APRIL 2020 TAX UPDATE

Monthly Tax Update series

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The Tax Faculty

What we are covering today…

- COVID-19 Tax Amendments
- Recent judgments
- Recent SARS documents

COVID-19 Tax Amendments

- Draft Disaster Management Tax Relief Bill, 2020
  - Expansion of Employment Tax Incentive
  - Special tax dispensation for COVID-19 trusts

- Draft Disaster Management Tax Relief Administration Bill, 2020
  - Deferral of employees' tax
  - Deferral of provisional tax
  - Deferral of interim payments by micro business
  - Extension of time periods

Expansion of Employment Tax Incentive

- For employers registered on 1 March 2020
  - Higher ETI on existing “qualifying employees”
  - Period extended beyond 24 months
  - ETI will be extended to also apply to employees aged from 30 to not more than 65 years
  - Effective 1 April 2020 and applies to any remuneration paid on or before 31 July 2020

- ETI may be claimed monthly
  - Effective from 1 March 2020 and applies in respect of any remuneration paid on or before 31 July 2020

Amended ETI formula: first 12 months of employment –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 – R1 999,99	R500 + 50% x monthly remuneration	~~R0 - R1000~~ **R500 - R1 500**
R2000 - R4 499,99	Fixed at ~~R1000~~ **R1 500**	~~R1000~~ **R1 500**
R4500 – R6 499,99	Formula: X = A - (B x (C - D))	R 999 - R0
	X = monthly calculated amount	
	A = ~~R1000~~ **R1 500**	
	B = ~~0,5~~ **0,75**	
	C = Monthly Remuneration	
	D = R4500	

Amended ETI formula: second 12 months of employment –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 – R1 999,99	R500 + 25% x monthly remuneration	~~R0 - R1000~~ **R500 - R1 000**
R2000 - R4 499,99	Fixed at ~~R500~~ **R1 000**	~~R500~~ **R1 000**
R4500 – R6 499,99	Formula: X = A - (B x (C - D))	R 999 - R0
	X = monthly calculated amount	
	A = ~~R500~~ **R1 000**	
	B = ~~0,25~~ **0,5**	
	C = Monthly Remuneration	
	D = R4500	

Amended ETI formula:

subsequent months of employment (after 24) AND employees aged from 30 to not more than 65 years –

Monthly Remuneration	Determination	Monthly ETI Amount
R0 - R4 499,99	Fixed at **R500**	**R500**
R4500 – R6 499,99	Formula: X = A - (B x (C - D))	R 999 - R0
	X = monthly calculated amount	
	A = **R500**	
	B = **0,25**	
	C = Monthly Remuneration	
	D = R4500	
R6 500 or more		Nil

Special dispensation for COVID-19 trusts

- “COVID-19 disaster relief trust”, means any **trust** established for the sole purpose of disaster relief in respect of the COVID-19 pandemic
  - declared a national disaster on 15 March 2020 by the Minister of Cooperative Governance and Traditional Affairs under s 27(1) of the Disaster Management Act No. 57 of 2002, by Government Notice No. 313 published in Government Gazette No. 43096 of 15 March 2020.

Special dispensation for COVID-19 trusts
Tax exempt status

- Any "COVID-19 disaster relief trust"
  - Is deemed to be a **public benefit organisation**, as defined in s 30(1) of the Income Tax Act, 1962 if that COVID-19 disaster relief trust carries on a **public benefit activity** as contemplated in paragraph (a) of the definition of "public benefit activity" in that section, i.e. any activity listed in **Part I of the Ninth Schedule**

  - subject to -

    (i) that COVID-19 disaster relief trust complying with all the conditions imposed by s 30 in respect of a public benefit organisation; and

    (ii) any power granted to the Commissioner: SARS to withdraw the approval of any public benefit organisation under s 30 of that Act.

- Comes into operation on 1 April 2020 and applies until 31 July 2020.
- After 31 July 2020, deemed to be a small business funding entity as contemplated in s 30C

Special dispensation for COVID-19 trusts
Deduction for donors

- Section 18A of the Income Tax Act, 1962 will apply to -
  - any *bona fide* donation by a taxpayer in cash which was actually paid during the year of assessment by that taxpayer to a COVID-19 disaster relief trust.
- Comes into operation on 1 April 2020 and applies in respect of any amount paid on or before 31 July 2020

Special dispensation for COVID-19 trusts
PAYE exemption on distributions

- For the purposes of paragraph 2(4) of the Fourth Schedule to the Income Tax Act, any amount received or accrued from a COVID-19 disaster relief trust, must be deducted or excluded from remuneration, as defined in that Schedule, in calculating the balance of remuneration as referred to in that paragraph.
- Effective from 1 April 2020 and applies in respect of any amount received or accrued on or after that date but on or before 31 July 2020.

