



JUTA'S TAX LAW REVIEW

June 2016

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 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

20 May 2016 – Promulgation of the Revenue Laws Amendment Act 2 of 2016 (*Government Gazette* 40006 of 20 May 2016).

BILLS

No new tax Bills have been promulgated since the March *Juta Tax Law Review*.

DRAFT BILLS

29 April 2016 – Draft Rates and Monetary Amounts Bill and Amendment of Revenue Laws Bill 2016.

29 April 2016 – Draft Rates and Monetary Amounts Bill and Amendment of Laws (Administration) Bill.

REGULATIONS

Draft regulations issued in terms of the Tax Administration Act 28 of 2011

11 April 2016 – Draft Regulations for the purposes of para (b) of the definition of 'international tax standard' in s 1, specifying the country-by-country reporting standard for multinational enterprises.

NOTICES

Income Tax Act

15 April 2016 – Notice in terms of para 14(3)(a) of the Fourth Schedule prescribing the dates on which employers are required to furnish EMP 501 returns

Value-Added Tax Act

Value Added Tax notice 558 (*Government Gazette* 40004 of 20 May 2016) increasing the value of bona fide unsolicited imported gifts from R400 to R1 400 and limiting the number of such gifts to two per person per annum.

24 June 2016 – Publication in GN 748 in terms of the Tax Administration Act 28 of 2011 (*Government Gazette* 40088) of 'Additional Considerations in respect of which an application for a Binding Private Ruling or a Binding Class Ruling may be rejected'. This notice replaces all previous notices issued in terms of s 80(2) of the Tax Administration Act, 2011.

VOLUNTARY DISCLOSURE PROGRAM

13 April 2016 – Release for public comment of the Voluntary Disclosure Programme (VDP).

GUIDES

DRAFT GUIDES

27 May 2016 – Draft Guide on the taxation of professional sports clubs and players. Comments have been invited by no later than 29 July 2016.

GUIDES

4 April 2016 – *VAT Guide 421 for Short Term Insurance* (Draft).

21 April 2016 – *Guide to Taxation in South Africa 2015/6*.

30 June 2016 - *Guide on the Determination of Medical Tax Credits*.

30 June 2016 - *Guide on Income Tax and the Individual*.

TAX ADMINISTRATION ACT

BINDING RULINGS

BINDING GENERAL RULINGS

BINDING GENERAL RULING 31

Effective date: 4 March 2016

Affected legislation: Income Tax Act 58 of 1962

Provisions: Second Schedule to the Act

Executive Summary: This is a ruling as to when an amount constitutes interest, as opposed to forming part of the lump sum benefit in terms of the Second Schedule to the Act. This ruling replaces General Note 32.

BINDING GENERAL RULING (VAT) 32

Effective Date: 18 March 2016

Affected legislation: Value-Added Tax Act 89 of 1991.

Provisions: Sections 1(1), 7, 8, 9, 11, 16, 20 and 21; the VAT treatment of specific supplies in the short-term reinsurance industry

Executive Summary: This ruling deals with taxable supplies made by reinsurers, cedents and intermediaries, reinsurance claims and recoveries, the time of supply in relation to the supply of short-term reinsurance, intermediary services and cedent services.

BINDING GENERAL RULING (VAT) 33

Date: 24 March 2016

Affected legislation: Value-Added Tax Act 89 of 1991

Provisions: Section 11(1)(j) and 13(3), para 7(a) of Schedule 1 and item 14 in part B of Schedule 2

Executive summary: This ruling sets out the VAT rate applicable to the supply and importation of vegetable oil.

BINDING GENERAL RULING (VAT) 34

Effective date: 14 April 2016

Affected legislation: Value-Added Tax Act 89 of 1991

Provisions: Sections 2(1)(i), 10(22A) and 72

Executive summary: This ruling is a grant by the Commissioner to long-term insurers of permission to use the method as set out in this ruling when determining the consideration for the supply of

management services to a superannuation scheme where the consideration for such supply is not separately reflected, but is embedded in the premium payable in terms of a long-term insurance policy.

