

# ENSAfrica tax in brief

Below, please find issue 98 of ENSAfrica's tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- **Supreme Court of Appeal | *Commissioner for the South African Revenue Service v Medtronic International Trading S.A.R.L (Case no 456/2021) [2023] ZASCA 20 (03 March 2023)***
  - On 3 March 2023, the Supreme Court of Appeal (“SCA”) dismissed an appeal from the Gauteng Division of the High Court, Pretoria. The appeal turned on whether the voluntary disclosure (“VDP”) provisions of the Tax Administration Act, 2011 (“TAA”) precluded remission of interest levied on the late payment of value-added tax (VAT), as provided for in the VAT Act, 1991 (“VAT Act”).
  - The respondent, Medtronic International (“Medtronic”), had applied for a VDP in respect of VAT amounts owing. In the course of negotiations preceding the conclusion of the VDP agreement, Medtronic requested SARS to waive the interest payable as a result of its default of payment of VAT, considering the circumstances in which the default had occurred. SARS informed Medtronic that it was not empowered to waive interest under the VDP.
  - Medtronic elected to proceed with the VDP, and fully complied with the terms of the VDP agreement, ie, paying the post-relief amount in full, including the interest that resulted from the default.
  - Medtronic requested SARS to remit interest levied on the capital tax representing the amount of default in terms of the interest remission provisions in section 39(7) of the VAT Act, read with SARS' Interpretation Note 61.
  - SARS responded that the remission of interest was not catered for in the VDP programme under the TAA and considered the request invalid. SARS suggested Medtronic submit a notice of objection instead.
  - The SCA found that SARS' refusal to entertain Medtronic's remission of interest application undermined a fundamental right enshrined in the Bill of Rights and concluded that SARS bore a statutory duty buttressed by the Constitution to, at the very least, give consideration to the request and then make a decision based on the merits of the matter.
  - The SCA held that SARS' refusal was therefore unjustified and eligible to be reviewed under ss 6 and 8 of the Promotion of Administrative Justice Act, 2000 (PAJA) and dismissed the appeal with costs.

- In the minority judgment, it was found that the conclusion of the voluntary disclosure agreement in terms of section 229 of the TAA precludes the subsequent consideration of remission of interest in terms of section 39(7) of the VAT Act or section 187(6) of the TAA on the basis that the conclusion of the agreement establishes the liability for the payment of the agreed tax debt. However, the minority expressed the view that an application for remission of interest is not expressly excluded in Part B of Chapter 16 of the TAA and it leaves open the question of whether remission of interest may be considered simultaneously with consideration of voluntary disclosure relief.
- Since Medtronic had not elected to proceed with such an application prior to the conclusion of the voluntary disclosure agreement, no definite finding to this effect was made. The minority would therefore have upheld the appeal, with costs.
- Find a copy of the judgment [here](#).

## customs and excise

- **Customs and Excise Act, 1964 | Customs Weekly List of Unentered Goods**
  - Find a copy of the Customs Weekly List of Unentered Goods for 27/02/2023 to 05/03/2023 [here](#)
- **Customs | Registration, Licencing and Designation**
  - The facility codes used in Box 30 on the Customs Clearance Declaration have been updated.
  - Find more information [here](#).
- **Become an Authorised Economic Operator (“AEO”)**
  - A company that engages in international trade and has been approved by SARS Customs for complying with World Customs Organisation or similar supply chain security standards is known as an AEO.
  - Apply to SARS to become an AEO.
  - Find more information [here](#).
- **Customs and Excise Act, 1964 | Preparation of Legislation – Draft Documents for Public Comment**
  - Draft Schedule and Forms Amendments:
    - Part 3 of Schedule No. 6 – Insertion of Note 14 and refund item 470.05/00.00/01.00;
    - DA 185 – Application forms: Registration / Licensing of Customs and Excise clients; and
    - DA 185.4A3 – Registration client type 4A3 – Rebate/refund user (Schedule No 3, 4 & 6).
    - Find more information [here](#).

