



JUTA'S TAX LAW REVIEW

November 2015

Dear Subscriber to Juta's Tax publications

Welcome to the October 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

No further legislation has been enacted since the June issue of the JTLR.

BILLS

The Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B15-2015] was introduced in the National Assembly on 3 June 2015. The Bill was debated and put to the vote on 12 August 2015 and is now awaiting signature.

Taxation Laws Amendment Bill [B29 of 2015] was introduced in the National Assembly by the Minister of Finance on 27 October 2015.

The Tax Administration Laws Amendment Bill [B30 of 2015] was introduced in the National Assembly by the Minister of Finance on 27 October 2015.

Advance tax rulings – SARS invitation for comments

SARS has invited comments by no later than 29 January 2016 on a Draft Public Notice listing additional considerations in terms of s 80(2) of the Tax Administration Act, 2011 in respect of applications for advance tax rulings. The list of additional considerations in respect of which an application may be rejected has been updated, new considerations have been included and other considerations have been removed, following amendments to the legislation or the issuing of policy direction by way of Interpretation Notes. Comments on the draft public notice may be submitted by no later than 29 January 2016 to ATRinfo@sars.gov.za.

Changes to income tax return for trusts – ITR12T

With effect from 12 October 2015, form ITR12T has been amended. The amendments take account of legislative changes; previously optional fields have been changed to mandatory and certain automated calculations have been included.

Explanatory Memoranda

An Explanatory Memorandum on the Draft Taxation Laws Amendment Bill, 2015 has been released by SARS.

On 22 July 2015 National Treasury released for public comment a Memorandum on the Objects of the Draft Tax Administration Laws Amendment Bill, 2015.

National Treasury has issued a media statement on the 2015 Draft Taxation Laws Amendment Bill and the accompanying Explanatory Memorandum and on the 2015 Draft Tax Administration Laws Amendment Bill and the accompanying Memorandum of Objects. Interested parties were invited to make written submissions or oral presentations on these draft bills by no later than 12h00 on Monday 14 September 2015.

SARS issued a media statement on 9 July 2015 updating the progress made by SARS on foreign bank accounts that are held by South African residents and giving such residents until 12 August 2015 to approach SARS via its Voluntary Disclosure Programme (VDP) to regularise their tax affairs.

INTERNATIONAL TAXATION

GUIDES

On 19 August 2015 SARS released a Guide on Valuation of Assets for Capital Gains Tax Purposes (Issue 3).

On 28 August 2015 SARS released a Guide on Income Tax and the Individual (2014/15).

On 18 September 2015 SARS published a Guide to the Taxation of Special Trusts.

On 14 August 2015 SARS issued a Draft Guide to the Employment Tax Incentive.

SARS has issued a Draft Guide to the Employment Tax Incentive for public comment by 16 October 2015. This fiscal incentive was introduced by the Employment Tax Incentive Act 26 of 2013, promulgated on 18 December 2013. The guide reflects SARS's interpretation of the law, but taxpayers who take a different view may use the normal avenues for resolving such differences. The guide makes clear that it is not an 'official publication' as defined in s 1 of the Tax Administration Act 28 of 2011 and accordingly it does not create a 'practice generally prevailing' under s 5 of that Act. It is also not a binding general ruling under s 89 of Ch 7 of the Tax Administration Act.

On 22 October 2015 SARS issued a Guide on the Taxation of Foreigners Working in South Africa (2014/15) (7th issue).

TAX ADMINISTRATION ACT

BINDING RULINGS

BINDING GENERAL RULINGS

Binding General Ruling BGR 29

Effective Date: 20 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 46(3)(a)(v); unbundling transactions; the interpretation of 'as at the end of the day after that distribution'

Executive Summary: This ruling addresses the interpretation of the words 'at the end of the day after that distribution' in the context of s 46(3)(a)(v) in relation to an unbundling company listed on the Johannesburg Securities Exchange. The ruling does not address consecutive unbundling transactions occurring on the same day or the determination of the market value of shares in an unlisted unbundled company.