BINDING GENERAL RULING (VAT) 35

Effective date: 27 May 2016

Affected legislation: Value-Added Tax Act 89 of 1991

Provisions: Sections 11(1)(j) and 13(3), para 7(a) of Schedule 1; Item 12 in part B of Schedule 2.

Executive summary: This ruling sets out the VAT rate applicable to the supply and importation of frozen potato products.

BINDING PRIVATE RULINGS

BINDING PRIVATE RULING: BPR 225

Effective Date: 1 March 2016

Affected legislation: Income Tax Act of 1962

Provisions: Sections 8F, 64D and 64EA

Executive summary: This is a ruling on the dividends tax consequences for a non-resident issuer of hybrid debt instruments.

BINDING PRIVATE RULING: BPR 226

Effective date: 1 March 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act); Value-Added Tax Act 89 of 1991 (the VAT Act); Securities Transfer Tax Act 25 of 2007 (the STT Act)

Provisions: Sections 29A, 41(3) and 45 of the Act; paras 10(b)(ii), 12A, 35(1)(a) and 55(1)(a)(i) of the Eighth Schedule to the Act; sections 1(1), 2(1)(c), 2(1)(d), 2(1)(i), 7(1)(a) and 12(a) of the VAT Act; sections 2(1) and 8(1)(a)(iii) of the STT Act

Executive Summary: This is a ruling on the income tax, value-added tax and securities transfer tax consequences of the transfer of the business of a long-term insurer, in part to a third party long-term insurer and the remainder to a long-term insurer forming part of the same group of companies as the transferor.

BINDING PRIVATE RULING: BPR 227

Effective date: 17 March 2016

Affected legislation: Income Tax Act 58 of 1962; (the Act) Securities Transfer Tax Act 25 of 2007 (the STT Act)

Provisions: Section 1(1); definition of 'contributed tax capital' and 'gross income', 9C, 10(1)(k), 64E, 64EA and 64F of the Act and paras 1; definition of 'disposal', 3, 4, 11 and of the Eighth Schedule to the Act; sections 1; definition of 'transfer' and 'security', 2 and 6 of the STT Act

Executive Summary: This is a ruling on the income tax, capital gains tax, dividends tax and securities transfer tax consequences resulting from a share subscription transaction followed by two share repurchase transactions.

BINDING PRIVATE RULING BPR 228**Effective date:** 13 April 2016**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 8EA(1); definition of 'operating company' and 'qualifying purpose'**Executive summary:** This is a ruling concerns on whether an investment of preference share funding in a newly established business is for a 'qualifying purpose'.**BINDING PRIVATE RULING BPR 229****Effective date:** 14 April 2016**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Paragraphs 2(a) and 5(1), (2) and (3A) of the Seventh Schedule to the Act in respect of employer-provided accommodation for employees**Executive summary:** This is a ruling as to whether vacant stands to be acquired by qualifying employees from their employer will constitute 'immovable property' as contemplated in para 5(3A) of the Seventh Schedule to the Act.**BINDING PRIVATE RULING BPR 230****Effective date:** 4 May 2016**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 42(1) and (2) and 45(5); the disposal of an asset in terms of an asset-for-share transaction within 18 months of its acquisition in terms of an intra-group transaction**Executive summary:** This is a ruling on the income tax consequences under s 45(5) in respect of the disposal of an asset in terms of an asset-for-share transaction, within 18 months of the acquisition of the asset in terms of an intra-group transaction.**BINDING PRIVATE RULING: BPR 231****Effective date:** 10 May 2016**Affected legislation:** Income Tax Act 58 of 1962 (the Act); the Securities Transfer Act 25 of 2007 (the STT Act)**Provisions:** Sections 42 and 44 of the Act and para 11(2)(b)(i) of the Eighth Schedule to the Act and s 8(1)(a)(ii) of the STT Act**Executive summary:** This ruling deals with corporate restructuring by way of asset-for-share and amalgamation transactions and the income tax and securities transfer tax consequences of a corporate restructuring by way of an asset-for-share and amalgamation transactions.**BINDING PRIVATE RULING: BPR 232****Effective date:** 19 May 2016**Affected legislation:** Income Tax Act 58 of 1962 (the Act)**Provisions:** Sections 1(1) the definition of 'equity share', and 44(1); the definition of 'amalgamation transaction'; equity shares to be issued by the resultant company as part of an amalgamation transaction**Executive summary:** This ruling determines whether the shares of each class to be issued by a resultant company following an amalgamation transaction will be equity shares as defined in s 1(1) of the Act.**BINDING PRIVATE RULING: BPR 233****Effective date:** 19 May 2016**Affected legislation:** Income Tax Act 58 of 1962 (the Act)**Provisions:** Sections 1(1); definition of 'gross income', 8(4)(a), 11(a) read with 23(g); 24C and 45(4B) of the Act and paras 3(a) and 4(a) and (b)(ii)(aa) of the Eighth Schedule to the Act and the transfer of a part of a business to a fellow subsidiary.

