Synopsis
Tax today
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A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

Through analysis of and comment on new laws and judicial decisions of interest, Synopsis helps executives to identify developments and trends in tax law and revenue practice that may affect their business.

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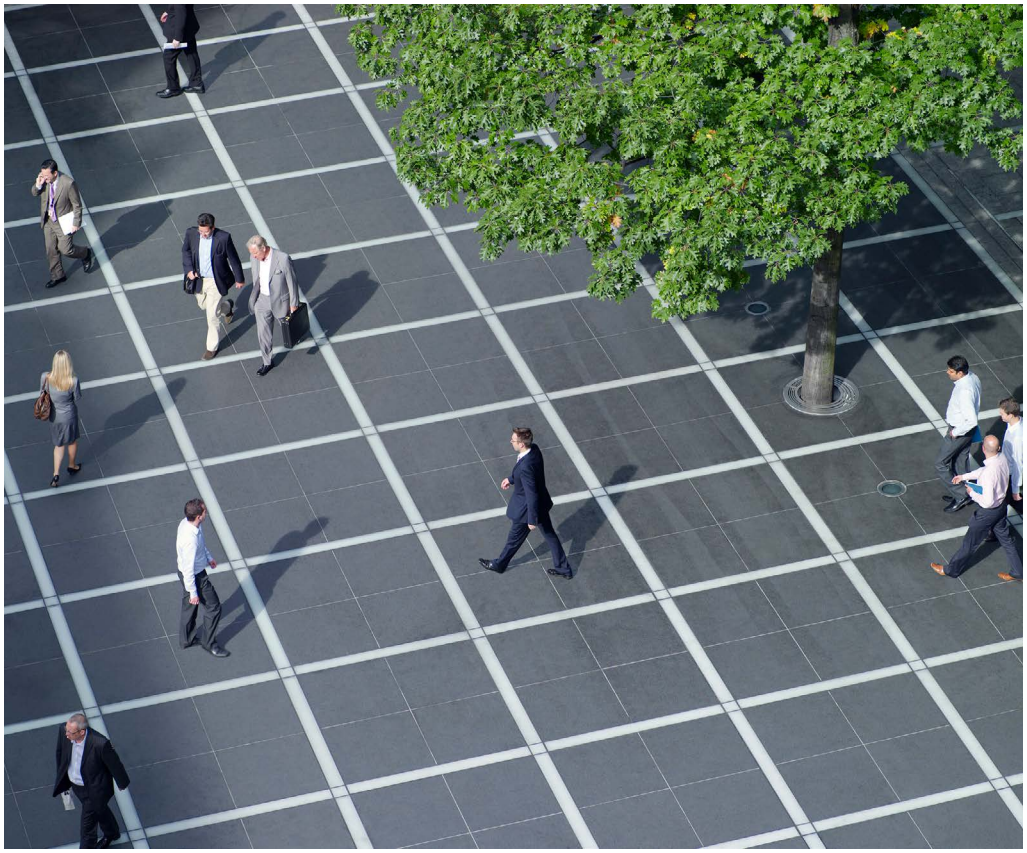
A contingent right is not an "amount" for tax purposes

Even though the principles of accrual of income were first formulated almost 100 years ago, taxpayers still find themselves in dispute with SARS on the question whether an amount has accrued. A decision in the Tax Court in the Western Cape (Case No. 13193) delivered in February 2017, but published on the SARS website only in May 2018, dealt anew with this much-disputed concept.



Background

The appeal related to the operations of four companies of which the taxpayer ("ABC") was one. It had been agreed that the appeal in this instance would be binding in relation to assessments made by SARS in respect of the other three companies as well.

ABC issued redeemable preference shares to investors and became obliged to pay preference dividends to those investors. It used the funds subscribed to purchase redeemable preference shares in companies with good credit standing. The dividend rate on the shares held by ABC was greater than the dividend rate on the shares that it had issued, leaving a profitable margin to ABC. The surplus cash derived from these operations was lent to the bank at zero interest.

In the relevant years of assessment, an alternative plan was developed by ABC and the bank, based on their knowledge of other similar operations upon which SARS had ruled favourably, to derive the return in an alternative manner.

Instead of lending funds that could not be placed in preference share investments to the bank interest-free, ABC Ltd advanced the funds to the bank in consideration for which the bank undertook to deliver, from time to time, the rights to dividends declared by listed companies.

These dividend rights would be purchased by the bank from tax-exempt funds subsequent to their declaration but prior to their accrual. It is commonplace that dividends declared by listed companies are not payable on the date of declaration, but are typically announced as payable to shareholders registered on a specified future date (the "last day to register" or "LDR"). In order to ensure that the dividends would actually accrue to the bank, the cedents would warrant that they would not dispose of the shares prior to the LDR.

