

# JUTA'S TAX LAW REVIEW

March 2017

## Dear Subscriber to *Juta's Tax Law Review* publications

Welcome to the March 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](mailto:sallcock@juta.co.za))

Kind Regards

## **The Juta Law Marketing Team**

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## LEGISLATION

The following fiscal legislation has been promulgated since the last issue of the Juta Tax Law Review:

Rates and Monetary Amounts and Amendment of Revenue Laws Act 13 of 2016 (promulgated in GG 40560 of 19 January 2017)

Rates and Monetary Amounts and Amendment of Revenue Laws (Administration) Act 14 of 2016 (promulgated in GG 40561 of 19 January 2017)

Taxation Laws Amendment Act 15 of 2016 (promulgated in GG 40562 of 19 January 2017)

Tax Administration Laws Amendment Act 16 of 2016 (promulgated in GG 40563 of 19 January 2017)

## BILLS

No fiscal Bills have been promulgated since the last issue of the Juta Tax Law Review.

## DRAFT BILLS

The following draft Bill has been tabled in the National Assembly:

23 February 2017 – (Draft) Rates and Monetary Amounts and Amendment of Revenue Laws Bill

### **Explanatory Memoranda**

16 December 2016 – SARS published Explanatory Memoranda on:

- the Taxation Laws Amendment Bill 17B of 2016; and
- the Special Voluntary Disclosure Programme (SVDP) in respect of off-shore assets and income as contained in Part II of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill 19 of 2016 and Bill 20B of 2016.

## **REGULATIONS**

23 December 2016 – SARS published Regulations for the purposes of para (b) of the definition of 'international tax standard' in s 1 of the Tax Administration Act 2011 (see R1598 in in GG 40516).

## **MEDIA RELEASE**

27 February 2017 – The South African Revenue Service (SARS) announced that it has committed to the automatic exchange of tax information with the revenue authorities of over fifty other jurisdictions under the Organisation for Economic Co-operation & Development (OECD) Common Reporting Standard (CRS) by September 2017. The number of committed jurisdictions is predicted to grow to over 100 by September 2018.

## **GUIDES**

SARS has published the following guides:

18 November 2016 – Guide to the Urban Development Zone (UDZ) tax incentive (issue 5)

12 December 2016 – VAT 421 – a guide to short-term insurance. This is a general guide to the application of the Value Added Tax Act to short-term insurance transactions in South Africa.

12 December 2016 – VAT Rulings Process Quick Reference Guide

17 January 2017 – Guide to the exemption from normal tax of income from films

26 January 2017 - Tax exemption guide for public benefit organisations in South Africa (Issue 5)

26 January 2017 - Tax Guide for Micro-businesses 2016 – 2017

1 February 2017 – Guide on the U.S. Foreign Account Tax Compliance Act (FATCA) (Issue 2)

10 February 2017 – ABC of Capital Gains Tax for Individuals (Issue 9)

10 February 2017 - ABC of Capital Gains Tax for Companies (Issue 7)

16 February 2017 - Tax Guide for Share Owners (Issue 5)

24 February 2017 – VAT 404 Guide for Vendors

## DRAFT GUIDES

SARS has published the following draft Guides:

7 October 2016 - Draft Guide to the Voluntary Disclosure Program (v1.2)

## GOVERNMENT NOTICES

3 March 2017 – Fixing of the rate per kilometre in respect of motor vehicles in terms of section 8(1)(b)(ii) and (iii) of the Income Tax Act (GG 40660; Notice 195)

Determination of the daily amount in respect of meals and incidental costs for purposes of section 8(1) of the Income Tax Act. (GG 40660; Notices 194 and 195)

## TAX ADMINISTRATION ACT

### BINDING RULINGS

#### *BINDING GENERAL RULINGS*

#### DRAFT BINDING GENERAL RULING

##### **DRAFT BINDING GENERAL RULING (INCOME TAX)**

**Date:** 3 February 2017; due date for comments 3 March 2017

**Affected legislation:** Income Tax Act 58 of 1963

**Provisions:** Section 30B(2)(b)(ix)

**Subject:** Associations' funding requirements

**Executive summary:** This ruling provides clarity on the interpretation and application of the funding requirement in s 30B(2)(b)(ix).

