



JUTA'S TAX LAW REVIEW

JUNE 2013

Dear Subscriber to Juta's Tax publications

Welcome to the June edition of *Juta's Tax Law Review*. We thank you for your constructive suggestions and comments about this electronic review.

SOME POINTS ABOUT THE CASE NOTES:

The case notes, classified by subject, are not intended as comprehensive summaries of the various judgments referred to. Rather, their focus is to identify those aspects most likely to be of interest to tax practitioners, and to provide a concise evaluative commentary.

Following each case note is a link to the full text (when available) of the judgment on Juta Law's website. The successive reviews and judgments are incorporated in your Juta's Tax Library, providing a comprehensive record of tax case law.

Please continue to send feedback to the publisher, Steve Allcock (sallcock@juta.co.za)

Kind regards

The Juta Law Marketing Team

LEGISLATION

Since the March 2013 issue of the Juta Tax Law Review the following tax bill has been tabled:

- The Rates and Monetary Amounts and Amendment of Revenue Laws Bill 12 of 2003 was introduced in the National Assembly on 18 June 2013. [1]

EXPLANATORY MEMORANDA

Since the March 2013 issue of the Juta Tax Law Review, no explanatory memoranda have been issued by SARS.

BINDING RULINGS

Binding general rulings

BINDING GENERAL RULING (VAT): NO 12 [2]

Effective date:	22 March 2013
Affected legislation:	Value-Added Tax Act 89 of 1991
Provisions:	Section 1(1) (definition of 'input tax')

Executive summary:

This Binding General Ruling reproduces the statement in para 7.3 of the *Value Added Guide for Motor Dealers* (VAT 420) under the heading 'Over-allowances: Notional Input Tax and Open Market Value' which comprises a Binding General Ruling under s 89 of the Tax Administration Act. That Guide, issued in March 2009, deals with the VAT implications arising from the supply by motor dealers, who are vendors, of motor cars and other vehicles. This ruling updates references to s 76P of the Income Tax Act 58 of 1962 with references to the Tax Administration Act and incorporates subsequent amendments to sections of the VAT Act.

BINDING GENERAL RULING (VAT): NO 13 [3]

Effective date:	22 March 2013
Affected legislation:	Value-Added Tax Act 89 of 1991
Provisions:	Sections 8(13), 16(3)(d), 16(4)

Executive summary:

This Binding General Ruling reproduces para 4.2.1 of Interpretation Note No 41 (Issue 2) and deals with the VAT implications of specific transactions in the gambling industry. This ruling updates references to s 76P of the Income Tax Act 58 of 1962 with references to the Tax Administration Act and incorporates subsequent amendments to sections of the VAT Act.

BINDING GENERAL RULING (VAT): NO 14 [4]

Effective date: 22 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Sections 1, 7, 8, 9, 11, 16, 20 and 21

Executive summary:

This Binding General Ruling sets out the VAT treatment of specified issues that have been highlighted during discussions with the short-term insurance industry.

BINDING GENERAL RULING (VAT): NO 15 [5]

Effective date: 22 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Sections 20(2) and 21(4)

Executive summary:

This Binding General Ruling reproduces para 5 of Interpretation Note No 56 'Recipient-Created Tax Invoices; Credit and Debit Notes' dated 31 March 2010, which comprises a Binding General Ruling under s 89 of the Tax Administration Act.

BINDING GENERAL RULING (VAT): NO 16 [6]

Effective date: 25 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Section 17(1)

Executive summary:

This Binding General Ruling reproduces the statement in para 8.4.3 of the *Value-Added Tax Guide for Vendors* (VAT 404) under the heading 'Formula: Turnover-based method of apportionment', which comprises a Binding General Ruling under s 89 of the Tax Administration Act.

BINDING GENERAL RULING (VAT): NO 17 [7]

Effective date: 27 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Sections 1(1), 8(2) and 50

Executive summary:

This Binding General Ruling sets out the application of s 50(3) regarding the cancellation of the registration of a separate enterprise, branch or division of the main enterprise, and whether such cancellation constitutes a deemed supply in terms of s 8(2).

BINDING GENERAL RULING (VAT): NO 18 [8]

Effective date: 27 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provision: Section 11(1)(j) read with item 13 in part b of schedule 2 to the VAT Act

Executive summary:

This Binding General Ruling sets out the VAT treatment of dates in various forms in order to determine whether the supply of such dates will be subject to VAT at the zero rate as envisaged in s 11(1)(j) read with Item 13.

