

ENS tax in brief

Below, please find issue 113 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- *Canyon Resources (Pty) Ltd v CSARS (68281/2016) [2023] ZAGPPHC (30 November 2023)*
 - This is an application for the setting aside and substitution of the determination by the Commissioner for the South Africa Revenue Service ("**Commissioner**" or "**SARS**") regarding the diesel refunds claimed by the applicant under rebate item 670.04 provided for in the Customs and Excise Act, 91 of 1964 ("**Customs and Excise Act**").
 - The High Court dismissed the applicant's claim and upheld the determination by SARS on the basis that the applicant did not produce sufficient evidence on which the High Court could find that SARS' determination was incorrect.
 - Find a copy of the judgment [here](#).
- *SAMU v Commissioner for the South African Revenue Service (VAT 1788) [2023] ZATC 14 (30 August 2023)*
 - This is an appeal against an additional assessment raised by SARS. The Tax Court in this matter had to determine whether the appellant was entitled to claim input tax in respect of expenses it incurred to provide accommodation and meals to certain employees, as well as whether SARS, the respondent, was entitled to impose an understatement penalty of 10%.
 - The employees in question were based on construction sites and were provided with accommodation and meals.
 - The Tax Court disallowed the input tax claim on the basis that the appellant is not in the hospitality entertainment business and did not charge its employees for the meals and accommodation so provided.
 - The Tax Court ordered SARS to remit the understatement penalty on the basis that the appellant's behaviour amounted to a bona fide inadvertent error due to the following factors:
 - The value-added tax ("VAT") returns are compiled by personnel employed in the different division of the appellant whereafter these are subjected to scrutiny not only by the senior finance manager but also by the Internal Audit department;
 - The finance department was assured by the audit department that the input tax under those circumstances was claimable; and
 - The appellant's external auditors did not raise any concern about the appellant claiming input tax in respect of the provision of meals and accommodation for employees.

- Find a copy of the judgment [here](#).
- *JT International Manufacturing South Africa (Pty) Ltd v CSARS (29690/14) [2023] ZAGPPHC (10 October 2023)*
 - The High Court had to determine whether:
 - The provisions of rebate item 460.24, read with rule 19A are peremptory, particularly insofar as timeous compliance with the provisions of the rule is concerned; and
 - The Commissioner has a discretion under section 75(10)(a) of the Customs and Excise Act, or alternatively the common law, to ex post facto, with retrospective effect, exempt the applicant from compliance with Rule 19A.09c of the Rules to the Customs and Excise Act.
 - The applicant did not comply with the rules of the Customs and Excise Act. The High Court found that, assuming all customs and excise processes were duly followed, the Commissioner would have been entitled to exempt the applicant from whatever prescripts of a Rebate Item or process occasioned after the fact.
 - The High Court dismissed the applicant and held that:
 - The rules are incorporated to the Customs and Excise Act and are peremptory unless a rule or its context expressly indicates that it is not;
 - The bona fides of the applicant and the facts causing the present issue are of little relevance. What is relevant is the applicant's compliance or non-compliance with the Customs and Excise Act; and
 - Neither the proviso to section 75(10)(a) nor the common law authorises the Commissioner to exempt non-compliance with the conditions prescribed by the Rules to the Customs and Excise Act.
 - Find a copy of the judgment [here](#).
- *Arcelormittal South Africa Limited v CSARS (2021/26916) [2023] ZAGPJHC (14 August 2023)*
 - The High Court in this matter had to determine whether the applicant, in terms of the relevant rebate item 670.04, read with Note 6, Schedule 6/Part 3 of the Customs and Excise Act, was entitled to claim refunds on diesel purchased by it to power locomotives travelling on rails in its steel manufacturing plant.
 - The court held that, on a proper interpretation of the expression "rail freight", particularly having regard to the context in which the words are used, it is clear that the legislation does not contemplate granting manufacturers refunds in respect diesel used for locomotive rail transport within their production plants. On this basis, the applicant was not entitled to the refunds on diesel in terms of rebate item 670.04. It follows that there is no basis for any of the relief sought by the applicant.
 - The application was dismissed.
 - Find a copy of the judgment [here](#).
- *Mbali Coal (Pty) Ltd v CSARS (81950-2019) [2023] ZAGPPHC 1792 (5 October 2023)*
 - This is an appeal in terms of the provisions of section 47(9)(e) of the Customs and Excise Act against the determination made by the Commissioner in terms of which it disallowed the applicant's diesel refund claims.