The bank, in turn, undertook, as consideration for the use of cash advanced by ABC, to cede the rights to the dividends to ABC prior to the LDR. The dividends would then accrue to ABC on the LDR, subject to the exemption afforded domestic dividends, resulting in a tax-exempt accrual that carried with it a credit for payment of secondary tax on companies ("STC"). Dividends were then paid by ABC in respect of preference shares that it had issued to investors together with the associated STC credit.

ABC declared the dividends as exempt in its returns of income for the relevant years of assessment, and initially SARS assessed them as dividends. Subsequently SARS reversed this decision and issued additional assessments.

SARS's position

SARS's position was that, at the time the right to the dividends were ceded to ABC, the amount of the dividends declared was known and the cedent institution had warranted that it would not dispose of the shares before the LDR. The right to the dividends had an objective value and constituted an amount. Therefore, ABC received an amount in respect of funds loaned and advanced to the bank which accrued to ABC on the date of cession and the receipt constituted gross income of ABC. SARS treated the amounts as interest in terms of section 24J(3) of the Income Tax Act ("the Act").

ABC Ltd's argument

ABC Ltd contended that nothing accrued to it until the LDR, because prior to the LDR its right to the dividend had not yet been established. The right to the dividend would arise only if the cedent institution was the registered holder of the shares on the LDR. Therefore it had received not a vested right, but a contingent right. On the LDR, a right did not vest, but rather a dividend accrued to ABC, which was exempt from tax.

Furthermore, ABC asserted that the adjustments contended for in the additional assessments did not reflect practice generally prevailing at the date of the original assessment.

The judgment

The judgment of Van Staden AJ in determining the merits summarises the principles that were common cause in the following terms, at paragraph [45]:

> 45. It is not in dispute that:
>
> 45.1. ABC was not assessed on the basis of the general anti-avoidance provisions of the Act (section 80A), but on the basis that an amount of interest had accrued to it under section 24J. Whether or not the overall transactions were 'tax-driven' played no role in the assessment.
>
> 45.2. The *Lategan* principle was upheld by the appeal court in *CIR v People's Stores (Walvis Bay)* and an amount accrues to a taxpayer when such taxpayer becomes entitled to payment thereof.
>
> 45.3. An amount can only accrue to a taxpayer once such taxpayer becomes unconditionally entitled to it.
>
> 45.4. The dividends acquired by ABC as cessionary became unconditional and accrued to ABC on the LDR and were exempt in terms of section 10(1)(k)(i) of the Act.
>
> 45.5. The onus is on the taxpayer to show, on a preponderance of probability, that the decisions of SARS against which it appeals are wrong. SARS is, however, not free to simply adopt a supine attitude. SARS is bound to set out the grounds for the disputed assessments and the taxpayer is obliged to respond to these grounds of appeal. These would serve to delineate the disputes between the parties. The burden of proving the existence of an 'amount', i.e. of quantifying the value of the alleged 'dividend rights' in this instance, however, rests on SARS.
> (Footnotes omitted)

From this logical framework of principle, agreed by the parties to the dispute, and after setting out SARS's arguments in detail, Van Staden AJ clarified that the principles of interpretation require that the words used in a statute must be interpreted by reference to their ordinary meaning having regard to the context in which they appear and the circumstances of their origin, and proceeded to the determination of the issues in dispute.

In paragraph [56] the decisive issue is identified:

> Appellant's counsel, in my view, correctly identified the decisive question in this appeal as whether ABC's right to dividends, pursuant to the antecedent cession of the dividends, but prior to the LDR, as opposed to the dividends themselves, was conditional or not and whether it constituted an amount that accrued to the appellant, either as a deemed accrual in terms of section 24J(3), or in terms of the definition of gross income.

The precedent to which ABC's counsel referred the Court (*Mooi v SIR* 1972 (1) SA 674 (A)) as determinative of the issue was examined at some length, first at paragraph [56.5]:

> I agree that the effect of *Mooi's* case is that a contingent right, conditional upon the fulfillment of conditions, is not an 'amount' for purposes of the definition of gross income in the Act, despite the fact that such right had a money value at the time that it was acquired by a taxpayer.

The impact of the *Mooi* decision is elaborated in paragraph [57]:

> In the *Mooi* judgment it was furthermore found that it is necessary in a case such as the present to distinguish between the 'real and true benefit' for which ABC contracted (to which tax consequences attach) and the contractual machinery set up to deliver that benefit (to which tax consequences do not attach). I associate myself with the appellant's contention that the cession of the contingent dividend rights in this matter can be regarded as a mechanism for the delivery of dividends. Setting up of a mechanism in terms of which a shareholder receives a dividend when it will in due course accrue, differs wholly from both the incurral and the accrual of interest in terms of section 24J.