BINDING PRIVATE RULINGS

Binding Private Ruling BPR 196

Date: 1 July 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of 'income'; s 9(2)(i); s 10(1)(gC)(ii); the para 1 definition of 'remuneration' and para 2(1) of the Fourth Schedule to the Act

Executive Summary: This ruling deals with the issue of whether or not a pension fund will be liable to deduct employees' tax from the monthly pension benefits payable to retired members who are resident in South Africa in respect of services rendered outside South Africa.

Binding Private Ruling BPR 197**Date:** 1 July 2015**Affected legislation:** Income Tax Act 58 of 1962 and the Estate Duty Act 45 of 1955**Provisions:** Section 56(1)(g)(ii) of the Income Tax Act and s 4(e)(ii)(aa) and (iii) of the Estate Duty Act; the exemption from donations tax and the net value of an estate**Executive Summary:** This ruling deals with the donations tax consequences of the onward donation or subsequent donation of funds that were received by way of a donation from a foreign source and with the estate duty consequences should any of such foreign sourced funds be retained or used to acquire 'property', as defined in s 3(2) of the Estate Duty Act, located outside and will remain outside South Africa.**Binding Private Ruling BPR 198****Date:** 7 July 2015**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 10(1)(k), 47, 64D and 64FA(1)(b) and the distribution of a debit loan account in anticipation of the deregistration of a company**Executive Summary:** This ruling deals with the distribution of a loan account where it was the only asset of the co-applicant, which was a wholly owned subsidiary of the applicant. This was to constitute a distribution of all of the co-applicant's accumulated profits and a return of its share capital to the applicant in anticipation of the co-applicant's deregistration.**Binding Private Ruling BPR 199****Date:** 20 July 2015**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 8C(7); the definition of 'restricted equity instrument' and the s 10(1)(k)(i) exemption from income tax of dividends received by virtue of restricted equity instruments**Executive Summary:** This ruling deals with whether participation rights held by beneficiaries of an incentive trust are 'restricted equity instruments' and whether the dividends that such beneficiaries will receive by virtue of those rights are to be taxed as income or as dividends.**Binding Private Ruling BPR 200****Date:** 3 August 2015**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** The s 1(1) definition of 'gross income'; s 47A and s 51A; the source of income or commission payable to non-resident junket agents**Executive Summary:** This ruling deals with the source of commission income that is payable to non-resident junket agents by a resident casino operator.**Binding Private Ruling BPR 201****Date:** 13 August 2015**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 1(1) definitions of: 'gross income' paras (c) and (k); 'contributed tax capital'; 'dividend' and 'return of capital'; ss 8C, 40C, 42(5) and (6) and para 11 of the Eighth Schedule to the Act in respect of the issuing of capitalisation shares**Executive Summary:** This ruling deals with the issuing of capitalisation shares by a company to its sole shareholder.**Binding Private Ruling BPR 202****Date:** 14 August 2015**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 13quin and 45(3); the application of s 13quin subsequent to an intra-group transaction in terms of s 45

Executive Summary: This ruling deals with whether a transferee company is entitled to claim the s 13quin allowance for commercial buildings on property that will be transferred to it by way of an intra-group transaction.

Binding Private Ruling BPR 203

Date: 17 August 2015

Affected legislation: Securities Transfer Tax Act 25 of 2007

Provisions: The s 1 definition of 'security' and 'transfer'

Executive Summary: This ruling deals with whether securities transfer tax is payable where there has been a renunciation of a usufruct over shares. This is a binding private ruling issued in accordance with s 78(1) and is published in accordance with s 87(2) of the Tax Administration Act 28 of 2011.

