



# Tax Practice: *On the Move* Legislative Interpretation

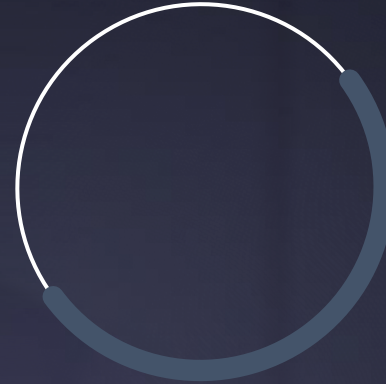
SAIT Webinar  
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YOUR KEY TO THE TAX COMMUNITY

WITH YOU TODAY



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# Agenda

In this webinar, we will cover the following topics:

- Legislation and policy
  - Annual Legislative Cycle
- Court cases of interest and tax importance
  - *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS* (Case no.: 40420/2020; 17064/2021) (14 July 2022)
  - *Commissioner for SARS v Candice-Jean van der Merwe* (Case no.: 211/2021) (30 June 2022)

## Presenters

- Keitumetse Sesana: (Tax Technical Specialist at SAIT)
- Thomas Lobban: (Tax Legal Manager at Tax Consulting SA)



## Annual Legislative Cycle

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# Annual Legislative Cycle

- Initiation of annual legislative cycle
- Draft Bill
- Bill With Parliament
- Promulgation
- Engagement

## Initiation of the annual legislative Cycle

- Process usually commences as soon as previous TLAB has been introduced in Parliament around about the MTBPS
- What does NT / SARS look at? Existing programmes pursued by Government and its partners, new proposals from Ministers and their departments, feedback on current legislation from SARS and the public, new requests from SARS & the public
- Origination – submissions, meetings & workshops; both internal & external
- A NT / SARS request for Annexure C submission is usually sent just after the MTBPS.
- The related workshop where the submission are discussion is usually held in early December.

## Draft Bills

- In theory: Policy decisions finalised & consensus reached prior to commencement of drafting
- Drafter's notes compiled & drafting commences
- Draft TLAB published for public comment
- Briefing & hearings at Parliament – draft TLAB up for discussion; public invited to take part in hearings
- Review of comments received on draft TLAB: Internal, external & from the briefing & hearings at Parliament
- Meetings & workshops, both internal & external to discuss merit of comments
- Document prepared for Parliament on response to comments received by NT & SARS
- Changes to draft TLAB as a result of comments received
- The reworked draft TLAB is reviewed by NT & SARS





## Bill with Parliament

- Minister of Finance introduces the TLAB in Parliament, usually with the MPBPS.
- Passage through Parliament?

# Promulgation

## Process of promulgation into law

- What is promulgation?
    - ❖ President assents & signs TLAA into law
- 
- ❖ TLAA published in Government Gazette
- 
- ❖ TLAA published on NT & SARS websites

## Formal legislative process

- Where do you direct your query?
  - NT for policy matters
  - SARS for rulings & interpretation of tax legislation
  - FSB for rulings & interpretation of financial sector legislation
- Constitutional Provisions?

## Engagement

- Substantive matters can be raised throughout the year. However they require extensive research & consultation & are often only addressed in subsequent years
- Anomalies between the current Legislation & the policy framework must be raised ASAP after introduction of the TLAB; these matters often require consultation, which may delay the implementation of an appropriate amendment
- Technical amendments should be raised immediately after introduction of the TLAB
- Some proposed changes may form the basis of a proposal for the following year's legislative amendments
- Entities?





## Recent court cases

## Recent court cases:

- *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*
- *Commissioner for SARS v Candice-Jean van der Merwe (Case no.: 211/2021) (30 June 2022)*

# *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*

## **Background**

- SARS disallowed certain exemptions of the applicant (“taxpayer”) for the 2005 – 2012 years of assessment, and raised audit findings to this effect. During ensuing litigation, the taxpayer duly filed its returns for the 2013 – 2016 years of assessment as well, in which the exemptions claimed were similarly disallowed.
- Following a successful application for default judgment against SARS, in respect of the taxpayer’s assessments for the 2005 – 2012 tax years, the taxpayer further requested SARS to revise its assessments for the 2013 – 2016 periods, in-line with the 2005 – 2012 years.
- No resolution was reached at this stage, and SARS declined the request on the basis that no conclusive outcome was reached on the merits of the previous matter (i.e., 2005 – 2012).
- The taxpayer responded, citing an agreement reached whereby prescription was extended and subsequent tax years would be assessed on the basis of the “final decision” in respect of the 2005 – 2012 years, which the default judgment constituted.
- No response was provided by SARS hereon.

