  - SARS applied for leave to appeal a judgment granting relief to Poseidon Operations (Pty) Ltd in a customs dispute concerning the export of goods to Katanga (DRC). The issues included whether goods had been exported, diverted, or swapped, hearsay evidence, and the effect of COVID-19 regulations.

- The application for leave to appeal was dismissed on the basis that SARS merely directed criticisms at the reasoning without demonstrating a material impact on the substantive order. The Court stood by its findings on each ground and held that SARS had not demonstrated reasonable prospects of success on appeal.
  - Find a copy of the judgment [here](#).
- High Court | *CSARS and Another v Alliance Fuel (Pty) Ltd (Leave to Appeal)* (7453/2024) [2026] ZALMPPHC 43
  - The Court had previously granted Alliance Fuel (Pty) Ltd urgent interim relief restraining further searches under customs warrants and use of seized materials.
  - SARS applied for, and the Court granted, SARS leave to appeal on grounds including that the original judgment failed to deal with section 96 of the Customs and Excise Act (a jurisdictional point), and denial of audi alteram partem given that SARS was given only one day's notice of the urgent hearing.
  - Find a copy of the judgment [here](#).
- High Court | *WCF Hardware Distributors (Pty) Ltd v CSARS (2024/051127)* [2026] ZAGPPHC 104
  - The Court was required to determine whether WCF Hardware Distributors (Pty) Ltd's ("**WCF Hardware**") assembly process relating to imported hinges constituted "manufacture" as contemplated in rebate item 315.06, entitling it to a full rebate of 20% customs duty.
  - The Court held that the imported hinges already had the essential character of complete hinges upon importation. WCF Hardware's process amounted to repackaging by adding screws – no characteristics were changed. The test is whether that which is made is different from that out of which it is made – and WCF Hardware did not satisfy this test.
  - The application was dismissed.
  - Find a copy of the judgment [here](#).
- High Court | *Afrinergy Holdings (Pty) Ltd v CCARS and Others (Review)* (18187/2022) [2026] ZAGPPHC 105
  - Afrinergy Holdings (Pty) Ltd's ("**Afrinergy**") truck, transporting diesel fuel, was found abandoned with the driver having absconded. SARS detained and subsequently seized the truck, trailer, and fuel. Afrinergy's Internal Administrative Appeal and alternative dispute resolution (ADR) proceedings were unsuccessful.
  - The Court held that inter SARS' decision to seize was lawful under the Promotion of Administrative Justice Act, 3 of 2000, given the discrepancies in invoices, truck movements, and absence of a proper declaration.
  - Afrinergy's review application was dismissed with costs.
  - Find a copy of the judgment [here](#).
- High Court | *Contract Packaging Solutions CC v SARS and Others (2025/016340)* [2026] ZAGPPHC 17
  - Contract Packaging Solutions CC ("**Contract Packaging**") operated a bottling, canning, and packaging business. Approximately 98% of its business comprised manufacturing non-alcoholic energy drinks, with less than 2% relating to bottling RTD alcoholic beverages. Pursuant to a search and seizure warrant, SARS entered Contract Packaging's premises, detained plant machinery, and goods, and closed the entire business operation (including the energy drink line). Contract Packaging sought urgent interim relief to resume its energy drink operations pending a review application.
  - The Court held that Contract Packaging failed to establish a prima facie right to resume operations because the detention (which it did not challenge) affected that right. There was prima facie evidence for SARS to believe unlawful activities took place at the premises, including possible unlicensed manufacturing of alcohol and sugary beverages subject to the Health Promotion Levy. The balance of convenience favored SARS – granting the

interdict would prejudice SARS' ability to conduct its investigation and perform tests on detained goods. Contract Packaging also had an alternative remedy in the form of a damages claim.

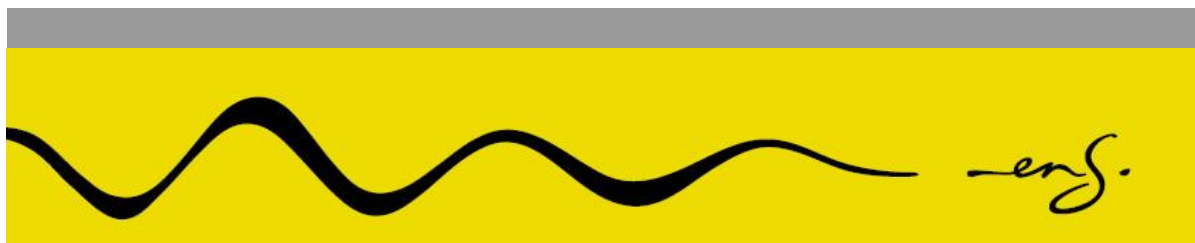
- The application was dismissed with costs.
- Find a copy of the judgment [here](#).