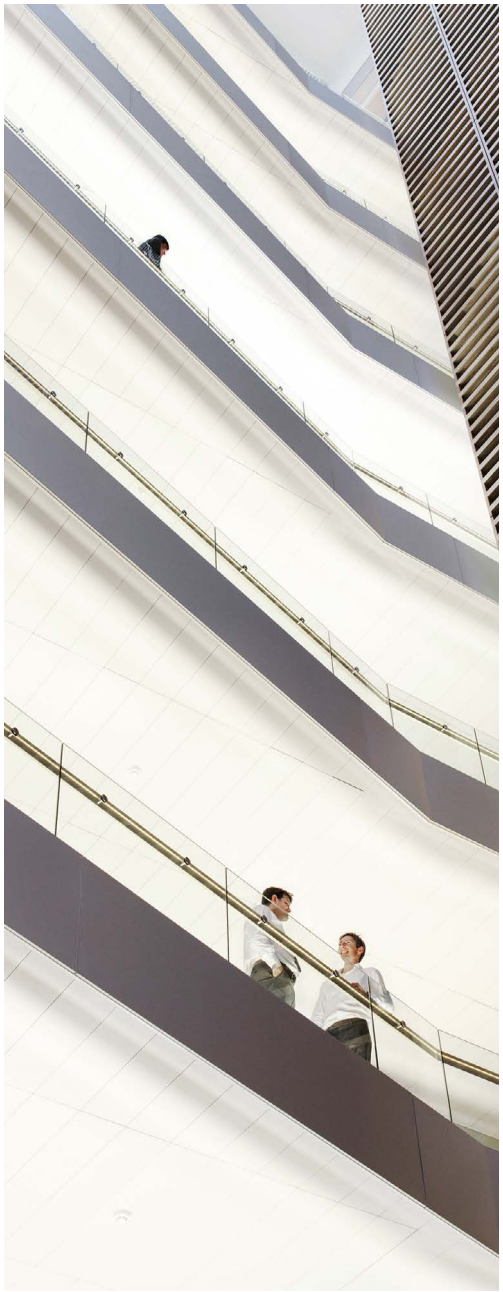
Continuing in the same paragraph, Van Staden AJ applied the principles to the facts:

> What was paid by [the bank] for the contingent dividend rights was paid to [the exempt institutions], not ABC. The only amount that was paid to ABC was the actual dividend paid by the JSE listed company of which ABC was a shareholder and not by [the bank]. What occurred between [the bank] and ABC was merely the cession of contingent rights to future dividends which gave rise to neither taxable accruals nor amounts receivable when they were ceded. The appellant did not become 'unconditionally entitled' to the contingent dividend rights – it simply acquired them as cessionary by way of an antecedent cession, and they did not then give rise to any unconditional entitlement. That came later when the dividends accrued. Akin to what was held in *Mooi's* case, this was simply the setting up of the machinery for the accrual of the dividends that would follow. SARS's inclusion of the alleged value of the so-called 'dividend rights' in ABC's gross income represents, in the language of Ogilvie Thompson CJ in *Mooi, 'the artificial concept of valuing appellant's contingent right as at its initial, inchoate, stage'*.

The Court was fortified in its view by reference to the principle of interpretation that the substance and reality of the transaction must be given effect. In this regard, Van Staden AJ, noting that the manner in which a right is transferred is by cession, stated at paragraph [59]:

> In respect of cession it must be remembered that the consequences of cession is that the cessionary succeeds the cedent as creditor of the right and as such is the only one entitled to administer and enforce such right. Cession is a legal manner in which rights are transferred, or delivered, and where what is transferred is a contingent right, an out-and-out cession thereof is merely the manner in which the contingent right is transferred by the cedent to the cessionary, which receives no less and no more than what was ceded, in this case a contingent right.

SARS argued that the right was not unconditional: the only question was to identify the person to whom the dividend would accrue, and, by inference, identifying the holder was not a condition. The Court's response at paragraph [60] was to reject this argument:



> I do not agree with respondent's contention that the uncertainty about the identity of the owner of the dividend right, prior to LDR, does not render the right conditional. The fact of the matter is that the conditionality or contingency of the right must be determined in relation to the accrual of the right in question. Although the right, divorced from the holder of the right may not be contingent, the accrual of the right depends on the identity of the holder and is conditional and/or contingent in that respect. The fact of the matter is that 'gross income' is defined as an amount received by or accrued to a resident of the Republic of South Africa, a specific person or entity. In *Chairman, Board on Tariffs and Trade v Volkswagen SA* Nienaber JA dealing with the interpretation of section 12(2)(c) of the Interpretation Act 33 of 1957 pointed out that a right accrues when all the conditions for its existences in relation to the particular beneficiary are met. In this instance the particular beneficiary in respect of a dividend right registered as the shareholder at the time of the LDR.

