

tax in brief

Below, please find issue 119 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- ***Cyril and Another v CSARS (186/2023) [2024] ZASCA 32***
 - The Supreme Court of Appeal (“SCA”) considered an appeal lodged by the appellants which related to whether evidence admitted by a Magistrate in a separate criminal trial in respect of the appellants was admissible.
 - In terms of the criminal trial against the appellants, the appellants were accused of offences under the Customs and Excise Act, 91 of 1964 (“**Customs and Excise Act**”) including 41 counts of fraud.
 - The offences in question were discovered by the South African Revenue Service (“SARS”) during an inspection conducted pursuant to sections 4(4)(a)(i) – (ii), 4(4)(b), 4(5) and 4(6) of the Customs and Excise Act, which sections were later declared unconstitutional (but not retrospectively) in the separate judgment of *Gaertner and Others v Minister of Finance and Others 2014 (1) SA 442 (CC)*.
 - The SCA found that the appeal did not meet the criteria for appealability, particularly in terms of the interests of justice. It noted a piecemeal approach to litigation and the ongoing criminal trial as factors against allowing the appeal which was struck from the roll.
 - Find a copy of the judgment [here](#).
- ***Poulter v CSARS (A88/2023) [2024] ZAWCHC 97***
 - The Full Court of the Western Cape High Court (“**Western Cape High Court**”) was tasked with determining whether the Tax Court had been misdirected in holding that the appellant’s father, who was given authority by way of a power of attorney by the taxpayer, was not entitled to appear on the taxpayer’s behalf in that forum. The appellant’s father was not an attorney or counsel or registered tax practitioner.
 - Additionally, the Western Cape High Court had to consider whether the Tax Court erred in granting “default judgment” against the appellant without considering the evidence before it.
 - The Western Cape High Court found that a taxpayer is entitled to be represented in proceedings before the Tax Court by a lay representative on the basis that the Tax Court is not a “court of law”, which order is binding on all parties in appeals to the Tax Court.
 - The appellant’s appeal was accordingly upheld and remitted to the Tax Court for hearing.
 - Find a copy of the judgment [here](#).

- ***Ramudzuli v CSARS and Others (A261/22) [2024] ZAGPPHC 280***
 - The case involves an appeal by the appellant against a judgment dismissing his application concerning the interception of his vehicle by the South African Defence Force (“SANDF”) and subsequent actions taken by SARS.
 - SARS officials issued the appellant with a detention letter for the vehicle in terms of the provisions of section 88(1)(a) of the Customs and Excise Act and later seized the vehicle. The appellant brought an application for review to set aside SARS’ decision to detain the vehicle and seize the goods. The Full Court of the High Court in the Gauteng Division, Pretoria (“**Pretoria High Court**”) dismissed the review application on two grounds:
 - The review lacked merits; and
 - The motion was incapable of being considered on the affidavits.
 - The Pretoria High Court held that the detention of the motor vehicle and the seizure of the goods was lawful and constitutional.
 - Find a copy of the judgment [here](#).
- ***Bullion Star (Pty) Ltd v CSARS (18176/2022) [2024] ZAGPPHC 184***
 - The Pretoria High Court considered an application for reconsideration and the setting aside of a warrant obtained ex parte by SARS for the search and seizure of certain premises connected to the applicant.
 - The warrant granted SARS unrestricted access to private residences for the search of listed items without adequate legal or factual compliance.
 - The Pretoria High Court found that SARS had not provided sufficient justification for the warrant’s issuance. Consequently, the warrant was set aside, and the seized items were ordered to be returned.
 - Find a copy of the judgment [here](#).
- ***Capitec Bank Limited v Commissioner for the South African Revenue Service (CCT 209/22) [2024] ZACC 1***
 - The appellant provided free insurance cover to its loan borrowers. SARS disallowed the appellant’s deduction claimed in respect of the insurance cover in terms of section 16(3)(c) of the Value-Added Tax Act, 89 of 1991 (“**VAT Act**”) on the basis that it did not qualify as a taxable supply since no explicit fee was charged for the cover.
 - The Constitutional Court (“**CC**”) was required to consider whether a supply free of charge can be a taxable supply in the context of section 16(3)(c) of the VAT Act.
 - The CC concluded that the free loan cover provided by the appellant to its borrowers could indeed constitute a taxable supply, despite there being no direct charge for it. The CC reasoned that the service, while free, was provided in the course or furtherance of the appellant’s broader banking enterprise, which involved an exempt component (being the provision of loans and other financial services), as well as fee-based financial services which are regarded as taxable supplies in terms of the proviso to section 2 of the VAT Act. This interpretation aligns with a broader understanding of the appellant’s business model and the purposes behind the free insurance cover, suggesting it was a strategic decision to enhance the loan products' attractiveness, rather than an outright non-taxable benevolent activity.
 - The CC thus confirmed that the appellant was entitled to a deduction under section 16(3)(c) of the VAT Act, and that such deduction should be apportioned despite the section making no express reference thereto.