Binding Private Ruling BPR 204

Date: 24 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: The s 1(1) definition of 'REIT'; ss 25BB, 42 and 44 and paras 1, 11(1)(a) and 13(1)(a) of the Eighth Schedule; the definition of 'disposal' for purposes of asset-for-share and amalgamation transactions; 'qualifying distributions' on conversion to a corporate real estate investment trust

Executive Summary: This ruling deals with the conversion of a portfolio of a collective investment scheme in properties, which are currently listed as a Real Estate Investment Trust (REIT) on the Johannesburg Securities Exchange, to a corporate REIT where, prior to the conversion, immovable property is to be transferred to a property company; whether the date of transfer of ownership in immovable property in the Deeds Office into the name of the property company impacts on the time of disposal of that immovable property for purposes of the asset-for-share transaction and the amalgamation transaction; and whether the declaration date of a distribution, as distinct from the date of payment, is the relevant time for determining whether the distribution is a 'qualifying distribution' under s 25BB.

Binding Private Ruling BPR 205

Date: 11 September 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definitions of 'controlled group company' and 'equity share'; s 12E(4)(c) and s 12J; the meaning of 'controlled group company' and 'equity share'

Executive Summary: This ruling determines the interpretation of 'equity share' and 'controlled group company' in respect of a company that proposes to issue different classes of ordinary shares. It also determines the meaning of 'investment income', as defined in s 12E(4)(c).

Binding Private Ruling BPR 206

Date: 14 September 2015

Affected legislation: Income Tax Act 58 of 1962; Value-Added Tax Act 89 of 1991; the Transfer Duty Act 40 of 1949

Provisions: Section 64FA and paras 67B of the Eighth Schedule to the Income Tax Act; ss 8(19) and 10(27) of the Value-Added Tax Act; s 9(19) of the Transfer Duty Act; the disposal by a share block company of its sectional title units to its share block holders

Executive Summary: This ruling determines the tax consequences of the disposal by a share block company of its sectional title units to its share block holders in exchange for the surrender of their share block certificates and their rights of use of the units.

Binding Private Ruling BPR 207

Date: 7 October 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 9H(6), 24BA and 44

Executive summary: This ruling determines certain income tax consequences resulting from the merger of two wholly-owned controlled foreign companies by a resident company.

Binding Private Ruling BPR 208

Date: 8 October 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 19 and para 12A of the Eighth Schedule

Executive summary: This ruling determines the income tax consequences of a repayment of a shareholder's loan from the proceeds of a new share issue by a company.

Binding Private Ruling BPR 209

Date: 21 October 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definitions of 'dividend', 'gross income' and 'income', 10(1)(k)(i)(ii), 64D, 64F(1)(l) and 64G(2)(a)

Executive summary: This ruling determines whether dividends tax is to be withheld from the dividends to be distributed in cash by a company to a discretionary trust, which will distribute those dividends to the beneficiaries of the trust who are employees of that company or its subsidiaries.

Binding Class Rulings

Binding Class Ruling BCR 047

Date: 24 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 10(1)(k)(i)(hh)

Executive Summary: This ruling deals with the limitation of the exemption from income tax of dividends that accrue to the issuer of a derivative in circumstances where those dividends are referenced in that derivative.

Binding Class Ruling BCR 048

Date: 14 September 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of 'income'; ss 11(a), 23(f) and 25BA

Executive Summary: This ruling concerns the deductibility of expenditure incurred by a portfolio of a Collective Investment Scheme in Securities (CISS), as defined in s 1 of the Collective Investment Schemes Control Act 45 of 2002.

INTERPRETATION NOTES

Archived Interpretation Notes

Interpretation Note 10

Date: 24 March 2003;

Replaced: 18 August 2015

Affected legislation: Skills Development Levies Act 9 of 1999

Provisions: Section 4(c); exemption for public benefit organisations

Executive summary: This note has been archived due to the release of issue 2 of the note.

Interpretation Note 63 (Issue 2)

Date: 12 August 2015

Replaced: 12 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1), 6quat(4) and (4A), 6quin(4), 9A, 9D(6), 25D, 35A(5), 47J, 49H, 50H, 51H and 64N(4)

Executive summary: This note deals with rules for the translation of amounts measured in foreign currencies other than exchange differences governed by s 24I and the Eighth Schedule.

Interpretation Note 64 (Issue 2)

Date: 6 November 2012

Replaced: 17 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 10(1)(e)

Executive summary: The income tax exemption in respect of bodies corporate established under the Sectional Titles Act 95 of 1986, share block companies established under the Share Blocks Control Act 59 of 1980 and associations of persons managing the collective interests common to all members.