BINDING GENERAL RULING (VAT): NO 19 [9]

Effective date: 30 April 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Section 27(6)

Executive summary:

This ruling reproduces para 5 of Interpretation Note No 52 (Issue 2) 'Approval to End a Tax Period on a Day other than the Last Day of a Month' (30 April 2013), which comprises a Binding General Ruling under s 89 of the Tax Administration Act. In this regard, the Binding General Ruling relates to the approval to end tax periods on a day other than the last day of the month.

Binding private rulings

BINDING PRIVATE RULING: BPR 136 [10]

Effective date: 13 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 8(1)

Executive summary:

This ruling deals with subsistence allowances paid by an employer to employees and with the amount of such an allowance that will be deemed to have been expended under s 8(1)(a)(i)(bb) read with s 8(1)(c) of the Act.

BINDING PRIVATE RULING: BPR 137 [11]

Effective date: 13 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 45 and 47

Executive summary:

This ruling concerns the sale of a business in terms of an intra-group transaction and whether the sale can be seen as a transaction relating to a liquidation, winding-up and deregistration, as envisaged under s 47 of the Act; and whether certain assets may be excluded from the ambit of s 45 of the Act where a business is sold. The ruling deals in particular with the interpretation and application of the provisions of s 45(6)(e) and (g) and s 47.

BINDING PRIVATE RULING: BPR 138 [12]

Effective date: 14 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 24J, 42 and 58; para 38 of the Eighth Schedule

Executive summary:

This ruling deals with the income tax consequences of a subscription for shares at nominal values and the repurchasing of those shares in the future at the same nominal values. This ruling deals in particular with the interpretation and application of s 24J, 42, 58; and with para 38 of the Eighth Schedule.

BINDING PRIVATE RULING: BPR 139 [13]

Effective date: 18 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Paragraph 65B of the Eighth Schedule

Executive summary:

This ruling deals with the capital-gains-tax consequences and the roll-over relief provided for under para 65B of the Eighth Schedule in respect of the disposal of some of the assets held by a recreational club and the utilisation of the total proceeds to acquire replacement assets.

BINDING PRIVATE RULING: BPR 140 [14]

Effective date: 27 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 46

Executive summary:

This ruling deals with an unbundling transaction with specific reference to the application of s 46(1), (7) and (8) of the Income Tax Act.

BINDING PRIVATE RULING: BPR 141 [15]

Effective date: 28 March 2013
Affected legislation: Income Tax Act 58 of 1962; Securities Transfer Tax Act 25 of 2007
Provisions: Sections 41 and 45 of the Income Tax Act; s 8(1)(a)(iii) of the Securities Transfer Tax Act.

Executive summary:

This ruling deals with the question whether the transfer of securities from an untaxed policyholder fund (UPF) of one long-term insurer to a UPF of another long-term insurer will be exempt from securities transfer tax.

BINDING PRIVATE RULING: BPR 142 [16]

Effective date: 04 April 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 24J

Executive summary:

This ruling deals with the tax treatment of interest expenditure incurred by a subsidiary in a group of companies on amounts borrowed and on-lent to other subsidiaries within the group.

BINDING PRIVATE RULING: BPR 143 [17]

Effective date: 02 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 1 (definitions of 'equity share' and 'headquarter company')

Executive summary:

This ruling deals with the question whether preference shares will qualify as equity shares for purposes of the definition of 'headquarter company'.

BINDING PRIVATE RULING: BPR 144 [18]

Effective date: 07 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 45(4)(b), 11(e), 12C and 13

Executive summary:

This ruling deals with the write-off period to be allowed in respect of the increase in either the cost or the value of assets initially acquired under s 45 as a result of a degrouping of companies as contemplated in s 45(4).

BINDING PRIVATE RULING: BPR 145 [19]

Effective date: 08 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 11(e)

Executive summary:

This ruling deals with the write-off period under s 11(e) of assets forming part of a sale and leaseback arrangement and the issue of deductibility.

BINDING PRIVATE RULING: BPR 146 [20]

Effective date: 10 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 1 (definition of 'mining operations' and 'mining'), s 11(a), 15(a), 23(g) 36 and 37A(1)(d)(ii).

Executive summary:

This ruling deals with whether a company, appointed as a contractor in terms of a mining agreement, is conducting mining operations and entitled to deductions under s 11(a), 15 and 36 of the Act during a transition period when the company is awaiting the transfer of mining rights to it; and with the deductibility of contributions made by such a company under s 37A(1)(d)(ii) in respect of environmental obligations.

