

## ENS tax in brief

Below, please find issue 115 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

### case law

- **Pather v CSARS (52782/21) [2024] ZAGPJHC 87**
  - This matter concerns the lawfulness and procedural fairness of the decision by the Commissioner for the South African Revenue Service ("SARS") to hold a third party, Ms Diroshini Pather ("Applicant"), jointly and severally liable for the tax debt of the taxpayer, Impulse International (Pty) Ltd, in terms of section 183 of the Tax Administration Act, 2011 ("the TAA") to the extent that she knowingly assisted in the dissipation of the taxpayer's assets in order to obstruct the collection of a tax debt of the taxpayer.
  - The Applicant argued that she was not aware of the taxpayer's tax affairs when she received payments from the company and that SARS' failure to consider a request to suspend payment of the alleged tax debt in terms of section 164(2) of the TAA was procedurally unfair.
  - The Court held that:
    - SARS is required, under section 183, to prove that the Applicant "knowingly" assisted in dissipating funds of the taxpayer. The court referred the matter to trial on this question.
    - The Applicant's remedies are set out in section 184 of the TAA and do not include remedies available to taxpayers owing tax under an assessment, such as a request for suspension of payment of tax debt in terms of section 164 of the TAA.
  - The Court accordingly dismissed the review application.
  - Find a copy of the judgment [here](#).
- **TUUP v CSARS (VAT 22402)**
  - The appellant, a university, entered into a head lease and sub-lease with a developer. Under the head lease, the appellant leased the land to the developer, who was obliged to build a student residence on the land. The property, with improvements, was leased back to the appellant under the sublease for use as a student residence.
  - The appellant is a VAT vendor who makes both taxable and exempt supplies. In terms of section 17(1) of the Value-Added Tax Act, 1991 ("VAT Act"), SARS granted a class ruling for universities which determined that universities cannot deduct more than 12.5% of the VAT they spent on goods and services. The class ruling was agreed between Higher Education South Africa ("HESA") and SARS.
  - The appellant sought to claim input tax deductions on the costs associated with the head lease, arguing these costs were for taxable supplies.
  - The Tax Court found the head lease and sub-lease to be components of a singular arrangement. The primary purpose of the dual arrangement was identified as providing student housing, which is an exempt supply in terms of section 12(h)(i) and (ii) of the VAT Act. Therefore, the appellant was not entitled to claim VAT input deductions.
  - The Tax Court further determined that the 12.5% cap on VAT input deductions, established by the class ruling, was lawful. The cap was based on a thorough investigation and agreement with HESA, ensuring fairness and preventing the formula from yielding disproportionate deductions for universities. Including the VAT costs from the head lease in the apportionment formula, as the appellant suggested, would have distorted the ratio, allowing for deductions that did not

reflect actual taxable supply use. The court supported SARS' decision to exclude the costs from the apportionment calculation.

- The appeal was accordingly dismissed.
- Find a copy of the judgment [here](#).

## customs and excise

- **International Trade Administration Commission of South Africa ("ITAC") | Media Release**
  - ITAC issued a media statement to provide clarity on the creation of a temporary rebate for the importation of poultry products.
  - ITAC clarified, inter alia, that in order to ensure continued protection for domestic poultry producers against unfair trade practices and injurious imports, the temporary rebate does not apply to anti-dumping duties and is not a full rebate in some product categories as set out in Schedule 4 of the Customs and Excise Act, 1964 ("**Customs and Excise Act**").
  - Find a copy of the media statement [here](#).
- **Draft Customs and Excise for public comment | Effect of transfer pricing on customs value**
  - SARS published draft amendments relating to the effect of transfer pricing on customs value.
  - The draft amendments relate to rules under sections 40(3), 41(4) and 120 of the Customs and Excise Act.
  - The due date for comment is **23 February 2024**.
  - Find a copy of the draft amendments [here](#).
- **Draft Customs and Excise document for public comment | Transfer of ownership of warehoused goods**
  - SARS published draft amendments to the rules regulating the transfer of ownership of warehoused goods.
  - The draft amendments relate to rules under sections 26 and 120 of the Customs and Excise Act.
  - The due date for comments is **1 March 2024**.
  - Find a copy of the draft amendments [here](#)
- **Tariff Amendments**
  - South Africa is streamlining the process of technical tariff amendments with other Southern African Customs Union ("SACU") Member States for the insertion of 8-digit tariff subheadings for statistical purposes in the Common External Tariff.
  - The date for submitting applications has changed from 31 August to 31 March each year.
  - Find more information [here](#).
- **Guide | Accreditation of clients**
  - The above guide has been prepared to provide an overview of the key legislative requirements under the Customs and Excise Act, 1964 ("**Customs and Excise Act**") applicable to accreditation of clients.
  - Find a copy of the guide [here](#).
- **Tariff amendment notices**
  - Notice R.4372 sets out the amendment to Schedule No. 1 to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement (SADC-EU EPA) – allocations for 2023 (with retrospective effect from 1 January 2023).
  - Find a copy of the notice [here](#).
  - Notice R.4373 sets out the amendment to Schedule No. 1 to implement the revised Tariff Rate Quota in terms of the Economic Partnership Agreement (SADC-EU EPA) – re-allocations for 2022 (with retrospective effect from 1 September 2022 up to and including 31 December 2022).
  - Find a copy of the notice [here](#).
  - Notice R.4370 sets out the amendment to Part 1 of Schedule No. 2 by the insertion of items 215.02/7210.49.10/01.08; 215.02/7210.49.10/02.08 and

