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TAX AND EXCHANGE CONTROL ALERT

IN THIS ISSUE

RAFT OF TAX COURT JUDGMENTS PUBLISHED ON THE SARS WEBSITE CONSIDER VARIOUS INTERESTING ISSUES

Section 132 of the Tax Administration Act, No 28 of 2011 states that a judgment of the tax court dealing with an appeal under the dispute resolution provisions contained in the TAA must be published for general information and, unless the sitting of the tax court was public under certain stipulated circumstances, in a form that does not reveal the taxpayer's identity.

CUSTOMS HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

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Section 132 of the Tax Administration Act, No 28 of 2011 (TAA) states that a judgment of the tax court dealing with an appeal under the dispute resolution provisions contained in the TAA must be published for general information and, unless the sitting of the tax court was public under certain stipulated circumstances, in a form that does not reveal the taxpayer's identity. This provision is premised on the right to equality set out in s9 of the Constitution of the Republic of South Africa, 1996 (Constitution) and specifically s9(1) which states that everyone is equal before the law and has the right to equal protection and benefit of the law.

A number of issues thus arise to the extent that SARS does not publish certain tax court judgments which are in its possession. For instance, SARS may internally circulate all tax court judgments amongst its officials for their benefit, however, taxpayers and their advisers alike will not have possession of such judgments hence creating an imbalance in respect of equality before the law and especially equal protection and benefit of the law.

Very few tax court judgments have been published on the SARS website during the course of this year, going against the norm since the advent of the TAA. However, on 5 October 2017, SARS published a raft of tax court judgments handed down during the course of this year, the first of which dates back to January. One can only speculate as to why the publication of these judgments were held back until last week, particularly in light of the fact that the tax court found in favour of SARS in seven out of the eleven judgments published.

Nevertheless, the publication of the 2017 tax court judgments handed down thus far will provide for interesting reading and cover a broad range of issues. Some of the procedural and administrative issues considered by the tax court in the most recent set of judgments include whether the taxpayer was entitled to condonation for the late filing of its appeal in terms of s107(2) of the TAA.

The key issues considered by the tax court on the underlying merits include the usual suspects such as capital versus revenue and the tax deductibility of certain expenditure in terms of the general deduction formula in s11(a) of the Income Tax Act, No 58 of 1962 (Income Tax Act). In addition, some of the other interesting issues the tax court considered include:

- whether the taxpayer was entitled to claim a deduction for mining operations as a contract miner in terms of s15(1)(a) of the Income Tax Act;

Who's Who Legal

Emil Brincker has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory and Who's Who Legal: Corporate Tax – Controversy for 2017.

Mark Linington has been named a leading lawyer by Who's Who Legal: Corporate Tax – Advisory for 2017.

RAFT OF TAX COURT JUDGMENTS PUBLISHED ON THE SARS WEBSITE CONSIDER VARIOUS INTERESTING ISSUES

CONTINUED

It will be interesting to study each judgment and in particular to analyse the judgments which considered the imposition of understatement penalties in terms of s221 to s223 of the TAA.

- whether the taxpayer became entitled to the proceeds from the sale of property in terms of s1 by way of accrual, alternatively, s24(1) of the Income Tax Act (we obtained this case on another online platform and reported on it in our [Tax and Exchange Control Alert](#) of 14 July 2017); and
- whether amounts fell to be included in the taxpayer's income for the purposes of s9D of the Income Tax Act (that is, the controlled foreign company provisions).

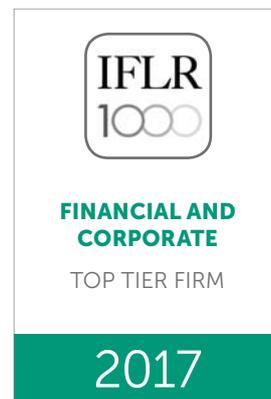
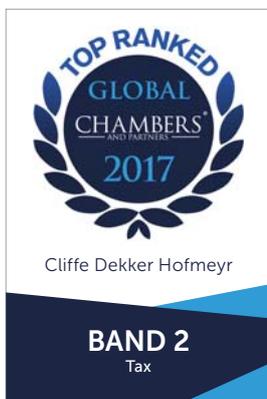
is a relatively new and developing area of tax jurisprudence in South Africa. It is interesting to note that Nkosi-Thomas AJ in Case No: IT14247, handed down on 18 August 2017 in the Tax Court, Johannesburg (as yet unreported) in fact increased the understatement penalties imposed by SARS in accordance with the exercise of the court's discretionary powers provided for in s129(3) of the TAA.

