

ENSafrica tax in brief

Below, please find issue 99 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **High Court of South Africa, Gauteng Division, Pretoria | The Commissioner for the South African Revenue Services v Grand Azania (Pty) Limited (33257/2021) [2023] ZAGPPHC 173 (13 March 2023)**
 - The matter dealt with an application lodged by the South African Revenue Service ("SARS") for the liquidation of Grand Azania ("Respondent") in terms of section 344 and section 345 of the Companies Act, 1973.
 - SARS based the application on income tax and VAT assessments relating to a gratuitous payment of ZAR6.4-million from VBS Bank. The Respondent had failed to file income tax returns in respect of the 2017 and 2018 years of assessment.
 - After engagement with the Respondent, SARS issued a finalisation of audit letter on 29 March 2021 in respect of which SARS levied understatement penalties of 200% in terms of section 223 of the Tax Administration Act, 2011 ("TAA").
 - The income tax assessments raised by SARS in respect of the 2017 and 2018 years of assessment were estimated assessments, which, in terms of section 95(5) is only subject to objection and appeal if SARS makes a reduced assessment or additional assessment after the taxpayer has filed the relevant tax return. The Respondent had 40 days from the issuance of the estimated assessment returns to file its income tax returns. The Respondent failed to file its income tax returns within the 40-day period. Therefore, the estimated assessment became final and was incapable of objection or appeal as per section 95, read with section 100(1)(a) of the TAA.
 - The court refused to entertain complaints and defences raised by the Respondent in his answering affidavit, which should have been raised by way of objection and thereafter appeal.
 - As regards the liquidation, the court noted that SARS had obtained a judgment in terms of section 172 of the TAA (which is treated as a civil judgment for a liquid debt).
 - The court held that SARS had made out a case and granted the provisional liquidation order.
 - Find the case [here](#).
- **Tax Court | P v Commissioner for the South African Revenue Services IT 45935 (ADM) [2023] ZATC CPT (23 March 2023)**

- This is an opposed interlocutory application in terms of rule 30 of the Uniform Rules of Court (“**uniform rule**”) in which the applicant (“**taxpayer**”) seeks to have a statement delivered by the respondent (SARS) in terms of Tax Court rule 31 set aside as an irregular step.
- This application relates to the proper interpretation of certain rules/sub-rules, in particular the interplay between rules 4, 52(1), 52(6) and 56 of the rules promulgated under section 103 of the TAA (the “**Tax Court Rules**”)
- The taxpayer submits that there is a distinct difference in consequence between the failure to comply with the period imposed for the delivery of a Rule 31 statement (and similarly, a Rule 32 or 33 statement) and any other failure to comply with a period prescribed in the Tax Court Rules.
- SARS argued that the purpose of a Rule 56(1)(a) notice is to afford a defaulting party an automatic extension of 15 days within which to remedy its default, thereby absolving that party of the necessity to apply for condonation as contemplated by rule 52(6) if it complies with the 15- day period. SARS argued that an application for condonation is only required where the 45-day period in Rule 31 has lapsed and the taxpayer has nonetheless failed to deliver a rule 56(1)(a) notice.
- The court considered:
 - Uniform rule 30
 - Rule 4 of the Tax Court Rules;
 - Rule 52(1) of the Tax Court Rules;
 - Rule 52(6) of the Tax Court Rules;
 - Rule 56 of the Tax Court Rules; and
 - Section 129(2) of the TAA;
- The court agreed with SARS’ interpretation, albeit for different reasons.
- The court held that, as a matter of logic, rule 52(6) applies where a party is in default, the other party has done nothing about it, and the defaulting party wishes for the case to proceed, whereas Rule 56(1) gives the innocent party the option to deliver a rule 56(1)(a) notice informing the defaulting party of its intention to apply for a final order in terms of section 129(2) if the defaulting party fails to remedy the default within 15 days. It is thus only if the defaulting party nonetheless fails to remedy the default within the 15- day period that the innocent party is entitled to apply to the tax court for a final order
- Find the case [here](#).

customs and excise

- **Customs and Excise Act, 1964 | Tariff Amendment 2023**
 - The tariff amendment relates to the imposition of provisional payments in relation to inter alia anti-dumping duties against the alleged dumping of other flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, otherwise plated or coated with zinc, of a thickness of less than 0,45 mm.
 - Find a copy of the tariff amendment notice [here](#).
- **Customs and Excise Act, 1964 | Customs Weekly List of Unentered Goods**

- Find a copy of the Customs Weekly List of Unentered Goods for 13/03/2023 to 19/03/2023 [here](#).

