



JUTA'S TAX LAW REVIEW

March 2015

Dear Subscriber to Juta's Tax publications

Welcome to the December 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 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

DRAFT BILLS

On 25 February 2015, the draft **Rates and Monetary Amounts and Amendment of Revenue Laws Bill [1]** and the linked Explanatory Memorandum were released for information. This Bill gives effect to rates and monetary threshold changes pertaining to income tax, transfer duty, customs and excise duties announced by the Minister of Finance in the 2015 Budget, and as outlined in the Budget Review.

BILLS

On 22 October 2014 the following Bills were introduced in the National Assembly:

Adjustments Appropriation Bill [2] [B10-2014] (now **Act 37 of 2014 [2A]**)

Division of Revenue Amendment Bill [3] [B11-2014] (now **Act 38 of 2014 [3A]**)

Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2014 [4] [B12-2014]

Taxation Laws Amendment Bill, 2014 [5] [B13B-2014]

Tax Administration Laws Amendment Bill, 2014 [6] [B14-2014]

On 30 October 2014 the versions of the last three Bills, mentioned above, were replaced with final versions received from National Treasury. The reason, according to the SARS website, was that the implementation dates might change.

ACTS

The **Rates and Monetary Amounts and Amendment of Revenue Laws Act 42 of 2014 [7]** promulgated on 20 January 2015 (GG 38404) inter alia fixed the rates of tax in respect of any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2014 or ending on 28 February 2015; any company for any year of assessment ending during the period of 12 months ending on 31 March 2015; and any trust (other than a special trust) for any year of assessment commencing on 1 March 2014 or ending on 28 February 2015.

Taxation Laws Amendment Act 43 of 2014 [8] promulgated on 20 January 2015 (GG 38405).

Tax Administration Laws Amendment Act 44 of 2014 [9] promulgated on 20 January 2015 (GG 38406).

Employment Tax Incentive Act 26 of 2013

On 18 December 2014 National Treasury published a **notice [10]** to bring s 10 of the Act into operation with effect from 19 December 2014.

RULES

On 11 November 2014, SARS published draft rules proposed under s 21A in relation to special economic zones in terms of the Customs Control Act 31 of 2014.

GENERAL

On 5 October 2014 SARS released a new income tax return for trusts.

DOCUMENTS FOR PUBLIC COMMENT

SARS has issued a draft [Binding General Ruling \[11\]](#) in relation to the termination of STC (secondary tax on companies) credits on dividends declared before 1 April 2015 but paid on or before that date. Comments by members of the public have been invited by no later than 20 February 2015.

SARS has issued [Draft Interpretation Note 63 \(issue 2\) \[12\]](#) on the rules for the translation of amounts expressed in foreign currencies and a draft [Interpretation Note on headquarter companies \[13\]](#). Comments by the public have been invited by no later than 31 May 2015

Tax-free savings and investment

On 20 February 2015 National Treasury issued a Media Statement that the Minister has approved the publication of the final Notices and Regulations under s 12T(8) of the Income Tax Act, 1962 that allow for the introduction of tax free savings and investment accounts effect from 1 March 2015.

EXPLANATORY MEMORANDA

SARS has issued the following explanatory memoranda:

Explanatory Memorandum on the Tax Administration Laws Amendment Bill [B14-2014] (the explanatory memorandum is set out at the end of the Bill).

[Memorandum on the Objects of the Taxation Laws Amendment Bill \[14\]](#) [W.P. –'14].

GUIDES

On 17 October 2014 SARS issued a [Guide on Income Tax and the Individual \[15\]](#) (2013/4).

On 28 October 2014 SARS published a [Dispute Resolution Guide \[16\]](#) in respect of the rules in terms of s 103 of the Tax Administration Act 28 of 2011.

On 31 October 2014 SARS published a [Guide on Alternative Dispute Resolution \[17\]](#).

On 13 November 2014 SARS published a [Guide to Building Allowances \[18\]](#).

On 14 November 2014 SARS issued a [Guide \(issue 5\) on the Determination of Medical Tax Credit Allowances \[19\]](#).

On 20 November 2014 SARS issued a [Draft Guide to the Exemption from Normal Tax of Income from Films \[20\]](#).

On 12 December 2014 SARS released issue 4 of the [Tax Exemption Guide for Public Benefit Organisations in South Africa \[21\]](#).

On 17 December 2014 SARS released a [Draft Guide on the Implementation of an Inter-Governmental Agreement to Improve International Tax Compliance \[22\]](#).

