

ENS tax in brief

Below, please find issue 128 of ENS' tax in brief, a snapshot of the latest tax developments in South Africa.

case law

- *Tholo Energy Services CC v Commissioner for the South African Revenue Service* (378/2023) [2024] ZASCA 120 (6 August 2024)
 - The Supreme Court of Appeal (“SCA”) dismissed an appeal by Tholo Energy Services CC (“TES”) under section 47(9)(e) of the Customs and Excise Act 91 of 1964 (“**Customs and Excise Act**”).
 - TES, a licensed distributor of fuel, sought refunds for diesel exported to Lesotho, but the Commissioner of SARS disallowed the claims because the fuel was not obtained from a licensed customs warehouse and was not transported by a licensed remover of goods.
 - The SCA:
 - agreed with the High Court's decision, which had upheld the Commissioner's refusal of the refund claims on the grounds that TES did not meet the necessary legal requirements therefor; and
 - held that an appeal under section 47(9)(e) of the Customs and Excise Act involves a complete rehearing of the matter, allowing the High Court to decide the appeal on additional grounds presented by the Commissioner.
 - The appeal was dismissed with costs, including the costs of two counsel.
 - Find the judgment [here](#).

legislation and draft legislation

- Revised draft Revenue Laws Amendment Bill, 2024 (“RLAB”) and Explanatory Memorandum | Published for comment
 - As outlined in the [media statement](#) on the 2024 RLAB published for comment on 21 February 2024 and public workshops held on 6 June 2024, National Treasury and SARS invited a second round of written comments on the revised 2024 draft RLAB that were due on **16 August 2024**.
 - Find the revised draft RLAB [here](#) and the draft Explanatory Memorandum [here](#).

- GG 51001 Notice 5086 | Exemption in terms of section 12P(2) of amounts credited from National Revenue Fund to South African Reserve Bank for Contingency Reserve Requirements
 - Find the Notice, which will apply retrospectively from 1 July 2024, [here](#).

tax rulings

- Binding Class Ruling (“BCR”) 090 | Award of listed shares under a share incentive scheme
 - This BCR determines the income tax and securities transfer tax consequences for employer companies of a proposed share incentive scheme.
 - Find the BCR [here](#).
- Binding Private Ruling (“BPR”) 407 | Generation and supply of renewable energy
 - This BPR determines the deductibility of expenditure to be incurred by a company installing photovoltaic solar energy plants on a lessors’ premises to be used by the Applicant to supply solar electricity to companies within the same group of companies as the Applicant in terms of power purchase agreements (PPAs).
 - Find the BPR [here](#).
- BPR 408 | Corporate restructurings using section 42 of the ITA
 - This BPR determines the tax consequences of a corporate restructuring involving the disposal of shares in terms of section 42 of the ITA.
 - Find the BPR [here](#).
- BPR 409 | Acquisition by a public benefit organisation of forfeited share incentive scheme shares
 - This BPR determines the income tax and securities transfer tax consequences for a public benefit organisation acquiring forfeited share incentive scheme shares.
 - Find the BPR [here](#)

SARS publications

- Updated Guide re Contribution Deductions in respect of the amendment to section 11F(2)(a) of the Income Tax Act, 58 of 1962 (“ITA”)
 - Where a person’s year of assessment is less than 12 months, the maximum amount of the allowable retirement fund contribution deduction may not exceed the prescribed limit (currently R350 000) for all years of assessment within the 12-month period from 1 March of that calendar year to the last day of February in the following year.
 - The formula to determine the allowable retirement fund contributions is set out in Section 11F of the ITA.
 - Find the Updated Guide [here](#).
- Legal Counsel | Interpretation and Rulings
 - Interpretation Note 98 (issue 2) (“IN98”) | Public benefit organisations: The provision of funds, assets or other resources to any association of persons.

- IN98 provides guidance on a conduit PBO carrying on a PBA in Part I; the requirement imposed under section 30(3)(f) on a conduit PBO providing funds to an association of persons contemplated in PBA 10(iii) in Part I and; the meaning of “association of persons” contemplated in Part I.
 - Find IN98 [here](#).
 - Interpretation Note 133 (“**IN133**”) – Income tax exemption: Water services provider.
 - IN133 provides guidance on the interpretation and application of the definition of “water services provider” in section 1(1) for purposes of the exemption of the receipts and accruals of a qualifying water services provider from normal tax under section 10(1)(t)(ix).
 - Find IN133 [here](#).
- Updated e@syFile™ Employer BETA release
 - The trade testing will be available from 19 August to 30 August 2024.
 - The formal release date is 16 September 2024.
 - The BETA version of the current e@syFile™ will contain the following changes:
 - New source code for the saving withdrawal benefit for the two-pot system; and
 - Minor amendments to source code validations.
 - Find more information [here](#) and [here](#).
- Third Party Data reporting – Medical Aid Trade Testing commences from 19 August until 13 September 2024.
 - Find more information [here](#).

