

ENS tax in brief

Below, please find issue 142 of ENS' Tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- **Constitutional Court | United Manganese of Kalahari (Pty) Limited v CSARS and four other cases 2025 ZACC 2 (31 March 2025)**
 - This matter concerned five consolidated applications for leave to appeal in relation to the interpretation and application of section 105 of the Tax Administration Act, 28 of 2011 (“TAA”) which provides that a taxpayer must challenge an assessment in the Tax Court unless the High Court directs otherwise.
 - The Constitutional Court held that section 105 applies to both review and declaratory applications that effectively challenge the correctness of tax assessments. The Court rejected the prior “exceptional circumstances” test used by the Supreme Court of Appeal and held that a directive under section 105 of the TAA should be given in appropriate circumstances or when good cause is shown, depending on the facts of each case.
 - The Court’s decision in the five cases was as follows:
 - **United Manganese of Kalahari (Pty) Limited v Commissioner for the South African Revenue Service (“CSARS”)** – the Court found the taxpayer’s review and declaratory applications inappropriate for High Court adjudication and refused to provide the section 105 direction. The Court therefore dismissed the appeal.
 - **Rappa Resources (Pty) Limited v CSARS** – the Court confirmed that High Court jurisdiction is suspended until a section 105 direction is granted. The Court refused to provide the section 105 directive and therefore held that the High Court could not compel SARS to produce a rule 53 record. The appeal was therefore dismissed.
 - **Forge Packaging (Pty) Limited v CSARS** – the Court did not grant leave to appeal due to late filing and lack of reasonable prospects of success.
 - **Absa Bank and Another v CSARS** – the Court granted the section 105 directive on the basis that the issue concerned a pure question of law. The Court will issue directions that will be used for the enrolment of the appeal on the merits in due course.
 - **Lueven Metals (Pty) Limited v CSARS** – the Court found section 105 did not apply as no assessment had been issued. The Court will, however, adjudicate the merits as it concerns a discrete legal issue.

- Find a copy of the judgment [here](#).
- **Constitutional Court | CSARS and another v Richards Bay Coal Terminal (Pty) Ltd [2025] ZACC 3 (31 March 2025)**
 - Richards Bay Coal Terminal (Pty) Ltd (“**RBCT**”) registered for the diesel refund scheme in 2009, claiming rebates for fuel used in its operations from 2009 to 2017.
 - The primary issue before the Constitutional Court was whether the wide appeal excluded the review jurisdiction of the High Court.
 - Regarding whether section 47(9)(e) of the Customs and Excise Act 91 of 1964 (“**Customs and Excise Act**”) effectively ousted the review jurisdiction of the High Court, the Court held that it did not. Regarding the interaction between the wide appeal and judicial review, the Court held that, while the right to pursue a wide appeal and the right of judicial review co-existed, a litigant ought to rely on the section 47(9)(e) wide appeal as a remedy of first resort when challenging a tariff determination made under the Customs and Excise Act.
 - The Court therefore upheld SARS’ appeal ordered that the orders of the High Court and Supreme Court of Appeal be set aside and ordered that the matter be remitted to the High Court.
 - Find a copy of the judgment [here](#).
- **Cell C (Pty) Ltd v CSARS (30959/2019) [2025] ZAGPPHC 265 (17 March 2025)**
 - Cell C (Pty) Ltd (“**Cell C**”) challenged SARS over a tariff re-determination on Apple iPhone 6 devices.
 - SARS withdrew its initial tariff determination and reclassified the product under a different tariff heading and Cell C sought a court review of this decision, arguing that it should be classified under an alternative tariff heading.
 - The Court was asked to stay proceedings pending the outcome of a Constitutional Court case in *CSARS v Richards Bay Coal Terminal (Pty) Ltd* (above) as it involved a similar legal issue.
 - The Court found that in the case before it, the issue of review jurisdiction had already been definitively decided by Tolmay J in the court a quo, and that judgment remained binding.
 - The Court dismissed Cell C’s application for a stay of proceedings, ruling that it had no legal basis. It also ordered Cell C to pay SARS’ legal costs, including the costs of two counsel.
 - Find a copy of the judgment [here](#).
- **Woods Warehousing (Pty) Ltd v CSARS and Others (2022/026798) [2025] ZAGPPHC 162 (14 February 2025)**
 - In 2021 SARS investigated four bills of entry which related to goods imported, stored and exported from the applicant's warehouse and issued four letters of demand/decisions with findings that the applicant had released goods to an unauthorised haulier. The goods could not be found and thus the applicant became liable for an amount equal to the export value of the goods and any unpaid duty.
 - The applicant launched a review application on the following grounds: that it (the applicant) is neither an importer, exporter nor clearing agent; the claim had prescribed; there was bias in SARS not prosecuting the matter against the clearing agent importer/exporter and road hauliers; SARS' decisions were

arbitrary, capricious and made via an error of law; and finally that SARS' record was incomplete.

