

JUTA'S TAX LAW REVIEW

November 2017

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

Welcome to the November 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

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LEGISLATION

There has been no fiscal legislation since the last Juta's Tax Law Review.

BILLS

The following fiscal Bills have been introduced in Parliament:

Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26 – 2017]

Taxation Laws Amendment Bill [B27 of 2017]

Tax Administration Laws Amendment Bill [B28 – 2017]; SARS has published an explanatory summary of this Bill.

RESPONSE DOCUMENTS PUBLISHED BY NATIONAL TREASURY AND SARS

14 September 2017 – Draft Response Document on the Taxation Laws Amendment Bill, 2017 and the Tax Administration Laws Amendment Bill, 2017 (based on report-back hearings to the Standing Committee on Finance in Parliament)

EXPLANATORY MEMORANDA AND DRAFT MEMORANDA

19 July 2017 – Publication by SARS of a draft Explanatory Memorandum on the Draft 2017 Taxation Laws Amendment Bill

19 July 2017 – Publication by SARS of a draft memorandum on the objects of the 2017 (Draft) Tax Administration Laws Amendment Bill

RULES

3 July 2017 - Publication by SARS of the third draft of the Customs Duty Rules under the Customs Duty Act 30 of 2014

GUIDES AND DRAFT GUIDES

The following Guides have been published by SARS:

21 July 2017 – Guide on the determination of medical tax credits (issue 8)

28 July 2017 - Guide on Income Tax and the Individual (2016/17)

2 August 2017 – Chapter 16 of the Draft Comprehensive Guide to Capital Gains Tax

18 August 2017 – SARS (Draft) Quick Reference Guide to Non-Executive Directors (SARS has also published responses to frequently asked questions regarding Binding General Rulings 40 and 41 in this regard)

12 September 2017 – Draft Guide to the Employment Tax Incentive (Issue 2)

5 October 2017 – Taxation in South Africa 2016/2017

12 October 2017 – Comprehensive Guide to Dividends Tax (Issue 2)

SPECIAL VOLUNTARY DISCLOSURE PROGRAM

This programme closed on 31 August 2017.

INTEREST-FREE OR LOW-INTEREST LOANS

11 August 2017 – SARS has published Table 3 in relation to interest-free or low-interest loans, updating the rates at which interest-free or low interest loans are subject to income tax).

APPROVED PUBLIC BENEFIT ORGANISATIONS

17 October 2017 - SARS has published a comprehensive list of public benefit organisations approved for purposes of s 18A.

VENTURE CAPITAL COMPANIES

31 October 2017 – SARS has published an updated list of approved venture capital companies.

BINDING RULINGS

BINDING GENERAL RULINGS

BINDING GENERAL RULING (VAT) 43

Effective Date: 12 September 2017

Affected legislation: Value Added Act 89 of 1991

Provisions: Section 1(1) definitions of 'input tax' and 'second-hand goods'.

Subject: Deduction of input tax in respect of second-hand gold.

Executive Summary: This ruling deals with the circumstances in which the supply of gold is regarded as falling within the exclusions in para (ii) of the definition of 'second-hand goods' in s 1(1).

BINDING GENERAL RULING 44 (EMPLOYMENT TAX INCENTIVE)

Effective date: 13 October 2017

Affected legislation: Employment Tax Incentive Act 26 of 2013

Provisions: Section 4(1)(b)

Subject: The meaning of 160 hours for purposes of s 4(1)(b).

Executive summary: This ruling determines the meaning of the 160 hours stipulated in s 4(1)(b).

BINDING PRIVATE RULINGS

BINDING PRIVATE RULING BPR 196 (SARS has given notice that this ruling is affected by subsequent changes to the law)

Effective date: 1 July 2015

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 1(1), definition of 'income', s 9(2)(i), 10(1)(gC)(ii), para 1 – definition of 'rendition of remuneration' and para 2(1) of the Fourth Schedule.