#### BINDING GENERAL RULINGS

##### **BINDING GENERAL RULING (INCOME TAX) 9 (Issue 3)**

**Effective date:** 3 February 2017

**Affected instruments:** South Africa's international tax treaties

**Subject:** Taxes on income and substantially similar taxes for purposes of South Africa's tax treaties

**Executive summary:** This ruling identifies the taxes administered by SARS which in its opinion constitute taxes on income or substantially similar taxes for purposes of South Africa's tax treaties.

##### **BINDING GENERAL RULING (INCOME TAX) 29 (ISSUE 2)**

**Effective date:** 1 February 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 46(3)(a)(v)

**Subject:** Unbundling transactions

**Executive summary:** This ruling addresses the interpretation of the words 'at the end of the day after that distribution' in s 46(3)(a)(v) in relation to an unbundling company listed on the JSE. It 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 GENERAL RULING (VAT) 37**

**Effective date:** 12 December 2016

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

**Provisions:** Sections 11 and 72

**Subject:** The zero-rating of international travel insurance

**Executive summary:** The purpose of this ruling is to make an arrangement under s 72 relating to the zero-rating of international travel insurance.

### **BINDING GENERAL RULING (VAT) 39 [26]**

**Effective date:** 27 January 2017

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

**Provisions:** Section 72

**Subject:** The VAT treatment of municipalities affected by changes to municipal boundaries

**Executive summary:** The purpose of this ruling is to make an arrangement under s 72 relating to the VAT treatment of the transfer of any assets, liabilities, rights and obligations pursuant to the merger, creation and disestablishment of municipalities as a result of any municipal boundary change.

### **BINDING GENERAL RULING (INCOME TAX) 40 [27]**

**Effective date:** 10 February 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 23(m) and the Fourth Schedule, para (1), definition of 'remuneration'.

**Subject:** Remuneration paid to non-executive directors

**Executive summary:** This ruling provides clarity on the employees' tax consequences of income earned by a non-executive director ('NED'), as well as the effect those employees' tax consequences could have on the prohibition against deductions by office holders under s 23(m). This ruling should be read in conjunction with Binding General Ruling (Value-added Tax) 41, which deals with the VAT consequences of amounts earned by NEDs.

### **BINDING GENERAL RULING (VAT) 41 [28]**

**Effective date:** 10 February 2017

**Affected legislation:** Value-added Tax Act 89 of 1991

**Provisions:** Proviso (iii) to the definition of 'enterprise' in s 1(1)

**Subject:** The VAT treatment of non-executive directors

**Executive summary:** This ruling deals with the VAT treatment of the activities conducted by NEDs and clarifies whether those activities fall within the ambit of proviso (iii)(aa) or proviso (iii)(bb) to the definition of 'enterprise' in s 1(1). This ruling must be read in conjunction with BGR (Income Tax) 40, which provides clarity on whether director's fees for services rendered by NEDs fall within the definition of 'remuneration' in the Fourth Schedule to the Act

## **BINDING PRIVATE RULINGS**

### **BINDING PRIVATE RULING BPR 254**

**Effective date:** 30 November 2016

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

**Provisions:** Sections 24BA, 42 and 64FA of the Act; section 8(1)(a)(i) and (vi) of the STT Act.

**Subject:** Consequences of cross border and domestic asset-for-share transactions.

**Executive summary:** This ruling determines, amongst other things, the interpretation and application of s 24BA of the Act in the context of three simultaneous asset-for-share transactions between a domestic company and its three prospective shareholders, two of whom are non-residents for tax purposes.

**BINDING PRIVATE RULING BPR 255**

**Effective date:** 30 November 2016

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Sections 8(4)(a), 19, and paras 12A and 20(3)(a) of the Eighth Schedule

**Subject:** Debt reduction by means of set-off.

**Executive summary:** This ruling determines the tax consequences relating to the settlement of shareholder-funding loans owed to the shareholder being set-off against the same amount of that shareholder's share subscription obligation.