- NB: receipts are still taxable on assessment

COVID-19 Tax Amendments

"Qualifying taxpayer" for deferral of PAYE and Provisional tax payment

- a "qualifying taxpayer" is a company, trust, partnership or individual

  (a) that is a taxpayer as defined in s 151 of the Tax Administration Act (TAA) that conducts a trade;

  (b) gross income of R50 million or less during the year of assessment ending between 1 April 2020 31 March 2021;

  (c) gross income for the year of assessment does not include more than 10% income derived from interest, dividends, foreign dividends, rental from letting fixed property and any remuneration received from an employer; and

  (d) that is tax compliant as referred to in s 256(3) of the TAA

Deferral of employees' tax payments

- Applies to: qualifying taxpayer that is a resident employer or representative employer that is registered as such an employer by 1 March 2020
- Relief:
  - Employer may pay only 80% of the employees' tax due in respect of amounts deducted or withheld during the period commencing on 1 April 2020 and ending on 31 July 2020
    - No penalties or interest
  - Remaining 20% of the employees' tax is spread over 6 equal monthly instalments, from 7 September 2020 to 5 February 2021
    - Penalties and interest apply if not paid by (deferred) due date

Deferral of provisional tax payments

- Applies to: a qualifying taxpayer that is a provisional taxpayer
- Relief:
  - For any 1st provisional tax payment that is payable between 1 April 2020 and 30 September 2020
    - May pay only 15% (instead of 50%) of the total tax liability for that year, less PAYE paid and s 6*quat* rebate
  - For any 2nd provisional tax payment that is payable between 1 April 2020 and 31 March 2021
    - May pay only 65% (instead of 100%) of the total tax liability for that year, less 1st provisional payment made within 6 months after the commencement of the year of assessment, PAYE paid and s 6quat rebate
  - Balance of provisional tax to be paid by 3rd provisional date
    - S 89quat interest will apply to amounts outstanding after the effective date

Deferral of Micro Business interim payments

- Applies to: A qualifying micro business
  - micro business as defined in the Sixth Schedule that –

    (a) is a taxpayer as defined in s 151 of the TAA; and

    (b) is tax compliant as referred to in s 256(3) of the TAA
- Relief:
  - For any interim payments between 1 April and 30 September 2020
    - May pay only 15% (instead of 50%) of the total amount calculated for the year
  - For any interim payments between 1 April 2020 and 28 Feb 2021
    - May pay only 65% (instead of 100%) of the total amount calculated for that year, less 1st interim payment made by due date

Extension of time periods

- The period of the national lockdown (26 March – 30 April 2020) is not counted for TAA -
  - notices under ss 47 (interviews), 48(1) (audit/ investigation),53 (inquiry), 60(3) (warrant of search and seizure), 99(1) additional assessments, 100 (finality of assessment)
  - Chapter 7 – advance rulings
  - Chapter 9 - dispute resolution process and rules

Recent SCA judgments

- Marais N.O. and Another v Maposa and Others
- Diageo South Africa (Pty) Ltd v CSARS
- Telkom SA SOC Limited v CSARS

Marais N.O. and Another v Maposa and Others
(642/2018) [2020] ZASCA 23 (25 March 2020)

- Matrimonial Property Act No. 88 of 1984
- Spouses married in community of property
- Donation of asset of joint estate requires consent of spouse in terms of s 15(3)(c)
- Consent not given
- Whether consent deemed to have been given in terms of s 15(9)(a)

Matrimonial Property Act No. 88 of 1984

s 15. Powers of spouses

(1) Subject to the provisions of subsections (2), (3) and (7), a spouse in a marriage in community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.

