

When I hear somebody sigh "Life is hard" I'm always tempted to ask "Compared to what?"

TAX ON INTEREST FREE LOANS

In a 2007 case before the Supreme Court of Appeal, the question arose whether or not the value of interest which accrues by reason of having received an interest free loan, constitutes taxable income.

In short the lender and borrower were engaged in a scheme in terms of which interest free loans were received in exchange for certain life rights. The Borrower contended that the interest free loans did not result in any amount being received by it which could be included in its gross income.

In short the court ruled that the word "amount" in the definition of "gross income" (as defined by the Income Tax Act 58 of 1962), includes not only an amount actually received, but also rights of a non-capital nature.

The ruling of the court created wide spread uncertainty regarding the tax implications associated with interest free loans. SARS subsequently released an explanatory note in order to create clarity on this matter. The note sets out certain principles as follows:

- The word "amount" in the definition of "gross income" is to be interpreted widely.
- The "right" to use the loan capital interest free has a monetary value.
- The test to be applied in order to determine whether the receipt or accrual has a monetary value is an objective rather than subjective one.

As a result, the principles may be applied in all cases in which benefits in a form other than money (such as the right to use an interest free loan) is granted in exchange for goods supplied, services rendered or any other benefit given.

A receipt or accrual in a form other than money could constitute an "amount", unless the amount is of a capital nature which is not specifically included in the definition of "gross income". As such the receipt or accrual could be valued and included in the gross income of a taxpayer in the year of assessment in which it is received or accrued.

With reference to an interest free loan, the valuation would in all probability take into account normal rates of interest. Hence, the amount of interest that would ordinarily accrue to a loan could be deemed as income in the hands of a borrower who is not obliged to pay same.

Law & Laughter

Q: How do you get a group of lawyers to smile for a picture?

A: Just say "Fees!"

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THE DELIVERY OF DEFECTIVE GOODS BY SUPPLIERS

It is trite law that a party to a contract may excuse itself from the consequences of its own negligence. However, over the years, exemption clauses have attracted much derisive judicial criticism.

In this regard it has been identified that, where there is a non-performance in terms of the contract, a supplier cannot rely on an exclusion of liability clause.

Non-performance will occur where a supplier supplies an entirely different product to the one ordered. Delivery of defective goods may also constitute a non-performance.

The Consumer Protection Act, Act No. 68 of 2008 has its own explicit provisions concerning the delivery of defective goods, and specifically provides that:

1. *“a supplier cannot contract out of liability for the supply of defective goods; and*
2. *within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier’s risk and expense, if the goods:*
 - 2.1 *are not reasonably suitable for the purposes for which they are generally intended;*
 - 2.2 *are not of good quality, or in good working order or free of any defects;*
 - 2.3 *will not be usable and durable for a reasonable period of time; or*
 - 2.4 *do not comply with any applicable standards set by The Standards Act (Act 29 of 1993), or any other regulation“*

The Consumer Protection Act serves to protect the consumer. It should however be noted that consumers do not include juristic persons whose asset value or annual turnover equals or exceeds R2 million.

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