The judgment emphasised that the assessment to tax is an annual event and that it is only at the end of the year of assessment that the amounts to be assessed must be determined. Examining the history, there was only one accrual of an amount, namely the accrual of the dividend. At the moment that the dividend accrued, the contingent right ceased and had no value, as was pointed out at paragraph [62.3]:

> Viewed from the correct vantage point, namely the end of the year of assessment, it is clear that the conditional dividend rights had been replaced by the unconditional dividend rights and indeed the cash dividends themselves. So viewed, the value of the conditional dividend rights was nil. From the vantage point of the end of the tax year, the contingent rights to the dividend therefore had no value at [sic] whatsoever.

In summary, Van Staden AJ found, at paragraphs 65 and 66:

> I therefore conclude that the concept of unconditionality forms part and parcel of the very fabric of the Act and that entitlement to a contingent right does not give rise to an accrual as envisaged in the definition of gross income. The question arises how one can be 'entitled' to a contingent right. It is only when such a contingent right is ever sold that gross income can arise in the form of an amount received. In this instance the contingent right, acquired by ABC when the antecedent cession took place, could not have given rise to 'gross income' – because nothing had yet accrued…
>
> In respect of section 24J the respondent purported to include the contingent dividend rights in the gross income of the appellant as amounts receivable constituting interest in terms of section 24J, alternatively as an accrual in terms of the definition of 'gross income'. It however bears noting that section 24J(3) gives rise to an inclusion in 'gross income'. It stands to reason that only an amount unconditionally receivable can trigger an inclusion in gross income in terms of section 24J(3) on the basis that it embodies an amount receivable. The contingent right received by ABC could therefore not constitute an amount receivable for the purposes of section 24J of the Act. It was not, at that stage, an amount receivable because there was no unconditional entitlement to any amount.

The appeal therefore succeeded.

The takeaway

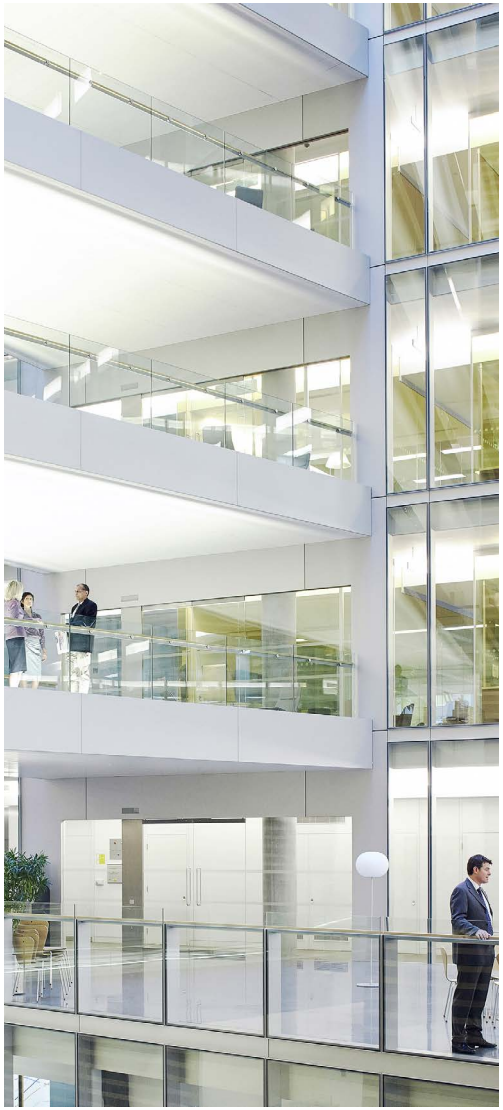
Amendments to the dividend exemption in section 10(1)(k) of the Income Tax Act have overtaken events, and the use of dividend cessions no longer gives rise to the benefits that were enjoyed by ABC.

This does not diminish the fact that the judgment has followed the well-established principle that a right does not accrue to a cessionary until such time as it becomes unconditional. Not only is this a principle established in the common law, but the Interpretation Act also provides that a right does not come into existence until all conditions for its existence in relation to the particular beneficiary have been fulfilled.