## SARS publications

- Income Tax | How to complete the Beneficial Ownership Register for Partnership IT3(BO) before submitting an ITR12
  - SARS advises taxpayers of the steps and requirements for the IT3(BO) Beneficial Ownership declaration on eFiling and the Income Tax Return for Individuals (ITR12).
  - Taxpayers must submit the IT3(BO) before the related ITR12. This enables SARS systems to correctly align third party data with the individual income-tax return and facilitates accurate and efficient processing.
  - Although the IT3(BO) submission should precede the ITR12 submission, taxpayers should note that:
    - The IT3(BO) form may be completed, updated, and submitted at any point during the year; and
    - No penalties are currently associated with the timing of the IT3(BO) submission.
  - Find a more details in the guide [here](#).
- Guide to the Voluntary Disclosure Programme (Issue 2)
  - This guide provides general guidance on the voluntary disclosure programme under Chapter 16 of the TAA.
  - Find a copy of the guide [here](#).
- Interpretation Note 144 (“**IN 144**”) | Income Tax Exemption: Bargaining Councils
  - SARS has published IN 144 to provide clarity on the approval of registered bargaining councils as institutions, boards, or bodies under section 10(1)(cA)(i) of the ITA.
  - Find a copy of the IN [here](#).
- Guide to the Tax Directive functionality on eFiling has been updated
  - This guide is designed to assist Fund Administrators / Long-term Insurers / Employers / Tax Practitioners and/or Individuals with the Tax Directive administrative functions on eFiling:
    - To activate the Tax Directive function;
    - Set applicable rights for the user(s) of eFiling;
    - To assist with the completion and submission of the IRP3(b) and IRP3(c) tax directives forms, by Organisations, Tax Practitioners, and/or Individual taxpayers, and to ensure that they are successful;
    - Obtain a simulation of the Lump Sum tax calculation;
    - Provide guidance with the uploading and submission of supporting documents; and
    - Any other relevant functions on eFiling.
  - Find a copy of the guide [here](#).
- Employees' Tax | How to submit EMP501 where income tax number not available
  - SARS has compiled a few FAQs on what to do when an employee's income tax number is not available and the employee cannot be contacted.
  - Find the FAQs [here](#).

## customs and excise

- Tariff Amendments
  - Notice R.7491
    - Imposition of provisional payment in relation to anti-dumping duty on new pneumatic tyres of rubber of a kind used on motor cars and on buses and lorries manufactured by Shandong Changlu Hong Tire Co. Ltd originating in or imported from the Peoples Republic of China – (ITAC Minute M03/2025).
    - Implementation date is 22 May 2026.
    - Find a copy of the notice [here](#).
  - Notice R.7492
    - Amendments to Part 1 of Schedule No. 2, by the termination of the anti-dumping duties on new pneumatic tyres of rubber of a kind used on motor cars and on buses or lorries manufactured by Shandong Changlu Hong Tire Co. Ltd originating in or imported from the Peoples Republic of China (ITAC Minute M03/2025).
    - Implementation date is 22 May 2026.
    - Find a copy of the notice [here](#).
  - Notice R.7521
    - Correction Notice – By the substitution of tariff subheading 7307.19.90 as published in Notice No. R.7480 of Government Gazette No. 54678 dated 15 May 2026.
    - Find a copy of the notice [here](#).
- Rule Amendments
  - Notice R.7493
    - Amendment to the rules under sections 64D and 120 of the Customs and Excise Act – Licensing of remover of goods in bond (DAR270).
    - Implementation date is 22 May 2026.
    - Find a copy of the notice [here](#).
  - Notice R.7522
    - Amendment to the rules under sections 46A and 120 – non-reciprocal zero-tariff treatment for goods exported from the Republic of South Africa to the Peoples Republic of China (DAR271)
    - Find a copy of the notice [here](#).



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