- It was contended that the diesel refund claims were in respect of qualifying or eligible mining activities and that the applicant had provided sufficient records, which meet the legislative requirements, to substantiate its quantification of the diesel refund claim.
- The High Court held that:
 - The diesel refund claims were not in respect of qualifying or eligible mining activities on the basis that they clearly encompass activities carried out after the mineral had been extracted from the ground; and
 - The requirements of a logbook cannot possibly be met as the source documents themselves do not identify the activity that is being undertaken and do not label whether the activity is eligible or non-eligible.
 - The appeal was dismissed.
 - Find a copy of the judgment [here](#).
- *Fast (Pty) Ltd v Commissioner for the South African Revenue Service (IT 14305) [2023] ZATC 13 (24 August 2023)*
 - The Tax Court had to consider two interlocutory applications. Both the applicant and the Commissioner sought to amend the respective statements that they had filed in court. Neither party consented to the amendment sought by the other party, thus compelling each party to seek the court's approval for its intended amendment. The two applications were heard separately on the same day. Due to the facts relating to the assessment and appeal being the same, the court issued one judgment.
 - The applicant opposed the Commissioner's amendment on the basis that it constituted a justification of the Commissioner's additional assessment on grounds that were absent when the assessment was made.
 - The court held that the Commissioner is allowed to rely on a new ground, as long as the new ground does not constitute a change of the whole of the factual or legal basis of his assessment. Should that occur, the Commissioner is obliged to withdraw the assessment and replace it with a new one. For it to constitute a new ground for the whole of the factual or legal basis of the Commissioner's assessment, the ground stated in the SARS rule 31 statement of grounds of assessment must in substance be different from that in the assessment. The court allowed the Commissioner's amendment on the basis that the evidence the Commissioner relied upon to make its assessment in the first place remains the evidence it intends to rely upon to make out its case at the appeal.
 - The Commissioner opposed the applicant's amendment on the ground that it is prohibited by rule 32(3). The Commissioner further argued that the amendment should be refused because the applicant inordinately delayed in bringing the amendment, and as a result thereof the Commissioner has suffered prejudice that cannot be cured by a costs order.
 - The court held that the applicant is only barred from raising a ground that is completely novel, one that was not at all raised in the objection filed in terms of rule 7. The court refused the applicant's application to amend its rule 32 statement of grounds of appeal to the extent that it raised novel grounds.
 - Find a copy of the judgment [here](#).