(2) Such a spouse shall not without the written consent of the other spouse –

(a) alienate, mortgage, burden with a servitude or confer any other real right in any immovable property forming part of the joint estate;

(b) enter into any contract for the alienation, mortgaging, burdening with a servitude or conferring of any other real right in immovable property forming part of the joint estate;

(c) alienate, cede or pledge any shares, stock, debentures, debenture bonds, insurance policies, mortgage bonds, fixed deposits or any similar assets, or any investment by or on behalf of the other spouse in a financial institution, forming part of the joint estate;

(d) alienate or pledge any jewellery, coins, stamps, paintings or any other assets forming part of the joint estate and held mainly as investments;

(e) withdraw money held in the name of the other spouse in any account in a banking institution, a building society Of the Post Office Savings Bank of the Republic of South Africa;

(f) enter, as a consumer, into a credit agreement to which the provisions of the National Credit Act, 2005 apply, as „consumer" and „credit agreement" are respectively defined in that Act, but this paragraph does not require the written consent of a spouse before incurring each successive charge under a credit facility, as defined in that Act;

(g) as a purchaser enter into a contract as defined in the Alienation of Land Act, 1981, and to which the provisions of that Act apply;

(h) bind himself as surety.

Matrimonial Property Act No. 88 of 1984

s 15(3) A spouse shall not without the consent of the other spouse –

(a) alienate, pledge or otherwise burden any furniture or other effects of the common household forming part of the joint estate;

(b) receive any money due or accruing to that other spouse or the joint estate by way of –

(i) remuneration, earnings, bonus, allowance, royalty, pension or gratuity, by virtue of his profession, trade, business, or services rendered by him;

(ii) damages for loss of income contemplated in subparagraph (i);

(iii) inheritance, legacy, donation, bursary or prize left, bequeathed, made or awarded to the other spouse;

(iv) income derived from the separate property of the other spouse; (v) dividends or interest on or the proceeds of shares or investments in the name of the other spouse;

(vi) the proceeds of any insurance policy or annuity in favour of the other spouse;

(c) donate to another person any asset of the joint estate or alienate such an asset without value, excluding an asset of which the donation or alienation does not and probably will not unreasonably prejudice the interest of the other spouse in the joint estate, and which is not contrary to the provisions of

Matrimonial Property Act No. 88 of 1984

s 15(9) When a spouse enters into a transaction with a person contrary to the provisions of subsection (2) or (3) of this section, or an order under section 16(2), and –

(a) that person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order, it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or (3), or while the power concerned of the spouse has not been suspended, as the case may be;

(b) that spouse knows or ought reasonably to know that he will probably not obtain the consent required in terms of the said subsection (2) or (3), or that the power concerned has been suspended, as the case may be, and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse upon the division of the joint estate.

Diageo South Africa (Pty) Ltd v CSARS
(330/2019) [2020] ZASCA 34 (03 April 2020)

- Appeal from the Tax Court
- Value-Added Tax Act No. 89 of 1991: interpretation of s 8(15) deeming provision
- Single supply of advertising and promotional goods and services to non- resident entities; zero-rated
- Applicability of deeming provision applied to goods portion of the supply
- Held: VAT at standard rate correctly levied in terms of s 7(1)(a) of the VAT Act
  - appeal dismissed with costs including costs of two counsel

VAT Act s 8(15)

- For the purposes of this Act, where a single supply of goods or services or of goods and services would, if separate considerations had been payable, have been charged with tax in part at the rate applicable under s 7(1)(a) and in part at the rate applicable under s 11, each part of the supply concerned shall be deemed to be a separate supply

Tax Court held -

- The supply of promotional goods, as a portion of the single A&P service was, by virtue of s 8(15), a cognisable supply of goods capable of notional separation from the total A&P services supplied to the brand owners.
- This local supply of promotional goods, not exported but consumed in the Republic, was accordingly deemed to be a separate supply, and VAT at the standard rate was justifiably levied on these goods, with the result that the additional assessments were confirmed.
- Diageo was therefore liable for the VAT output tax adjustment under s 8(15) in respect of the A&P services costs incurred by Diageo constituting goods not exported but consumed in the Republic.

SCA judgment

- Section 8(15) is, as the Commissioner has correctly submitted, a deeming provision.
- Section 8, under which it is located, is headed 'Certain supplies of goods or services deemed to be made or not made'. The effect thereof was aptly summed up as follows in *Mouton v Boland Bank 2001 (3) SA 877*

  'The intention of a deeming provision, in laying down an hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further.'

- The jurisdictional requirements that must be met before the deeming provision can be invoked are, first, a 'single supply' of two or more types of goods or services or a combination of goods and services. Secondly, one consideration must be payable as only a single supply is made. Lastly, the circumstances must be such that if the supply of the goods or services or of the goods and services had been charged for separately, part of the supply would have been standard rated and part zero-rated ('notional separate considerations').