- The Court dismissed all the above grounds of review on the basis that there are statutory duties and liabilities placed on customs warehouse licensees under sections 18-20 of the Act.
- Find a copy of the judgment [here](#).
- ***Naude v CSARS and Another (51712/2017) [2025] ZAGPPHC 152 (13 February 2025)***
 - The main issue in dispute between the parties was whether the applicant was entitled to the diesel claims he made during the period under review.
 - The court held that the applicant had not satisfied the requirements set out in Rebate Item 670.04 included in Part 3 of Schedule 6 of the Customs and Excise Act.
 - The application was dismissed, and SARS' determination was confirmed.
 - Find a copy of the judgment [here](#).
- ***FTTX and Energy Warehouse (Pty) Ltd v CSARS (2022/5522) [2025] ZAGPPHC 140 (31 January 2025)***
 - FFTX and Energy Warehouse (Pty) Ltd challenged a tariff determination by SARS regarding the classification of its imported product, the "FCST01131 Fiber Optical Splice Closure – 8 Core". SARS classified it under tariff heading 3926.90, which applies to articles of plastic.
 - The Court found that tariff heading 8538.90 (which covers parts suitable for use with optical fibre connectors) was the correct classification, not tariff heading 3926.90 as SARS had initially determined.
 - Find a copy of the judgment [here](#).
- ***SARSTC IT 45931 VAT 22285 {ADM} [2025] ZATC 2 (6 February 2025)***
 - The taxpayer launched an application to compel SARS to discover documents in its possession relating to the appeals against his Income Tax and VAT assessments (meeting minutes, internal memoranda, records supplied by the taxpayer to SARS etc).
 - The issues before the court were twofold: first, whether the court should go behind the documents discovered by SARS and order the discovery of further documents which the applicant contends are in SARS' possession, and secondly whether SARS should be ordered to discover the documents which it has discovered but in a different format as requested by the applicant.
 - The Court held that discovery does not extend to discovery of a document in a particular format preferable or acceptable to a party but relates to a document in its current form in the control or possession of the other party.
 - The Court held that the taxpayer had failed to make a case to go behind SARS' affidavit as when SARS stated that it had received all documents from the applicant, the documents in question were not specified. Thus, the taxpayer's application for discovery was dismissed.
 - Find a copy of the judgement [here](#).
- ***C:SARS v ASPASA NPC and Others (Leave to Appeal) [2025] ZAGPPHC 223 (5 March 2025)***
 - The High Court previously issued a declaratory order that the term "bulk" in Schedule 2 of the Mineral and Petroleum Resources Royalty Act, 28 of 2008 ("**Mineral Royalty Act**") refers to aggregates in their unprocessed state as shot rock at the muck pile.

- The court exercised jurisdiction under section 105 of the TAA and granted a strike-out of portions of SARS' answering affidavit, with costs.
- SARS applied for leave to appeal, limited to the merits of the declarator, having abandoned its earlier procedural objections.
- SARS advanced five grounds of appeal focused solely on the interpretation of "bulk".
- The High Court dismissed the application for leave to appeal, holding that:
 - There were no reasonable prospects that another court would reach a different conclusion.
 - The interpretation of "bulk" aligns with SARS' own non-binding opinion (Afrimat), past interpretations by senior SARS officials, and the industry view prior to 2019.
 - SARS' arguments had poor prospects on appeal and did not constitute compelling reasons for an appeal to be heard.
- Find a copy of the judgment [here](#).

legislation and draft legislation

- **Introduction in the National Assembly of Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2025, and Publication of Explanatory Summary of Bill**
- The Bill provides for the following:
 - to fix the rates of normal tax;
 - to amend the Transfer Duty Act, 1949 so as to amend transfer duty monetary thresholds;
 - to amend the Income Tax Act, 1962, so as to amend certain provisions;
 - to amend the Customs and Excise Act, 1964, so as to amend rates of duty in Schedule 1 to that Act;
 - to amend the Value-Added Tax Act, 1991, so as to amend rates of tax and to amend Schedule 2 to that Act;
 - to amend the Employment Tax Incentive Act, 2013, so as to amend certain provisions;
 - to amend an amount; a to provide for matters connected therewith.

tax rulings

- **Binding Class Ruling 092 | Application of the proviso to section 8EA(3) of the ITA**
 - This ruling concerns the application of the proviso to section 8EA(3) and how it will apply in certain circumstances where equity shares in an operating company that were acquired by a person through the application of the

preference share funding, are no longer held, directly or indirectly by that person.