On 23 December 2014 SARS released a **Draft Comprehensive Guide to Capital Gains Tax (issue 5)** [23]. Comments from the public are invited by no later than 31 May 2015. The Guide was released on 23 February 2015.

In February 2015 SARS published an **Electronic Communications Guide** [24] which deals with the rules for electronic communication and is issued under section 255 of the Tax Administration Act 28 of 2011. The Electronic Communications Rules commenced on 25 August 2014

Per kilometre rate for motor vehicles and rate for meals and incidental costs

On 25 February 2015 SARS released notices in terms of s 81(1) of the Income Tax Act 58 of 1962 in relation to the rate per kilometre in respect of motor vehicles and the rate for meals and incidental costs as announced in the Budget.

MANUALS

No further manuals have been issued.

DOUBLE TAXATION AGREEMENTS AND PROTOCOLS

The **India Protocol** [25] and the Turkey Protocol were ratified in South Africa. The text of these protocols is to be made available after publication in the Government Gazette. The India Protocol was published in Government Gazette 38440 and came into force on 26 November 2014.

A double tax agreement with Hong Kong was signed on 30 September in Pretoria and on 16 October 2014 in Hong Kong, but has not yet been ratified.

Tax information exchange agreements ('TIEAs') have been entered into with the **Cook Islands** [26], **Barbados** [27], Monaco, **Argentina** [28], Liechtenstein and Belize. The text of these agreements is to be made available after publication in the Government Gazette. A TIEA with Grenada was signed on 10 December 2014 in St. Georges, Grenada.

VAT Mutual Administrative Assistance Agreements with Swaziland and Lesotho have been ratified in South Africa.

A FATCA (Foreign Account Tax Compliance Act) intergovernmental agreement annexure I and a memorandum of understanding have been published in Government Gazette 38466. The date of entry into force is 28 October 2014.

Voluntary disclosure program

All VDP1 applications have now been processed.

BINDING RULINGS

BINDING GENERAL RULINGS

BINDING GENERAL RULING 25 [29]

Effective date: 14 November 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 10(1)(gC)(ii)

Executive summary: This ruling clarifies the interpretation and application of the words 'from a source outside the Republic' in s 10(1)(gC)(ii) in relation to foreign pension payments that are received by or accrue to a resident.

BINDING CLASS RULINGS

No further binding class rulings have been issued.

BINDING PRIVATE RULINGS

BINDING PRIVATE RULING 180 [30]

Effective date: 1 October 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 12N

Executive summary: This ruling deals with the question whether a taxpayer who is a party to a public-private partnership will qualify for a deduction under any of the provisions referred to in s 12N in respect of improvements effected on land not owned by the taxpayer.

BINDING PRIVATE RULING 181 [31]

Effective date: 4 November 2014 Act

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1) definition of 'resident', s 9(2)(b), s 24J(1) definition of 'interest', s 50A(1) definition of 'foreign person', s 50B and s 50E of the Act and articles 1, 4 and 11 of the Convention between the government of the Republic of South Africa and the government of the Kingdom of Denmark 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 withholding tax on interest arising from loans made to a resident of South Africa by a funding scheme related to a foreign government.

Binding Private Ruling 182 [32]

Effective date: 6 November 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 15(a) read with s 36, s 19 and para 12A of the Eighth Schedule to the Act.

Executive summary: This ruling deals with the waiver of a debt that funded mining capital expenditure.

Binding Private Ruling 183 [33]

Effective date: 6 November 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of 'gross income' paragraphs (c) and (i); paragraphs 2(a) and 2(d) of the Seventh Schedule to the Act.

Executive summary: This ruling considers whether a taxable benefit will arise for employees who acquire properties from an associated institution of their employer in terms of a proposed employee housing scheme.

Binding Private Ruling 184 [34]

Effective date: 11 November 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 24BA, 42, 54 and 58 and paragraph 38 of the Eighth Schedule to the Act.

Executive summary: This ruling deals with the disposal by a trust of its shareholding in a company to another company, also wholly owned by the trust, in exchange for an additional equity share to be issued by the transferee company.

Binding Private Ruling 185 [35]

Effective date: 11 December 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 7B, 11(a), 23(g), 37A and 42.

Executive summary: This ruling deals with the disposal of assets (including equity shares held in subsidiaries) and liabilities (including contingent liabilities) from one company to another company under s 42 of the Act.