Interpretation Note 22 (Issue 2)

Date: 9 December 2008

Date of archiving: 22 September 2015

Affected legislation: Transfer Duty Act 40 of 1949

Provisions: Sections 9(1)(c) and 9(1A)

Executive summary: The exemption in respect of public benefit organisations and statutory bodies.

Draft Interpretation Notes

Draft Interpretation Note

Date: Comments have been invited by no later than 31 December 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1) (definition of 'gross income') and 11(a), and para 35(1) of the Eighth Schedule

Executive Summary: This draft Note deals with contingent liabilities assumed in the acquisition of a going concern. SARS has published a discussion paper giving its preliminary views on the income tax implications for the seller and purchaser where a transaction is structured such that the purchase price of assets acquired as part of a going concern is settled or partly settled by the assumption of contingent liabilities. This draft Interpretation Note follows that discussion paper, and considers select aspects in so far as the relief in the corporate rules under ss 42 to 47 is applicable in these circumstances.

Draft Interpretation Note

Date: Comments have been invited by no later than 31 October 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 19 and para 12A of the Eighth Schedule to the Act

Executive Summary: This Note provides guidance on the interpretation and application of s 19 and para 12A which deal with the reduction of debt.

Draft Interpretation Note

Date: comments have been invited by not later than 18 September 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 30(1), s 30(3)(f) and the public benefit activity numbered 10(iii) in part one of the Ninth Schedule

Executive Summary: This Note provides guidance on the monitoring requirement imposed in terms of s 30(3)(f) on a public benefit organisation that provides funds, assets or other resources to an association of persons contemplated in the public benefit activity numbered 10(iii) in part one of the Schedule; and the interpretation of 'association of persons' contemplated in the public benefit activity numbered 10(iii) in the Schedule.

Draft Interpretation Note 6 (Issue 2)

Date: Comments have been invited by no later than 31 July 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of 'resident'

Executive Summary: This draft discusses the principles and guidelines that will be applied in considering the term 'place of effective management' in the definition of 'resident' in s 1(1).

Draft Interpretation Note

Date: Comments have been invited by no later than 30 November 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section (1), definition of 'financial year' and 'year of assessment', ss 66(13C), 89quat(1) and para 23 of the Fourth Schedule

Executive summary: This Note provides guidance on the application of s 66(13C) and the discretionary power vested in the Commissioner to accept financial accounts of a company for a period ending on a day which differs from the last day of the company's financial year.

New and re-issued interpretation notes

Interpretation Note 22 (Issue 3)

Effective Date: 22 September 2015

Affected legislation: Transfer Duty Act 40 of 1949

Provisions: Sections 9(1)(c) and 9(1A)

Executive Summary: This Note provides guidance on the interpretation and application of the following sections of the Transfer Duty Act, namely, s 9(1)(c) which exempts from the payment of transfer duty a public benefit organisation or any statutory body that has as its sole or principal object the carrying on of any public benefit activities, provided that the whole or substantially the whole of the property acquired is used for carrying on one or more public benefit activities; and s 9(1A), which exempts from transfer duty the transfer of property by a public benefit organisation to any other controlled by that organisation. For the purposes of this Note, the transactions do not constitute taxable supplies of fixed property under s 7(1)(a) of the Value-Added Tax Act 89 of 1991.

Interpretation Note 10 (Issue 2)

Date: 18 August 2015

Affected legislation: Skills Development Levies Act 9 of 1999

Provisions: Section 4(c) and the skills development levy exemption in respect of public benefit organisations

Executive Summary: This Note provides guidance on the interpretation and application of s 4(c) of the Skills Development Levies Act which exempts any public benefit organisation contemplated in s 10(1)(cN) from the payment of the levy, provided that the organisation solely carries on qualifying public benefit activities or solely provides funds to public benefit organisations that solely carry on qualifying public benefit activities.

