

ENSafrica tax in brief

Below, please find issue 88 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **North Gauteng High Court, Pretoria | SACS (Louis Trichardt) (Pty) Ltd v CSARS (40420/2020; 17064/2021)**
 - The parties have been engaged in extensive litigation since 2007, which has required the attention of at least 10 judges.
 - The applicant, SACS (Louis Trichardt), brought two applications in which it sought relief against the South African Revenue Service ("**SARS**") on the following grounds:
 - an order declaring that SARS is precluded both from auditing, assessing, or "performing tax computations" in respect of its tax liabilities for the 2013 to 2016 tax years, and is precluded from disallowing an exemption claimed for the 2013 to 2019 tax years; and
 - an order declaring that SARS is precluded from raising additional assessments in respect of the applicant's tax liabilities for the 2013 to 2016 years since the period of limitation for the issuance of additional assessments, as contemplated in section 99 of the Tax Administration Act, 2011 ("**TAA**"), has expired.
 - Additionally, the respondent (SARS), challenged the jurisdiction of the court, stating that the dispute should be raised in the Tax Court, rather than the High Court. The court however found that section 21(1)(c) of the Superior Courts Act, 2013, confers jurisdiction on the High Court to consider the application. Furthermore, an agreement between the parties recorded their consent to the jurisdiction of the Gauteng North High Court in the case of any dispute arising therefrom.
 - As regards the first application, the respondent claimed that it has reassessed its understanding and therefore wished to disallow various exemptions claimed in sections 10(1)(z), 11(g), and 8(4)(a) of the Income Tax Act, 1962 (the "**Act**"). The court stated that there is nothing in the law that precludes SARS from doing so, and SARS is therefore entitled to adjust future assessments in line with what it believes is the correct legal position, and apply the same facts to what it now believes is the correct legal position.
 - Regarding the second application, the court found that an oral agreement had been concluded between the parties and therefore, since section 99(1)(c) of the Tax Administration Act, 2011 allows for extension upon agreement, without prescribing any method by which the extension should

be agreed upon, it is not possible for the court to hold that the period of prescription had expired by effluxion of time.

- To this end, the court dismissed both applications with costs following the result in accordance with the agreement concluded by the parties.
- Notably, however, the court stated that “It has to be said that applicant was only able to bring the rule 56 applications because of SARS’ conduct – acts or omissions – which has fallen woefully short of what is required of it in terms of sub-sections 195(1)(a) and (b) of the Constitution of the Republic of South Africa Act, 108 of 1996(the Constitution). It has failed dismally in its duty to comply with the rules of the Tax Court and with court orders. If its version of the tax liabilities of an applicant is correct, then it has by virtue of its acts or omissions concerning the 2005 to 2012 tax years caused the fiscus to lose a considerable amount of money. Its operations constitute the lifeblood of public affairs of the country. Apart from breaching its obligations as set out in section 195 of the Constitution, SARS’ conduct has caused significant harm to the public interest, which by definition is intense. It is for this reason that I believe that this matter should be brought to the attention of its head, the Commissioner, who it is hoped will take personal charge of the matter and ensure that it is properly and efficiently attended to and that it is finalised with the expedition.”
- Find a copy of the judgment [here](#).
- **North Gauteng High Court, Pretoria | Kapeel Bechan and Another v SARS Customs Investigations Unit and Others (19626/2022) [2022] ZAGPPHC 525**
 - This is an application for leave to appeal against the dismissal of an application for an order granting the restoration (*a mandament van spolie application*) of certain computer equipment seized by the respondents pursuant to the execution of a warrant issued by the same court.
 - The court referred to the test for the granting of leave to appeal, as contained in section 17(1)(a) of the Superior Courts Act, 2013.
 - The application for leave to appeal was brought on the basis that the court erred in adopting a restrictive interpretation of the warrant. Instead, the applicant argued that the court should have utilised an interpretation taking into account various rights enshrined in the Constitution of the Republic of South Africa.
 - However, this argument was not advanced when the main case was heard. Instead, the argument was confined within the ambit of the *mandament van spolie* and was based upon the alleged unlawful dispossession of certain computer equipment that was previously in the applicant’s possession.
 - The court thus found that the requirements of section 17(1)(a) were not met, and dismissed the application.
 - Find a copy of the judgment [here](#).

legislation and draft legislation

- **National Treasury and SARS published the following 2022 draft tax bills and explanatory memoranda:**

- 2022 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill;
- 2022 Draft Revenue Laws Amendment Bill;
- Draft Explanatory Memorandum on the 2022 Draft Revenue Laws Amendment Bill;
- 2022 Draft Taxation Laws Amendment Bill;
- Draft Explanatory Memorandum on the 2022 Draft Taxation Laws Amendment Bill;
- 2022 Draft Tax Administration Laws Amendment Bill; and
- Draft Memo on objects of the 2022 Draft Tax Administration Laws Amendment Bill.
- The due date for public comment is 29 August 2022.
- Find copies of the draft bills [here](#).