BINDING PRIVATE RULING: BPR 147 [21]

Effective date: 14 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 1 (definition of 'gross income') and s 8C

Executive summary:

This ruling deals with the income tax consequences for a taxpayer in respect of consideration to be received for the surrender of a right to acquire shares.

BINDING PRIVATE RULING: BPR 148 [22]

Effective date: 19 June 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Section 64G(3)(b)(i), read with articles 10(2) and 10(4) of the Convention between the government of the Republic of South Africa and the government of Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Executive summary:

This ruling deals with the appropriate dividends tax rate applicable to a permanent establishment in South Africa of a company which is not a resident of South Africa having regard to the application of Article 10(2) and the non-application of Article 10(4) of the South Africa- Japan double tax agreement.

Binding class rulings

BINDING CLASS RULING: BCR 038 [23]

Effective date: 14 March 2013
Affected legislation: Income Tax Act 58 of 1962 and the Securities Transfer Tax Act 25 of 2007
Provisions: Sections 8C and 42 of the Income Tax Act; s 8 of the Securities Transfer Tax Act

Executive summary:

This ruling deals with the tax consequences under s 8C and 42 of the Income Tax Act regarding the exchange of one restricted equity instrument for another and the interpretation in this regard of s 8 of the Securities Transfer Tax Act.

BINDING CLASS RULING: BCR 039 [24]

Effective date: 24 April 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 64G, 64H and 64J

Executive summary:

This ruling deals with the obligation of a company or a regulated intermediary to notify a beneficial owner of a dividend to be paid in cash or distributed in specie of the amount by which the dividend will reduce the STC credit of the company paying the dividend, and the publication of that notice.

BINDING CLASS RULING: BCR 040 [25]

Effective date: 14 May 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 10(zG), 23(n) and 24F

Executive summary:

This ruling deals with the tax consequences for an investor who is to acquire rights in a completed film.

NEW INTERPRETATION NOTES

The following new interpretation notes have been issued since March 2013:

INTERPRETATION NOTE: NO 70 [26]

Effective date: 14 March 2013
Affected legislation: Value-Added Tax Act 89 of 1991
Provisions: Section 1(1) (definition of 'enterprise', 'taxable supply', 'input tax', 'donation' and 'consideration'); s 10(4) and 10(23)

Executive summary:

This interpretation note sets out the legal framework for the VAT treatment of supplies of goods or services which are made by vendors for no consideration in certain circumstances; and provides guidance to vendors on whether input tax may be deducted in respect of VAT incurred on goods or services acquired to make supplies for no consideration; and on whether output tax must be declared on any goods or services supplied for no consideration.

INTERPRETATION NOTE: NO 71 [27]

Effective date: 18 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Paragraphs 2(a), 5(2)(b) and 5(4) of the Seventh Schedule

Executive summary:

This Note provides guidance and clarity on the income tax consequences for an employee where the employer gives an employee an asset as a long service award.

INTERPRETATION NOTE: NO 72 [28]

Effective date: 22 March 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Paragraph 7 of the Seventh Schedule to the Act

Executive summary:

This Note provides guidance on the income tax consequences for an employee where an employer (or an associated institution in relation to an employer) grants that employee the right of use of a motor vehicle, commonly known as a 'company car fringe benefit', with specific reference to the latest legislative amendments to the Fourth and Seventh Schedules to the Act.

INTERPRETATION NOTE: NO 73 [29]

Effective date: 24 April 2013
Affected legislation: Income Tax Act 58 of 1962
Provisions: Sections 11(a), 11(e), 20(1), 23A and 25D

Executive summary:

This note provides guidance on the income tax implications of the letting of tank containers.

CASE LAW

SUPREME COURT OF APPEAL

Master Currency (Pty) Ltd v CSARS [2013] ZASCA 17 (20 March 2013) [30]

Background

The appellant, Master Currency (Pty) Ltd, had appealed against the dismissal by the Johannesburg Tax Court of its objection to, and appeal against, revised value-added tax assessments in respect of the October 2003 to January 2005 tax period where it was held that the commission and transaction fees received by the appellant's two branches operating in the duty-free area of the then Johannesburg International Airport should be standard rated in terms of s 7(1)(a) of the Value-Added Tax 89 of 1991.