Interpretation Note 53 (issue 2)

Date: 9 October 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: s 23A

Executive summary: This Note provides clarification and guidance on the application of s 23A, which ring-fences specified capital allowances granted to a lessor for certain aircraft, ships, machinery, plant, implements, utensils and articles ('affected assets') under a lease that is not an 'operating lease'.

Interpretation Note 64 (Issue 3)

Date: 17 August 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 10(1)(e) of the Act

Executive Summary: This Note provides guidance on the application and interpretation of s 10(1)(e) of the Act which exempts from income tax the levy income of a body corporate or of a share block company or an association of persons managing the collective interests common to all members. It also provides a basic exemption for these qualifying entities.

CASE LAW

Supreme Court of Appeal

Shuttleworth v South African Reserve Bank 2015 (1) SA 586 (SCA); [2014] ZASCA 157

Background

The statutory exit levy imposed on capital exported from South Africa.

Facts

An exit levy of 10% had been imposed on the appellant in terms of the Exchange Control Regulations read with the Currency and Exchanges Act 9 of 1933 in respect of capital exported by him.

Issue

Whether the imposition of the exit levy was constitutional

Decision

It was held by the Supreme Court of Appeal that the exit levy was a generally applicable revenue-raising mechanism and thus a form of taxation. Consequently, the imposition of the levy was invalid since it had not been imposed in accordance with the requirements laid down in s 75 and s 77 of the Constitution for the imposition of a tax.

Director of Public Prosecutions, Western Cape v Parker 2015 940 SA 28 (SCA); [2014] ZASCA 223; (2015) 77 SATC 224

Background

The legal relationship between a VAT vendor and the South African Revenue Service.

Facts

A close corporation that was a VAT vendor had collected but had then misappropriated and failed to remit value-added tax to SARS. The close corporation and its representative taxpayer were thereafter charged with, inter alia, common law theft. They pleaded guilty and were convicted in the Regional Court. There was an appeal to the High Court which held that, on the common cause

facts, the crime of theft had not been committed. The case was thereafter taken on further appeal to the Supreme Court of Appeal.

Issue

Whether, on the facts, the appellant had committed theft at common law.

Decision

Held in the negative. The Value-Added Tax Act does not create a relationship of trust between the VAT vendor and the South African Revenue Service; the relationship is one of debtor and creditor. Consequently, the misappropriation of the value-added tax did not constitute theft at common law.

High Court

Commissioner for South African Revenue Service v Tradex (Pty) Ltd 2015 (3) SA 596 (WCC); [2014] ZAWCHC 142; (2015) 77 SATC 121

Background

Preservation orders as provided for in terms of s 163 the Tax Administration Act 28 of 2011.

Facts

In these proceedings, the Commissioner sought confirmation of a provisional preservation order granted in terms of s 163(4) of the Tax Administration Act.

Issue

Whether a preservation order would be routinely available to SARS in every case of an actual or anticipated tax liability, or whether such an order would be granted only where there was a material risk that assets would be dissipated.

Decision

The focus of a preservation order is the dissipation of assets and an ex parte application for such an order will generally be satisfied only where SARS can show that there is a material risk that assets that would otherwise be available in satisfaction of a tax liability will not be available in the absence of such an order. It was held that such circumstances were not present in this case and that SARS had not sought to show that the respondent's business was being run into the ground. It was held that putting pressure on a taxpayer is not the purpose of a preservation order and that such an order will not be required unless there is reason to believe that a forced sale of the taxpayer's assets or business will achieve a better outcome for SARS than if the business were to continue in operation. It was held that, in the present matter, a preservation order was not required to secure the collection of tax, and the application was dismissed.

Ackermans Ltd v Commissioner for South African Revenue Service (2015) 77 SATC 191 (North Gauteng High Court)

Background

The power of the Commissioner, in terms of the Tax Administration Act 28 of 2011, to raise additional assessments.

Facts

The Commissioner had raised additional assessments six years after the original assessments and the taxpayer applied to the High Court for a review of the decision to do so.

Issue

Whether the High Court or the Tax Court had jurisdiction to hear the matter.