SARS publications

- **Legal counsel publications | tables of interest rates**
 - SARS issued updated interest rate tables for the following categories:
 - interest charged on outstanding taxes, duties and levies and those payable in respect of refunds of tax on successful appeals and certain delayed refunds;
 - interest payable on credit amounts (overpayment of provisional tax) in terms of section 89*quat*(4) of the Act; and
 - interest applicable to a loan denominated in the currency of the Republic, as described in paragraph (a) of the definition of “official rate of interest” in section 1(1) of the Act.
 - Find a copy of the tables here.
- Legal counsel publications
 - Issue 6 of the *Tax Exemption Guide for Public Benefit Organisations in South Africa* has been published.
 - Find a copy of the guide [here](#).
- Tax practitioner newsletter
 - The July 2022 issue of the *Tax Practitioner Connect* newsletter is now available.
 - The newsletter deals with, among other things, the following:
 - Section 13 *quat* – extension of the sunset date of the incentive by another two years to 31 March 2023;
 - Section 12J(3)(c) – Clarifying administrative provisions of Venture Capital Companies tax incentive regime. Code 4054 will be limited to the deduction of ZAR2.5-million on assessment;
 - Section 18A requirement changes. Required to submit reporting data to SARS from the 2022 year of assessment;
 - Section 10(1)(o)(ii) – Qualifying criteria for section 10(1)(o)(ii) exemption relating S8A/S8C gains excluding dividends is reinstated to the ITR12 return; and

- Paragraph 13 of the First schedule – Record retention period will be adjusted to give the farmer the option of going back to claim the deduction on the re purchased stock. Paragraph 131A prescription period will be extended to six years and Paragraph 131B prescription period will be extended to 11 years.
 - Find a copy of the newsletter [here](#).
- **SARS industrial action impact**
 - SARS is experiencing delays in taxpayer service due to the continued industrial action taking place across SARS.
 - While some SARS branches and offices are closed to the public, they will continue to honour virtual appointments, as booked.
 - The contact centre is currently experiencing high call volumes and suggests taxpayers use digital channels should they have any queries.
- **Legal counsel | Interpretation Note 91 (Issue 2) - concession or compromise of a debt**
 - SARS published issue 2 of interpretation 91 on 20 July 2022.
 - Find a copy of the interpretation note [here](#).
- **Estates | When is a company or a close corporation liquidated**
 - SARS has updated the “Frequently Asked Questions” relating to liquidations.
 - Find a copy of the questions [here](#).
- **Bulk and additional payments on e-filing**
 - The bulk and additional payment guide have been amended to update the screenshot depictions on the e-filing section and to cater for unallocated payments.
 - Find a copy of the guide [here](#).
- **VAT domestic reverse charge transitional measures**
 - SARS has provided guidance on transitional measures.
 - The DRC Regulations will apply to all valuable metal suppliers from 1 August 2022.
 - Find more information [here](#).
- **Updated mobile tax unit schedule for KwaZulu-Natal**
 - KZN has published updated Mobile Tax Unit schedules.
 - Find a copy of the schedules [here](#).
- **Tax Directives | Emigration withdrawal changes**
 - The tax directive system currently includes a validation that results in tax directive applications, with the “Emigration withdrawal” reason where the date of accrual is on or after 1 March 2022, being rejected.
 - The tax directive validation has been subsequently removed.
 - Find a copy of the updated directives [here](#) and [here](#).

customs and excise

- **Customs and Excise Act, 1964 | Unentered Goods**
 - SARS published the customs weekly list of unentered goods.
- **Onboarding of traders to Registration Licensing and Accreditation (“RLA”) system**

- SARS' RLA team are in the process of re-registering and re-licencing existing clients into a RLA.
- Find more information [here](#).
- **Changes to cargo processing hours at selected ports**
 - As a result of the SARS wage negotiations dispute, to ensure continued trade facilitation and a streamlined process during this period of negotiations, there are changes to the cargo processing hours at selected ports.
 - Find a list of these changes [here](#).
- **Customs | Offences and penalties**
 - The offences and penalties policy document has been revised to explain how to apply the Promotion of Administrative Justice Act, 2000 when a client elects to be dealt with departmentally in terms of Section 91 of the Customs and Excise Act, 1964.
 - Find the updated guide [here](#).

international

- **OECD | Efficiency, effectiveness and equity of housing taxation can be improved**
 - Housing taxation in OECD countries provides an assessment of the wide range of taxes governments levy on residential property.
 - Find more information [here](#).
- **OECD | Lesotho deposits an instrument for the ratification of the Multilateral BEPS Convention**
 - The BEPS Convention will enter into force on 1 November 2022 for Lesotho.
 - Please find more information [here](#).
- **OECD | New results show progress continues in combatting harmful tax practices**
 - Further progress has been made on the implementation of the international standard on harmful tax practices as the OECD/G20 Inclusive Framework on BEPS agrees on new conclusions on preferential tax regimes and substance in no or only nominal tax jurisdictions.
 - Find more information [here](#).
- **OECD | Public consultation meeting on Amount A of Pillar One**
 - As part of the ongoing work to implement the Two-Pillar Solution to address the tax challenges arising from the digitalisation of the economy, the OECD is seeking public comments on the draft model rules to implement a new taxing right that will allow market jurisdictions to tax profits from some of the largest multinational enterprises.
 - Find more information [here](#).
- **OECD | Tax revenues in Asia and the Pacific hit hard by the COVID-19 crisis**
 - Tax revenues in Asia and the Pacific fell by -1.2% of GDP to 19.1% of GDP on average in 2020 as a result of the COVID-19 pandemic, according to a new OECD report released on 25 July 2022.

- Find more information [here](#).

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