

ENS tax in brief

Below, please find issue 112 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- Supreme Court of Appeal (“SCA”) | Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service (Case no 728/2022) [2023] ZASCA 144 (8 November 2023)
 - This is an appeal against a judgment of the Gauteng Division of the High Court, Pretoria (per Davis J), dismissing an application for declaratory relief pertaining to section 11(1)(f) of the Value-Added Tax Act, No. 89 of 1991 (the “VAT Act”).
 - The SCA had to determine whether granting declaratory relief was appropriate in the matter.
 - The SCA held that the high court ought to have exercised its discretion against the hearing of the application on the basis that:
 - A declaratory order is not appropriate if there are other specific statutory remedies available;
 - The appellant did not afford SARS the opportunity to reconsider or alter the proposed assessments in light of its response to SARS' letter of audit findings, as it gave notice in terms of section 11(4) of the Tax Administration Act, No. 28 of 2011 (“TAA”) of its intention to institute proceedings before the high court on the same day that it responded to the letter of audit findings and some three weeks thereafter proceeded to do so;
 - The appellant ignored the emphasis placed by the TAA on alternative dispute resolution and in disregarding the need to exhaust all its internal remedies, the high court became the appellants first port of call;
 - This is not a matter where ‘there is a set of clear, sufficient, uncontested facts’ because the parties adopted divergent views not only in relation to the law but also the facts;
 - The approach adopted opened the door to the “fractional disposal” of actions and the “piecemeal hearing of appeals”; and
 - The nature of the dispute more properly lent itself to resolution by use of the special machinery of the TAA set up for that purpose.
- The SCA therefore dismissed the appeal.
- Find a copy of the judgment [here](#).

customs and excise

- Customs and Excise Act, 91 of 1964 (“**Customs and Excise Act**”) | Registration, Licensing and Designation
 - The facility codes used in Box 30 on the Customs Clearance Declaration (CCD) have been updated to include the details of the new approved container depot in Durban, AO – EXXELO South Africa (Pty) Ltd.
 - Find more information [here](#).

legislation and draft legislation

- **The following bills and explanatory memoranda have been published:**
 - Rates and Monetary Amounts and Amendment of Revenue Laws Bill (B35-2023) (“**RMA B35**”)
 - Find a copy of the RMA B35 [here](#).
 - Taxation Laws Amendment Bill (B36-2023) (“**TALAB B36**”)
 - Find a copy of the TALAB B36 [here](#).
 - Tax Administration Laws Amendment Bill (B37-2023) (“**TALAB B37**”)
 - Find a copy of the TALAB B37 [here](#).
 - Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2023 (“**TALAB EM**”)
 - Find a copy of the TALAB EM [here](#).

SARS publications

- **Tax compliance status (“TCS”) enhancements**
 - The TCS process relating to the approval of international transfer (“AIT”) applications has been adjusted to address feedback from stakeholders.
- **Below is a summary of the key revisions:**
 - **TCS Application Form (TCR01)**
 - All the fields under the “Foreign Assets and Liabilities Details” container have been made optional based on the date the TCS applicant ceased to be a South African tax resident.
 - The “Net Worth” field under the “Assets and Liabilities Details” container has been amended to “Net Amount (At cost)”.
 - The “Trust No.” and “Passport No. of Main Trustee/Representative Taxpayer of the Trust” under the “Local and Foreign Trust Details” container, and the “Local and Foreign Loan to a Trust Details” container have been made optional when “Foreign Trust” is selected.

- The “Trust No.” under the “Distribution from Trust Additional Details” container has been made optional when the “Foreign Trust” is selected.
- The “Share code” field and “Number of shares sold” field under the “Sale of Shares and Other Securities Details” container have been disabled when the “Listed Shares” is selected.
- **TCS Verification Letter (TCR006)**
 - The TCR006 letter has been amended to display the residency status under which the application was approved
- **TCS Dashboard**
 - An “Amount” column has been added to the TCS dashboard to enable the AIT Reviewers and Approvers to view the total value of the international transfer per the TCR01 application (where the application has not yet been approved) or the approved amount per the AIT case.
 - Find a copy of the updated Guide to the TCS functionality on eFiling [here](#).
- **Interpretation notes published**
 - Interpretation Note 24 (Issue 5) – Public Benefit Organisations (“PBO”): Trading rules – partial taxation of trading receipts
 - The interpretation note provides guidance on the interpretation and application of section 10(1)(cN) of the Income Tax Act, 58 of 1962 (“ITA”), and in particular the exemption from income tax of receipts and accruals of a PBO to the extent that the receipts and accruals are derived from:
 - carrying on its public benefit activities; and
 - permissible business undertakings or trading activities.
 - Find a copy of the interpretation note [here](#).
- **Interpretation Note 112 (Issue 2) – Section 18A: Audit certificate**
 - This interpretation note provides guidance on the interpretation and application of section 18A(2B) and (2C) in relation to the audit certificate that must be obtained and retained on specified circumstances for section 18A receipts issued by an approved organisation or department.
 - Find a copy of the interpretation note [here](#).
- **Guides published**
 - Update to the Guide to submit a dispute via eFiling
 - If a taxpayer incurred interest and a penalty on provisional tax, a taxpayer is allowed to submit a Request for Remission prior to submission of the annual return.
 - Find a copy of the updated guide [here](#).
- **Section 18A Approval of a Department in the National Provincial and Local Sphere of Government**
 - The guide provides guidance on:
 - the meaning of the government of South Africa in the national, provincial and local sphere contemplated in section 10(1)(a) of the ITA;
 - the approval of a department of government contemplated in section 10(1)(a) of the ITA by the Commissioner under section 18A(1)(c) of the ITA to issue section 18A receipts for bona fide donations received; and