Subject: Employees' tax – monthly pension benefits in respect of foreign services rendered.

Executive summary: This ruling deals with whether or not a pension fund is liable to deduct employees' tax from the monthly pension benefits payable to retired members who are residents of South Africa in relation to services rendered outside South Africa.

BINDING PRIVATE RULING: BPR 275

Effective date: 23 June 2017

Affected legislation: Income Tax Act 58 of 1962.

Provisions: Sections 1(1) – definition of 'gross income'; s 24JB and para 1 – definition of 'asset', 'disposal' and 'proceeds' of the Eighth Schedule.

Subject: Security arrangements in respect of home loans.

Executive summary: This ruling determines certain tax implications arising out of the implementation of security arrangements in respect of home loans.

BINDING PRIVATE RULING BPR 277

Effective Date: 6 September 2017

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 8C, para 11A of the Fourth Schedule and paras 11(2)(j), 13(1)(a)(iiB), 38, and 80 of the Eighth Schedule.

Subject: The consequences for an employee share trust where an employee share incentive scheme is unwound.

Executive summary: This is a ruling on the tax consequences for an employee share trust consequent upon the vesting of 'restricted equity instruments' held by its beneficiaries, and whether the trust, in these circumstances, is liable to withhold PAYE in respect of the vesting of the s 8C gain in the beneficiaries.

BINDING PRIVATE RULING: BPR 278**Effective date:** 12 September 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 1(1) – definition of 'gross income', 11(a) read with 23(g) and 24JB of the Act**Subject:** The application of s 24JB to equity-linked notes.**Executive summary:** This is a ruling on the income tax consequences of the issuing of equity-linked notes by a covered person.**BINDING PRIVATE RULING: BPR 279****Effective date:** 14 September 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Section 1(1) – definition of 'connected person', 9D and para 64B(1) of the Eighth Schedule to the Act.**Subject:** Capital gains tax participation exemption in relation to controlled foreign companies.**Executive summary:** This ruling determines that the participation exemption from capital gains tax (CGT) is available in relation to the disposal of assets by a controlled foreign company (CFC) of the Applicant, because the parties are not connected persons in relation to each other at the time of the proposed transaction, albeit that such a relationship is created by the transaction.**BINDING PRIVATE RULING BPR 280****Effective date:** 4 October 2017**Affected legislation:** Income Tax Act 58 of 1962;**Provisions:** Sections 8(4)(a), 19 and 47 and para 56 of the Eighth Schedule.**Subject:** Debt reduction, capital losses and the corporate rules.**Executive summary:** This ruling is in respect of the income tax consequences for debtors and creditors of the same group of companies, after the forgiving of a loan and the subsequent liquidation of the debtors.**BINDING PRIVATE RULING: BPR 281****Effective date:** 20 October 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Paragraph 65B of the Eighth Schedule.**Subject:** The disposal of portion of land owned by a recreational club.**Executive summary:** This ruling determines the availability of roll-over relief under para 65B to a recreational club that sub-divides and disposes of part of its land and utilises the proceeds to effect improvements to the remaining portion of the land.**BINDING PRIVATE RULING: BPR 282****Effective date:** 20 October 2017**Affected legislation:** Income Tax Act 58 of 1962**Provisions:** Sections 11(a), 23(g), 55(1) – definition of donation – and s 58.**Subject:** The deductibility of socio-economic and enterprise development expenditure.**Executive summary:** This ruling determines the income tax consequences for the operator of a wind farm when incurring expenditure in respect of socio-economic development and enterprise development obligations imposed and undertaken in terms of an electricity generation agreement and licence.

BINDING CLASS RULINGS

BINDING CLASS RULING BCR 057

Effective date: 24 July 2017

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

Provisions: Sections 12J and 24H

Subject: The s 12J(2) deduction by partners.

