

# ENS tax in brief

Below, please find issue 123 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

## case law

- Constitutional Court (“CC”) | *Coronation Investment Management SA (Pty) Ltd v CSARS* 2024 ZACC11
  - The CC considered whether the net income of Coronation Global Fund Managers (Ireland) Limited (“CGFM”), a foreign subsidiary of Coronation Investment Management SA (Pty) Ltd (“CIMS”), was exempted from tax for the 2012 year of assessment in accordance with the provisions of section 9D of the Income Tax Act, No. 58 of 1962 (“ITA”).
  - The exemption hinged on whether, at the time, CGFM met the requirements for constituting a “foreign business establishment” (“FBE”) as defined in section 9D(9)(b) of the ITA based on its primary operations and economic substance. Central to this determination was distinguishing between fund management and investment management activities.
  - The CC confirmed that the Supreme Court of Appeal (“SCA”) erred by mischaracterising CGFM’s business as predominantly investment management and misreading the evidence. This led to an illogical conclusion that undermined the objectives of section 9D which aims to ensure offshore companies remain competitive with its foreign rivals.
  - The appeal was therefore upheld and the order of the SCA set aside.
  - Find a copy of the judgment [here](#).
  - Find the ENS tax department’s newsflash [here](#).
- High Court (Western Cape division) | *Baseline Civil Contractors (Pty) Ltd v CSARS* (A83/2023)
  - This case is an appeal against a decision of the Tax Court.
  - The High Court held that the inclusion of a new ground in the taxpayer’s statement in terms of rule 32 of the Tax Court Rules constituted a fundamentally different ground of objection to that which was filed in the taxpayer’s rule 7(2)(b) notice of objection and is prohibited by rules 10(3) and 32(3) of the Tax Court Rules.
  - The appeal was dismissed.
  - Find the judgment [here](#).
- High Court (Gauteng, Pretoria division) | *CSARS v Buthelezi and Others* (B5917/2023)
  - The High Court was tasked with considering the taxpayers’ objection to a preservation order granted to SARS in terms of section 163 of the Tax Administration Act, No. 28 of 2011.

- The taxpayers argued that the SARS preservation order application was flawed on the basis that (i) the relevant SARS official did not state he was satisfied that an amount was “due and payable” by the taxpayers, and (ii) it was premised on the taxpayers’ alleged involvement in an illegal scheme which was not proven.
- It was held by the court that (i) the statement regarding the amount owed could be inferred from the evidence, and (ii) the inclusion of the alleged illegal scheme in SARS' affidavit was not decisive of the application for the preservation order.
- The High Court held that the preservation order was and remains a justified measure but limited the duration thereof in light of its impact.
- Find the judgment [here](#).
- High Court (Gauteng, Pretoria division) | *Fair-Trade Independent Tobacco Association NPC and Others v CSARS and Another* (115176/2023; 115375/2023)
  - The High Court was tasked with determining whether the applicants were entitled to interim interdictory relief against SARS in respect of the discharge and/or implementation of the impugned rule 19.09 (“**impugned rule**”) related to monitoring of customs and excise warehouses through CCTV equipment, published under sections 19, 60 and 120 of the Customs and Excise Act, No. 91 of 1964 (“**Customs and Excise Act**”), to the extent that it infringed on their right to privacy, dignity and property.
  - The purpose of the impugned rule was found in SARS’ difficulty in verifying the integrity of the values presented in documentation and the information provided by licensees of custom excise warehouses.
  - The High Court held that no evidence was provided to support that any of the applicants were connected with acts of illicit trade or that they were not tax compliant.
  - Resultantly, SARS was interdicted and restrained from implementing rule 19.09.
  - Find the judgment [here](#).

## SARS publications

- **Tax Directives | Two Pot retirement system**
  - SARS will be making enhancements to the Tax Directives process to facilitate the upcoming two-pot retirement system changes.
  - Find more information [here](#).
- **SARS | Monthly Tax Digest**
  - See the [June 2024 issue of the Monthly Tax Digest](#).
- **SARS | 2024 Filing Season changes**
  - Pro-rata Deductions for Retirement Funds: If a taxpayer’s tax year is less than 12 months, the allowable retirement contribution deduction (currently R350,000) will be adjusted on a pro rata basis.
  - Exemption of Tax-Free Investments: If a taxpayer’s tax year is less than 12 months, the contribution limitation for tax-free investments (currently R36,000) will be adjusted on a pro rata basis.