# *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*

## **Background**

- The taxpayer delivered a rule 56 notice to SARS, requiring an outcome in respect of its objection to the 2013 – 2014 years, which outcome was not issued by SARS in time. The taxpayer proceeded to lodge another application for default judgment in the Tax Court. This application was dismissed and successfully appealed to by the taxpayer.
- SARS issued an assessment in respect of the 2017 tax year, also disallowing the exemptions in dispute. It further notified the taxpayer of audit in respect of the 2013 – 2017 years, which the taxpayer refused to provide on the basis of the ongoing dispute.
- This audit was later extended to the 2018 year and the objection (for the 2013 – 2014 years) was ultimately disallowed by SARS based on the same position as with the 2005 – 2012 years.
- Following further engagement between the parties in the matter, the taxpayer ultimately submitted 2 applications to the High Court.



# *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*

## **Background**

- The 2 applications by the taxpayer were for declaratory relief against SARS, insofar as –
  1. SARS is precluded from auditing, assessing or performing tax computations regarding its liabilities for the 2013 – 2016 years of assessment, and shall not disallow an exemption claimed for the 2013 – 2019 years of assessment; and
  2. SARS is precluded from raising additional assessments in respect of the taxpayer's tax liabilities for the 2013 – 2016 years of assessment, on the basis that the period of limitation for the issuance of additional assessments has lapsed, in terms of section 99 of the TAA.
- In addition, SARS challenged the jurisdiction of the Court, on the basis that the dispute should be referred to the Tax Court (and not the High Court).

# *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*

## **Arguments and Findings of the Court**

- SARS claimed that it reassessed its understanding and thus wished to disallow the exemptions claimed. The Court stated that there is nothing in the law that precludes SARS from reassessing its understanding of the law and adjusting future assessments in line therewith.
- Therefore, SARS may adjust future assessments in line with what it believes is the correct legal position, and apply the same facts to what it now believes is the correct legal position.
- Regarding the second application, the Court confirmed that an oral agreement had been concluded, in terms of section 99(1)(c) of the TAA, without prescribing any method by which the extension should be agreed upon, it is not possible for the court to hold that the period of prescription had expired by effluxion of time.
- Therefore, both of the applications by the taxpayer were dismissed.

# *SACS (Louis Trichardt) (Pty) Ltd v Commissioner for SARS (Case no.: 40420/2020; 17064/2021) (14 July 2022)*

## **Findings of the Court**

- With regard to the time periods elapsed, in view of the Rule 56 notices raised by the taxpayer, the Court raised a point of concern to the effect that SARS' inattentiveness caused harm to the RSA fiscus and recommended that the matter be brought to the attention of the SARS Commissioner to oversee.

# *Commissioner for SARS v Candice-Jean van der Merwe (Case No.: 211/2021) ZASCA 106 (30 June 2022)*

## **Background**

- The taxpayer submitted a return for the 2014 year of assessment, disclosing taxable income of R365 919, and she further declared a receipt of R142 901 673 as a “gift from her companion abroad”.
- SARS raised an original assessment in terms hereof, with the donation not subject to tax. However, in February 2015, SARS started further interrogating the return and donation.
- SARS’ representatives directed a letter to those of the taxpayer, stating that the R144 million amount was not a gratuitous donation and was subject to income tax. Parties settled the matter for a reduced quantum and which was accordingly paid by the taxpayer.
- However, in 2018, the taxpayer lodged an objection to the additional assessment raised, along with a condonation application. She then lodged an application for default judgment against SARS.



# *Commissioner for SARS v Candice-Jean van der Merwe (Case No.: 211/2021) ZASCA 106 (30 June 2022)*

## **Arguments and Findings of the Court**

- The taxpayer argued that the payment made in settlement of the matter was so made in terms of the “pay now, argue later” rule.
- The SCA found that the taxpayer had paid the relevant amount in terms of section 95(3) of the TAA, which is not subject to objection or appeal.
- The SCA therefore found that the taxpayer did not meet the jurisdictional requirements for the consideration of an application, which presupposed compliance with all prerequisites.
- Accordingly, the SCA held that the application in the tax court was premature, because SARS was not in default as envisaged in rule 56(1).

## *Thomas Lobban biography*

Thomas is a SARS-registered tax practitioner, and a co-author of the LexisNexis Expatriate Tax textbook. Thomas holds an LLB and LLM Tax Law degree and specializes in tax technical matters, with a focus on cross-border taxation and fin-tech matters.





Thank you