



UNICUS TAX UPDATE

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Tax Court judgment IT 24852 Taxpayer EPP v Commissioner for SARS

Judgment handed down: 14 April 2026

Core issue: whether prescribed customs/excise refund claims produced a deductible 2015 loss



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HELLO & WELCOME!

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FACTS

- Taxpayer operated as a licensed distributor of fuel during the 2011 to 2015 tax periods
- It bought fuel from South African manufacturers and resold/exported it outside South Africa
- On purchase, it paid excise duties and levies in addition to the fuel price
- As exporter, it was potentially entitled to claim refunds under the Customs and Excise Act
- Refund claims had to be submitted within two years from date of entry for export

FACTS CONTINUED

- The clearing agent failed to prepare and forward certain refund applications timeously
- Refund claims relating to the 2011 to 2013 periods became prescribed
- Taxpayer had not deducted the duties in its 2013 return
- Taxpayer also did not include them in trading stock costs under section 22
- In the 2015 return, taxpayer claimed R38,831,547 as a section 11(a) deduction

TAXPAYER ARGUMENT

- It was not claiming old expenditure in 2015
- It was claiming a loss actually incurred in 2015
- The loss arose only when the refund claims became time-expired and irrecoverable
- Before prescription, the claims were still alive and recoverable
- The failure was involuntary and fortuitous because it resulted from the clearing agent not lodging claims timeously
- Relied on the distinction between expenditure and loss under section 11(a)

TAXPAYER ARGUMENT CONTINUED

- Expenditure: voluntary outlay or disbursement
- Loss: involuntary deprivation or fortuitous loss
- The prescribed refund claims were said to be a loss of a statutory recovery right
- Taxpayer also argued that customs/excise duties are not taxes under the TAA definition of a tax Act

SARS' ARGUMENT

- Taxpayer conflated two separate things
- First: unconditional obligation to pay duties when fuel was purchased
- Second: potential statutory entitlement to claim a refund on export
- The expenditure was incurred in 2011 to 2013 when the fuel was bought
- It could not be shifted into 2015 by calling it a loss
- Tax is a yearly event
- Section 11(a) deductions must be claimed in the correct year of assessment

SARS' ARGUMENT CONTINUED

- Failure to claim the deduction in the original years does not create a later-year deduction
- Failure to lodge refund claims under the Customs and Excise Act does not convert expenditure into a 2015 loss
- SARS also defended the 10% understatement penalty and section 89quat interest

JUDGMENT

- Appeal dismissed
- Additional 2015 assessment confirmed
- R38,831,547 deduction disallowed in 2015
- 10% understatement penalty upheld
- Section 89quat interest upheld
- Taxpayer ordered to pay costs

BASIS FOR JUDGMENT

- The true nature of the amount was expenditure, not a new 2015 loss
- The duties and levies were paid as part of the fuel purchase price
- The outlay was incurred voluntarily in the ordinary course of trading operations
- The expenditure was actually incurred in 2011 to 2013 when the fuel was purchased
- The later prescription of the refund claims did not change the year of incurral

BASIS FOR JUDGMENT CONTINUED

- The refund right was a separate statutory entitlement
- Loss of that right did not transform the original expenditure into a deductible 2015 loss
- The duty liability was unconditional when the fuel was purchased
- The refund mechanism was not a suspensive condition attached to the duty payment
- The taxpayer's remedy, if any, may lie against the clearing agent

VAT ANALOGY

- Analogy: taxpayer pays an invoice including VAT
- VAT input tax is not deducted for income tax purposes at the time of payment
- If the input tax claim later prescribes, taxpayer may ask whether an income tax deduction should then follow
- The instinct is that the taxpayer has suffered a real economic loss when the VAT recovery right is lost
- But VAT is different because income tax contains a specific VAT exclusion rule

WHY VAT IS DIFFERENT: SECTION 23C

- The reason input VAT is normally excluded is not that it was never actually incurred
- The full invoice liability, including VAT, may be incurred as a matter of contract/commercial law
- Section 23C excludes input tax from cost or expenditure where the taxpayer is or was entitled to deduct input tax under VAT Act section 16(3)
- The words "is or was entitled" matter: prescription of an unclaimed input tax deduction may not undo the section 23C exclusion
- If VAT was never claimable as input tax, section 23C may not exclude it and ordinary income tax principles apply

TAKEAWAY 1: GET THE CORRECT YEAR RIGHT

- This case shows the danger of litigating only the year in which the taxpayer wants the deduction
- The challenge only to 2015 suggests either complete confidence that 2015 was the correct year
- Or there may have been a procedural difficulty in opening 2011 to 2013, such as prescription
- The court's answer was that, if deductible at all, the amount belonged in 2011 to 2013
- Practical point: always protect the alternative years before committing to a single-year theory

TAKEAWAY 1 CONTINUED: PROCEDURAL RISK

- A taxpayer can lose the selected year because the deduction belongs in another year
- But the other year may then be procedurally difficult to reopen
- That creates a timing trap rather than a pure merits problem
- Before filing an objection or appeal, map all possible years of assessment
- Consider protective reduced assessment requests or objections for alternative years where possible

TAKEAWAY 2: POST-JUDGMENT MOVE

- Use the judgment as the platform to request reduced assessments for 2011 to 2013
- Frame the omission in those years as an error now confirmed by SARS's argument and the Tax Court's reasoning
- Route: section 93(1)(d) reduced assessment for a readily apparent undisputed error
- If SARS says the earlier years are prescribed, rely on the exceptions in section 99
- The aim is to move the deduction to the years the court says were the correct years

TAKEAWAY 2 CONTINUED: PRESCRIPTION ROUTES

- First route: section 99(2)(d)(i)
- Argument: reduced assessment is necessary to give effect to resolution of a Chapter 9 dispute
- Use I-CAT as support for a purposive approach where the dispute resolution requires a reduced assessment despite prescription
- Second route: section 99(2)(d)(iii)
- Argument: section 93(1)(d) reduced assessment is permitted if SARS became aware of the error before the ordinary prescription period expired

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THANK YOU



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