customs and excise

- Customs and Excise Act | South African Traveller Management System
 - As part of the Customs Modernisation Programme, Customs implemented the South African Traveller Management System ("SATMS") only at airports as the first phase of the project.
 - The second phase includes the implementation of the SATMS at sea and land ports, which has been finalised. The SATMS guide has been updated to include the application of the SATMS at sea and land ports.
 - Find more information [here](#).
- Customs and Excise Act | The [tariff amendment notices](#)
- The [tariff amendment notices](#), scheduled for publication in the Government Gazette, relate to the amendments to -
 - Part 1 of Schedule No. 1, by the deletion and insertion of various subheadings under Chapter 48, in order to increase the rate of customs duty on thermal paper rolls of a width not exceeding 150mm from free of duty to 5% – ITAC Report 711. Find tariff amendment notice R.4089 [here](#).
 - Part 1 of Schedule No. 1, by insertion of Additional Note 3 to Chapter 70 as well as tariff subheadings 7020.00.10 and 7020.00.90, in order to increase the rate of customs duty on shower enclosures from free of duty to 15% – ITAC Report 693. Find tariff amendment notice R. Notice R.4098 [here](#).
- Customs and Excise | Updated Guide to Manage eAccounts on eFiling
 - The external manual, EA-01-M01 eAccount on eFiling, has been withdrawn and replaced with a new guide.
 - All relevant eFiling processes have been revised in their entirety to reflect current system functionalities.
 - The registration process has been deleted from this new guide as it is already contained in the guide on [How to Register for eFiling and Manage Your User Profile](#).
 - Find the new External Guide to Manage eAccounts on eFiling [here](#).
- Customs and Excise Act | Rule amendment notice R.4110
 - The rule amendment notice R.4110 relates to the amendment to the rules under sections 77H and 120 of the Customs and Excise Act and internal appeals
 - Find the notice [here](#).
- Customs and Excise Act | Customs Registration, Licensing and Accreditation: Appeal process
 - The purpose of above process is to submit an internal administrative appeal against a decision relating to customs or excise matters in terms of the provisions of sections 77A – H of the Customs and Excise Act.
 - The appeal will be considered and decided by the Commissioner, or an authorised officer acting under a delegation from, or under the control and direction of, the Commissioner, or by an appeal committee authorised by rule to consider such an appeal.

- Taxpayers must complete and submit the [DA 51 - Internal Administrative Appeal - External form](#).
- The appeal must be delivered to the office from which the notice of the decision was issued within the period specified by rule. Proof of authority to act on behalf of an appellant must be attached where applicable.
- [The DA 52 - Application for ADR for Customs - External form](#) must be completed and submitted to engage the Alternative Dispute Resolution process in terms of the Customs and Excise Act.
- Find more information regarding the Internal Administrative Appeal process [here](#).
- Customs and Excise Act | Customs Registration, Licensing and Accreditation (“**RLA**”): Required supporting documents for applications
 - Supporting documents are required to be uploaded to RLA applications.
 - The following documents are required as proof of address or contact details:
 - A municipal account, fixed line telephone or cellular phone account or any other monthly account or statement (for example, if appropriate in the circumstances, a co-operative statement for farmers, medical aid statement, mortgage statement, SABC television license documents, eToll account, major retail accounts) issued to the applicant that can confirm physical address of the applicant, if the applicant is located in South Africa.
 - A telephone or cellular phone account issued to the applicant to confirm the applicant’s telephone or cellular phone contact details.
 - If the above documents are not in the name of the applicant a commissioned affidavit is required to support the supplied documents.
 - Find more information [here](#).
- Customs and Excise Act | Special Shops for Diplomats
 - SARS published a guide to prepare an overview of the key legislative requirements under the Customs and Excise Act applicable to special shops for diplomats.
 - Find a copy of the guide [here](#).
- Customs and Excise Act | Advance Payment Notification (“**APN**”)
 - Since 3 December 2021, it has been mandatory for all importers to apply for an APN number from SARS for each advance import payment with a value of R50,000.00 and above, and where the balance of payment category code is 101.
 - With effect from **1 December 2023**, authorised dealers (banks) are obligated to record, validate and report the APN provided by a trader/importer to the South African Reserve Bank when such payment is concluded. This means that authorised dealers will only make Advance Import Payments on confirmation of a valid SARS APN.
 - Find the updated FAQs [here](#).

legislation and draft legislation

- Tax Administration Act, 2011 | Public Notice 4051 | Returns of information to be submitted by third parties
 - Public Notice 4051 was published in *Government Gazette* 49646 on 10 November 2023, in terms of section 26 of the Tax Administration Act, 28 of 2011 (“TAA”), amending Notice 3631 published in *Government Gazette* 48867 of 30 June 2023.
 - This notice sets out an amendment to the prior notice issued in respect of the returns of certain trusts for periods commencing on or after 1 March 2023.
 - Find the notice [here](#).

