15 July 2025

Tax Alert

C:SARS v Woolworths – VAT victory on deductibility of capital-raising costs for active investment holding companies

In brief

The Supreme Court of Appeal ("SCA") delivered its judgment on 4 July 2025, confirming Woolworths Holdings Limited's entitlement to deduct input tax on costs incurred for underwriting services relating to a rights offer to raise capital for the purpose of acquiring shares in David Jones Limited. In addition, the SCA ruled that the services from non-resident providers were not subject to VAT on imported services and set aside the understatement penalty imposed by SARS.

Background

In 2014, Woolworths Holdings Limited ("Taxpayer" / "Woolworths") acquired all of the shares in David Jones Limited for R21.4 billion. The acquisition was funded through a combination of cash, new debt and a R10 billion fully underwritten rights offer to shareholders. Woolworths engaged both local and foreign service providers for underwriting and related professional services, incurring significant VAT on local services and costs for foreign services.

Woolworths deducted the VAT incurred as input tax to the extent of the services relating to non-resident shareholders and declared VAT on imported services to the extent of the services relating to resident shareholders (that is, effectively using the resident vs non-resident shareholders ratio as a basis of applying a method of apportionment).

SARS argued that the services relating to the rights offer were not taxable supplies rendered for the purpose of consumption, use or supply in the course or furtherance of the enterprise conducted by Woolworths. SARS contended that Woolworths had not engaged in the activity of issuing shares in a continuous manner, as an enterprise. That is, it had not traded in shares before or after the acquisition, and that the rights offer was rather an isolated, once-off transaction.

As such, the costs incurred were not in the course of an enterprise, and input tax was not deductible. Similarly, the services from foreign service providers were subject to VAT on imported services as they were not acquired for taxable purposes. SARS assessed Woolworths accordingly and imposed an understatement penalty.

In the Tax Court it was found that the VAT was deductible as Woolworths was an active investment holding company conducting an enterprise, which included acquiring and managing investments, raising capital and providing management and support services to its subsidiaries. Woolworths argued in this case that the rights offer and related services were integral to its enterprise activities and the expenses incurred were for the purpose of making taxable supplies. Woolworths also maintained that the services supplied under the rights offer to resident shareholders were exempt financial services, while those supplied to non-residents were zero-rated.

Woolworths asserted that it made full disclosure to SARS and relied on a *bona fide* tax opinion obtained from a tax practitioner before the VAT return was due.

Matthew Besanko
Indirect Tax Leader
m.besanko@pwc.com
+27 (0) 78 827 6376

Rodney Govender
Director: Value-Added Tax
rodney.govender@pwc.com
+27 (0) 82 211 8568

Annemarié Janse van Rensburg
Associate Director: Value-Added Tax
annemarie.janse.van.rensburg@pwc.com
+27 (0) 71 326 5925

Contributors

Joandri Fourie
Senior Manager
joandri.fourie@pwc.com
+27 (0) 82 660 6321

Virasha Ramautar
Manager
virasha.ramautar@pwc.com
+27 (0) 73 490 3855

Findings and key takeaway

The judgment provides much needed clarity on the interpretation and understanding of the deduction of input tax in relation to investment activities. To date, the decisions in the De Beers and Consol[1] cases were applied and interpreted narrowly to generally deny the deduction of VAT as input tax if incurred in the course of any deals or investment related activities.

The court in this case affirms that an active investment holding company which manages and provides services to its subsidiaries is conducting an "enterprise" as envisaged for VAT purposes and can deduct input tax on capital-raising expenses incurred in the course of this enterprise.

This judgment further reiterates important considerations including that:

- Woolworths was indeed conducting an enterprise as an active investment holding company, and the raising of capital through the rights offer was in the course and furtherance of that enterprise.
- The definition of "enterprise" in the VAT Act[2] is broad and includes activities related to the commencement or expansion of a business.
- SARS cannot isolate a single transaction (like a rights offer) and treat it as outside the scope of the enterprise, merely because it is once off, if it is functionally connected to and integral to the company's business.
- Capital-raising activities, even if not recurring, are integral to the ongoing business of an active investment holding company.
- The deductibility of input tax is not limited to routine or recurring transactions; it extends to significant, once-off transactions that are part of the company's business strategy and operations.

The use of professional services (local or foreign) for capital-raising, when linked to the enterprise's taxable activities, does not trigger VAT liabilities on imported services.

This case highlights the importance of understanding the entity's activities, the purpose of capital raising and the clear link to the ongoing management and expansion of the enterprise to avoid disputes with SARS.

It is important to note that the circumstances of this case were distinguishable from its predecessors (De Beers and Consol) and that this outcome does not provide for a blanket application that VAT on investment related expenses are deductible as input tax in all instances. It is important to consider and analyse the position on a case-by-case basis and to ensure that the principles are applied appropriately.

[1] *Commissioner for South African Revenue Service v De Beers Consolidated Mines Ltd* (503/11) [2012] ZASCA 103; 2012 (5) SA 344 (SCA); [2012] 3 All SA 367 (SCA); 74 SATC 330 (1 June 2012);
Consol Glass (Pty) Ltd v The Commissioner for the South African Revenue Service (1010/2019) [2020] ZASCA 175; 83 SATC 186 (18 December 2020)
[2] Value-Added Tax Act, 89 of 1991