**BINDING PRIVATE RULING BPR 256**

**Effective date:** 7 December 2016

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

**Provisions:** Sections 1(1) – definition of 'gross income'; section 8(4)(a), 11(a) and s 37A of the Act; section 1(1) – definition of 'enterprise', ss 16, 17 and 20 of the VAT Act.

**Subject:** Mining rehabilitation

**Executive summary:** This ruling determines, amongst other things, the tax consequences of the proposed rehabilitation of land that forms part of mining areas by way of a bioenergy project.

**BINDING PRIVATE RULING BPR 257**

**Effective date:** 16 January 2017

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

**Provisions:** Sections 1(1) – definition of 'gross income'; sections, 8F, 8FA, 11(a), 19, 23(g), 24J, 24JA, 24JB and 25B and para 12A of the Eighth Schedule.

**Subject:** Islamic financing arrangements.

**Executive summary:** This ruling determines the income tax consequences of an Islamic financing arrangement, known as a 'mudaraba' arrangement, for the parties.

**BINDING PRIVATE RULING BPR 258**

**Effective date:** 17 January 2017

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

**Provisions:** Sections 1(1) – definitions of 'contributed tax capital', 'foreign return of capital', 'group of companies' and 'return of capital', 9D, 24BA, 41 – definition of 'group of companies';, 42 and 45 of the Act and paras 1 (definition of 'value-shifting arrangement'), 11(1)(g) and (2)(b), 12(4), 24(1), 64B(4) and 76B of the Eighth Schedule to the Act; section 2(1)(a)(ii) of the STT Act

**Subject:** Corporate group restructuring

**Executive summary:** This ruling determines the tax consequences resulting from a group restructuring involving multiple transactions to be undertaken in terms of the corporate roll-over rules and the consequences of the controlled foreign company rules in relation to the restructuring.

**BINDING PRIVATE RULING BPR 259**

**Effective date:** 18 January 2017

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

**Provisions:** Section 8C and paras 20(1)(h)(i), 35, 38 and 80 of the Eighth Schedule

**Subject:** Capital gains tax implications for an employee share trust

**Executive summary:** This ruling determines the capital gains tax consequences for an employee share trust on the vesting of the shares in the employees of a company and the companies' subsidiaries as a consequence of an employee share ownership plan.

**BINDING PRIVATE RULING BPR 260****Effective date:** 25 January 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 23(f) and (g) and 24J**Subject:** Interest on loans used to acquire shares.

**Executive summary:** This ruling determines the continuing deductibility of interest on loans used to acquire shares in companies that will be liquidated following the distribution to the borrower as a dividend in specie of the businesses operated by those companies.

**BINDING PRIVATE RULING BPR 261****Effective date:** 30 January 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 8C and paras 20(3)(b) and 80(2) and (2A) of the Eighth Schedule.**Subject:** The repurchase of restricted equity instruments.

**Executive summary:** This ruling determines the tax consequences for an employee share trust that is obliged to repurchase restricted equity instruments.

**BINDING PRIVATE RULING BPR 262****Effective date:** 30 January 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Paragraphs 2(e) and 10(1)(b) and (2)(b) of the Seventh Schedule**Subject:** An employer-provided transport service.

**Executive summary:** This ruling determines the value to be placed on a taxable benefit that will be granted by an employer to employees by rendering a transport service to them to convey them from a certain location to their place of work and back.

**BINDING PRIVATE RULING BPR 263****Effective date:** 1 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 8FA, 10(1)(k)(i) read with para (hh) of the proviso thereto; section 24J(1) – definition of 'interest', sections 24JB(2)(b), 64D, 64E, 64EA, 64F AND 64FA.**Subject:** Hybrid interest

**Executive summary:** This ruling determines the income tax consequences of the entitlement to and the payment of a share in the profits of the co-Applicant to the Applicant in the context of a funding arrangement, as well as the re-characterisation rules contained in s 8FA.

**BINDING PRIVATE RULING BPR 264****Effective date:** 3 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 1(1) – definition of 'equity share' and 'controlled group company', 12J(1) – definition of 'venture capital share', 'qualifying company' and 'qualifying share'**Subject:** Venture capital company shares

**Executive summary:** This ruling determines whether each share to be issued by a venture capital company (VCC) and another company (the target company) will be an 'equity share' as defined in s 1(1) and whether the target company will be a controlled group company for purposes of the definition of 'qualifying company' in s 12J(1).