- The CC therefore set aside the SCA's order and partially upheld Capitec' appeal. The CC remitted the assessments back to SARS for reconsideration and to apply an apportionment to the deductions.
- Find a copy of the judgment [here](#).

customs and excise

- **Customs and Excise Act | Tarriff Amendments**
 - Amendment Notice R.4601
 - Amendment to Part 1 of Schedule No. 1 is effected to implement the correct African Continental Free Trade Area ("AfCFTA") Agreement rates of duty on various tariff subheadings to align with the AfCFTA Agreement.
 - Find a copy of the amendment [here](#).
 - Amendment Notice R.4599
 - Amendment to Part 1 of Schedule No. 1 is made by the reduction in the AfCFTA rates of duty, with retrospective effect from 31 January 2024, being the date, the Agreement was implemented
 - Find a copy of the amendment [here](#).
 - Amendment Notice R.4600
 - Amendment to Part 1 of Schedule No. 1 is made by the reduction in the rates of duty on minced anchovies as recommended in Commission's Report 719, with retrospective effect from 1 March 2024, being the date, the amendment was implemented
 - Find a copy of the amendment [here](#).
- **Customs and Excise Act | Draft Amendments to Schedules published for comment**
 - Note 8 to Schedule No. 5 is amended to include the reference to refund item 541.01 so that the item can also comply to the requirement of Note 8.
 - Item 541.01 was inserted to provide for specific drawbacks and refunds of customs duties paid on imported fuel levy goods upon the subsequent export or removal thereof to BELN.
 - Find a copy [here](#).
 - Comments may be made in respect of the above [here](#).
 - Due date for comments is 30 April 2024.
- **Customs | Registration, Licensing and Accreditation**
 - The facility codes used in Box 30 on the Customs Clearance Declaration have been updated to change the name of Airline Cargo Resources under facility code A3 in O.R. Tambo Internation Airport and Airline Cargo Resources (Menzies Aviation) under facility code C1 in Cape Town to Menzies Aviation (South Africa) (Cargo) (Pty) Ltd.
 - Find a copy [here](#).
- **Customs and Excise Act | Rule Amendments**
 - Insertion of rule: Rules for section 4(3D) of the Customs and Excise Act is inserted under the heading Chapter II of the Rules.
 - Please find a copy [here](#).

