

# ENSafrica tax in brief

Below, please find issue 97 of ENSafrica's tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- **Tax Court | *Applicant X v Commissioner for The South African Revenue Service (2022/12) [2022] ZATC 11***
  - This case relates to an application for a default judgment in terms of rule 56 (2) of the Tax Court Rules (“Rules”) promulgated in terms of section 103 of the Tax Administration Act, 2011 (as amended) (“TAA”).
  - The applicant filed the application for default judgment following the notices delivered in terms of Rule 56(1)(a) to the South African Revenue Service (“SARS”) to address the objections that he had raised.
  - SARS opposed the application on the ground that the application was not properly before the court on the basis that the application was not properly delivered to SARS in terms of the Rules.
  - The court found that the applicant delivered the notice to the Registrar at the email address, [RegistrarTaxCourt@sars.gov.za](mailto:RegistrarTaxCourt@sars.gov.za), instead of delivering the notices to the Tax Court Litigation Unit of SARS at the email address [taxcourtlitigation@sars.gov.za](mailto:taxcourtlitigation@sars.gov.za) and on this basis, the notices were not delivered to SARS. It was held that the Registrar, who is appointed in terms of section 121 of the TAA, is not a party to the dispute between the parties but rather is responsible for administering the dispute resolution processes envisaged in the TAA.
  - The court ordered the application be dismissed with costs on the attorney and client scale.
  - Find a copy of the judgment [here](#).
- **Tax Court | *Taxpayer S v Commissioner For The South African Revenue Service (IT 45997) [2022] ZATC 12***
  - This case deals with an interlocutory application in a tax appeal.
  - The relief requested by the applicant in terms of the interlocutory application is that new grounds of assessment be struck out from SARS' rule 31 statement on the basis that it is impermissible.
  - The court held that the inclusion of a new ground in a rule 31 statement is not impermissible unless the impugned portions of the rule 31 statement (i) constitute a novation of the whole of the factual or legal basis of the disputed assessment, or (ii) required the issue of a revised assessment. The applicant was found to not have discharged its onus of proof in this regard.
  - The court ordered the application to be dismissed with costs.
  - Find a copy of the judgment [here](#).

- **Tax Court | *A v Commissioner for the South African Revenue Service (IT 46206)* [2023] ZATC 1**
  - The taxpayer appealed against an additional assessment SARS pertaining to her 2018 year of assessment, during which year:
    - the taxpayer emigrated (for purposes of both exchange control and tax) to the United Kingdom with effect from 3 September 2017; and
    - the taxpayer "recouped" an amount of ZAR67 995 991 in respect of a foreign partnership trade in aircraft as a result of the deemed disposal of assets under section 9H of the Income Tax Act, 1962 ("ITA").
  - The taxpayer contended that she was entitled to set off her foreign trade income against an assessed loss brought forward in the amount of R62 296 925 arising from that same foreign trade in prior years.
  - The court considered section 20(1) of the ITA, as well as the erstwhile sub-paragraph (n)(ii) of the definition of 'gross income' in section 1 of the ITA (since repealed).
  - The taxpayer's appeal was upheld and the additional assessment set aside. There was no order as to costs.
  - Find a copy of the judgment [here](#).

## legislation and draft legislation

- **The 2023 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill ("2023 Draft Bill")**
  - The 2023 Draft Bill has been introduced in the National Assembly by the Minister of Finance on 22 February 2023.
  - Find the 2023 Draft Bill [here](#).
- **Income tax notices scheduled for publication in the *Government Gazette***
  - The income tax notices relate to the following:
    - Fixing of rate per kilometre in respect of motor vehicles for purposes of section 8(1)(b)(ii) and (iii) of the ITA.
    - Find the notice [here](#).
  - Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(c)(ii) of the ITA (overnight allowance).
    - Find the notice [here](#).
  - Notice 268 GG 42258 dated 1 March 2019 for the "Table: Daily Amount for Travel Outside the Republic" remains in force effective 1 March 2019 until communicated otherwise.
    - Find the notice [here](#).
  - Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1)(a)(ii) of the ITA (daily allowance).
  - Find the notice [here](#).

## SARS publications

- **Trust Registration Beneficial Owners Details**
  - In order to comply with the Financial Action Task Force requirements, SARS aims to record all beneficial owners of newly registered Trusts.

- The [Trust Registration query](#) on SARS Online Query System has been enhanced to allow for the capturing of the beneficial owner's details.
- For more information [here](#).
- **Budget Speech 2023**
  - The Minister of Finance announced the National Budget for 2023 on 22 February 2023, including changes to tax rates, duties, and levies.
  - The highlights for this year are:
    - Granting tax relief by adjusting personal income tax brackets and rebates for the effect of inflation.
    - An expanded tax incentive for businesses of 125% of the cost of renewable energy assets used for electricity generation, brought into use during a period of two years from 1 March 2023.
    - A tax rebate to individuals for solar PV panels of 25% of the cost for a limited period, subject to certain conditions, and capped at ZAR15 000 per individual.
      - National Treasury has published a document outlining the basic characteristics and requirements for the solar panel incentive to assist individuals with their immediate decision making, rather than postponing any solar installation until the legislative process can be finalised.
      - The document can be found [here](#).
  - Adjustments to tax tables for transfer duty, retirement fund lump sum benefits, and retirement fund lump sum withdrawal benefits, for the effect of inflation.
  - Increases of 4.9% in excise duties on alcohol and tobacco.
  - No changes to general fuel levy and road accident fund levy.
  - The increase of the health promotion levy on beverages to 2.3 cents per gram of sugar is delayed until **1 April 2025**.
  - Please visit the [Budget 2023](#) and [Tax Rates](#) web pages for more information.
  - Find ENSafrica's webinar on the Budget Speech 2023 [here](#).
- **Increase to estimated revenue collection**
  - The Minister of Finance increased the revenue estimate to ZAR1.69-trillion (an increase of ZAR93.7-billion from the Budget Speech 2022).
  - The improved revenue collection enabled the Minister of Finance to provide tax relief in excess of ZAR20 billion to support the response to energy challenges and to account for inflation tax **Postponement of withdrawal of Practice Notes 31 of 1994 and 37 of 1995**
    - In view of the Budget announcement, the withdrawal of these two practice notes is postponed to **1 March 2024**.
    - The practice notes, which SARS intends to withdraw, can be found below:
      - [Practice Note 31](#) – Interest paid on monies borrowed.
      - [Practice Note 37](#) – Deduction of fees paid to accountants, bookkeepers, and tax consultants for the completion of tax returns.
- **Individual provisional taxpayers to file second provisional tax return**
  - The deadline for individual provisional taxpayers to file their second provisional tax return (IRP6) was **28 February 2023**.
  - Find an article explaining the requirements for provisional taxpayers [here](#).