SARS publications

- **Public Notice**

- SARS issued the following public notices in terms of the TAA, promulgated on Friday, 10 March 2023.
 - Public Notice 3146 (*Government Gazette 48188*) (“**PN3146**”) - Rules promulgated under section 103 of the TAA.
 - Find a copy of PN3146 [here](#).
 - Public Notice 3136 - (*Government Gazette 48187*) (“**PN3136**”) - Notice of address of service specified by the Commissioner in terms of section 11(5) of the TAA.
 - Find a copy of PN3136 [here](#).
 - Public Notice 3135 - (*Government Gazette 48187*) (“**PN3135**”) - Notice of addresses at which a document, notice or request is to be delivered or made for purposes of rule 2(1)(c)(ii) and rule 3(1) read together with rule 2(c)(iii) of the rules promulgated in terms of section 103 of the TAA.
 - Find a copy of PN3135 [here](#).
- **Interpretation Note**
 - SARS issued Interpretation Note 35 (Issue 5) | Employees’ tax: Personal service providers and labour brokers.
 - Find a copy of the Interpretation Note [here](#).
- **Newsletter**
 - SARS published the latest version of the *Tax Practitioner Connect Newsletter* Issue 40.
 - Find a copy [here](#).
- **New USSD service**
 - USSD or quick codes as it is known, is a new feature available to taxpayers. Taxpayers can now request specific Personal Income Tax related services by typing in a USSD string *134*7277# into their mobile devices to SARS. The benefits are that it is free of charge, and you do not need to have a smart phone or internet connectivity.
 - Find more information [here](#).
- **Tax Directives**
 - SARS issued new tax directives regarding the employees’ tax (PAYE) on the taxpayer’s pension or annuity for the tax period 1 March 2023 to 29 February 2023.
 - Find more information [here](#).
- **Third Party Data Annual Submissions**
 - The SARS Third Party Data Annual Submissions process for the period 1 March 2022 – 28 February 2023 opens on 01 April 2023 and will close on 31 May 2023.

- Find more information [here](#).

International

- **Organisation for Economic Co-Operation and Development (“OECD”) | Mexico deposits its instrument for the ratification of the Multilateral BEPS Convention**
 - Mexico has deposited its instrument of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS Convention), which now covers around 1 850 bilateral tax treaties, thus underlining its strong commitment to prevent the abuse of tax treaties and base erosion and profit shifting (“BEPS”) by multinational enterprises. The BEPS Convention will enter into force on 1 July 2023 for Mexico.
 - Find more information [here](#).
- **OECD | Public consultation meeting on compliance and tax certainty aspects of global minimum tax**
 - As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the Inclusive Framework invited input from stakeholders on compliance and co-ordination aspects of the Pillar Two global minimum tax. This public consultation meeting will discuss the input provided to assist members of the Inclusive Framework in completing the work relating to those aspects and preserve consistent and co-ordinated outcomes for MNEs while minimising compliance burdens and avoiding the risk of double taxation.
 - Find a copy of the *Tax Policy Review* [here](#).
- **OECD | Sustained progress demonstrated in the latest OECD peer review results on the prevention of tax treaty shopping**
 - Members of the OECD/G20 Inclusive Framework on BEPS continue to make significant progress in the implementation of the BEPS package to tackle international tax avoidance, as the OECD releases the latest peer review results assessing the actions taken by jurisdictions to prevent tax treaty shopping and other forms of treaty abuse under Action 6 of the OECD/G20 BEPS Project.
 - Find more information [here](#).
- **OECD | Vietnam joins Multilateral Convention to tackle tax evasion and avoidance**
 - At the OECD Headquarters in Paris, Mr. Cao Anh Tuan, Deputy Finance Minister of Vietnam, signed the world’s widest-reaching international treaty for multilateral tax co-operation, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (or the Convention), bringing the total number of jurisdictions that participate in the Convention to 147.
 - Find more information [here](#).

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