Decision

It was held that the High Court had jurisdiction to hear the application; however, the oral evidence necessary to adjudicate the application for review was the same evidence as would be required to adjudicate the merits of the challenge to the additional assessment; it was further held that there were no rules prohibiting a review application being referred for the hearing of oral evidence and that the disputed facts and issues raised in the application required the expertise of the Tax Court. It was held that the Tax Court was better placed to adjudicate on the disputed facts.

Tax Court

ABC (Pty) Limited v Commissioner for South African Revenue Service (Case No 13410; Special Tax Court, Johannesburg; 4 August 2014); 1875 (2015) 77 SATC 161

Background

The taxpayer in this case carried on mining operations.

Facts

The taxpayer extracted mineral ore from rock and conveyed this ore to its concentrator plant where the ore was smelted.

Issue

Whether the mineral-bearing order mined by the taxpayer (as distinct from the concentrate extracted from the ore) constituted the taxpayer's trading stock

Decision

The concentrate extracted by the taxpayer from the ore, but not the ore itself, constituted trading stock. Consequently, only expenditure that was incurred in respect of the acquisition of the concentrate met the requirements of s 23F(2) of the Income Tax Act 58 of 1962.

ABC (Pty) Limited v Commissioner for South African Revenue Service (Case No 13238 and 13164/2008; Tax Court, Cape Town; 8 December 2014); 1876 (2015) 77 SATC 175

Background

The statement of grounds of assessment provided for in Rule 10.

Facts

The Commissioner wished to amend his Rule 10 statement of grounds of assessment in relation to this particular matter.

Issue

Whether, in the circumstances of the present matter, the Commission was entitled to amend his Rule 10 statement of grounds of assessment.

Decision

The Western Cape Tax Court dismissed with costs the Commissioner's application to amend his Rule 10 statement of grounds of assessment. It was held that the present matter involved a situation in which a particular fiscal result followed only if the Commissioner were satisfied in regard to certain matters, and that his satisfaction was a jurisdictional fact for the issuing of the assessment. If the Commissioner thereafter discovered other facts which caused him to be satisfied on other matters, he could not issue a further assessment based on his new satisfaction.

Foreign Courts

ITC 1874 (2015) 77 SATC 106 (Fiscal Appeal Court, Zimbabwe)

Background

Zimbabwe's Value Added Tax Act

Facts

The appellant, a registered operator and a manufacturer of steel and steel products, had been supplied with fuel and groceries imported from South Africa by a Zimbabwean company.

Issue

Whether the transaction between the parties in this case constituted a "supply" of goods as envisaged in the Act.

Decision

It was held that the transaction in issue was a sale in which consideration was given, not in cash, but by way of setting off of such cash against a debt; that the consideration by way of goods and services constituted a 'supply' as envisaged in the Act and that the transaction therefore fell within the scope of the Act.

BT (Pvt) Ltd v Zimbabwe Revenue Authority (2015) 77 SATC 204 (High Court of Zimbabwe)

Background

The scope of the provisions of Zimbabwe's Income Tax Act in relation to bad debts.

Facts

The appellant, a producer of gold bullion, had sold the produce to a wholly-owned subsidiary of the Reserve Bank of Zimbabwe, which had been obliged to pay for the duly delivered product, but had not done so and had instead unilaterally converted all such outstanding amounts to bonds. The Appellant, having decided for good reason not to enforce payment, created a provision for the doubtful debt in its accounting records and thereafter wrote off the balance as a bad debt in the relevant year of assessment.

Issue

Whether the amount in question had been correctly claimed as a doubtful debt and thereafter as a bad debt in terms of the Act.

Decision

In the absence of statutory authority to issue such bonds, they were not lawful tender and could not discharge a debt; the requisite statutory elements for a bad debt had been satisfied and the Zimbabwe Revenue Authority should have allowed the claim accordingly.

DOUBLE TAX AGREEMENTS

On 16 October 2015, a protocol was entered into amending the agreement between the government of the Republic of South Africa and the government of the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital. The date of entry into force is 18 September 2015.

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