tax rulings

- Binding Class Ruling 087
 - This ruling determines the tax consequences for shareholders of a venture capital company upon termination of the company’s corporate existence.
 - This is a ruling on the interpretation and application of the following provisions of the Income Tax Act, No. 58 of 1962 (“ITA”) –
 - Section 8(4)(a);
 - Section 9C(5);
 - section 12J; and
 - section 44.
 - Find the ruling [here](#).
- Binding Private Ruling (“BPR”) 395
 - This ruling determines the tax consequences of the termination of a venture capital company.
 - This is a ruling on the interpretation and application of –
 - sections 12J and 44 of the ITA; and
 - section 8(1)(a) of the Securities Transfer Tax Act, No. 25 of 2007 (“STT Act”).
 - Find the ruling [here](#).
- BPR 396
 - This ruling determines the tax consequences for the Applicant of a proposed settlement of a shareholder’s debt via set-off against the subscription price for the issue of additional shares to the shareholder.
 - This is a ruling on the interpretation and application of the following provisions of the ITA –
 - section 8(4)(a) and (l);
 - section 19; and
 - paragraph 12A of the Eighth Schedule.
 - Find the ruling [here](#).
- BPR 397

- This ruling determines the income tax and securities transfer tax consequences resulting from an amalgamation transaction entered into between a holding company and its subsidiary.
- This is a ruling on the interpretation and application of –
 - The ITA –
 - section 1(1) – definition of “trading stock”;
 - section 41(1) – definition of “capital asset” and “disposal”;
 - section 44(1) – paragraph (a) of the definition of “amalgamation transaction”;
 - section 44(2);
 - section 44(3);
 - section 44(4A);
 - section 44(8);
 - section 44(13); and
 - paragraph 11 of the Eighth Schedule.
 - The STT Act –
 - section 1(1) – definition of “transfer”; and
 - section 8(1)(a)(ii).
- Find the ruling [here](#).
- BPR 398
 - This ruling determines the tax consequences of a disposal of ordinary shares in a property company, and the redemption of newly issued capitalisation preference shares in that company at a later stage.
 - This is a ruling on the interpretation and application of –
 - The ITA –
 - section 1(1) – definitions of “contributed tax capital”, “gross income”, “dividend” and “equity share”;
 - section 8E;
 - section 8EA;
 - section 40C; and
 - paragraph 43A.
 - The STT Act –
 - section 1;
 - section 2; and
 - section 6.
 - Find the ruling [here](#).
- Binding General Ruling 16 (Issue 3)
 - This binding general ruling (“**BGR**”) prescribes the method to be used in determining the ratio contemplated in section 17(1) of the Value-Added Tax Act, 89 of 1989 (“**VAT Act**”).
 - This BGR applies with effect from all financial years commencing on or after 1 January 2024, and will apply until it is withdrawn, amended or the relevant legislation is amended.
 - The apportionment formula as set out in Issue 2 of BGR 16 is withdrawn effective from the aforementioned date.
 - Find the ruling [here](#).
- BGR 66
 - This BGR clarifies the VAT consequences for a clearing agent and a principal in the event of an overpayment of VAT on the importation of goods due to

- an erroneous Customer Clearance Declarations made by the clearing agent, on behalf of the principal.
 - This BGR applies from date of issue, and is valid until it is withdrawn, amended or the relevant legislation is amended.
 - Find the ruling [here](#).
- BGR 67
 - This BGR determines the income tax treatment of a government grant received under the Clothing, Textiles, Footwear and Leather Growth Programme that replaced the Clothing and Textiles Competitiveness Programme.
 - This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.
 - Find the ruling [here](#).
- BGR 68
 - This BGR sets out the documentation acceptable to SARS to substantiate an input tax deduction on an upward pricing adjustment in respect of goods previously imported into the Republic.
 - This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.
 - Find the ruling [here](#).