The second important issue is that section 24J of the Act does not in itself give rise to an amount of interest. There must first be an amount before it can be established whether the amount is interest to which section 24J applies. In this instance, when the dividend accrued, the contingent right was replaced, with the result that it effectively ceased to exist and had no value. What accrued was a dividend.

The third vital concept embodied in the judgment is the fact that tax is assessed by identifying at the end of the year of assessment the receipts and accruals in that year and not by interpreting or applying a series of snapshots taken at different times during the year of assessment. A sensible and businesslike interpretation emerges from the application of this principle.

Resolutive condition – does it create an obligation prior to fulfilment?



In the Gauteng High Court recently, the Court considered whether a resolutive condition imposed an obligation on a debtor, notwithstanding the fact that the condition had not been fulfilled. The nature of a condition is that it is based on an uncertain future event and is unenforceable for as long as the event does not occur.

In the matter of *Crookes Brothers Ltd v Commissioner for the South African Revenue Service* [2018] ZAGPHC 311 (judgment delivered 8 May 2018), Crookes Brothers Ltd ("CBL") sought relief by way of review proceedings, arising out of a refusal on the part of SARS to issue a reduced assessment.

Background

CBL had formed a wholly owned subsidiary company in Mozambique ("MML") which was set up to establish and develop a farming operation in that country. CBL advanced loans to MML by under three separate loan agreements, all with identical terms.

Salient features of the agreements relevant to the matter were:

- The loans were for a term of 30 years commencing from the later of the date of approval or the date on which the loan amount was advanced to MML;
- No payment or redemption of the loan may be made if, at the time of the payment or redemption, the liabilities of MML exceeded the fair value of the assets;
- No interest was payable on the loans; and
- In the event that MML should suffer bankruptcy, be placed under business rescue or be subject to any similar proceedings or MML should fail to satisfy any judgment taken against it within 14 days of such judgment, the agreement would terminate with immediate effect and the loan amount or any outstanding balance thereof would immediately become payable to CBL (Clause 7).

At the end of the relevant years of assessment, CBL entered into a subordination agreement with MML in terms of which CBL subordinated its claim against MML to the claims of all other creditors, which subordination would remain in effect until such time as the assets, fairly valued, exceeded the liabilities. CBL undertook that for as long as this condition existed, it would not sue for or accept any payment of a subordinated amount until MML obtained an auditor's certificate that the fair value of the assets exceeded the liabilities. In the event that the liabilities should subsequently again exceed the liabilities after a period of "solvency", a new subordination agreement would have to be concluded.

In its return of income, CBL had made an adjustment in respect of the MML loans under the provisions of section 31(2) of the Income Tax Act. The nature of the adjustment was to include in income an amount equal to the notional interest that would otherwise have accrued if the loans had not been interest-free but had been subject to payment of interest at an arm's-length rate.

In addition, CBL accounted for dividends tax on the amount of the adjustment, as required under section 31(3) of the Income Tax Act.

The issue

CBL subsequently became aware of the provisions of section 31(7) of the Income Tax Act. This provides that the provisions of section 31 do not apply to a debt where:

- The debt is between a resident company and a foreign company in which the resident holds at least 10% of the equity shares and voting rights in the foreign company;
- The foreign company is not obliged to repay the loan within 30 years of the date the debt is incurred;
- Redemption of the debt is conditional on the value of the assets being greater than the liabilities; and
- No interest accrued on the debt in the year of assessment.

CBL therefore requested the issue of a reduced assessment in terms of section 93(1)(*d*)(ii) of the Tax Administration Act ("TAA").

Section 93(1)(*d*)(ii) of the TAA states that SARS may issue a reduced assessment if it is satisfied that there is a readily apparent undisputed error by a taxpayer in a return.

CBL asserted that it had made an error in that it had included an adjustment in respect of the interest-free debts in income. However, the debts in question met the requirements of section 31(7) of the Income Tax Act. Therefore, the provisions of section 31 0f the Income Tax Act did not apply in respect of the debts in question and no adjustment should have been made.

SARS refused to issue a reduced assessment, alleging that, in terms of the agreement, an act of insolvency would render the debt immediately repayable and that such an event may occur at any time before the

expiration of 30 years. Therefore, since the debtor was obliged to repay the debt within a period of 30 years, section 31(7) of the Income Tax Act did not apply and the error was not an undisputed error.

CBL took SARS's refusal to issue a reduced assessment on review to the High Court.