**BINDING PRIVATE RULING: BPR 265****Effective date:** 3 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 19 and 44 and paragraph 12A of the Eighth Schedule**Subject:** Amalgamation transactions**Executive summary:** This ruling determines the tax consequences for a company that intends to dispose of its assets in terms of an "amalgamation transaction" as defined in section 44(1). The company holds loans and preference shares in the company that will acquire the assets.**BINDING PRIVATE RULING BPR 266****Effective date:** 9 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 7B, 11(a), 23(g), 23N and 24J(2)**Subject:** the acquisition of a business in exchange for the assumption of liabilities and the issuing of a loan note**Executive summary:** This ruling determines the tax consequences resulting from the acquisition of a business of a company in exchange for the assumption of the liabilities of that company and the issuing of a loan note in favour of that company. It also determines the deductibility of interest on a loan incurred to finance the repayment of the loan note.***BINDING CLASS RULINGS*****BINDING CLASS RULING BCR 056****Effective date:** 16 February 2017**Affected legislation:** Income Tax Act 58 of 1962 (the Act) Securities Transfer Tax Act 25 of 2007 (the STT Act)**Provisions:** Sections 1(1) – definition of 'portfolio of a collective investment scheme', 'portfolio of a declared collective investment scheme', and 'portfolio of a hedge fund collective investment scheme'; section 41(1) – definition of 'equity share' and 44 of the Act and paras 1 – definition of 'asset' and 'disposal', 3, 10, 11 and 61(3) of the Eighth Schedule to the Act; section 8(1)(a)(ii) of the STT Act.**Subject:** The amalgamation of portfolios of declared hedge fund collective investment schemes with registered hedge fund collective investment schemes.**Executive summary:** This ruling determines the income tax and securities transfer tax consequences of the amalgamation of hedge fund portfolios that have been declared collective investment schemes ('CISs') with registered hedge fund CISs pursuant to a change in the law governing hedge fund portfolios.**DISCUSSION PAPER**

SARS has released the following discussion paper for public comment:

15 February 2017 – Review of the diesel fuel tax refund system

## INTERPRETATION NOTES

### DRAFT INTERPRETATION NOTES

#### **DRAFT INTERPRETATION NOTE 60 (Issue 2)**

**Date for public comments:** 13 April 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Sections 11(o), 20B and 24M(1)

**Subject:** The loss on disposal of depreciable assets

**Executive summary:** This Note gives guidance on the interpretation and application of s 11(o), which grants a deduction for a loss on disposal of a qualifying depreciable asset as a result of alienation, loss or destruction.

#### **DRAFT INTERPRETATION NOTE**

**Date for public comments:** 23 February 2017

**Affected legislation:** Mineral and Petroleum Resources Royalty Act 28 of 2008; Mineral and Petroleum Resources Development Act 28 of 2002

**Provisions:** Section 1, and 6A(1)(b) of the Act.

**Subject:** The meaning of 'extracted' in the above context.

**Executive summary:** This Note provides clarity on the interpretation of the term 'extracted' referred to in s 6A(1)(b)

#### **DRAFT INTERPRETATION NOTE**

**Date for public comment:** 28 April 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 10(1)(o)(iA)

**Subject:** The exemption from income tax in respect of remuneration derived by a person as an officer or crew member of a South African ship

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

#### **DRAFT INTERPRETATION NOTE 50 (Issue 2)**

**Due date for public comment:** 10 February 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 11D

**Subject:** Deductions in respect of scientific or technological research and development

**Executive summary:** This Note provides guidance on the interpretation and application of s 11D, which provides an incentive to taxpayers carrying on research and development. Amendments to legislation up to 1 January 2015 are taken into account for purposes of this Note.

## INTERPRETATION NOTES

### INTERPRETATION NOTE 42 (ISSUE 2)

**Effective date:** 12 December 2016

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

**Provisions:** Sections 7(1)(a), 11(1)(a) and 11(2)(l)

**Subject:** The supply of goods or services by the travel and tourism industry

**Executive summary:** This note provides guidance to local entrepreneurs in applying current VAT legislation to the supply of tour packages and related goods or services to non-resident tourists and foreign tour operators, with specific emphasis on the application of s 11(2)(l). It does not deal with the supply of hunting safari packages or other supplies made by professional hunters and taxidermists.

