



UNICUS TAX UPDATE

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Lueven Metals

The limits of interpretation in tax law - Text, context and purpose cannot stretch wording beyond what it can reasonably bear





HELLO & WELCOME!

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FACTS

- Lueven traded in and refined precious metals, including gold
- It bought second-hand gold, including scrap jewellery
- The gold was deposited with Rand Refinery
- Rand Refinery refined and smelted gold from multiple depositors
- Lueven supplied refined gold bars to Absa
- Lueven treated the supplies as zero-rated

THE DISPUTE

- Section 11(1)(f) zero-rates certain supplies of gold
- The supply must be to prescribed purchasers
- The gold must be in prescribed forms
- The gold must not have undergone a manufacturing process other than permitted processes
- SARS said second-hand gold had previously undergone manufacture
- SARS therefore denied zero-rating

THE FINAL ANSWER

- The Constitutional Court dismissed Lueven's appeal
- Second-hand gold was excluded from zero-rating
- Historical manufacture into non-prescribed forms mattered
- Refining did not erase the prior manufacturing history
- Lueven had to pay SARS' costs, including two counsel

WHY THIS CASE MATTERS

- The gold issue is narrow and fact-specific
- The broader lesson is about statutory interpretation
- Lueven relied on text, context and purpose
- Some arguments were commercially attractive
- But the wording remained decisive
- Endumeni is not a licence to rewrite a tax provision

THE MAIN MESSAGE

- Text, context and purpose are part of one interpretive exercise
- They are not three separate escape routes from the wording
- Context may explain text
- Purpose may guide text
- But neither may delete, dilute or replace text
- The words remain the inevitable point of departure

TEXT: LUEVEN'S ARGUMENT

- Lueven tried to reduce the provision to a form-and-purchaser test
- The supply was to Absa, a prescribed purchaser
- The supply was of gold
- The gold was supplied in a prescribed form: bars
- On that approach, the prior history of the gold should not matter

TEXT: THE COURT'S ANSWER

- The Court held that the provision imposed a real third requirement
- The gold must not have undergone a disqualifying manufacturing process
- Lueven's reading made the phrase "which has not undergone" redundant
- The Court refused to treat that phrase as meaningless
- Text strongly favoured SARS

TEXT: REFINING DOES NOT ERASE HISTORY

- Lueven argued that refining destroyed the previous form of the gold
- Once refined into bars, the gold was simply gold in a prescribed form
- The Court rejected this
- Refining may destroy the previous physical form
- But it does not erase the historical fact of prior manufacture

TEXT: THE REMAINING TEXTUAL MOVES

- Lueven argued that the phrase governed form, not history
- The Court said the second requirement already dealt with form
- Lueven argued that newly mined gold would also be excluded
- The Court said refining and production into bars are permitted processes
- Lueven argued the phrase targeted later value-added products
- The Court said the form requirement already dealt with that

CONTEXT: EXPLANATORY MEMORANDUM

- Lueven relied on the reference to gold in “certain forms”
- It said this supported a form-based interpretation
- The Court said the memorandum did not explain the requirements of section 11(1)(f)
- It described the effect of the provision only
- It did not resolve the disputed phrase

CONTEXT: EXPLANATORY MEMORANDUM

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CONTEXT: VAT SCHEME

- Lueven argued that VAT focuses on the current supply
- The current supply was refined gold bars to Absa
- The prior form of the gold should therefore not matter
- The Court rejected this
- A specific zero-rating provision may impose historical requirements
- General VAT principles cannot override clear wording

CONTEXT: SARS RULINGS AND PRACTICE

- Lueven relied on binding class rulings and SARS' historical treatment
- The rulings dealt with documentary and accounting difficulties caused by commingling
- They did not interpret the disputed statutory phrase
- They did not decide what counted as a disqualifying manufacturing process
- Administrative practice could not determine the proper interpretation

CONTEXT: OTHER LEGISLATION

- Lueven relied on the Mining Rights Act and Precious Metals Act
- Those Acts did not distinguish between newly mined and recycled gold
- The Court rejected the comparison
- Those statutes dealt with different subject matter
- They did not control the VAT zero-rating enquiry

PURPOSE: LUEVEN'S ARGUMENT

- Lueven argued that the purpose was to let prescribed purchasers acquire gold at the zero rate
- It relied on availability, sustainability and continuity of gold supply
- It argued that newly mined gold is finite
- It also relied on VAT neutrality
- These were commercially attractive arguments

PURPOSE: THE COURT'S ANSWER

- The Court accepted that the sustainability argument had force at first blush
- But the asserted purpose was not clearly grounded in the text or admissible material
- SARS' asserted purpose was also not clearly grounded
- Purpose did not clearly support either side
- Lueven could not escape clear text by relying on purpose

THE BOTTOM LINE

- Lueven Metals is not mainly important because of gold
- It is important because it shows the limits of interpretation
- A strained interpretation can become extremely expensive
- Tax positions must be tested against the actual words of the provision
- Commercial sense matters, but wording remains crucial

CLOSING POINT

- Endumeni remains the correct approach
- But Endumeni is not a rescue mechanism for bad wording (Benhause Mining)
- The words, context and purpose must be read together
- The interpretation must still be one the provision can reasonably bear
- In tax disputes, the starting point is still the statute

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THANK YOU



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