The judgment

CBL urged that the rights and obligations of the parties to the agreements should be considered at the time of the assessment. If, at that time, MML was not obliged to repay the loan within the 30-year period, section 31(7) of the Income Tax Act should operate and no adjustment should be made under section 31(2). To this, Louw J responded at paragraph [17]:

> In terms of clause 7 of the loan agreements, the agreements terminate with immediate effect and the loan amount, or any balance then outstanding, becomes immediately due and payable to the applicant in the event of an application being made for the liquidation of MML, or MML going into bankruptcy or business rescue or similar type proceedings, or judgment having been taken against MML and remaining unsatisfied for a period of 14 days. *A situation may therefore arise which obliges the foreign company to repay the loan before the expiry of 30 years*. It follows that the loan agreements therefore do not comply with the requirement of s 31(7)(b). The decision of SARS that the criteria of s 31(7)(b) had not been met, was therefore in my view correct. (Emphasis added)

CBL urged further that, in any event, the subordination letter prevented it from claiming or accepting payment unless the value of the assets exceeded the liabilities. Louw J responded to this submission in paragraph [19]:

> It is apparent from the above quoted passages of the subordination agreement that they do not override clause 7 of the loan agreements or make it inapplicable. They simply regulate the subordination of the applicant's claim against MML to the claims of other creditors for such time as the liabilities of MML exceed its assets, during which time the applicant will not be entitled to the amount or sue for or accept payment of any part of the amount subordinated owing to the applicant by MML. The clauses cannot be interpreted to mean that the applicant shall not be entitled to claim immediate payment from MML in the event of an application being made for the liquidation of MML or any of the other eventualities provided for in clause 7 of the loan agreements occurring. Its claim will just be subordinated to the claims of other creditors of MML in circumstances where the liabilities of MML exceed its assets, fairly valued. The finding of SARS that the subordination agreement merely changes the applicant's ranking amongst the creditors of MML, and does not detract from the fact that the loans will become immediately due and payable under the circumstances provided for in clause 7 of the loan agreements circumstances [*sic*], was therefore correct.

As a result, Louw J dismissed the application to have the decision of SARS overturned.

Commentary

It is unusual for there to be no statement of the applicable law in a judgment. The typical structure of a judgment is that there should be a statement of the facts, the issues in dispute, the applicable legal principles and the application of those principles to the facts.

In this instance, it was clear that the issue was whether the borrower was, in terms of the applicable loan agreements, not obliged to repay the loan within a period of 30 years. Although the condition in the relevant section of the Income Tax Act is couched in negative terms ("is not obliged to redeem that debt in full within a period of 30 years …"), its restatement in the positive is that the relief under section 31(7) is not available if MML is obliged to redeem the debt in full within that period.

The Court had to consider a contract subject to a resolutive condition. A condition is an uncertain future event. The condition may be suspensive, meaning that the contract or a portion thereof will not come into existence unless and until the event occurs, or it may be resolutive, in which case the contract would terminate on the occurrence of the event.

There is no doubt that Louw J was dealing with a resolutive condition.

The effect of fulfilment of a resolutive condition is that the contract is regarded as a nullity. This is a well-established principle of law, as stated by Theron J in *Faithill Holdings (Pty) Ltd v Sothiros* 1976 (4) SA 197 (T) at 199:

> Clause 6 (1) clearly is a resolutive condition and as stated by Wessels, *Law of Contract*, 2nd ed., vol. 1, para. 1409 (3):
>
> "If the resolutive condition is fulfilled, the law regards the whole transaction inter *partes* as if the absolute contract had never existed and the parties must therefore be restored to their former position."

The loan agreements indicated that MML would be liable to make restoration were a specified event to occur. The obligation to make payment to which the judgment refers is the common law remedy in the event of the fulfilment of a resolutive condition, namely that the parties must be restored to the position that pertained before the contract was concluded.

The judgment contains no examination of the effect of a resolutive condition on the contractual rights and obligations. In the event that the condition were to be fulfilled the contract would cease forthwith and be treated as never having been concluded. The requirement to make restoration in the case of a void contract in such circumstances appears to be different from an obligation to redeem under a valid contract.

In any event, if the condition was neither resolutive nor suspensive, the obligation to repay was contingent. It is trite that a contingent right does not ripen into a right unless the contingency is fulfilled. It simply is unenforceable. By necessary inference, any corresponding obligation similarly conditioned does not come into existence while the condition is not fulfilled.