Binding Private Ruling 186 [36]

Effective date: 12 February 2015

Affected legislation: Income Tax Act 58 of 1962; Securities Transfer Tax Act 25 of 2007.

Provisions: Sections 24J, 41 and 42 of the Income Tax Act; ss 1 and 8 of the Securities Transfer Tax Act.

Executive summary: This ruling deals with the tax treatment of the conversion of an existing portfolio of assets into participatory interests in a collective investment scheme in securities under s 42 of the Act and the immediate disposal of the participatory interests.

Binding Private Ruling 187 [37]

Effective date: 18 February 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1), definition of 'gross income', 8(4)(a), 15(a), 19, 36, 45 and paragraphs 12A, 38(1) and 56(1) of the Eighth Schedule to the Act

Executive summary: This ruling deals with the waiver of a loan that funded the acquisition of a mining operation as a going concern under an intra-group transaction contemplated in s 45 of the Act.

Binding Private Ruling 188 [38]

Effective date: 18 February 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 30

Executive summary: This ruling deals with the conversion of a tax exempt public benefit organisation to a profit company, that is to say, from a company limited by guarantee to a company limited by shares.

Binding Private Ruling 189 [39]

Effective date: 19 February 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1) definition of 'connected person', 24J and paragraphs 13 and 20(1)(a) of the Eighth Schedule to the Act

Executive summary: This ruling deals with the time of acquisition of shares that are acquired under an agreement subject to suspensive conditions.

NEW AND RE-ISSUED INTERPRETATION NOTES

Interpretation Note 20 [40] (issue 5; issue 4 has been archived)

Effective date: 30 January 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 12H

Executive summary: This note clarifies the interpretation and application of s 12 which provides for deductions for registered learnership agreements. The amendments to section 12H by the Taxation Laws Amendment Act No 43 of 2014 are taken into account.

Interpretation Note 80 [41]

Effective date: 5 November 2014

Affected legislation: Income Tax Act 58 of 1962.

Provisions: Sections 11(a), (c), 23(c) and (g) and the definition of 'gross income' in s 1(1)

Executive summary: This interpretation note deals with the income tax treatment of stolen money.

Interpretation note 15 [42] (issue 4; issue 3 has been archived)

Effective date: 20 November 2014

Affected legislation: Tax Administration Act 28 of 2011

Provisions: Sections 104 and 107

Executive summary: This note provides guidance on the factors that a senior SARS official will take into account when deciding whether to extend the period for lodging an objection under s 104(4) or an appeal under s 107(2). The note also serves to highlight that the period during which an objection or appeal may be lodged is limited.

Interpretation Note 45 [43] (reissue; issue 1 has been archived)

Effective date: 10 December 2014

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 11(a) and (e), 18A, 22(8), 23(b) and (g), 24D, paragraphs 20 and 53 of the Eighth Schedule and Part II of the Ninth Schedule

Executive summary: This note provides guidance on whether security expenditure incurred by a taxpayer is deductible for income tax purposes.

PRACTICE NOTES

No further practice notes have been issued.

CASE LAW

SUPREME COURT OF APPEAL

SARS v Pretoria East Motors (Pty) Ltd [44] [2014] ZASCA 91; (2014) 76 SATC 293 (SCA)

Background

The appellant was an authorised motor dealer for a major motor manufacturer.

Facts

Following a detailed audit by the South African Revenue Service, additional income tax and value-added tax assessments were raised by SARS in respect of several years of assessment, and penalties were levied. The taxpayer's objections to the assessments were disallowed. On appeal, the Tax Court upheld the assessment in certain respects, found for the taxpayer in other respects, and confirmed the penalties levied by SARS. The taxpayer appealed to the Supreme Court of Appeal.

Issue

Whether the taxpayer's appeal to the Supreme Court of Appeal should be upheld.

Decision

The Supreme Court of Appeal affirmed the principle laid down in earlier Appellate Division decisions that the Tax Court is not a court of appeal in the ordinary sense, but a court of revision, and that an appeal to the Tax Court involved a re-hearing of the whole matter in which the Tax Court could substitute its own decision for that of the Commissioner. The taxpayer bore the onus of proving the assessments wrong, but this did not mean that SARS was free to adopt a supine attitude; for it was bound to set out the grounds for the disputed assessments and the taxpayer was bound to respond with grounds of appeal. The taxpayer's *ipse dixit* would not lightly be regarded as decisive, but it had to be considered with all the other evidence in the case, including the course of conduct of the taxpayer in regard to the transactions in issue, the nature of his business or occupation, and the frequency of his past participation in similar transactions.