Facts

In 1999 the appellant was awarded the tender to operate two bureaux de change in the duty-free area of the Johannesburg International Airport. There were numerous 'duty free shops' in this area where departing passengers were able to purchase goods free of taxes and duties. There was also a VAT refund administrator stationed in the area where departing non-residents could collect cheques for the VAT they claimed back on purchases they had made in South Africa. The services rendered by the appellant at the two bureaux were, for the most part, cash transactions concluded with departing non-resident passengers in possession of a boarding pass and a passport. These passengers would present South African rands to the appellant in cash, travellers' cheques or cheques received from the VAT refund administrator. The appellant would then convert the rand into foreign currency, calculate the exchange rate margin and the commission and transaction fee, and present the departing passengers with an invoice. The latter would then pay over a rand amount to the appellant in exchange for the equivalent in foreign currency, less commission and a fee.

Issue

Whether the services so rendered by the appellant in that duty free area were subject to VAT at the standard rate in terms of s 7(1)(a) of the Value-Added Tax Act 89 of 1991 or whether, on a proper construction of s 11(2)(l), the services were zero rated.

Decision

The appellant had failed to show that the Johannesburg Tax Court had reached the incorrect conclusion. The appellants' services rendered in the duty-free area were subject to VAT at the standard rate and were correctly so assessed.

CASE LAW

High Court

Gaertner v Minister of Finance and CSARS (Case No 12632/12; Western Cape High Court; not yet reported; 8 April 2013) [31]

Background

Searches conducted by SARS officials of certain premises.

Facts

On 30 and 31 May 2012 officials of SARS conducted a search at the third respondent's premises at Muizenberg and on 1 June 2012 SARS they conducted a search of a private residence in Constantia in terms of s 4(4) of the Customs and Excise Act 91 of 1964 which requires no prior warrant for the search. On 2 July 2012 the applicants applied to the High Court for an order: declaring the relevant part of s 4 of the Customs and Excise Act to be unconstitutional to the extent that it permitted targeted non-routine searches to be conducted without judicial warrant; declaring that the searches had been conducted in an unlawful manner, and requiring SARS to return everything taken or copied.

Issue

The constitutionality or otherwise of sub-paras (i) and (ii) of s 4(4)(a) of the Customs and Excise Act 91 of 1964.

Decision

It was held that sub-paras (i) and (ii) of s 4(4)(a) of the Customs and Excise Act 91 of 1964 were inconsistent with the Constitution and invalid.

CASE LAW

Tax Court

The decision of the Western Cape Tax Court in *A Ltd v CSARS* summarised in the March 2013 Juta Tax Law Review has now been reported as ITC 1862 (2013) 75 SATC 34.

A (Pty) Ltd v CSARS (Case No 13003; Cape Town Tax Court; not yet reported; 13 June 2013) [32]

Background

The appellant had disposed of certain shares in a private company, thereby giving rise to a dispute with the South African Revenue Service regarding the tax consequences of the transaction.

Facts

In the 2005 tax year, the appellant had disposed of certain shares in FG (Pty) Ltd in terms of a transaction involving associated expenditure and the giving of an indemnity.

Issue

Whether the proceeds of the disposal by the appellant of certain shares in FG (Pty) Ltd in the 2005 year of assessment were of a capital or a revenue nature. If those proceeds were of

a capital nature, the further issues to be determined were, firstly, whether the expenditure of R 45 123 050 actually incurred and paid by the appellant as a so-called 'equity kicker' in respect of certain loans was to be excluded from the capital gain made by the appellant on the sale of the shares, in that this amount formed part of their base cost. If the gain in question were properly classified as of a revenue nature, then the question arose as to whether expenditure in respect of an indemnity obligation, associated with the purchase of the FG shares, ought to be excluded from the capital gain made by the appellant and whether the expenditures of R 45 123 050 and R 55 million were deductible from the revenue gain. The final question related to interest levied in respect of the additional assessment.

Decision

It was held that the 2005 assessment in respect of the assessment must be set aside and revised to reflect that the proceeds of the disposal of shares were a receipt or accrual of a capital nature, that certain specified amounts were deductible from the appellant's taxable income, and that interest on the tax found to be payable was to be remitted.

SARS GUIDES

Short Guide to the Tax Administration Act 28 of 2011 (Version 2 released by SARS on 5 June 2013)

This publication is intended to assist taxpayers in understanding their rights and obligations under the Tax Administration Act 28 of 2011 which came into force on 1 October 2011. The Guide does not constitute a binding general ruling, interpretation note, practice note or other official publication and SARS has cautioned that it should therefore not be used as a legal reference.