SCA judgment

- s 8(15) must be interpreted in the context of the provisions of
  - s 7(1)(a), in terms of which the supply of goods and services by a vendor, in the course or furtherance of an enterprise, attracts VAT at a standard rate, and
  - s 11(2)(l) which constitutes an exception to the provisions of s 7.
- Goods or services supplied to non-residents in the Republic are zero-rated in terms of s 11(2)(l).
- The purpose of s 8(15) is to provide, by way of a deeming provision, for a situation where the provisions of ss 7(1)(a) and 11(2)(l) are implicated in a single supply of goods, or services, or goods and services so that the appropriate rate of VAT is charged in respect of the particular goods or services or goods and services supplied.

SCA judgment (cont.)

- For s 8(15) to apply, it only has to be determined whether ‘each part of a single supply’ properly falls within its ambit for the deeming provisions to be triggered.
- The meaning of the section was clearly described in CSARS v British Airways plc 2005 (4) (SCA) 231 in the following terms (paras 10 and 11):

  ‘The section applies to a single supply of goods or services comprising parts that would each, if they had been supplied separately, have attracted a different rate of tax. In such cases, each part of the single service is deemed to be a separate supply of goods or services – although, in truth, they are not – with the result that the separate parts each attract the tax that is levied by s 7 but at different rates (0% for that part of the service that, had it been separately supplied, would have fallen within s 11, and 14% for the remainder).

SCA judgment (cont.)

- A “single supply of services” is only capable of notional separation into its component parts, as contemplated by the section, if the same vendor supplies more than one service, each of which, had it been supplied separately, would have attracted a different tax rate.
- If that were not so, there would be no parts of the “single supply of services” by the vendor capable of notional separation from one another.’
- Of significance to the present appeal is what was stated at para 13:

  ‘. . . The section does no more than apportion the rate at which the vendor is required to pay the tax that is levied by s 7 when the vendor has supplied different goods or services as a composite whole.’

SCA judgment (cont.)

- The provision of the A&P services by the appellant, Diageo, to the foreign based brand owners comprised a single supply of goods and services, which, if they had been supplied separately, would have attracted a different rate of tax and for which a single consideration was payable.
- The jurisdictional requirements of s 8(15) were therefore satisfied with the result that the deeming provision had the effect of notionally separating the supply of services from the supply of goods, when in fact they were not separate supplies.
- Furthermore, there can be no justification for importing into s 8(15) a requirement derived from foreign authorities, as the appellant would have it, that the deeming provision may apply only to a single supply of economically divisible, independent and hence dissociable supplies of goods and services.

SCA judgment (cont.)

- The meaning of s 8(15) of the Act is clear. Its purpose is to ensure that in a case like the present the appellant and other similarly positioned VAT vendors fulfil their obligation to pay VAT at the standard rate on the goods that they have supplied.
- Clearly, this cannot be an artificial and insensible result and does not in any way produce a commercially unreal outcome.

Telkom SA SOC Limited v CSARS
(Case no 239/19) [2020] ZASCA 19 (25 March 2020)

- Appeal from the Tax Court
- Income Tax Act 58 of 1962
  - s 24 I – losses or gains caused by foreign exchange fluctuations – proviso to s 24 I(10) – not a self-standing provision for deduction of a commercial loss unconnected to foreign exchange currency differences
  - s 23H - Deductibility of cash incentive bonus (cross-appeal)
- Appeal dismissed with costs; SARS cross-appeal upheld; understatement penalties set aside

Telkom SA SOC Limited v CSARS

Facts

- 2007 – 2009: a subsidiary of Telkom acquired 100% of the issued share capital of a Nigerian telecommunications company (NCo)
- In order for Nco to become financially viable, Telkom advanced numerous shareholder loans amounting to USD877 022 901 to it
- By 2011, USD346 000 000 of the loans had been converted into preference shares and the remainder of the loans (USD531 022 901) were outstanding
- During Telkom's 2012 year of assessment, the equity interests of Telkom and its subsidiary in Nco were sold to a third party
- Telkom's rights in respect of its loans to Nco were also sold to the third party for USD100.
- In the 2012 year of assessment tax return, Telkom claimed a s 24I foreign exchange loss deduction of R3 961 295 256
- SARS disallowed the deduction and issued an additional assessment in terms of which SARS assessed Telkom on a foreign exchange gain of R425 188 643