In the present case, the approach of SARS's auditor had been that if she did not understand something in the taxpayer's accounting system, she was free to raise an additional assessment. This approach, said the court, was fallacious, for an additional assessment must be based on proper grounds, as it was only in this way that SARS could engage with the taxpayer in an administratively fair manner. Having provided grounds for the assessment, it was then for the taxpayer to respond by proving the assessment to be wrong. In this case, the taxpayer had been left none the wiser as to what was truly in issue and what needed to be produced to discharge the onus of proof. The taxpayer was not called on to produce every underlying voucher or invoice or to reconstruct its accounts from scratch for the Tax Court. Where SARS had based an assessment on the taxpayer's accounts and records, but had misconstrued them, it was sufficient for the taxpayer to explain the nature of the misconception, point out the flaws in the analysis, and explain how the records and accounts should be understood. If SARS wished to place underlying facts in dispute, then it should indicate what those facts were so that the taxpayer was alerted to lead evidence on those matters. As to penalties, the Tax Court in this case had simply rubber-stamped SARS's decision and its failure to engage with the issues meant that the court was at large to substitute its own decision.

GB Mining v Commissioner: SARS [45] [2014] ZASCA 29; (2014) 76 SATD 347 (SCA)

Background

The appellant, which was originally a shelf company, had been acquired to exploit a process for the extraction of platinum from chrome mining tailings.

Facts

The appellant had located a source of chrome tailings on a certain farm. Capital for its exploitation was to be raised from the public via a company (OTR Ltd) which was listed on the Johannesburg Stock Exchange. The intent was that the appellant would transfer its business to and become the principal shareholder in OTR. OTR was in dire financial straits and, in order to prevent its demise, the appellant mounted a rescue operation. This entailed the provision of loan capital and the incurring of expenditure to pay the staff and office expenses of OTR.

Issue

SARS had assessed the taxpayer on the basis that the moneys advanced on loan were of a capital nature and not deductible; and this determination was upheld by the Tax Court whose judgment was taken on appeal to the Supreme Court of Appeal. The basis of the appellant's objection to an assessment was that the assessment was wrong because it was based on incorrect facts that the appellant had furnished to SARS in its returns and financial statements. The issue was whether, in these circumstances, it was permissible for the appellant to proceed by way of objection or whether the appellant was restricted to asking for a reduction in the assessments in terms of s 79A of the Income Tax Act.

Decision

It was held that the Commissioner may reduce an assessment in terms of s 79A in the absence of an objection under s 81 of the Income Tax Act even where the error is the result of incorrect information furnished in the taxpayer's return; alternatively, however, the taxpayer may claim to

be 'aggrieved' by the assessment and object in terms of s 81, in which event the taxpayer bears the onus of proving that the assessment was wrong and the balance sheets and accounts would play a vital role in corroborating the information in the return. If incorrect information had been contained in the balance sheets or accounts, the taxpayer would have to provide evidence to explain the nature of the incorrect information and how it came to be included, and this principle would apply to each of the disputed assessments. In relation to expenditure incurred by the appellant in the attempted rescue of a listed company, the issue was whether the funds provided by the appellant took the form of a loan of a capital nature or of tax-deductible salaries paid to the appellant's employees and deductible office expenses. It was held that the appellant had not provided credible and reliable evidence to explain the alleged errors in this regard in its financial statements and that the Commissioner's view on this issue was plainly correct.

In regard to the appellant's claim for a deduction of expenses incurred in travelling overseas to gain additional sources of income and to raise further capital, it was held that the 50:50 apportionment of the expenses by the Commissioner was fair and reasonable in all the circumstances; hence, 50% of the expenditure would be capital and non-deductible. It was held that the Commissioner had erred in imposing additional tax in respect of the travel expenditure and the loan in question and that there had been no omission or incorrect statement by the appellant in this regard. It was ordered that the Commissioner must pay 10% of the appellant's costs in the appeal since the additional tax had been entirely remitted.

SARS v Terraplas South Africa (Pty) Ltd [46] [2014] ZASCA 69; (2014) 76 SATC 377 (SCA)

Background

The appellant was an importer and distributor of a type of plastic tile designed to serve a specific purpose.