The link to the tax court judgments published on the SARS website can be found here:

<http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/2019-2017.aspx>

Jerome Brink

It will be interesting to study each judgment and in particular to analyse the judgments which considered the imposition of understatement penalties in terms of s221 to s223 of the TAA which



CHAMBERS GLOBAL 2011 - 2017 ranks our Tax and Exchange Control practice in Band 2: Tax.
 Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2017 in Band 1: Tax: Indirect Tax.
 Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2017 in Band 1: Tax.
 Mark Linington ranked by CHAMBERS GLOBAL 2017 in Band 1: Tax.
 Ludwig Smith ranked by CHAMBERS GLOBAL 2017 in Band 3: Tax.



CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.



This week's selected highlights in the Customs and Excise environment since our last instalment.

1. Amendments to the Rules to the Customs & Excise Act, No 91 of 1964 (Act) (certain sections quoted from the SARS website):
 - 1.1 Rule 19A3 to facilitate the removal of extracted ethyl alcohol.
2. Amendments to Schedule 1 Part 1 to the Act (certain sections quoted from the SARS website):
 - 2.1 The substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 37.93c/kg and 56.90c/kg to 75.24c/kg and 112.85c/kg respectively.
 - 2.2 Draft amendment (with effect from 1 January 2018) to create 8-digit tariff subheadings under 2809.20 to include a phosphoric content of 78 per cent or more. Separate 8-digit tariff subheadings are proposed to be created to distinguish between the acids used in the food industry and that used in the fertiliser industry.
- 2.3 The substitution of tariff subheading 9612.10 and the insertion of tariff subheading 9612.10.10 and 9612.10.90 to reduce the rate of customs duty on thermal transfer ribbons and cartridges from 15% to free of duty.
3. Amendments to Schedule 2:
 - 3.1 The deletion of items 213.03/7005.29.05/02.08; 213.03/7005.29.05/05.08; 213.03/7005.29.05/07.08 and 213.03/7005.29.05/10.08 to give effect to the termination of anti-dumping duties on solar glass originating in or imported from Indonesia (with retrospective effect from 26 July 2017).
4. Amendments to Schedule 6:
 - 4.1 The substitution of item 619.07/104.10.20/01.01 and the insertion of item 619.09/104.10.20/01.01 in order to provide for a rebate on the excise duties of beer, wine and other fermented beverages used in the manufacture of low alcohol and non-alcoholic beverages by a process of extracting ethanol as well as the movement of the extracted ethanol by-product.

CUSTOMS AND EXCISE HIGHLIGHTS

CONTINUED

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- 4.2 The amendment of various rebate items and Notes under item 620.00 in order to provide for a rebate on the excise duties of beer, wine and other fermented beverages used in the manufacture of low alcohol and non-alcoholic beverages by a process of extracting ethanol as well as the movement of the extracted ethanol by-product.
- 4.3 The insertion of various rebate items under item 621.00 in order to provide for a rebate on the excise duties of beer, wine and other fermented beverages used in the manufacture of low alcohol and non-alcoholic beverages by a process of extracting ethanol as well as the movement of the extracted ethanol by-product.
5. The International Trade Administration Commission recommended to the Minister of Trade and Industry that the anti-dumping duty on the following product be maintained, which recommendation has been approved by the Minister:

Unframed glass mirrors of a thickness of 2mm or more but not exceeding 6mm originating in or imported from Indonesia.
6. The Select Committee on Social Services invites comments on the Border Management Authority Bill [B9B-2016] by 27 October 2017.

The aim of the Bill is "to provide for the establishment, organisation, regulation, functions and control of the Border Management Authority; to provide for the appointment, terms of office, conditions of service and functions of the Commissioner and Deputy Commissioners; to provide for the appointment and terms and conditions of employment of officials; to provide for the duties, functions and powers of officers; to provide for the establishment of an Inter-Ministerial Consultative Committee, Border Technical Committee and advisory committees; to provide for delegations; to provide for the review or appeal of decisions of officers; to provide for certain offences and penalties; to provide for annual reporting; to provide for the Minister to make regulations with regard to certain matters; and to provide for matters connected therewith".

Comments can be sent to:
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P O Box 15, Cape Town, 8000
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Petr Erasmus

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