- **Business Requirement Specification (“BRS”) | PAYE Employer Reconciliation (2023 Release)**
  - The PAYE Employer Reconciliation BRS for the 2024 tax year has been published and can be found [here](#).
  - The following source codes have been amended:
    - 2025;
    - 2036;
    - 3040;
    - 3231;
    - 3232;
    - 3233;
    - 3234;
    - 4150
- **Further information required for the purposes of section 18A of the ITA**
  - [Notice 3082](#) was published in Government Gazette 48104 on 24 February.
  - The notice provides for further information required in terms of section 18A(2)(a)(vii) for the purposes of a receipt issued under section 18A(2)(a) of the ITA.
  - The notice is with effect from **1 March 2023**.
  - Find the notice [here](#).

## exchange control

- Exchange Control Circular No. 1/2023
- The appointment of ICICI Bank Limited, South Africa Branch, as an Authorised Dealer in foreign exchange has been cancelled with immediate effect.
- Find a copy of the circular [here](#).

## advance tax rulings

- **Value-Added Tax Act, 1991 (“VAT Act”) | Binding General Ruling (VAT) 28 (Issue 3) (“BGR 28”)**
  - SARS published issue 3 of BGR 28 on 10 February 2023 dealing with Electronic Services: Specific requirements relating to credit and debit notes, exchange rates, and advertised or quoted prices.
  - The relevant sections of the VAT Act are sections 21(3), 21(5) and 65.
  - Find a copy of BGR 28 [here](#).

## customs and excise

- **Customs and Excise Act, 1964 | Submission and payment dates**
  - Find the Excise submission and payment dates for 2023/2024 [here](#).
- **Customs weekly list of unentered goods**
  - Find the list [here](#).
- **Customs and Excise Act | Budget Speech proposals**
  - The Minister of Finance tabled proposals in the Budget Speech 2023.

- The taxation proposals will take effect from **14:33 pm on 22 February 2023**.
- Find the proposals [here](#).

## international

- **Organisation for Economic Co-Operation and Development (“OECD”) | Working paper on the design of presumptive tax regimes**
  - Presumptive tax regimes, also known as simplified tax regimes, simplify the tax compliance process for micro and small businesses. This OECD working paper provides an analytical framework for characterising and comparing these regimes. It also highlights key design aspects that deserve further consideration and lists a series of best practices on the design and administration of these regimes.
  - Find a copy of the working paper [here](#).
- **OECD | New toolkit to strengthen the effective collection of VAT on e-commerce in Africa**
  - A new toolkit released by the OECD provides guidance to African tax administrations for the effective collection of VAT revenues on e-commerce.
  - Find more information [here](#).
- **OECD | Tax challenges arising from digitalisation: Public comments received on compliance and tax certainty aspects of global minimum tax**
  - On 20 December 2022, as part of the ongoing work of the OECD/G20 Inclusive Framework (“**Inclusive Framework**”) on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the Inclusive Framework invited the public comments on the compliance and co-ordination aspects of the Pillar Two global minimum tax.
  - Find more information [here](#).
- **OECD | Report on international tax update on G20 Finance Ministers and Central Bank Governors**
  - The OECD published a report setting out the latest developments in international tax reform since October 2022, including the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, as well as progress made on tax transparency and efforts to support developing jurisdictions in building sustainable tax revenue bases and reporting on the first meeting of the Inclusive Forum on Carbon Mitigation Approaches.
  - Find a copy of the report [here](#).
- **OECD | Tax Talks**
  - With a number of recent and upcoming developments in the OECD’s international tax agenda, experts from the OECD Centre for Tax Policy and Administration presented an update on 27 February at 13:00 CET.
  - The event provided an update on:
    - the implementation of the Two-Pillar Solution, including the latest economic impact assessment and upcoming public consultations;
    - G20 developments;
    - ongoing efforts to enhance tax certainty;
    - recent developments regarding the international aspects of VAT/GST;

- ongoing tax and development work and capacity building efforts; and
  - the launch of the inclusive forum on carbon mitigation approaches.
- Find more information [here](#).
- **OECD | Public consultation meeting**
  - As part of the ongoing work of the 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 multinational enterprises while minimising compliance burdens and avoiding the risk of double taxation.
  - Find more information [here](#).
  - This public consultation meeting will be held on **16 March 2023 from 12:30 pm to 15:30pm CET**.

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