customs and excise

- Customs and Excise Act | Draft amendments to rules under sections 21(1), 60, 120 published for comment
 - Amendments have been proposed to the storage of imported bonded fuel goods in special customs and excise storage warehouses.
 - Draft amendments have been published in respect of the following:
 - [DA185](#) – Application form – Registration or Licensing of Customs and Excise Clients
 - [DA 185.4B4](#) – Licensing Client Type 4B4 – Special storage warehouse
 - [DA 185.4B17](#) – Licensing Client Type 4B17 – Marine remover of imported bonded fuel goods
 - The due date for comment is **20 August 2024**.
 - Find the draft amendments [here](#).
- Customs and Excise Act | Legal Counsel – Secondary Legislation – Tariff Amendments 2024
 - Publication details for [tariff amendments notices R5128, R5129, R5130, R5131, R5132, R5133, and R5134](#), as published in Government Gazette 51056 of 16 August 2024, are now available.
 - The tariff notices relate to the amendments to:
 - Part 1 of Schedule No. 1, by the insertion of Additional Note 7, the substitution of tariff subheadings 8704.10.20 and 8704.10.30 to

- increase the general rate of customs duty on articulated dump trucks with a gross vehicle mass exceeding 50 tonnes from free of duty to 10% and the substitution of tariff subheading 8704.10.25, to amend the description by the insertion of “Other,” (ITAC Report 688);
- Part 1 of Schedule No. 1, by the insertion of tariff subheading 8716.90.40 to provide for a reduction in the general rate of customs duty on automatic slack adjusters from 15% to free of duty (ITAC Report 680);
 - Part 1 of Schedule No. 1, by the substitution of tariff subheadings 7215.10, 7215.50 and 7228.50 to increase the rate of customs duty on certain bars and rods of steel, whether or not alloyed, not further worked than cold-formed or cold-finished from free of duty to 10% (ITAC Report 658);
 - Part 1 of Schedule No. 1, by the substitution of tariff subheading 8708.22 and the insertion of tariff subheadings 8708.22.10 and 8708.22.90 in order to increase the general rate of customs duty on front windscreens (windshields) from 20% to 30% (ITAC Report 712);
 - Part 1 of Schedule No. 1, by the insertion of tariff subheading 3926.90.89 to reduce the general rate of customs duty on stemming plugs for mining and civil blast holes from 20% to free of duty (ITAC Report 665);
 - Part 1 of Schedule No. 3, by the deletion and insertion of various rebate items under rebate item 316.17 to exclude the importation, under rebate, of other electric conductors for a voltage not exceeding 1000 V, fitted with connectors, classifiable under tariff subheading 8544.42 (ITAC Report 727); and
 - Part 2 of Schedule No. 4, by the insertion of rebate item 460.02/0712.20/01.06 and the substitution of the header for rebate item 460.02 to provide for a temporary rebate facility for the importation of onion powder classifiable under tariff subheading 0712.20 (ITAC Report 698).
- Customs | Valuation of Imports
 - The [Policy on Valuation of Imports](#) has been updated to reflect legislative amendments. To effect these updates, the following sections have been removed from the policy:
 - The value specified in Schedule 1 Part 2B shall, in respect of imported goods, exclude goods entered in terms of item 412.18 of Schedule 4; and
 - Reference to incomplete declaration documents because the declaration processing system will not allow an incomplete declaration.
 - The Updated Customs and Excise Contravention List was published and implemented on 8 August 2024.
 - Find more information [here](#) and [here](#).

ENSafrica takes your privacy and the protection of your personal information very seriously and is committed to doing the right thing as underpinned by our [privacy policy](#) and values.

It is our understanding that you are receiving this communication because you are an esteemed client of our firm or have historically elected to opt-in to receive communications from us. If you no longer wish to receive communications from us, please [click here to unsubscribe](#) so we can ensure your details are removed from all our communication lists. Should you change your mind, you can subscribe to specific areas of interest using the following link <http://www.ensafrica.com/contact-us>.

We appreciate your ongoing support and interest.

ENS | original thinking

info@ENSafrica.com | [ENSafrica.com](http://www.ensafrica.com)

[privacy statement](#) | [unsubscribe](#)



The ENS logo is a stylized, handwritten-style signature of the letters 'ens' in a dark grey or black color. The 'e' is lowercase and has a long horizontal stroke that extends to the left. The 'n' is lowercase and has a tall, thin vertical stroke. The 's' is lowercase and has a long, sweeping tail that curves downwards and to the right, ending in a small dot.