Executive summary This ruling determines the tax consequences for the seller and the buyer on the transfer of a part of the seller's business, specifically whether the settlement of the seller's actual obligations by the buyer will result in a recoupment for the seller; whether an amount accrues to or is received by the buyer as gross income if the seller transfers an cash amount to the buyer in order to take over certain of the seller's contingent liabilities; and whether, in that event, the buyer will be entitled to an allowance in respect of future expenditure on the relevant contracts.

BINDING PRIVATE RULING: BPR 234

Effective date: 23 May 2016

Affected legislation: Income Tax Act. 58 of 1962 (the Act); Securities Transfer Tax Act 25 of 2007 (the STT Act)

Provisions: Sections 1(1); the definition of 'contributed tax capital', 42 and 46 of the Act and paras 11(2)(b), 39 and 75 of the Eighth Schedule to the Act; sections 2 and 8(1)(a) of the STT Act; and asset-for-share and unbundling transactions not regulated by ss 42 and 46

Executive summary: This ruling determines the income tax and securities transfer tax consequences of an asset-for-share exchange and an unbundling of shares that does not qualify for relief under ss 42 and 46 respectively, of the Act.

BINDING PRIVATE RULING BPR 235

Effective date: 31 May 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act)

Provisions: sections 1(1); definition of 'company', 'foreign company' and 'resident', ss 9D, 9H, 42 and 46 of the Act and para 12 of the Eighth Schedule to the Act

Executive summary: This ruling determines certain income tax consequences for the parties to an unbundling transaction that follows asset-for-share transactions.

BINDING PRIVATE RULING: BPR 236

Effective date: 31 May 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act)

Provisions: Sections 1(1); definition of 'contributed tax capital'; sections 10(1)(k)(i), 24J, 41, 45, 55; the definition of 'donation'; sections 56, 58, 64D, 64E and 64FA of the Act and paras 11, 20, 35 and 75 of the Eighth Schedule to the Act

Executive summary This ruling determines the income tax consequences resulting from the acquisition of equity shares by setting-off a loan account, arising from an intra-group transaction, against the subscription price.

BINDING PRIVATE RULING BPR 237

Effective date: 7 June 2016

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

Provisions: Section 44(13) of the Act; section 8(25) of the VAT Act; section 9(1)(l)(iB) of the Transfer Duty Act

Executive summary This ruling determines that the re-instatement of a deregistered company in order to complete the transfer of immovable properties pursuant to an amalgamation transaction will not be a step taken to withdraw or invalidate the deregistration of that company as envisaged in s 44(13) of the Act.

BINDING PRIVATE RULING BPR 238

Effective date: 9 June 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act).

Provisions: Section 1 – the definition of ‘gross income’; the taxation of receipts by or accruals to a programme of activities of a clean development mechanism project

Executive summary: This ruling determines the taxability of receipts of a managing entity that manages a ‘Clean Development Mechanism project’ as defined in s 12K, carried on under a programme of activities modality.

BINDING PRIVATE RULING BPR 239

Effective date: 10 June 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act)

Provisions: Section 1(1); definition of ‘gross income’, s 15(a) and s 36(11); definition of ‘capital expenditure’ of the Act and para 1 definition of ‘disposal’; paras 3 and 11 of the Eighth Schedule to the Act

Executive summary: This ruling determines the income tax consequences resulting from cash contributions to be made by the Applicant (as a party to a mining joint venture) to a special purpose vehicle established to provide housing for the employees of the joint venture and the group of companies of which the Applicant forms part (the group).