Executive Summary: This is a ruling in relation, firstly, to a commanditarian partner's eligibility to claim a deduction under s 12J(2) in respect of venture capital shares acquired by a partnership and, secondly, whether the proposed investor certificates issued to the commanditarian partners will be acceptable for purposes of s 12J(4).

BINDING CLASS RULING: BCR 058

Effective date: 6 September 2017

Affected legislation: Income Tax Act 58 of 1962;

Provisions: Section 8C

Subject: The consequences for beneficiaries in respect of the unwinding of an employee share incentive scheme.

Executive summary: This is ruling on the income tax consequences for the beneficiaries consequent upon the unwinding of an employee share incentive scheme.

BINDING CLASS RULING: BCR 059

Effective date: 20 October 2017

Affected legislation: Income Tax Act 58 of 1962

Provisions: Section 1(1) – definition of 'company' and s 42.

Subject: Asset for share transactions involving a foreign collective investment scheme.

Executive summary: This ruling determines the tax consequences of an asset for share transaction.

INTERPRETATION NOTES

DRAFT INTERPRETATION NOTES

DRAFT INTERPRETATION NOTE 69 (issue 2)

Date: 1 August 2017

Affected legislation: Income Tax Act 58 of 1962.

Provisions: Sections 9HA, 25, 25C, 26 and the First Schedule.

Subject: Game farming.

Executive Summary: This Note explains the application of selected sections of the Act and paragraphs of the First Schedule to persons who carry on game-farming operations; its focus is the provisions applicable to livestock. The note does not deal with farming in general. The changes to this note relative primarily to the legislative amendments affecting deceased persons and deceased estates that came into operation on 1 March 2016 and that apply to persons dying on or after that date.

DRAFT INTERPRETATION NOTE 79 (Issue 2)

Date: 1 August 2017

Affected legislation: Income Tax Act 58 of 1962

Provisions: Sections 9HA, 25, 25C and 26 and paragraphs 2, 3, 4 and 9 of the First Schedule.

Subject: Produce that is held by nursery operators

Executive summary: This Note deals with the valuation of produce held and not disposed of by nursery operators at the beginning and at the end of each year of assessment. The note also examines the capital gains tax consequences of the disposal of produce.

DRAFT INTERPRETATION NOTE (no number)

Date: 13 October 2017

Affected legislation: Income Tax Act 58 of 1962; s 10(1)(gC)(ii)

Subject: The exemption applicable to foreign pensions and transfers.

Executive Summary: This Note deals with the interpretation and application of s 10(1)(gC)(ii) in respect of a lump sum, pension or annuity that is received by or that accrues to a resident from a source outside the Republic, and in respect of amounts transferred from a source outside the Republic into a local retirement fund.

INTERPRETATION NOTES

INTERPRETATION NOTE 60 (Issue 2)

Date: 29 September 2017

Affected legislation: Income Tax Act 58 of 1962

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

Subject: Losses on the disposal of qualifying depreciable assets.

Executive Summary: This note deals with the interpretation and application of s 11(o) which grants a deduction for a loss on the disposal of a qualifying depreciable asset as a consequence of alienation, loss or destruction.

INTERPRETATION NOTE 96

Date: 21 July 2017

Affected legislation: Income Tax Act 58 of 1962

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

Subject: Exemption from income tax in respect of the remuneration derived by a person as an officer or crew member of a South African ship.

Executive Summary: This note deals with the circumstances in which s 10(1)(o)(iA) exempts from normal tax the remuneration, derived by a person as an officer or crew member of a South African ship.

INTERPRETATION NOTE 20 (Issue 6 and issue 7)

Date: 12 October 2017

Affected legislation: Income Tax Act 58 of 1962; s12H

Subject: The additional deduction in respect of learnership agreements

Executive summary: This note deals with the interpretation and application of s 12H regarding deductions for registered learnership agreements. Included in this note are the amendments to s 12H by the Taxation Laws Amendment Act 15 of 2016 and those provisions are effective from 1 October 2016 and are applicable to all learnership agreements entered into on or after that date. The previous issue of Interpretation Note 20 must be consulted in relation to learnership agreements entered into before that date.