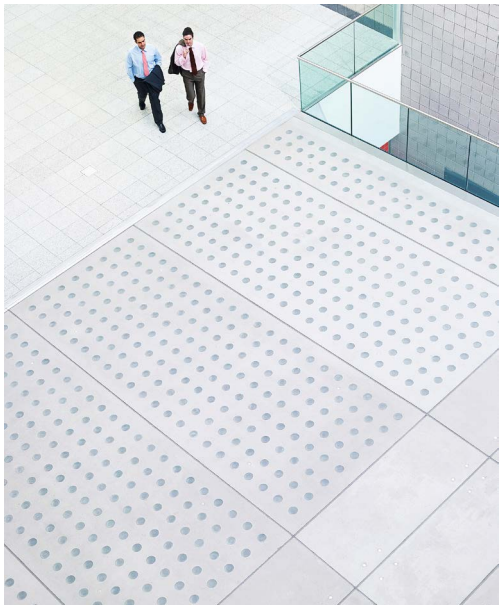
The takeaway

This matter reveals the difficulties encountered in identifying the *ratio decidendi* (legal reason for the outcome) where the Court does not make the parties aware of the legal principles that bear on the matter and the application of the principles to the facts.

A bare statement of fact and a conclusion on the possibility of the occurrence of an uncertain future event within a specified period are, with respect, insufficient. Conditions are, by their nature, uncertain.

It appears that the possibility of occurrence of an uncertain future event was elevated to the status of certainty – the *possibility* (however remote) that an event may occur within a period of 30 years was transformed into the certainty that it will occur.

It is uncertain whether CBL will apply for leave to appeal against this judgment.



SARS Watch:

Legislation

25 May	Amendment of Schedule No. 8 by the substitution of items 820.05 and 820.10 in order to extend the validity period for licences for pot stills	Notice R. 537 published in Government Gazette No. 41651 with an implementation date of 25 May 2018.
25 May	Amendment in Part 1 of Schedule No. 1, by the substitution of tariff heading 1205.10 and insertion of tariff subheading 1205.10.20 and 1205.10.90 to make provision for the reduction of the rate of customs duty on canola seed – ITAC Report 574	Notice R. 538 published in Government Gazette No. 41651 with an implementation date of 25 May 2018.
25 May	Amendment in Part 1D of Schedule No. 6, by the insertion of various items under rebate item 621.08 in order to make provision for a rebate of full duty in respect of ethyl alcohol by-product that has been used for industrial purposes or for the manufacture of other non-liquor products	Notice R. 539 published in Government Gazette No. 41651 with an implementation date of 25 May 2018.
25 May	Amendment in Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 29,38c/kg and 44,06c/kg to 43,72c/kg and 65,59c/kg respectively, in terms of the existing variable tariff formula – Minute 04/2018	Notice R. 540 published in Government Gazette No. 41654 with an implementation date of 25 May 2018.
21 May	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to reduce the rate of customs duty on wheat and wheaten flour from 39,49c/kg and 59.23c/kg to 29,38c/kg and 44,06c/kg respectively, in terms of the existing variable tariff formula – Minute 03/2018	Notice R. 512 published in Government Gazette No. 41641 with an implementation date of 21 May 2018.
18 May	Amendment to Part 2 of Schedule No. 4 by the insertion of rebate item 460.15/7225.99/01.06 in order to create a rebate facility on certain hot-rolled steel plates – ITAC Report 575	Notice R. 509 published in Government Gazette No. 41663 with an implementation date of 18 May 2018.
18 May	Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/7225.99/01.06 to exclude rebate item 460.15/7225.99/01.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 575	Notice R. 508 published in Government Gazette No. 41663 with an implementation date of 11 August 2019 up to and including 10 August 2020.
18 May	Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/7225.99/01.06 to exclude rebate item 460.15/7225.99/01.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 575	Notice R. 507 published in Government Gazette No. 41663 with an implementation date of 11 August 2018 up to and including 10 August 2019.
18 May	Amendment to Part 3 of Schedule No. 2, by the substitution of safeguard item 260.03/7225.99/01.06 to exclude rebate item 460.15/7225.99/01.06 in order to exclude certain hot-rolled steel plates from being subject to safeguard duty – ITAC Report 575	Notice R. 506 published in Government Gazette No. 41663 with an implementation date of 18 May 2018 up to and including 10 August 2018.
11 May	Draft rules under section 38 – Southern African Customs Union ("SACU") unique consignment reference ("UCR")	Comments must be submitted to SARS by Friday, 25 May 2018.

11 May	Public Notice notifying taxpayers who are obliged to submit TP documentation that they will be subject to a fixed-amount penalty in accordance with sections 210(1) and 211 of the TAA.	Notice No. 480 published in Government Gazette No. 41621 with an effective date of 11 May 2018.
4 May	Amendment of Schedule No. 2 (No. 2/1/383) (Amendment to terminate anti-dumping duties on fully threaded screws with hexagon heads originating in or imported from the People's Republic of China).	Notice R. 470 published in Government Gazette No. 41605 with retrospective effect from 15 November 2017.
26 Apr	Amendment of Schedule No. 1 (No. 1/1/1598), amendment to implement the SACU allocation of cheese tariff rate quota under the EPA agreement between the EU and SADC EPA states	Notice R. 462 published in Government Gazette No. 41599 with retrospective effect from 1 January 2018.