BINDING PRIVATE RULING BPR 240

Effective date: 13 June 2016

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of ‘gross income’; sections 8(4)(a), 11(a), 23(g), 23H, 24C, 24J, 24L and 24M of the Act and Part VI of the Eighth Schedule to the Act

Executive summary: This ruling determines the income tax consequences resulting from the issue of notes that provide a return determined in respect of a share index, issued by a special purpose vehicle to its holding company that is an insurer.

BINDING PRIVATE RULING BPR 241

Effective date: 13 June 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act)

Provisions: Section 1(1) definition of ‘gross income’, s 10(1)(k), 24C, 25B of the Act and paras 11(1)(d), 13(1)(a)(iiA), 38, 75 and 80 of the Eighth Schedule to the Act

Executive summary: This ruling determines the income tax and capital gains tax consequences for the recipient of an award of participation units in a trust received in pursuance of a BEE training initiative and its entitlement to claim a s 24C allowance against the award.

BINDING PRIVATE RULING BPR 242

Effective date: 15 June 2016

Affected legislation: Income Tax Act 58 of (the Act)

Provisions: Sections 1(1); definition of ‘controlled group company’, ‘equity share’ and ‘hotel keeper’; sections 11(e), 12C(1)(d), 12J(1); definition of ‘qualifying company’ and ‘qualifying share’; and 12J(6A)(b)(ii); venture capital company investment in qualifying companies carrying on business as hotel keepers .

Executive summary This ruling determines the meaning of ‘controlled group company’ and ‘equity share’ with reference to companies that propose to issue different classes of ordinary shares; the application of s 12J(6A)(b)(ii) in relation to the granting of an option to purchase additional assets once qualifying shares have been issued to the venture capital company and the subsequent exercising of the option; and the meaning of ‘hotel keeper’ and the allowances that a hotel keeper may claim.

BINDING CLASS RULINGS

BINDING CLASS RULING BCR 052

Effective date: 31 May 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act); the Securities Transfer Act 25 of 2007 (the STT Act)

Provisions: Section 46 of the Act and para 76B of the Eighth Schedule to the Act; section 8(1)(a)(iv) of the STT Act

Executive summary: The Income Tax Act and Securities Transfer Act tax consequences for the shareholders of a listed company following an unbundling transaction. This ruling determines the tax consequences for resident and non-resident shareholders of a listed company in terms of an unbundling transaction in relation to the shares of the co-Applicant company.

BINDING CLASS RULING BCR 053

Effective date: 9 June 2016

Affected legislation: Income Tax Act 58 of 1962 (the Act); Value-Added Tax Act 89 of 1991 (VAT Act)

Provisions: Sections 12K and 22 of the Act; section 11(2)(l) of the VAT Act; the programme of activities of a clean development mechanism project

Executive summary This ruling determines the tax consequences for the participants in a 'Clean Development Mechanism project', as defined in s 12K of the Act, carried on under a programme of activities modality.

INTERPRETATION NOTES

DRAFT INTERPRETATION NOTES

DRAFT INTERPRETATION NOTE 16 (Issue 2)

Effective date: the due date for comment is 29 July 2016

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) definition of 'REIT', 8F(3)(d), 8FA(3)(d), para (aa) of the proviso to section 10(1)(k)(i), 23N(5)(a) 25BB, 41(4)(a)(iii), 43, proviso to s 44(4A), 46(2) and (6A), 64F(1)(a) and (l) and (2), 64FA(1)(a); section 8(1)(t) of the Securities Transfer Tax Act; sections 1(1) – definition of 'residential property company' and 9(1)(l) of the Transfer Duty Act; and ss 2, 7(1)(a) and 12(a) of the Value Added Tax Act

Executive summary: This draft Interpretation Note provides guidance on the interpretation and application of s 25BB which deals with the taxation of REITs and controlled companies. It also considers other selected provisions of the Act of particular relevance to REITs, controlled companies and the holders of shares or linked units in these companies.