- Find a copy of the ruling [here](#).
- **Binding Private Ruling 414 | Interpretation and application of section 8EA of the ITA**
 - This ruling determines how the proviso to section 8EA(3) will apply in certain circumstances where equity shares in an operating company that were acquired by a person through the application of preference share funding, are no longer held, directly or indirectly, by that person.
 - Find a copy of the ruling [here](#).

SARS publications

- **Tax Practitioner Connect (Issue 61)**
 - This Issue provides clarity and certainty about donations tax and explores the different options to find out if taxpayers owe SARS any money.
 - Find more detail on Issue 61 [here](#).
- **Tax Directives | Trade Testing of Interface Specification version 6.803**
 - SARS is preparing to implement enhancements to the Tax Directives process.
 - To access the Tax Directives Interface Specification, visit www.sars.gov.za, go to the “Individuals” page through the top-most menu, and choose “I want to get a tax directive”.
 - This version will resolve the issues encountered in the previous version regarding reason 54 and 48 transfers.
 - Trade testing began on 24 March 2025 and will run until 7 April 2025.
- **VAT Publication**
 - In response to the recent regulations promulgated on 14 March 2025, two publications relating to Frequently Asked Questions have been published, to assist vendors who may have any questions:
 - Frequently Asked Questions – Domestic Reverse Charge Regulations, find the publication [here](#).
 - Frequently Asked Questions – Supplies of Electronic Services, find the publication [here](#).
- **SARS’ Payments**
 - SARS’ Payments Guide has been updated to reflect the name change of Grindrod Bank, which has been changed to African Business Bank.
 - Access the SARS Payment Rules [here](#).
- **Tax Practitioner guide on use of the SARS MobiApp**
 - The SARS MobiApp is one of the digital platforms that enables tax practitioners to access profile information, monitor compliance with tax obligations, and transact on behalf of their clients easily and effortlessly. SARS has published this guide as a support tool for tax practitioners in managing their clients’ tax matters using the SARS MobiApp.
 - Find a copy of the guide [here](#).
- **Tax Exemption Guide for Institutions, Boards, or Bodies (Issue 2)**

- SARS has published an updated guide that provides general guidance on the exemption from income tax of qualifying institutions, boards, or bodies under section 10(1)(cA)(i) of the Income Tax Act, 58 of 1962 (“ITA”).
- Find a copy of the guide [here](#).
- **Customs and Excise Guides | SARS has published the following Customs and Excise Guides:**
 - Rebate Stores: This guide outlines the legislative requirements regarding rebate stores as stipulated in the Customs and Excise Act, 91 of 1964 (“**Customs and Excise Act**”).
 - Find a copy of the guide [here](#).
 - Customs and Excise Storage Warehouses (OS): This guide outlines the legislative requirements under the Customs and Excise Act regarding the storage of dutiable imported goods in customs and excise storage warehouses (OS).
 - Find a copy of the guide [here](#).
 - Special Customs and Excise Storage Warehouses (SOS): This guide outlines the legislative requirements set forth in the Customs and Excise Act, 1964, regarding the storage of imported goods in special customs and excise storage warehouses (SOS).
 - Find a copy of guide [here](#).
 - Quick Reference Guide: SARS published a Quick Reference Guide on Anti-Dumping Countervailing and Safeguard Duties to provide clarity on consignor bonds, explain the rule for the correction of surety bonds, include Rule 12.08., and remove financial institution and bank names.
 - Find a copy of the guide [here](#).
- **Interpretation Note 59 (Issue 3) | Tax treatment of the receipt or accrual of government grants**
 - SARS has published an updated Interpretation Note 59 dealing with –
 - the tax consequences of the receipt or accrual of government grants;
 - the exemptions from normal tax applicable to government grants in terms of sections 10, 12O and 12P of the ITA; and
 - anti-double-dipping rules applicable to expenditure funded by such grants.
 - Find a copy of the Interpretation Note [here](#).
- **Interpretation Note 45 (Issue 4) | Deduction of security expenditure**
 - SARS has published an updated Interpretation Note 45 dealing with –
 - the deductibility of security expenditure incurred by a taxpayer for income tax purposes; and
 - the fringe benefits tax implications for employees when their employers fund such expenditure.
 - Find a copy of the Interpretation Note [here](#).
- **Interpretation Note 137 | Recoupment of amounts deducted or set off when an asset commences to be held as trading stock**
 - SARS has published new Interpretation Note 137 dealing with the interpretation and application of section 8(4)(k)(iv) of the ITA, which is relevant when a depreciable asset (not previously classified as trading stock) has had an amount allowed to be deducted or set-off under a provision listed in section 8(4)(a) and subsequently commences to be held as trading stock.
 - Find a copy of the Interpretation Note [here](#).