SARS publications

- Tax Practitioner Connect Newsletter | Issue 48
 - This issue includes information on the basic guide to section 18A of the ITA approvals, updates to the guide to submit a dispute via eFiling, implementation of two-factor authentication to login on the SARS MobiApp, enhancements to the tax compliance status, digital fraud reporting and declaration of proceeds from rental income on the income tax return.
 - Find Issue 48 [here](#).
- Government Connect Newsletter | Issue 15
 - This issue includes information on VAT training for municipalities, managing the employer account, a basic guide to section 18A of the ITA approval, implementation of two-factor authentication for login to the SARS MobiApp, enhancements to the tax compliance status and online digital fraud reporting.
 - Find Issue 15 [here](#).
- VAT Connect | Issue 17
 - The latest VAT Connect newsletter includes information on legislative amendments, VAT on the importation of goods, securities lending arrangements, the discussion paper on VAT modernisation and VAT rulings.
 - Find a copy [here](#).
- SARS External Policy | Taxpayer Record Retention
 - Taxpayers are obliged to retain records, books of account and documents in order to fulfil the requirements of the TAA. These records can be kept electronically as prescribed by the Commissioner by public notice.

- In the following instances, taxpayers must request authorisation from SARS to deviate from the legislated requirements:
 - Where records are to be kept in a different form than required by TAA; and/or
 - Where the electronic records are kept at a place physically located outside of South Africa.
- In both instances, in accordance with section 30(2) of TAA, a senior SARS official may, subject to conditions authorise the form of record keeping or its location outside South Africa if acceptable.
- Find SARS' newly published External Policy regarding the above matters [here](#).
- How to activate a post-sequestration number to submit income tax returns
 - Find the steps that should be followed to activate the post-sequestration number on eFiling here to enable the submission of income tax returns for the period of sequestration.
 - Find more information on insolvency [here](#).

International

- The Organisation for Economic Co-Operation and Development (“OECD”) | Kuwait, Azerbaijan join the Inclusive Framework and BEPS Convention
 - Kuwait has joined the OECD/G20 Inclusive Framework on BEPS, an international collaboration with over 140 member countries and jurisdictions.
 - Azerbaijan has become the 102nd jurisdiction to join the BEPS Convention, which now covers over 1 900 bilateral tax treaties. This represents an important milestone in the implementation of treaty-related BEPS measures and the strengthening of the global tax treaty network.
 - As of today, over 1200 treaties concluded among the 85 jurisdictions which have ratified, accepted or approved the BEPS Convention have already been modified by the BEPS Convention. Around 700 additional treaties will be modified once the BEPS Convention will have been ratified by all Signatories.
 - Find more information [here](#) and [here](#).
- OECD | OECD invites public input on proposed changes to the Commentary on Article 5 of the OECD Model Tax Convention and its application to extractible natural resources.
 - This public discussion draft includes proposals for changes to the Commentary on Article 5 of the OECD Model Tax Convention.
 - Find more information [here](#).
- OECD | corporate tax statistics and new working paper on effective tax rates of multinational enterprises
- A new OECD report and dataset was published on 21 November to provide internationally comparable statistics designed to inform the tax policy debate and support the analysis of corporate taxation in general, and ongoing efforts to reform international taxation, in particular.
- Find more information [here](#).

- OECD | Multinational enterprises continue reporting low-taxed profit, even in jurisdictions with high corporate tax rates, underlining need for global tax reform
 - Jurisdictions with high tax rates account for more than half of the low-taxed profits reported globally by multinational enterprises, according to new OECD analysis.
 - The OECD's latest Corporate Tax Statistics report and a new accompanying working paper, Effective Tax Rates of MNEs: New evidence on global low-taxed profit, provide new data on global low-taxed profit, a key issue for determining the impact of the global minimum tax.
 - Find more information [here](#).
- OECD | Fuel axes less resilient than emission permit prices amid high inflation
 - Tax rates in the road transport sector decreased in a large majority of OECD and G20 countries between 2021 and 2023, due in part to government support and high inflation, eroding the carbon pricing signals designed to alter consumer behaviour and help countries meet climate change objectives, according to a new OECD report.
 - Find more information [here](#).
- OECD | Tax and Development Case Study: Combatting tax evasion, avoidance, and illicit financial flows to mobilise domestic resources in West Africa
 - Find a copy of the case study [here](#).

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