Judgment

- The resolution of this dispute was to be found in the interpretation of the provisions of s 24I, which provides for the tax treatment of gains or losses incurred by taxpayers on foreign exchange transactions and requires that any such gain or loss must be included in or deducted from the income of a taxpayer to the extent that the provisions apply thereto.
- Section 24I contains many definitions, the crucial one being “ruling exchange rate” (RER)

  “ruling exchange rate” means, in relation to an exchange item, where such exchange item is –

  (a) a loan or advance or debt in a foreign currency on –

  (i) transaction date, the spot rate on such date;

  (ii) the date it is translated, the spot rate on such date; or

  (iii) the date it is realised, the spot rate on such date:

  Provided that where the rate prescribed in respect of a loan or advance or debt in terms of this definition is the spot rate on the transaction date or the spot rate on the date on which such loan or advance or debt is realised, and any consideration paid or payable or received or receivable in respect of the acquisition or disposal of such loan or advance or debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be.
- At issue between the parties was the determination of the RER on the realisation date of the loan, which rate would ultimately dictate the extent of the gain or loss that was to be included in, or deducted from, Telkom’s income.

Telkom’s argument

- Telkom submitted that the proviso to the definition of RER applied to the facts and that a rate other than the spot rate at the date on which the loan was realised stood to be used to determine the foreign exchange gain or loss.
- It argued that the USD100 received by Telkom as consideration for the disposal of the loan was clearly not determined by applying the spot rate at the time to the transaction, as a consequence of which it was apparent that “a rate other than [...] the spot rate” had been utilised.
- Telkom contended that the pertinent question to be answered was whether the consideration of USD100 was determined by applying a “rate”.
- It submitted that “rate” should be taken to mean “the price paid or charged for a thing or class of things”, with the result being that the consideration of USD100, having been agreed upon by the parties to the transaction, fell within the meaning of “rate”.
- The basis of this argument was that the context of the word “rate” indicated that the word did not refer to an exchange rate between currencies, but rather to an agreement as to value or worth.
- Ultimately, Telkom concluded that the consideration of USD100 was determined using a rate other than the spot rate, and that the proviso to the definition of RER had to be applied to the transaction.

SCA -

- Agreed with the findings of the Tax Court and the submissions made by SARS
- found that Telkom's arguments stood to be rejected for the following reasons:
  - s 24I deals with losses or gains caused by foreign exchange fluctuations and is not applicable to a 'business' loss of the kind incurred by Telkom.
  - When the proviso to the definition of RER is interpreted in the context of the section as a whole, the use of the word 'rate' means an exchange rate which reflects the value of a particular currency. It is a currency exchange rate, and not a discount rate, that is contemplated by the proviso.
  - In order to satisfy the requirement in the proviso that the consideration must be 'determined' by 'applying' the rate, the consideration would have had to be the result of a process of calculation which utilised the 'rate' as a factor to produce that result.
  - The only type of rate that would have been able to perform this function was one which compared two items against one another, such as a currency exchange rate. It was apparent that the consideration for the loan of USD100 was agreed by reference only to the perceived value of the loan and that currency exchange ratios played no role in the determination of the price.
  - The SCA agreed that s 24I is not intended to deal with the tax consequences of commercial losses and that its operation is limited to gains and losses arising out of currency fluctuations.
  - The SCA dismissed Telkom's appeal with costs.

SARS' Cross-appeal

- In the 2012 year of assessment, Telkom made a "cash incentive bonus" payment of R178 788 421 to Velociti (Pty) Ltd (Vc) in respect of the connection of initial subscriber contracts relating to special tariff plans
- These connections were made by Vc on behalf of Telkom
- Telkom claimed the amount paid as the cash incentive bonus as a deduction
- SARS only allowed a portion thereof as a deduction and added back the remainder under s 23H(1)(b)(ii)

S 23H. Limitation of certain deductions

- (1) Where any person has during any year of assessment actually incurred any expenditure (other than expenditure incurred in respect of the acquisition of any trading stock) –
  - (a) which is allowable as a deduction in terms of the provisions of s 11(a), (c), (d) or (w), or s 11A; and
  - (b) in respect of –
    - (i) goods or services, all of which will not be supplied or rendered to such person, during such year of assessment; or
    - (ii) any other benefit, the period to which the expenditure relates extends beyond such year of assessment,

  the amount of the expenditure in respect of which a deduction shall be allowable in terms of such section in the said year and any subsequent year of assessment, shall be limited to, in the case of expenditure incurred in respect of –