- a section 18A-approved department of government's obligation to use bona fide donations for which section 18A receipts were issued for purposes of only a public benefit activity in Part II of the Ninth Schedule to the ITA in South Africa.
 - Find a copy of the guide [here](#).
- **Taxation in South Africa (2023)**
 - This is a general guide providing a high-level overview of the most significant tax legislation administered in South Africa by SARS.
 - Find a copy of the guide [here](#).
- **Tax Guide for Small Businesses (2022/2023)**
 - This guide is a general guide dealing with the taxation of small businesses such as sole proprietors, partnerships and companies not part of large groups. Some of the considerations in this guide could, however, be applicable to any type of taxpayer. The aim is to consider the typical taxation issues of an average business trading in South Africa
 - Find a copy of the guide [here](#).
- **Trade statistics for September 2023**
 - South Africa recorded a preliminary trade balance surplus of R13.1 billion attributable to exports of R174.65 billion and imports of R161.51 billion.
 - Find the relevant media release [here](#).
- **SARS welcomes the Medium-Term Budget Policy Statement ("MTBPS") Revenue Announcement**
 - SARS welcomes the MTBPS tabled in Parliament on 1 November 2023 by the Minister of Finance, Mr Enoch Godongwana, which revised the 2023 February Budget net tax revenue estimate from R1 787.5 billion to R1 730.4 billion.
 - SARS has continued with its core functions of collecting all that is due to the fiscus. During the first half of the current fiscal year, SARS collected gross revenue totalling R1 016.3 billion, growing by 4.5% and recording a surplus of R1.0 billion against the Budget 2023 estimate. This performance is on the back of strong gross collections from value-added tax, fuel levy and personal income tax - partially offset by lower gross collections from corporate income tax as company profits remain under pressure.
 - Find the full media statement [here](#).
- **Media Release | Collective engagement to implement the Crypto-Asset Reporting Framework**
- SARS welcomes the new international standard on automatic exchange of information between tax authorities developed by the Organisation for Economic Co-Operation and Development ("OECD") – the Crypto-Asset Reporting Framework (CARF).
- Find more information [here](#).

International

- **OECD | Africa's tax revenues remain below pre-pandemic levels in 2021 as financing challenges worsen**

- Africa's average tax-to-GDP ratio was 15.6% in 2021, unchanged from the previous year and remaining below its pre-pandemic levels, according to the 2023 edition of Revenue Statistics in Africa released on 31 October 2023.
- Find more information [here](#).
- **OECD | ATAF and OECD renew partnership to strengthen tax co-operation in Africa**
 - The African Tax Administration Forum (ATAF) and the OECD signed a renewal of their Memorandum of Understanding (MoU) for a period of five years, agreeing to continue to work together towards the common objective of promoting fair and efficient tax systems and administrations in Africa.
 - Find more information [here](#).
- **OECD | OECD and IGF invite comments on a draft toolkit to support developing countries in addressing base erosion and profit shifting (“BEPS”) risks when pricing minerals**
 - As part of the ongoing work of the OECD/IGF partnership on BEPS in mining programme, the OECD is seeking public comments on an additional toolkit that is designed to support developing countries in addressing the transfer pricing challenges faced when pricing minerals. The toolkit applies the transfer pricing framework as documented in Determining the Price of Minerals: A Transfer Pricing Framework to a specific mineral (lithium).
 - Find more information [here](#).
- **OECD | Global Forum publishes eight new peer review reports on transparency and exchange of information on request**
 - The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) published today new peer review reports on transparency and exchange of information on request (EOIR) for six of its members (Latvia, Mauritania, Pakistan, Poland, Serbia and Thailand), and supplementary reports that reflect progress made by two members (Botswana and Dominica) in implementing the EOIR standard.
 - Find more information [here](#).
- **OECD | The Philippines joins the Inclusive Framework on BEPS**
 - The Philippines joins international efforts against tax avoidance by joining the OECD/G20 Inclusive Framework on BEPS, an international collaboration with over 140 member countries and jurisdictions and participating in the agreement to address the tax challenges arising from the digitalisation of the economy.
 - Find more information [here](#).

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