INTERNATIONAL

31 July 2017 – Turkey Protocol (date of entry into force 15 July 2017)

31 July 2017 – Samoa Tax Information Exchange Agreement (TIEA) (date of entry into force 28 May 2017)

1 September 2017 – SARS announced the conclusion of a Double Tax Agreement with Cameroon, effective 13 July 2017

6 October 2017 – Uruguay Tax Information Exchange Agreement (TIEA) (date of entry into force 6 October 2017)

9 October 2017 – Agreement between the Competent Authority of the Republic of South Africa and the Competent Authority of the Hong Kong Special Administrative Region of the People's Republic of China on the Automatic Exchange of Financial Account Information to improve international tax compliance

CASE LAW

SUPREME COURT OF APPEAL

CSARS v Marula Platinum Mines Ltd 2017 (2) SA 398 (SCA); (2017) 79 SATC 127

Facts

The taxpayer company held mining rights in the areas of Limpopo where it was actively engaged in mining. Its operations comprised two phases. The first was the extraction of ore from underground rock and bringing the ore to the surface; the second phase involved crushing and milling the mineral-bearing ore. The result of these two phases was a mineral-bearing concentrate in powder form.

Decision

It was held that the taxpayer's activities constituted the disposal of trading stock and that the Commissioner was therefore entitled to invoke s 23F(2) of the Act, the effect of which was to delay the deduction of s 11(a) expenditure until the year of assessment in which the corresponding income was taxed.

TAX COURT

ABC Holding (Pty) Ltd v CSARS (Case no ITI 13772, Western Cape Division, Cape Town, 4 November 2016); (2017) 79 SATC 63

Facts

The appellant's business involved the administering and managing of retirement villages and their frail care centres. The appellant concluded two contracts with potential purchasers of units in the villages in terms of which the appellant undertook to pay various monetary obligations of the owners in return for which the appellant became entitled to a certain percentage of the enhanced value when the owner disposed of his unit.

Decision

It was held that s 24C requires that the contract in question must provide for both income and for the future expenditure in issue. In the circumstances of this case, it was held that the future expenditure in question was not in respect of obligations in terms of the contract from which the income was derived, and that consequently, an allowance was not deductible in terms of s 24C.

ITC 1892 (2017) 79 SATC

Facts

The appellant was a VAT vendor who carried on a fast food delivery business. Its customers placed orders for the fast foods by telephone and the appellant then despatched a driver to collect and pay for the food and deliver it to the customer. The tax invoice issued by the appellant to the customer included an amount described as 'driver's petrol money'.

Decision

It was held that the appellant, being a VAT vendor, was accountable for output VAT on the delivery charges, included in the tax invoice and described in this way, as such charges were an incident of supplies made by a vendor.

XYZ (Pty) Ltd v CSARS (Case no 13539 and 13673, Tax Court, Port Elizabeth, 6 July 2017); (2017) 79 SATC 159

Decision

In this case, the Tax Court held that the Productive Assets Allowance that is payable in terms of the Motor Industry Development Programme administered by the Department of Trade and Industry, constituted an amount received by or accrued to the appellant, that it did not constitute gross income in the appellant's hands and was a receipt of a capital nature.

ABC (Pty) Ltd v CSARS (Case no IT13775, Tax Court, Megawatt Park, 29 April 2016); (2017) 79 SATC 167

Decision

In this case, the tax court held that a contractual entitlement to the services of a tax consultant, made available free of charge, constituted a benefit with a money value, that such value fell within the statutory definition of 'gross income', and that it was a taxable benefit in terms of para 2(e) of the Seventh Schedule to the Income Tax Act 58 of 1962.