- Deductions for Urban Development Zones: The deduction for erection or improvement of buildings in Urban Development Zones is extended until 31 March 2025.
- Solar Energy Tax Credit: Individuals received a tax credit of 25% of the cost of new solar PV panels, up to a maximum of R15,000, if brought into use from 1 March 2023 to 29 February 2024. Deceased estates were not eligible.
- Renewed Renewable Energy Tax Incentive: Businesses can deduct 125% of the cost of eligible assets used in renewable energy production. If the asset is disposed of by 1 March 2026, the deducted amounts will be recouped.
- ITR12 Form Changes: Sections related to Foreign Employment Income Exemption (s10(1)(o)(i) and s10(1)(o)(ii)) have been redesigned to simplify completion.
  - See an example of the ITR12 [here](#).
- **Government Connect Newsletter | Issue 19 (June 2024)**
  - SARS published Issue 19 of the Government Connect Newsletter.
  - This issue includes information on the SARS Online Query System, changes in the SARS medical aid data reporting, auto assessments, access to audit files, payment of contingency fees for tax services rendered, and what to do when unauthorised changes were made to your eFiling profile.
  - Find more information [here](#).
- **Tax Practitioner Connect Newsletter | Issue 53 (June 2024)**
  - SARS published Issue 53 of the Tax Practitioner Connect Newsletter.
  - This issue includes information on the 2024 Filing Season dates, the SARS Online Query System, videos produced by the Education Team, changes in SARS medical aid data reporting, Auto Assessments, how to protect clients' information, access to audit files and how to verify your personal details when you suspect unauthorised changes were made to your eFiling profile.
  - Find more information [here](#).
- **SARS - Frequently Asked Questions (VAT) – Domestic Reverse Charge Regulations | Issue 3**
  - SARS published an updated version of its Frequently Asked Questions (“FAQs”) on the Domestic Reverse Charge (“DRC”) Regulations on 10 June 2024.
  - A VAT DRC on valuable metal was introduced in the regulations published in Government Gazette 46512 on 8 June 2022.
  - Amendments to the DRC Regulations were made in Government Gazette 50642 published on 10 May 2024 (Notice 4793) and came into effect on 1 January 2024. The amendments to the DRC regulations mainly relate to the definition of “valuable metal” and “residue” as well as to certain administrative requirements regarding documentation.
  - The recent amendments to the DRC Regulations came into effect retrospectively from 1 January 2024, even though the amendments themselves were only published as final on 10 May 2024. This presented various practical questions and challenges regarding supplies of valuable metal made between 1 January 2024 and 10 May 2024.
  - Whilst the DRC Regulations do not contain any transitional rules, SARS has now provided practical transitional rules in its FAQs as a means of providing clarity to vendors of what is required of them in this regard.
  - Question 3 of the FAQs confirms that:

- Transactions that have a time of supply before 10 May 2024, must be treated in accordance with the “old” DRC Regulations (i.e., as it read before the recent amendments); and
  - Supplies made on or after 1 July 2024 must comply with the “new” DRC Regulations (i.e., as it currently read following the amendments).
- Therefore, vendors are not required to amend their historical VAT returns or DRC documentation for supplies made during the period from 1 January 2024 to 10 May 2024.
- Affected vendors are allowed time until 30 June 2024 to amend their systems to enable them to issue the correct documentation regarding supplies from 1 July 2024 onwards.
- Find the FAQs [here](#).

## customs and excise

- **Customs | List of Prohibited and Restricted Goods**
  - SARS published the prohibited and restricted imports and exports list.
  - Tariff headings 8701.91 to 8701.95 no longer require a letter of authority.
  - Find the list [here](#).
- **Customs and Excise Act | Draft documents for public comment**
  - SARS published draft amendments to the Customs and Excise Act to include electric vehicles (“EVs”) and associated components under APDP 2.
  - The due date for comments is 22 July 2024 and may be sent to [technicaltariff@sars.gov.za](mailto:technicaltariff@sars.gov.za).
  - Find the draft amendments [here](#).
- **SARS Notification – Whether taxpayers need register as an importer if they purchase personal goods from international online retailer sites i.e. from Amazon**
  - SARS has confirmed that personal goods can be cleared with Customs under the generic code 70707070. However, the following conditions must be met:
    - According to the [Legal LSec CE RA Customs and Excise Rules 1995 as amended](#) as published on 12 April 2024 on the [Rule Amendments](#) webpage, the allowance has changed from not more than R50 000 (only 3 transactions) to not more than R150 000 (one or more);
    - The taxpayer is only allowed to import goods for home consumption or personal use, not for resale or any other business;
    - The taxpayer must be located in South Africa; and
    - The taxpayers identity number/Passport number or taxpayer reference number must be entered in the field provided in the declaration form.
    - Should the purchase falls outside these limitations, the taxpayer will have to register and obtain an [importer](#) or [exporter](#) code.
- **SARS Online Query System - Air Passenger Tax**
  - As part of the Customs Modernization Programme related to Air Passenger Tax, the Travel Manifest Submissions function enables the taxpayer to submit manifests directly through the SARS Online Query System (“SOQS”) in a CSV file.

- The process for submitting the travel manifest has not been incorporated into the Customs and Excise SOQS Guide. Instead, separate annexures have been created to provide a detailed step by step process on how to create a CSV file to assist taxpayer's in submitting their travel manifests directly through the SARS Online Query System in a CSV file.
- The Customs and Excise SOQS Guide can be found [here](#), and the annexures can be found [here](#) and [here](#).
- **South African Traveller Management System | Phase 2 Policies, Annexure and Guides**
  - As part of the Customs Modernisation Programme, an online traveller declaration system called the South African Traveller Management System has been implemented in phases.
  - The online Traveller Declaration can be accessed via SARS Mobi Application and scanning the QR Code which is available on display throughout the Customs ports. Travellers can use the online Traveller Declaration to register or create a profile, complete, describe the goods in their possession and submit travelling declarations.
  - This phase of the project includes the Expanding of the list of the goods in the possession of the Traveller.
  - Duty Calculation by the online declaration system and display payable amount to Travelers.
  - In respect of Phase 2, SARS has published the following documents:
    - Customs – SARS External Policy: Traveller Processing (Revision 4) which can be found [here](#).
    - Customs – Completion of Traveller Card External Annexure which can be found [here](#).
    - Customs – SARS SATMS Through the SARS Website – External Guide which can be found [here](#).
    - Customs – SARS SATMS Through Mobi-App or QR Code Scan – External Guide which can be found [here](#).

## legislation and draft legislation

- The Revenue Laws Amendment Act No.12 of 2024 was published in the Government Gazette No. 50750, Notice. 4924 on 4 June 2024.
  - Find the Act [here](#).

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