DRAFT INTERPRETATION NOTE 34 (Issue 2)

Effective date: comments have been invited by 31 May 2016

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 10(1)(o)(i)

Executive summary: This Note provides guidance on the circumstances under which s 10(1)(o)(i) exempts from normal tax the remuneration derived by a person as an officer or crew member of a ship from normal tax.

WITHDRAWAL OF INTERPRETATION NOTES

INTERPRETATION NOTE 49 (Issue 2)

Date of withdrawal: 1 April 2016

Affected legislation: Value-Added Tax Act 89 of 1991 (the VAT Act)

Provisions: Section 1(1), definition of the term 'input tax' read with ss 16(2) and 16(3); documentary proof required in terms of s 16(2) to substantiate a vendor's entitlement to 'input tax' or a deduction as contemplated in s 16(3)

Executive summary: This Note provided guidelines on the documentary proof required to be obtained and retained under s 16(2) to substantiate a vendor's entitlement to input tax.

Reason for withdrawal: This Interpretation Note is to be incorporated into an Interpretation Note setting out the required documentary proof to be obtained and retained by a vendor to substantiate the vendor's entitlement to a deduction under ss 16(3)(c)-(n).

WITHDRAWAL OF VAT PRACTICE NOTES

VAT practice notes 1 2 3 4 10 and 11 and 12 have been withdrawn as indicated in the notice of withdrawal issued by SARS on 24 March 2016.

CASE LAW CONSTITUTIONAL COURT

South African Reserve Bank and Another v Shuttleworth and Another 2015 (5) SA 146 (CC); (2016) 78 SATC 23

Background

The respondent had exported funds from South Africa and SARS had imposed an exit levy on the funds in terms of exchange control legislation. The respondent had successfully challenged the constitutionality of the exit levy in the Supreme Court of Appeal.

Facts

The exit levy had not been imposed by Parliament.

Issue

Whether the exit levy was a 'tax' and consequently had to be imposed by way of a money bill in Parliament.

Decision

The Constitutional Court reversed the finding of the Supreme Court of Appeal and held that the exit charge imposed in terms of the exchange control regulations on the value of assets exported from the Republic is not a tax, since the raising of revenue is not its dominant purpose and is merely incidental. Consequently, the exit charge did not have to be imposed by way of a money Bill.

SUPREME COURT OF APPEAL

Krok and Another v Commissioner for South African Revenue Service 2015 (6) SA 317 (SCA); (2016) 78 SATC 1

Background

The Double Tax Agreement between Australia and the Republic of South Africa.

Facts

The High Court had earlier granted a provisional preservation order in respect of the respondent's assets in terms of ss 185 and 186 of the Tax Administration Act, read with art 25A of the protocol amending that double tax agreement, which provided for mutual assistance in the collection of taxes.

Issue

The decision involved the proper interpretation of the double tax agreement entered into between Australia and the Republic of South Africa, read with the Tax Administration Act 28 of 2011 and whether the preservation order had been correctly granted. Also in issue was whether the tax in dispute fell within the scope of the double tax agreement and whether the second appellant had been the beneficial owner of the taxpayer's South African assets.

Decision

It was held that art 25A applies to amounts owing in respect of taxes of every kind and that it is plainly prospective but tax claims that had arisen in the past are also covered. It was held that the jurisdictional challenge to the preservation order must fail, and that the second appellant had failed to prove that it was the beneficial owner of the assets in issue.

Anglo-Platinum Management Services (Pty) Ltd v CSARS (2016) 78 SATC 73 (SCA)

Background

The fringe benefits provisions of the Seventh Schedule to the Act.

Facts

The taxpayer company had offered its employees the opportunity of participating in what it believed to be a legitimate salary sacrifice arrangement, in terms of which employees could sacrifice a portion of their cash remuneration in return for the use of company-owned motor vehicles.

Issue

The issue before the court was whether, for the tax years in issue, the use of the vehicles in question was taxable (as contended by the taxpayer) on a reduced scale as a taxable benefit in terms of para (i) of the definition of 'gross income' in s 1 of the Income Tax Act read with the Seventh Schedule and the Fourth Schedule, or whether (as contended by the Commissioner) the benefit was taxable in terms of para (c) of the definition of 'gross income'.