S 23H. Limitation of certain deductions

(i) goods to be supplied, so much of the expenditure as relates to the goods actually supplied to such person in such year of assessment; or

(ii) services to be rendered, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such services are rendered bears to the total number of months during which such services will be rendered or, where the period during which such services will be rendered is not determinable, such period during which the services are likely to be rendered; or

(iii) any other benefit to which such expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will enjoy such benefit bears to the total number of months during which such person will enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed:

S 23H. Limitation of certain deductions

Provided that the provisions of this section shall not apply –

(aa) where all the goods or services are to be supplied or rendered within **six months after the end of the year of assessment** during which the expenditure was incurred, or such person will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period, unless the expenditure is allowable as a deduction in terms of s 11D(2); or

(bb) where the aggregate of all amounts of expenditure incurred by such person, which would otherwise be limited by this section, does not exceed **R100 000**; or

(cc) to any expenditure to which the provisions of section 24K or 24L apply; or

(dd) to any expenditure actually paid in respect of any **unconditional liability** to pay an amount imposed by legislation.

Judgment

- Was SARS entitled to apply s 23H to limit the deduction in the 2012 year of assessment, with the result that the balance paid was spread out over a number of years?
- Inquiry into the benefits derived by Telkom from the expenditure incurred, specifically when and how the benefit was enjoyed by Telkom, and agreed that the period to which the expenditure relates must be the period during which the benefit was enjoyed.
- SARS argued:
  - Telkom did not incur the cash incentive bonus expenditure merely to establish the new connections with customers, but rather that the benefit was derived by Telkom by means of the subscription fees paid by the customers over the fixed term period of the contract.
  - Telkom only derives a benefit from the expenditure incurred when the connection turns into fee income, and this only happens over the period of the contract when subscription fees are paid by customers.

Telkom contended:

- the cash incentive bonus was paid to Vc in respect of the connections that had to have been made prior to 30 September 2011 and that the benefit therefore did not extend past the 2012 year of assessment, resulting in s 23H not being applicable.
- the fact that Telkom paid a separate commission to Vc for the benefit that it derived from the subscription fees over the period of the contracts was indicative that the cash incentive bonus was paid solely in respect of the connections that had been made and did therefore not relate to the fees paid by customers over the contract periods.

Judgment

- SCA concurred with the submissions of SARS that the true benefit derived by Telkom was the monthly subscriber payments over the anticipated 24-month period and that the term of the contracts therefore represented the periods in respect of which the benefit was derived by Telkom.
- Held:
  - “Although the conclusion of the contract benefitted Telkom, the enjoyment of that benefit was spread out over the period of the contract, so that the period to which the expenditure related could not be limited to the first year.”

Judgment

- In response to the submission by Telkom that it paid a separate ongoing commission to Vc over the subscription period and that this commission, and not the connection bonus, was the *quid pro quo* for the subscription fees,
  - SCA stated that the pertinent question was whether Telkom derived a benefit from the connections over the contract period.
  - SCA answered this question in the affirmative and held that the fact that another payment was made by Telkom did not render this fact irrelevant.
- SCA upheld the cross-appeal and found that s 23H was to be applied to the cash incentive bonus paid by Telkom.

Understatement penalty

- SARS imposed an understatement penalty of R91 232 666 in respect of the 2012 year of assessment on the grounds that Telkom's conduct constituted a substantial understatement of its tax liability
- In the view of the Commissioner, it was a standard case which warranted a ten per cent penalty in terms of s 223 of the TAA
- Held: The appellant's appeal is upheld in part and the understatement penalties imposed in the appellant's income tax assessment for the 2012 year of assessment are set aside.

Recent SARS documents

- Interpretation Note 47 (Issue 3 & 4) – Wear-and-tear or depreciation allowance
- BGR 7 (Issue 3) – Wear-and-tear or depreciation allowance
- BGR 14 (Issue 3) – VAT treatment of specific supplies in the short-term insurance industry
- BGR 52 – Timeframe for the export of goods by vendors and qualifying purchasers affected by the global COVID-19 pandemic
- Draft Interpretation Notes
  - Value-added tax consequences of points-based loyalty programmes
  - Income Tax: Taxation of amounts received by or accrued to missionaries

The Tax Faculty

THANK YOU!

Any Questions

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