advance tax rulings

- **Binding General Ruling 69 | Documents and records to be obtained and retained by an agent under section 54(2C) and (3)**
 - The ruling sets out the further particulars prescribed by the Commissioner under section 54(2C) of the VAT Act that the agent must obtain and retain on behalf of the principal depositor, as well as the records to be maintained under section 54(3) of the VAT Act.
 - The ruling applies from **1 April 2024 until it is withdrawn**.
 - Find a copy of the ruling [here](#).
- **Binding Class Ruling 088 | *En Commandite* partners investing in solar assets**
 - This ruling determines the deductibility of expenditure to be incurred, and the limitation of any allowance and deductions claimed by en commandite partners investing in photovoltaic solar energy assets to be owned by the en commandite partnerships which will be installed at clients' premises in terms of power purchase agreements.
 - This binding class ruling is valid for a period of five years from 23 January 2024.
 - Find a copy of the ruling [here](#).
- **Binding Private Ruling 400 | Donations tax implications on the issue of shares at Nominal value to enhance BBBEE credentials**
 - This ruling determines whether donations tax will be payable on the amendment of a company's memorandum of incorporation to allow for the issue of shares at nominal value to a Corporate Social Investment trust in order to enhance the BBBEE status of a group of companies.
 - This binding private ruling is valid for a period of three years from 14 August 2023.
 - Find a copy of the ruling [here](#).
- **Binding Private Ruling 401 | Leasehold improvement allowance**
 - This ruling determines the tax consequences for a lessor in respect of improvements effected by a lessee.
 - This binding private ruling is valid for a period of three years from 11 September 2023.
 - Find a copy of the ruling [here](#).
- **Binding Private Ruling 402 | Transfer of long-term insurance business to a local branch of a foreign reinsurer**
 - This ruling determines the tax implications of the transfer of life reinsurance business from a resident reinsurer to a local branch of a foreign company.
 - This binding private ruling is valid in respect of the year of assessment ending 31 December 2023.
 - Find a copy of the ruling [here](#).
- **Binding Private Ruling 403 | Taxation of covered persons in respect of equity linked notes**

- This ruling determines the tax treatment of amounts causally connected to financial assets and financial liabilities of a “covered person” which is subject to section 24JB(2) of the Income Tax Act, 58 of 1962 (“ITA”).
- This binding private ruling is valid for a period of five years from 10 November 2023.
- Find a copy of the ruling [here](#).

SARS publications

- **Preliminary revenue collection outcome for the 2023/2024 fiscal year**
 - As at the end of March 2024, SARS collected a gross amount of R2.155 trillion, year-on-year 4.2% against the nominal GDP of 4.9%. SARS paid out refunds of R414 billion to taxpayers, the highest quantum in refunds compared to R381 billion in the prior year, representing growth of 8.6%. This brings the collected net amount to R 1.741 trillion, approximately R10 billion higher than the revised estimate and R54 billion more than last year’s R 1.687 trillion.
 - The full media release can be found [here](#).
- **Employer annual declarations**
 - The employer annual declaration period is open from **1 April** and closes on **31 May 2024**.
 - During this period, employers must submit their annual reconciliation declarations (EMP501) with accurate and up-to-date payroll information.
 - The EMP501 must include:
 - Monthly employer declarations (EMP201) for PAYE, Unemployment Insurance Fund contributions, and the Skills Development Levy;
 - Information about payments made (excluding penalties and interest paid); and
 - Employee tax certificates (IRP5/IT3[a] generated) covering the tax year from 1 March 2023 to 29 February 2024.
 - For more information, find the PAYE landing page [here](#).
- **Third Party Data Annual Submission**
 - SARS Third Party Data Annual Submissions opened on 1 April 2024. Parties must submit accurate and complete data for the entire period of 1 March 2023 – 29 February 2024.
 - Third Parties (banks, medical schemes, fund administrators, among others) must, by law, send data to SARS via a return. They must include information such as:
 - savings account interest;
 - medical scheme contributions;
 - withholding tax on interest;
 - dividends tax;
 - IT3 data submissions: IT3(b), IT3(c), IT3(e), IT3(s);
 - medical scheme contributions, and insurance payments.

- Third Party data providers can submit data to SARS using these three electronic options:
 - eFiling (via a data submission form with a limited volume)
 - Connect: Direct® (Unlimited)
 - Secured File Gateway [HTTPS] (for files smaller than 10MB)
- Find the Third Party Data submission landing page [here](#).
- **Tax Exempt Institutions Connect | Issue 4**
 - This issue includes information on FATF updates, third-party data submissions to SARS, World NGO Day and taxation of Bodies corporate, Share Block companies and Homeowners Associations.
 - Issue 4 is available [here](#).

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