



UNICUS TAX UPDATE

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Tax Court VAT Section 21 Judgment
Taxpayer Bank Limited v SARS, VAT 32666,
18 March 2026





HELLO & WELCOME!

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BACKGROUND FACTS

- Taxpayer supplied banking services to clients for a monthly account fee.
- The fee was subject to VAT and the taxpayer accounted for output VAT on the account fees.
- Taxpayer operated a cashback / rewards scheme for qualifying clients.
- Qualifying clients were credited with a percentage of the monthly account fee normally charged at month-end.
- SARS disallowed an input tax deduction of R5 551 275.52 for the August 2020 to July 2021 VAT period.

THE STATUTORY ISSUE

- The case turned on section 21(1)(c) and section 21(2)(b) of the VAT Act.
- Taxpayer said the cashback was a reduction of the previously agreed monthly service fee.
- SARS said it was not a reduction of the monthly account fee, but a payment to incentivise clients.
- The core question: did the crediting of previously debited service fees trigger a credit-note event under section 21(1)(c)?

COMMON CAUSE FACTS

- The relevant facts informing the dispute were common cause.
- The monthly account fee was a taxable supply.
- The taxpayer charged and received monthly fees, issued tax invoices / compliant statements, and accounted for output VAT.
- The taxpayer credited qualifying customers with amounts labelled as a monthly fee rebate.
- The amount of the input tax claim was not disputed by SARS.

SARS' PLEADED POSITION

- In Rule 31, SARS accepted the dispute concerned the VAT treatment of monthly cashback rewards.
- SARS pleaded that the cashback did not constitute a reduction or alteration of previously agreed consideration.
- SARS also said none of the clients paid consideration for the “re-paid” amount.
- SARS summarized its case as: the crediting of accounts did not constitute a credit-note event.

SARS' AUDIT MISUNDERSTANDING AND TRIAL SHIFT

- The audit finalization letter reflected an incorrect factual impression about the role of the electronic-cash incentive.
- The Rule 31 statement did not rely on that electronic-cash theory.
- At the hearing, SARS advanced an argument not raised in Rule 31 or in the joint practice notes.
- SARS counsel conceded that the electronic-cash issue may have been incorrectly interpreted and applied during the audit.
- The new argument was that there were two transactions, including a separate supply by the client to the taxpayer.

THE COURT'S RULING ON THE MERITS

- The court rejected SARS' argument.
- Section 21(1)(c) does not require a motive or specific reason for reducing the previously agreed consideration.
- The reduction does not require an alteration of the original service.
- The requirement is factual: was the previously agreed consideration altered by agreement with the recipient?
- On the common cause facts and unchallenged evidence, the taxpayer established the required alteration.

THE COURT'S CRITICISM OF SARS' MERITS ARGUMENT

- The court called SARS' argument a conflated interpretation of unrelated provisions of the VAT Act.
- The court said section 21(1)(c) is not complicated and requires a factual enquiry.
- The court rejected the attempt to treat the client as a virtual supplier of services or goods to the taxpayer.
- The court said SARS ignored the evidence as a whole and elevated isolated facts while ignoring others.
- The causal link was established by agreement in the joint practice notes and by unchallenged evidence.

FINAL ORDER ON THE APPEAL

- The taxpayer established the section 21(1)(c) and section 21(2)(b) requirements.
- The appeal was upheld.
- SARS was ordered to alter the additional assessment.
- The deduction of R5 551 275.52 had to be allowed for the August 2020 to July 2021 VAT period.
- The taxpayer's alternative relief became moot.

THE COSTS DECISION

- The taxpayer asked for costs on the basis that SARS' decision was unreasonable under section 130 of the TAA.
- The taxpayer argued that SARS' initial grounds were based on a misunderstanding of the facts and the electronic-cash rewards system.
- The taxpayer argued that this had been clarified during audit, Rule 32, heads of argument and trial.
- The taxpayer argued that SARS should have realised there was no basis to persist, but instead evolved its grounds into new grounds.
- SARS said it was entitled to test legal interpretation and seek clarity for future tax collection.

WHY THE COSTS ORDER IS VULNERABLE

- The court found the facts were common cause.
- The court found SARS' audit position rested on an incorrect factual impression.
- The court found SARS raised a hearing argument not pleaded in Rule 31 or the practice notes.
- The court found section 21(1)(c) was not complicated and required a factual enquiry.
- The court found SARS' two-transaction theory was conflated and ignored the evidence as a whole.
- Despite those findings, the court held that SARS was not unreasonable for costs purposes.

THINGS THE COURT FOUND THAT CONTRADICT THE REFUSAL OF COSTS

- Common cause facts resolved the essential factual enquiry.
- Unchallenged evidence supported the taxpayer's case.
- SARS' initial audit premise was factually wrong.
- SARS shifted to a new argument at the hearing.
- The new argument was not in Rule 31 or the joint practice notes.
- SARS' new theory was rejected as conflated.
- The statutory enquiry was described as not complicated.
- The court found SARS elevated isolated facts and ignored the whole evidential picture.

CORE CRITICISM

- The court's merits findings point strongly toward unreasonableness.
- The refusal of costs gives SARS a litigation indulgence for testing legal boundaries at the taxpayer's expense.
- This is difficult to justify where the material facts were common cause and the later theory was unpleaded.
- The issue is not that SARS lost.
- The issue is that SARS persisted after its factual premise failed, then sought to rescue the assessment with a new and unsuccessful theory.

POSSIBLE FORMULATION

- SARS may test a properly pleaded, genuinely arguable legal issue.
- But where the facts are common cause, the audit misunderstanding has been exposed, and the only way to save the assessment is an unpleaded re-characterization of those facts, the line of reasonableness has been crossed.
- On the judgment's own findings, the taxpayer was required to fund SARS' attempt to obtain clarity on a theory that failed on both pleading and substance.

KEY PARAGRAPH REFERENCES

- Background and dispute: [1]-[8].
- Common cause facts: [9]-[10].
- Audit misunderstanding and unpleaded trial argument: [14]-[17].
- Section 21 interpretation and factual enquiry: [18]-[21].
- Conflated SARS argument: [22].
- Conclusion and order: [23]-[25] and final order.
- Costs arguments and refusal: [26]-[30].

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THANK YOU



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