### INTERPRETATION NOTE 93

**Effective date:** 24 November 2016

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Sections 1(1) – definition of 'foreign dividend', 6quat, 9(4)(a), 9d(9)(f), 10B, 22(3)(a)(iii), 23(f), 23(q) and 25D and para 20(1)(h)(iii) of the Eighth Schedule

**Subject:** The taxation of foreign dividends

**Executive summary:** This Note provides guidance on the interpretation and application of various provisions of the Act relating to foreign dividends. The Note does not deal with the income tax consequences of a dividend paid by a headquarter company, since this topic is addressed in Interpretation Note 87 dated 19 February 2016.

### INTERPRETATION NOTE 94

**Effective date:** 19 December 2016

**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

**Subject:** Contingent liabilities assumed in the acquisition of a going concern

**Executive summary:** This Note sets out the income tax implications for the seller and purchaser where the purchase price of assets acquired as part of a going concern is settled or partly settled by the assumption of contingent liabilities.

### INTERPRETATION NOTE 95

**Effective date:** 24 February 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 12L

**Subject:** The tax deduction for energy-efficiency savings

**Executive summary:** This Note provides guidance on the deduction for energy-efficiency savings under s 12L read with the Regulations.

### INTERPRETATION NOTE NO. 11 (Issue 3)

**Effective date:** 11 February 2015

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Paragraph (jA) of the definition of 'gross income' in s 1(1)

**Subject:** Trading stock: assets not used as trading stock

**Executive summary:** This Note provides guidance on the application and interpretation of para (jA) and its interaction with other provisions of the Act.

**INTERPRETATION NOTE 11 (Issue 4)****Effective date:** 6 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Paragraph (jA) of the definition of 'gross income' in s 1(1)**Subject:** Trading stock: assets not used as trading stock

**Executive summary:** This Note provides guidance on the application and interpretation of para (jA) and its interaction with other provisions of the Act.

**INTERPRETATION NOTE 16 (Issue 2)****Effective date:** 2 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 10(1)(o)(ii)**Subject:** The exemption from income tax in respect of foreign employment income.

**Executive summary:** This Note discusses the interpretation and application of the foreign employment remuneration exemption in section 10(1)(o)(ii).

**INTERPRETATION NOTE 34 (Issue 2)****Effective date:** 2 February 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 10(1)(o)(i)**Subject:** The exemption from income tax in respect of remuneration derived by a person as an officer or crew member of a ship.

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

**INTERPRETATION NOTE 65 (Issue 3)****Effective date:** 6 February 2017**Affected legislation:** Income Tax Act 58 OF 1962**Provisions:** Section 22(8)**Subject:** Trading stock: inclusions in income when applied, distributed or disposed of otherwise than in the ordinary course of trade

**Executive summary:** This Note provides guidance on the application and interpretation of s 22(8) which deems an amount to be included in income when trading stock is applied, distributed or disposed of in specified circumstances, otherwise than by sale at market value in the ordinary course of trade.

**ARCHIVED INTERPRETATION NOTES****INTERPRETATION NOTE 34****Effective date:** replaced on 2 February 2017**Affected legislation:** Income Tax Act 58 of 1962 (the Act)**Provisions:** Section 10(1)(o)(i) of the Act; definition of 'remuneration' in para 1 of the Fourth Schedule to the Act**Subject:** Exemption from income tax: remuneration derived by a person as an officer or crew member of a ship.

**Executive summary:** The purpose of this interpretation note is to provide guidance on the circumstances under which the remuneration derived by a person as an officer or crew member of a ship will be exempt from tax in terms of the provisions of section 10(1)(o)(i) of the Act.