## SARS publications

- **SARS published information on whether an executor can be held personally liable for estate duty and when and how to request a Deceased Estate Compliance (DEC) letter**

- The information can be found [here](#).
- **The Government Connect**
  - Issue 8 of the newsletter is now available [here](#).
- **National Treasury and the South African Revenue Service have published the 15th annual edition of the Tax Statistics**
  - The 2022 edition provides an overview of tax revenue collections and tax return information for the 2018 to 2022 tax years, as well as the 2017/18 to 2021/22 fiscal years.
  - See the full media statement [here](#).
  - To see the Tax Statistics publications, visit the Tax Statistics [webpage](#).
- **Details for regulations in TAA scheduled for publication in the Government Gazette**
  - The regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the TAA, promulgated under section 257 of the Act, on the date that the mandatory disclosure rules take effect.
  - Find the regulations [here](#).
- **Publication details for regulation 3118, as published in the Government Gazette 48165 of 3 March 2023, are now available**
  - The regulation relates to the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act, 2011 (Act No. 28 of 2011), promulgated under section 257 of the Act, on the date that the mandatory disclosure rules (MDR) take effect.
  - Find the regulation [here](#).
- **SARS will introduce enhancements to the Tax Directives process**
  - The trade testing dates are still to be confirmed. Implementation of the software is planned for the first quarter of the 2023/2024 financial year.
  - These enhancements are indicated in [here](#).
- **The Minister of Finance has approved the new table of rates per kilometre for motor vehicles in respect of the 2024 year of assessment**
  - The Commissioner of SARS has determined the daily amount for expenditure in respect of meals and incidental costs in the Republic of South Africa in respect of the 2024 year of assessment, for purposes of section 8(1) of the Income Tax Act, 1962.
  - The daily amount for travel outside South Africa has remained unchanged since 1 March 2019.
  - The external guide and annexure have been updated and can be found [here](#).
- **Tax Directives**
  - Paragraph (b)(xii)(bb) of the definition of “retirement annuity fund” in section 1(1) of the Income Tax Act has been amended to allow for transfers between Retirement Annuity Funds (RAF).
  - Find more information [here](#).
- **Webinar on SARS Administered Incentives**
  - SARS hosted a webinar on 9 March on SARS Administered Incentives.
  - Find more information [here](#).
- **President Ramaphosa and the Public Officers for Ntaba Nyoni Estate and Ntaba Nyoni feedlot provide consent to SARS to make a public statement on their Tax Compliance Status**
  - SARS has received the consent of the Taxpayers in terms of section 69(6) of the TAA to make the public statement.
  - See the full media statement [here](#).
  - Watch the videos [here](#) and [here](#).
- **Legal Counsel Publications | Average Exchange Rate**
  - *The Average Exchange Rates* for the first quarter of 2023 have been published.

- Find a copy of Table A (list of the average exchange rates of selected currencies for a year of assessment as from December 2003) [here](#).

## International

- **COECD | International tax update**
  - The OECD presented an international tax update to the G20 finance ministers and central bank governors
  - Find the presentation [here](#).
- **An OECD Statistics blog post has been released on the new dataset for the tracking of carbon prices**
  - Find copy of the notice [here](#).
- **OECD | Angola joins Global Forum as 166th member**
  - Angola has become the 166th member – and 35th African member – of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
  - Angola will also join the Africa initiative.
  - Find more information [here](#).
- **OECD | Environmental Tax Policy Review of Andalusia**
  - The Environmental Tax Policy Review of Andalusia provides a detailed review of the environmentally related tax framework in the areas of greenhouse gas emissions and air pollution, water usage and pollution, and waste and circular economy in the autonomous region of Andalusia, Spain.
  - Find a copy of the Tax Policy Review [here](#).

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