Decision

It was held that the taxpayer and its employees had achieved a valid and binding salary sacrifice agreement, that the use of the vehicles in question was a consideration received by the employees as part of their employment and that the value formed part of their gross income and was taxable under para (c) of the definition of 'gross income'.

Commissioner for the South African Revenue Service v Stepney Investments (Pty) Ltd 2016 (2) SA 608 (SCA); (2016) 78 SATC 1

Background

The valuation of assets in a disposal subject to the Eighth Schedule of the Income Tax Act 58 of 1962.

Facts

The taxpayer had elected to use the market value of the asset in question on the valuation date as the valuation method for purposes of the Eighth Schedule and claimed to have sustained a loss in respect of the disposal of certain shares. The Commissioner had utilised the net asset value method and had adjusted the valuation to nil in terms of para 29(7)(b) of the Eighth Schedule.

Issue

Whether the respondent had discharged the onus of proving market value.

Decision

It was held that the respondent had failed to discharge the onus of proving the market value, but that the valuation adopted by the Commissioner could not be correct. It was held that, in these circumstances, the tax court ought to have referred the matter back to the Commissioner for further investigation and assessment.

HIGH COURT

Commissioner for South African Revenue Service v Prudence Forwarding (Pty) Ltd (2016)
78 SATC 119

Background

The validity of a High Court order setting aside the seizure of goods in terms of the Customs and Excise Act.

Facts

The second respondent, which conducted an importing business, had imported blankets or quilts from China which the Commissioner had detained by seizing the container holding the goods on the basis of a suspicion that the price declared by the second respondent (a clearing agent) did not reflect the true customs value of the goods. The respondents had applied to the High Court for an order setting aside the seizure of the goods, and such an order was duly granted.

Issue

SARS appealed to the full court of the Gauteng Division of the High Court against the granting of that order.

Decision

The appeal succeeded, inter alia on the basis that the High Court had lacked jurisdiction to make the order in that the requisite notice had not been given of the intention to make application to court, and that the Commissioner had not been afforded an opportunity to file papers in response to the application to review his decision; the order of the court a quo was set aside.

TAX COURT

ITC 1879 (Case No VAT 1005; 9 December 2014; (2016) 78 SATC 64)

Background

The special provision in the Value-Added Tax Act 89 of 1991 for supplies relating to low cost housing.

Facts

A registered VAT vendor had made certain supplies involving the rectification, rehabilitation and construction of new low-cost housing.

Issue

The issue before the court was whether (as contended by the taxpayer) such payment had been made in terms of the housing subsidy scheme envisaged in s 3(5)(a) of the Housing Act 107 of 1997 in which event the payments would be zero-rated for purposes of value-added tax or (as the Commissioner contended) were not made in terms of that Act and were consequently subject to value-added tax at the standard rate.

Decision

In the light of the inconsistent testimony of witnesses who gave testimony, the court applied the *contra fiscum* rule and held that payment for services must be treated as having been made in terms of a housing subsidy scheme and consequently were to be zero-rated in terms of s 11(2)(s) of the Act.

ITC 1880 (Case No 13472; 18 November 2014; (2016) 78 SATC 103)

Background

The provisions of the Eighth Schedule to the Income Tax Act 58 of 1962 in regard to the quantification of a capital gain on disposal of an asset.

Facts

The taxpayer, when calculating the capital gain on a disposal of shares, had claimed, in terms of para 35(3)(c) of the Eighth Schedule to the Income Tax Act, a reduction in respect of the amount set off by the seller by way of damages incurred in respect of the taxpayer's breach of duty as an agent in the context of the sale.

Issue

Whether such damages were properly set off against the proceeds of the disposal of the shares.

Decision

It was held such damages did not justify a reduction as envisaged in para 35(3)(c). As to the understatement penalty that had been imposed in terms of s 221 of the Tax Administration Act 28 of 2011, it was held that the taxpayer, having taken advice on the issue, had reasonable grounds to take up the position that he had, and it could not be said that he had not taken reasonable care in relation to his return. Although it was common cause that his return had contained a substantial understatement, it was also common cause that this matter was a 'standard case' with the result that a 10% penalty would be applicable unless there were reasons for a different outcome. As regards the imposition of penalty interest, it was common cause that s 89quat(3) was applicable which allowed the Commissioner to exercise a discretion and it was held that the interest should be waived *in toto*.