## **INTERPRETATION NOTE 16**

**Effective date:** replaced on 2 February 2017

**Affected legislation:** Income Tax Act 58 of 1962

**Provisions:** Section 10(1)(o)(ii)

**Subject:** Exemption from income tax in respect of foreign employment income.

**Executive summary:** This note analyses and interprets 10(1)(o)(ii) of the Act.

## **DOUBLE TAXATION AGREEMENTS**

### **International**

Revised Double Tax Agreement with Zimbabwe: date of entry into force 1 December 2016

International Exchange of Information Agreement with St Kitts and Nevis (promulgated in GG 40610; date of entry into force: 18 February 2017)

Revised Double Tax Agreement with Singapore: date of entry into force – (GG 40577; date of entry into force – 16 December 2016)

## **CASE LAW**

### **SUPREME COURT OF APPEAL**

#### ***Avenant v Commissioner for South African Revenue Service [2016] ZASCA 90; (2016) 78 SATC 343 (SCA)***

##### **Facts**

The appellant, who was a wine farmer carrying on farming operations, had delivered his harvest of grapes to a farming co-operative. There they were pressed into pulp and mixed with pulp supplied by other members of the co-operative to be processed into wine.

##### **Issue**

Whether the wine in process constituted “produce” or “trading stock” in terms of the Income Tax Act and whether the appellant remained a joint owner of the pooled pulp and, thereafter, the pooled wine and whether this was “produce on hand and not disposed of” at the end of the year of assessment.

##### **Decision**

It was held that the wine in process constituted both “produce” and “trading stock” and that the appellant had retained joint ownership in undivided shares of the pooled pulp and later the pooled wine. Consequently, the appellant had “produce on hand and not disposed of” at the end of the tax year. It was ordered that the matter be referred back to the Commissioner to re-assess the appellant in accordance with the principles set out in the judgment.

***Wingate-Pearse v Commissioner for South African Revenue Service [2016] ZASCA 109; (2016) 78 SATC 360 (SCA)***

**Facts**

The appellant was disputing revised assessments issued by SARS and in these proceedings was appealing against a ruling of the Tax Court in terms of ss 129 and 130 of the Tax Administration Act 28 of 2011.

**Issue**

Whether the Tax Court's ruling on onus and the duty to begin the proceedings was an appealable 'decision' of the Tax Court.

**Decision**

It was held that the interlocutory decision ruling by the Tax Court in respect of the duty to begin the proceedings was not a 'decision' that was appealable in terms of the Tax Administration Act, and that only 'final' decisions are so appealable.

**HIGH COURT**

***Malema v Commissioner for South African Revenue Service [2016] ZAGPPHC 263; (2016) 78 SATC 279 (Gauteng High Court)***

**Facts**

In these proceedings SARS was applying for a declaratory order that, as a result of alleged non-disclosures and misstatements by the taxpayer, it was not bound by a compromise agreement entered into in terms of s 205(a)-(c) of the Tax Administration Act 28 of 2011.

**Issue**

The circumstances in which SARS is not bound by a compromise agreement entered into in terms of the Tax Administration Act in respect of a disputed tax debt

**Decision**

It was held that the only circumstances in which SARS is not bound by such a compromise agreement are those set out in section 205 of that Act. In that regard, the term "material" has to be interpreted in the context of the expressions 'a material fact' and 'materially incorrect information'. It was held that these expressions had to be interpreted objectively, and that genuine disputes of fact in this matter were not capable of being resolved on affidavit and that the matter therefore had to be referred to trial.

***Coconut Express CC v South African Revenue Service (Customs and Excise) [2016] ZAKZDHC 15; (2016) 78 SATC 297 (KwaZulu-Natal High Court)***

**Facts**

The applicant, an importer of goods, had facilitated the supply of certain goods between a manufacturer in one country and the eventual consumer in another country, by placing an order for such goods. The goods in issue had been shipped to Durban; on arrival the container was seized and SARS had issued a notice for such detention in terms of s 88(1)(a) read with ss 87 and 102 of the Customs and Excise Act 91 of 1964.

**Issue**

Whether SARS had acted lawfully in terms of the governing legislation, namely, the Customs and Excise Act in detaining the imported goods in question and whether SARS had acted in contempt of an earlier court order in this regard.

**Decision**

The applicant had not discharged the onus of proving that SARS had acted in contempt of the earlier court order when it detained the goods in question; however, the continued detention of the goods was not justified and was thus unlawful.