- **Interpretation Note 138 | Determining the calorific value of coal for purposes of the royalty**
 - SARS has published new Interpretation Note 138 dealing with whether the terms “air-dried” or “as-received”; should be used to determine the condition specified for coal in the Schedule 2 to the Mineral Royalty Act for calculating the royalty payable on the transfer of coal extracted from within the Republic.
 - Find a copy of the Interpretation Note [here](#).
- **Taxation of amounts received by or accrued to missionaries**
 - This draft Interpretation Note, previously published for comment, provides clarity on the tax treatment of amounts received by or accrued to missionaries who are performing religious or related activities.
 - Due date for public comments to policycomments@sars.gov.za has been extended to 23 May 2025.
 - Find a copy of the draft Interpretation Note [here](#).
- **PAYE Employer Reconciliation BRS for the 2026 tax year**
 - SARS has published an updated version of the PAYE Employer Reconciliation Business Requirements Specification (“BRS”) which specifies the requirements for the generation of an import tax file for the yearly as well as the interim submission.
 - The following changes are applicable from 1 March 2025:
 - New source codes: 3623/3723, 4042, 4588, 4589
 - Amended description: 3020, 3907
 - Amended validations: 3230, 3232
 - Find a copy of the BRS [here](#).

customs and excise

- **Tariff Amendments Notices scheduled for publication in the Government Gazette**
 - **Notice R.6087**
 - Amendment to Part 1 of Schedule No. 3, by the insertion of rebate item 306.01/2815.11/03.06 to provide for a rebate facility on solid sodium hydroxide (caustic soda), classifiable under tariff subheading 2815.11, for conversion into sodium hydroxide in aqueous solution, classifiable under tariff subheading 2815.12 – ITAC Report 731.
 - **Notice R.6090**
 - Amendment to Part 1 of Schedule No. 1, by the deletion and insertion of various tariff subheadings under tariff heading 44.11 as well the insertion of Additional Note 1 to Chapter 44 to provide for ad hoc technical amendments.
 - **Notice R.6089**
 - Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10, 1101.00.20, 1101.00.30 and 1101.00.90, to reduce the rate of customs duty on wheat and wheaten flour from 42.20c/kg and 63.29c/kg, respectively to 18.35c/kg and 27.52c/kg, in terms of the existing variable tariff formula (ITAC Minute M09/2024).

- **Notice R.6088**
 - Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99, to increase the rate of customs duty on sugar from 234.89c/kg to 286.25c/kg in terms of the existing variable tariff formula (ITAC Minute 13/2024).
- **Registration | Documentary Requirements**
 - The Customs and Excise External Documentary Requirements Annexure did not provide an alternative for the Customs and Excise clients who are unable to provide mandatory supporting documentation.
 - The definitions and acronym table in the Customs and Excise External Documentary Requirements Annexure have been updated to clarify the relevant alternative as well as other various amendments.
 - Find the updated annexure [here](#).
- **Updated Bonds Policy**
 - The Customs and Excise External Bonds policy has been amended to:
 - Provide clarity on consignor bonds
 - Explain the rule for the correction of surety bonds.
 - Include Rule 12.08.
 - Remove financial institution and bank names.
 - Find the updated policy [here](#).

international

- **The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, also known as the Multilateral Instrument (MLI)**
Synthesised texts
 - SARS has updated its repository of synthesised texts to the MLI.
 - A synthesised text does not constitute a source of law. The authentic legal texts of the tax treaty and the MLI take precedence and remain the legal texts applicable.
 - Find more information [here](#).

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