Facts

The type of tile in question was designed to cover and protect the turf floor in sports stadiums when used for non-sporting events. The properties of the tiles were such as to allow for the passage of air and light and create a moist atmosphere

Issue

The decision concerned the appropriate tariff classification, in terms of the Customs and Excise Act 89 of 1991, applicable to the particular tiles that had been imported by the respondent from the United Kingdom. The central question was whether the tiles fell under the tariff heading appropriate to 'floor tiles'.

Decision

It was held that the determination in question involved an interpretation of Schedule 1 to the Act and that a secondary source of interpretation was the notes to each section or chapter. The court affirmed the Commissioner's determination regarding the tariff heading under which the tiles in question were to be classified.

High Court

GW van der Merwe v CSARS [47] (Case No 1984/14; Western Cape Division, Cape Town; 17 February 2014; (2014) 76 SATC 273)

Background

The first applicant in this case had been arraigned on multiple charges of fraud and contraventions of the Income Tax Act 58 of 1962 and the Value-Added Tax Act 89 of 1991.

Facts

SARS had applied in terms of s 163(4)(a) of the Tax Administration Act 28 of 2011 for a preservation order. Davis J had issued an order authorising the holding of an inquiry in terms of Part C of Chapter 5 of the Tax Administration Act. The taxpayers in question had applied for an

interim interdict to halt the commencement of that inquiry, pending the outcome of an application to review the order to hold the inquiry, alternatively, for a declaration that the relevant provisions of the Tax Administration Act were unconstitutional in so far as they authorised the holding of such an inquiry, notwithstanding the fact that civil or criminal proceedings had commenced.

Issue

At issue was whether, on a proper interpretation of the relevant provisions of the Tax Administration Act, an inquiry in terms of Part C of Chapter 5 of that Act was to proceed notwithstanding that civil and criminal proceedings were under way in respect of the taxpayers in question; whether the provisions of the Act in this regard were unconstitutional; and whether the applicants were entitled to access to the court file.

Decision

It was held that, in terms of s 58 of the Tax Administration Act, the inquiry must continue even during civil or criminal proceedings unless a court orders otherwise. From this it followed that civil or criminal proceedings involving the applicants in this matter did not require their exclusion from the ambit of the inquiry.

As to the applicants' contention that they should not be denied access to the court file, the court held that they should attempt, at least in broad terms, to identify the documents in the file to which they sought access, since the file might contain information that is protected by the Income Tax Act.

The applicants' argument that the relevant provisions of the Act were unconstitutional had no prospect of being upheld.

The application was dismissed with costs.

DKR Auto CC v CSARS [48] (Case No 42604/2012; North Gauteng High Court, Pretoria; 13 May 2014; (2014) 76 SATC 279)

Background

The provisions of the Customs and Excise Act 91 of 1964 in regard to the Commissioner's power to seize and detain a motor vehicle if it was liable to forfeiture in terms of the Act.

Facts

The Commissioner had seized a Lamborghini motor vehicle in terms of his powers under s 88(1)(c) of the Customs and Excise Act 91 and the applicant had applied to the High Court to have the seizure set aside and the vehicle returned to him as provided for in s 89(1) of the Act.

Issue

It was common cause that, in order to establish *locus standi* to bring such an application, the applicant had to show that he was the owner of the vehicle. At the time the vehicle was detained it was registered in another person's name.

Decision

It was held that the applicant had failed to discharge the onus of proof. None of the methods of constructive delivery recognised by law applied in this case, nor could delivery have been effected by attornment; consequently ownership had not passed to the applicant. In the result, it was held that the applicant had not shown a sufficient personal and direct interest to entitle him to claim the vehicle or to take the Commissioner's decision to seize the vehicle on review. The court decided the application on this point *in limine* and dismissed the application.

Island View Storage Ltd v CSARS [49] (Case No 12262/2012; KwaZulu-Natal High Court, Durban; 8 April 2014; (2014) 76 SATC 285)

Background

In terms of the Customs and Excise Act 91 of 1995, ethanol attracts excise duty but such duty is deferred where the ethanol is stored in a warehouse as provided for in the Act.

Facts

The applicant carried on the business of the bulk storage of ethanol in premises licensed by the South African Revenue Service, and certain ethanol so stored had been stolen from its warehouse. In the exercise of his statutory discretion, the Commissioner had determined that the ethanol so stolen did not qualify as a rebatable item in terms of schedule 6 to the Act.