X v CSARS (Case no 13791 and 13792, Tax Court, Cape Town, 13 December 2016); (2017) 79 SATC 179

Facts

The taxpayer had been obliged to assist his employer in the latter's requirement for capital by providing the employer with a loan on which interest was payable. The taxpayer thereafter secured a bank loan to fund the acquisition of a property to use as his residence and he claimed a deduction in terms of s 11(a) of the Income Tax Act against the interest earned on the loan he had made to his employer.

Decision

The tax court held that the taxpayer had failed to discharge the onus of proving the requisite connection between the interest he had paid on the mortgage for the home loan and the interest income he had received for the relevant years of assessment and that such interest was consequently not deductible.

ITC 1896 (2017) 79 SATC 191

Facts

This case involved the antecedent cession of dividend rights to the appellant company during the relevant years of assessment, which the Commissioner's disputed assessment included in the appellant's gross income for those years. The appellant and its holding company had also put in place plans whereby the holding company would purchase rights to future dividends declared by listed companies and on-cede them to the appellant before the last day of registration. The appellant contended that it had acquired an unconditional right to dividends, the subject matter of which was a conditional right to the payment of a dividend, and that the right to dividends had a value equal to the dividends.

Decision

The court held that the onus was on the appellant to show that the decisions of the Commissioner against which it had appealed were wrong. It was further held that a conditional right does not give rise to gross income because nothing has yet accrued. It was held, further, that only an unconditional receipt can give rise to an inclusion in gross income in terms of s 24J(3) of the Income Tax Act and that the contingent right received by the appellant could not constitute an amount that was receivable for the purposes of s 24J because there was no unconditional entitlement to any amount. As to costs, it was held that SARS's grounds of assessment were unreasonable and that the Commissioner should bear the appellant's costs of appeal.

XYZ CC v CSARS (Case no VAT 1345, Tax Court, Cape Town, 28 July 2016); (2017) 79 SATC 224

Facts

The appellant, a VAT vendor for purposes of the Value-Added Tax Act, had claimed a deduction of input tax on the purchase of a 2007 Mercedes Benz vehicle on the basis that it was used for making taxable supplies in that it was used in the appellant's business to deliver a range of packages.

Issue

Whether the vehicle was a 'motor car' as defined in s 1 of the Act.

Decision

It was held that the onus was on the appellant to show that the vehicle had not been constructed or converted wholly or mainly for the carriage of passengers, this being an objective test, and that the onus in this regard had not been discharged. As to the right of appearance, the court held that a taxpayer may be represented in the tax court by an ordinary lay person who may have no understanding of the law or legal process.

FOREIGN COURTS

ITC 1891 (2017) 79 SATC 80

Decision

In this decision of the Zimbabwean Special Court for Income Tax Appeals it was held that where a company's money is stolen by a manager, the loss thereby incurred is not deductible in terms of s 15(2)(a) of Zimbabwe's Income Tax Act because misappropriations by managerial employees are not a necessary incident or inseparable from the taxpayer's trading activities. On the facts of this case, it was held that the appellant had not discharged the onus of proving that the individuals who were responsible for the misappropriation of the funds were not managers who were in the position of a managing director or proprietor; consequently, the appellant was not entitled to a deduction in respect of the stolen money.

Zimbabwe Revenue Authority v Packers International (Private) Ltd (2017) 79 SATC 140

Decision

The Supreme Court of Zimbabwe ruled on a legal challenge to the authority of the Zimbabwe Revenue Authority (ZIMRA) to issue garnishee orders for the payment of tax that had been assessed as due and owing, and to appoint agents for the payment of value-added tax. The court held that once a person has been declared an agent in terms of Zimbabwe's Value-Added Tax Act, the person so appointed is under a duty to pay the assessed tax, regardless of the provisions of any other law. It was further held that ZIMRA was entitled not only to appoint an agent for the collection of assessed tax, but was also entitled to garnishee the taxpayer's account through an agent for the collection of tax.

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