Rulings

26 Apr	BPR 302 – Corporate restructuring and unbundling of listed shares	This ruling determines the tax consequences for the Applicant and the Co-applicants of the proposed corporate restructuring and unbundling of listed shares to shareholders.

Case law

16 May	Crookes Brothers Limited v CSARS	This is an application to review and set aside two decisions taken by the respondent, namely not to make a reduced assessment in relation to the payment of normal tax in respect of the applicant's 2015 year of assessment and not to make a reduced assessment in relation to the payment of dividend tax in respect of the 09-2015 period, which SARS was permitted to do in terms of s 93(1)(d)(ii) of the Tax Administration Act 28 of 2011.
13 May	Commissioner for the South African Revenue Service v Louis Pasteur Investments (Pty) Ltd and Others (12194/2017) [2018] ZAGPPHC 287	The application launched by Applicant is aimed primarily at obtaining an order in terms of section 132(2)(a)(ii) of the Companies Act, 71 of 2008 for the conversion of the business rescue proceedings relating to First Respondent to liquidation proceedings and ultimately for the final liquidation if unable to pay its debts.
10 May	SG Taxpayer v CSARS (Case No. 14264)	The central issue is whether there is a sufficiently close connection between the contribution of R48 million ("the expense") paid by it to a certain Trust in respect of its own employee management share incentive scheme ("the scheme"), and its production of income during the 2005 to 2012 years of assessment ("the income") for purposes section 11(a).
9 May	Mr X v CSARS (Case No. 14218)	Whether the foreign income earned by the Appellant is taxable in South Africa.
4 May	ABC (Pty) Ltd v CSARS (Case No. 13193)	Whether the Appellant's rights to dividends constituted a taxable amount in terms of either section 24J or section 1 of the Income Tax Act.
4 May	Benhaus Mining (Proprietary) Limited v Commissioner of the South African Revenue Services (Case No. 13863)	Whether the Appellant was conducting mining operations or not.
26 Apr	CSARS v Logikal Consulting (Pty) Ltd	This is an application under rule 42(1)(a) of the uniform rules of court, alternatively the common law, for the rescission of a judgment granted in the applicant's absence under case number 50356/16 on 29 June 2016, sanctioning an offer of compromise under section 155(7) of the Companies Act 71 of 2008.

Guides and forms

21 May	Draft Guide on MAPs	Comments must be submitted to SARS by Friday, 15 June 2018.
11 May	Customs Sufficient Knowledge	This policy describes the requirements relating to the Customs sufficient knowledge for (prospective) Customs clients to obtain competency certification before an application for registration or licensing can be submitted to Customs and comes into effect date of 11 May 2018.
9 May	VAT267 – Declaration in respect of supply of goods or services to or from a Customs Controlled Area ("CCA') or Special Economic Zone ("SEZ")	External form for the declaration in respect of goods and services supplied and delivered / rendered to a CCAE* / SEZ Operator* in a CCA* and the temporary admittance / removal of goods to / from a CCA.

Organisation for Economic Cooperation and Development (OECD)

9 May	OECD invites public comments on the scope of the future revision of Chapter IV (administrative approaches) and Chapter VII (intra-group services) of the Transfer Pricing Guidelines	Comments must be submitted to the OECD by Wednesday, 20 June 2018.

Other Publications

16 May	Tax Alert – Fixed non-compliance penalties imposed on TP documentation	The SA Revenue Service has indicated that the failure by a SA-resident Tier 1 company to submit a Country-by-Country report, Master file or Local file return within 12 months from the final day of the group's "Ultimate Parent Entity's" financial year end will be an instance of non-compliance that will, in terms of sections 210(1) and 211 of the SA Tax Administration Act, attract a financial penalty of up to R16,000 per month.
14 May	Tax Alert – The Health Promotion Levy ("HPL"): Compliance Requirements	The HPL on sugary beverages came into effect on 1 April 2018 and has been levied since that date. To ensure compliance with the Customs and Excise Act, all local manufacturers of sugary beverages must be registered with and obtain a licence from the South African Revenue Service and must prepare and submit monthly accounts (returns).
7 May	TCDR Alert – Understatement Penalties ("USP") Guide	SARS published Issue 2 of the Guide to Understatement Penalties on 18 April 2018. An understanding of this guide may be useful when under audit and at risk of understatement penalties.