215.02/7210.49.10/03.08 in order to impose anti-dumping duties on imports of other flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, otherwise plated or coated with zinc, of a thickness of less than 0,45 mm. originating in or imported from the Peoples Republic of China – ITAC Report 720.

- Find a copy of the notice [here](#).
- Notice R.4371 sets out the amendment to Part 1 of Schedule No. 3 by the insertion of rebate item 307.08/4002.19.90/01.08 in order to create a rebate provision for customs duty applicable to synthetic rubber, classifiable in tariff subheading 4002.19.90 used in the manufacture of tyres, classifiable in tariff heading 40.11 – ITAC Report 625.
- Find a copy of the notice [here](#).
- **Inbound and outbound duty and tax-free shops | policy updated**
  - The internal and external policies for inbound and outbound duty and tax-free shops have been updated to align with section 38(1)(a) of the Customs and Excise Act.
  - Find a copy of the external policy [here](#).

## SARS publications

- **Draft interpretation note for comment | Consequences of an employer's failure to deduct or withhold PAYE**
  - The draft note explains how certain of the employees' tax obligations of an employer and the income tax obligations of an employee operate in relation to each other when an employer incurs personal liability for failing to deduct or withhold employees' tax.
  - The due date for public comment is **15 March 2024**.
  - Find the draft interpretation note [here](#).
- **Media release | Tables of interest rates**
  - On 27 January 2023, SARS published the following tables of interest rates:
    - Table 1 – Interest rates on outstanding taxes and interest rates payable on certain refunds of tax
    - Table 2 – Interest rates payable on credit amounts
    - Table 3 – Rates at which interest-free or low interest loans are subject to income tax
  - Find tables of interest rates [here](#).
- **Multilateral Instrument (“MLI”) | Synthesised texts**
  - The synthesised text of Australia's MLI has been updated.
  - Although not obligated to do so under the MLI, South Africa opted for the development of synthesised texts to the MLI.
  - These texts, which are essentially consolidated versions of the Covered Tax Agreements (“CTA”) as modified by the MLI, are aimed at facilitating the understanding of the application of the MLI to a particular tax treaty.
  - It should be noted that 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.
  - A synthesised text represents the following in a single document:
    - The text of the CTA that is modified by the MLI, including the text of amending protocols (where relevant);
    - The provisions of the MLI that have an effect on the tax treaty as a result of the interaction of the MLI positions of the jurisdictions; and
    - The dates on which the provisions of the MLI take effect for the specific CTA.
  - Find a copy of the updated synthesised text of Australia's MLI [here](#).

## International

- The Organisation for Economic Co-Operation and Development (“OECD”) | Inclusive Framework Members continue countering harmful tax practices
  - The OECD Forum on Harmful Tax Practices (**FHTP**) released its results following its review of preferential tax regimes.
  - The FHTP found that jurisdictions continue to make progress in addressing harmful tax practices through the implementation of the international standard under BEPS Action 5, and that this progress is evident in the release of new results on preferential tax regimes and substantial activities in no or only nominal tax jurisdictions.
  - Find more information [here](#).

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