Issue

Whether the Commissioner's determination that the stolen ethanol did not qualify as a rebatable item in terms of the Act should be set aside by the court.

Decision

It was held that a court of appeal can interfere with the Commissioner's discretion only if satisfied on a balance of probabilities that the discretion had been exercised capriciously or wrongly, and that this had not been demonstrated to be so in the present matter. It was further held that the circumstances surrounding the loss of the ethanol were mere conjecture and that the Commissioner had not been wrong in determining that the stolen ethanol did not qualify as a rebatable item in terms of schedule 6 of the Act. It was further held that the conditions provided for in terms of s 76(2)(d) of the Act in regard to a refund of duties and levies were not shown to have been satisfied; consequently, the applicant was not entitled to the relief that had been sought.

Medox Ltd v CSARS [50] (Case No 49017/11; North Gauteng High Court, Pretoria; 20 February 2014; (2014) 76 SATC 369)

Background

SARS had issued certain assessments in respect of the appellant, and the appellant had applied to the High Court to have the assessments declared null and void.

Facts

The taxpayer averred that, for the year of assessment in issue, the Commissioner had failed to set off the balance of assessed losses incurred in an earlier year of assessment.

Issue

The issue before the court was whether the High Court had jurisdiction to hear and determine this appeal.

Decision

The appellant had neither objected to nor appealed against the disputed assessments and had instead applied to the High Court for an order declaring the assessments null and void. It was held that the lawfulness and correctness of disputed assessments can be dealt with only by the Tax Court and that the legislature could not have intended to create competing and concurrent fora for the resolution of tax disputes. The merits of the assessments in issue fell within the competency of the Tax Court. The High Court did not have jurisdiction to entertain the dispute and it should have been pursued by way of an objection to the assessment and an appeal to the Tax Court. In this instance, the applicant had not exhausted internal remedies within the permissible time and was now seeking to circumvent the Income Tax Act by way of a declaratory order that would have the same effect as a review in terms of the Promotion of Administrative Justice Act 3 of 2000. This was tantamount to forum shopping. Once a taxpayer had exercised his rights in terms of the Tax Court, a further appeal lies to the Supreme Court of Appeal and the Constitutional Court. The application was dismissed with costs.

Hathurani v CSARS (2014) 76 SATC 387 (North Gauteng High Court)

Background

The appellant averred that he had entered into a settlement with SARS regarding his tax liability.

Facts

In the context of an investigation, the appellant had conveyed to SARS that he wished to settle his tax affairs and an agreement in this regard was allegedly reduced to writing.

Issue

The appellant sought an urgent interim order to restrain the Commissioner from executing a default judgment obtained in terms of s 91(1)(b) of the Income Tax Act 58 of 1962 and from enforcing the tax assessment in issue until the court had made a determination regarding the final relief sought. Such final relief was to involve a review and a setting aside of the Commissioner's refusal to suspend payment of the assessment in issue in terms of s 88(1) of the Income Tax Act 58 of 1962 in view of the alleged settlement.

Decision

It was held that the appellant had not adduced *prima facie* evidence of the settlement agreement allegedly entered into with the Commissioner and that it was therefore not necessary for the court to make a determination regarding the power of the Commissioner to enter into such an agreement.

Tax Court

There are no new reported Tax Court decisions.

Foreign Courts

Ben Nevis Holdings Ltd v Revenue and Customs Commissioners [51] [2013] STC 1579; [2013] EWCA 578; (2014) 76 SATC 243 (English Court of Appeal, Civil Division)

Background

SARS sought to recover an amount of assessed tax from a company registered in the British Virgin Islands

Facts

The company in question had deposited money into a United Kingdom bank account, and SARS sought access to those funds. The Commissioner for the South African Revenue Service had made a formal request to his counterpart in the United Kingdom, the Commissioner for Her Majesty's Revenue and Customs, for the assistance of HMRC in collecting the tax debt by providing access to those funds.

Issue

The request for assistance by SARS was made in terms of the protocol amending the 2002 double taxation treaty between the United Kingdom and South Africa. In the present proceedings, the appellant was appealing against the dismissal of an application to set aside an order granting permission to serve the proceedings out of the jurisdiction and freezing the funds in question, pending the forthcoming trial

Decision

The court agreed with the interpretation of the double tax agreement, adopted in the court below, namely that its provisions permitted the cross-border collection of a tax debt that had become due prior to the date that the agreement came into force. The appeal was dismissed.