**Respublica (Pty) Ltd v Commissioner for South African Revenue Service (Case no 864/2014, Gauteng Division, Pretoria, 29 February 2016); (2016) 78 SATC 368****Facts**

A VAT vendor had leased to a university a building that was divided into smaller units for the sole purpose of accommodating students and, in terms of the lease, it also supplied certain 'domestic goods and services' together with the property. The university paid the vendor a monthly rental that included an amount for utilities.

**Issue**

In these proceedings, the vendor was applying for a declaratory order, the issue being whether the supply of certain accommodation by the vendor in question constituted 'commercial accommodation' as defined in s 1 of the Value-Added Tax Act 89 of 1991.

**Decision**

It was held that the vendor had made a taxable supply of commercial accommodation and was consequently liable to account for VAT on 60% of the rental received in terms of that provision of the Act.

**TAX COURT****ITC 1885 (2016) 78 SATC 316****Facts**

The appellants were six private senior schools operating in Zimbabwe in terms of their respect trust deeds. Certain employees of these schools had enrolled their children in the schools where they worked or at other schools which had reciprocal agreements with those schools. Those employees paid a lesser amount in school fees than other parents.

**Issue**

The issue before Zimbabwe's Special Court for Income Tax Appeals was whether the lower school fees charged in respect of the children of those teachers was a taxable fringe benefit for the parents in terms of Zimbabwe's Income Tax Act.

**Decision**

It was held that the benefit in question had been enjoyed by virtue of the parents' employee status. There was thus the necessary causal nexus between the contract of employment and the benefit, and the benefit thus fell within the ordinary meaning of the word "income". In addition, the benefit fell within the ambit of s 8(1)(b) of the Act and would, in any event, have formed part of the taxpayers' gross income. Moreover, the pay-as-you-earn system applied to the employee parents.

## **ITC 1886 (2016) 78 SATC 338**

### **Facts**

The appellant, a supplier of ferrochrome, who was ordinarily resident in Zimbabwe had entered into an agreement with the Minerals Marketing Corporation of Zimbabwe ('MMCZ') and an entity called Centachrome which was a sub-agent based in Switzerland. Centachrome facilitated the selling of ferrochrome produced by the appellant and sold through MMCZ as required by Zimbabwean legislation.

### **Issue**

Zimbabwe's Special Court for Income Tax Appeals was required to determine whether Centachrome, a non-resident, that had received fees from a source in Zimbabwe, was liable to income tax in Zimbabwe on such fees. In this regard, the court considered whether the amounts in question were 'fees', whether they had been derived from a source in Zimbabwe and whether the foreign entity in question was the taxpayer's agent,

### **Decision**

It was held that the expression 'fees' covered any sum of money, regardless of the name by which it was called. Moreover, that the fees in question had been paid directly to the foreign entity or were deemed to have been so paid. It was held that the appellant was the real principal and was ultimately responsible for the payment of the commission in question; that the fees in question had been directly paid by the appellant or could be deemed to have been so paid, and that on the question of source, the commission in question constituted the payment of fees from within Zimbabwe by a party ordinarily resident in Zimbabwe.

## **ITC 1887 (Case No: 13753); (2016) 78 SATC 375**

### **Facts**

The appellant was the operating company of a group of fishing companies, which operated as the owners and charterers of fishing vessels and as the producers and wholesalers of fresh and frozen fish products.

### **Issue**

The sole issue for determination by the Tax Court was whether the allocation by the Appellant of the charge-out rates applicable to internal repairs by its engineering division would constitute 'expenditure . . . on repairs to any ship' for the purpose of calculating the allowance provided for in s 14(1)(c) of the Income Tax Act in respect of the tax year in question.

### **Decision**

It was held that, in terms of s 14(1)(c) of the Income Tax Act, the Commissioner had a discretion (subject to objection and appeal) to grant an allowance based on the expenditure that he was satisfied the taxpayer was likely to incur in the following five years on repairs to any ship used by the taxpayer for the purposes of trade. It was held that, in the context of the expression 'any expenditure ... on repairs to a ship', the word 'any' was of wide import, and included expenditure paid to an employee or to a third party and that there was no principle that differentiated between external expenditure on such repairs from internal or in-house expenditure.