ITC 1881 (Case No IT 12951/VAT 855; 12 January 2016; (2016) 78 SATC 132)

Background

The fiscal consequences of SARS's failing, in additional assessments, to specify the alleged fraud, misrepresentation or non-disclosure within the prescriptive period; the onus of proof in regard to the valuation of trading stock and the deductibility of overseas travel expenses. SARS disputed the taxpayer's valuation of trading stock, the claimed deductions for bad debts, for salaries and wages, for overseas travel expenses and for repairs to buildings.

Facts

Additional assessments had been raised in respect of the taxpayer, after an investigation, on the grounds that the taxpayer had failed to provide proof of amounts claimed for casual wages, salaries and that wear and tear in respect of vehicles had not been correctly claimed. SARS alleged that the taxpayer's trading stock had been undervalued, and that the taxpayer's claim for a provision for settlement discounts had not been claimed in the correct tax year. SARS also disputed the taxpayer's claim for the expenses of overseas travel.

Issue

Whether SARS's failure to provide the specifics of the taxpayer's alleged conduct had the consequence that prescription of that claim had not occurred; whether there was any rational basis for SARS dispute the independent valuation of trading stock; whether the taxpayer had discharged the onus of proof in regard to the other disputed deductions.

Decision

It was held that the Commissioner had failed to specify the particular conduct of the taxpayer supporting the averment of fraud, misrepresentation or non-disclosure and that the matters relating to income tax for the 2004 and 2005 years of assessment had become prescribed in terms of s 79 of the Income Tax Act 58 of 1962. As to the valuation of trading stock, it was held that there was no reasonable or rational basis to dispute the independent valuation of stock at the end of the relevant year of assessment and that the taxpayer had discharged the onus of establishing the value of stock based on the disposal of the stock after year end. In regard to settlement discounts in respect of credit notes, it was held that, in the particular circumstances of this case, the provision for credit notes was an adjustment to correct the amount accrued as sales and gross income and that it is proper to use information obtained after the end of the year of assessment to determine the amount of gross income for that year. As to the deduction claimed for overseas travel, it was held that the

taxpayer's business required overseas buying trips and the claim for expenditure ought to be allowed as a deduction on a balance of probabilities. As to the claim of a deduction for repairs to certain leased premises, it was held that the restoration work was a repair rather than an improvement and that the amount in issue was deductible. As to liability for additional tax, it was held that since the taxpayer had taken advice on the preparation of the tax return, and that a penalty of only 10% should be imposed where there had been bona fide errors with not intent to evade or postpone tax. As to interest in terms of s 89*quat* (3) of the Income Tax Act, it was held that the interest that had been levied must be remitted as the taxpayer's contentions in this regard were reasonable.

ITC 1882 (Case No 13380; 27 January 2016; (2016) 78 SATC 165)

Background

The decision in ITC 1882 (2016) 78 SATC 165 involved an appeal by the taxpayer against the imposition of a penalty in terms of (the now-repealed) s 76 of the Income Tax Act. (See now s 213 of the Tax Administration Act 28 of 2011.)

Facts

It was common cause that, although the objection, disallowance of the objection and appeal were all lodged prior to the coming into force of the Tax Administration Act on 1 October 2012, the effect of the transitional provisions was that this matter had to be determined in accordance with the latter Act.

Issue

The only issue in this case was the quantum of the additional tax levied by the Commissioner.

Decision

It was held that the burden of proof in relation to the imposition of the additional tax was on the Commissioner in terms of s 102(2) read with s 129(3) of the Tax Administration Act. It was further held that the Tax Court exercises its own original jurisdiction in respect of an appeal. It was held that there is a duty on taxpayers to ensure that the professionals they employ are diligent and that, ultimately, it is the duty of the taxpayer to ensure that the correct amount of tax is paid timeously. It was held that in the matter, on the evidence, where the fiscus had suffered no loss of revenue or interest and that the taxpayer had completely relied on her accountant, additional tax of 35% rather than 50% should be levied.

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