CASES / VONNISSE

DUTY FREE NOT VAT FREE

Master Currency v CSARS (155/2012) [2013] ZASCA 17 (20 March 2013)

1 Introduction

In *Master Currency v CSARS* ((155/2012) [2013] ZASCA 17 (20 March 2013)) the court had to address the question of whether services supplied by Master Currency (hereinafter "the appellant") were subject to a zero rating. This case is of particular interest as it addresses the VAT implications of services supplied in a duty-free area of an airport. Hence, it was questioned whether a service rendered in a duty-free area will be subject to VAT.

A duty-free area or zone is an area or zone within which goods and services may be supplied without being subject to customs duties, (See "SARS Customs and Border management external standard operating procedure inbound and outbound duty and tax-free shops" (1 November 2010 http://bit.ly/1mqk2zx (accessed 2014-07-07). The IBFD International Tax Glossary (2005 IBFD) defines "Duty-free zone" as follows: "[z]one usually next to an international port or airport where imported goods may be unloaded, stored and reshipped without payment of customs duties or other type of indirect tax, provided the goods are not imported" (140). The importance of this definition is that it specifically refers to "other type[s] of indirect taxes" also not being leviable in the duty-free area. It is important to note that the Customs and Excise Act (91 of 1964) does not define "duty free" or "duty-free area".

The South African value-added tax (hereinafter "VAT") is a tax on the consumption of goods and services in the Republic of South Africa (see National Treasury "The Explanatory Memorandum on the 1998 Taxation Laws Amendment Bill" Clause 89 http://www.osall.org.za/docs/2011/02/1998-Taxation-Laws-Amendment-Bill.pdf (accessed 2014-07-07)). Accordingly, the Value-added Tax Act 89 of 1991 (hereinafter "the Act") and, accordingly, references to sections in this note are to sections of the Act, unless otherwise expressly stated, provides for three instances where goods and services will be considered to be consumed in South Africa and thus be subject to VAT. The first instance will be when a vendor supplies goods or services in the course or furtherance of an enterprise in South Africa (s 7(1)(a)). The second instance is when goods are imported into South Africa by any person (s 7(1)(b)), and lastly when imported services are supplied to any person in South Africa (s 7(1)(a)).

The supply of domestic goods and services is taxable in terms of section 7(1)(a) of the Act. Imported goods and services are subject to VAT firstly because they are destined for consumption in South Africa. Moreover, it is essential for these goods and services to attract VAT consequences, otherwise imported goods and services would enjoy a competitive price advantage over equivalent local goods and services as the latter would be subject to VAT in terms of section 7(1)(a). Thus the taxation of imported goods and services creates an equal competitive footing with the domestic goods and services. Bearing in mind that VAT is a tax on consumption it follows that exportation of goods and services from South Africa are subject to tax at a zero-rate as the consumption will not take place in South Africa (see Silver and Beneke *VAT Handbook* 9ed (2013) 67). As a general matter, the supply of these goods is taxable in the country where they are destined to be consumed (see National Treasury "The Explanatory Memorandum on the 1998 Taxation Laws Amendment Bill" Clause 89 http://www.osall.org.za/docs/2011/02/1998-Taxation-Laws-Amendment-Bill.pdf (accessed 2014-03-29)). The zero-rating ensures that no double taxation ensues in that an exporter will not be taxed in South Africa and again in the export country ("export country" refers to any place that is outside South Africa).

2 Legal Principles

Taxable goods and services are subject to VAT at the standard rate of fourteen per cent unless there are provisions in the Act to the contrary (s 7). Provisions to the contrary include exemptions, exceptions and adjustments provided for in the Act.

One of the provisions that refer to the contrary is contained in section 11 of the Act. This section deals with zero-rated supplies which means that the supply made in terms of section 7(1)(a) of the Act is taxed at a rate of zero per cent and results in no tax being charged to the consumer (output tax). It is, however, seen as a taxable supply which will enable the vendor to deduct any tax payable by the vendor in order to make these supplies (referred to as input tax – see section 1 for the definition of *input tax*). Thus, even though the vendor does not need to collect VAT from the consumer to whom the supply is made, the vendor will be entitled to deduct the VAT that the vendor paid in order to make the supply (Stiglingh, Koekemoer, van Schalkwyk, Wilcocks and De Swardt *Silke: South African Income Tax 2013* (2013) 1086). Therefore a zero-rated supply is more favourable for the supplier than a standard-rated supply or an exempt supply (see s 11(2)(l); see also Silver and Beneke *VAT Handbook* 16).

Section 11(2) of the Act deals more specifically with zero-rated services. Services, in general, are defined broadly and are basically any economic activity that does not constitute a supply of goods (Silver and Beneke *VAT Handbook* 23). Salient to these zero-rated services are supplies relating to international transport and supplies made to non-residents (Silver and Beneke *VAT Handbook* 95).

Supplies made to non-residents will be zero-rated if conditions prescribed in section 11(2)(l) are met. In order for a service to be zero-rated such service supplied to a non-resident may not be in connection with land

situated in South Africa (s 11(2)(l)(i)). Moreover, the supply may not be connected to movable property (excluding debt securities, equity securities and participatory securities) situated in South Africa at the time the services are supplied (s 11(2)(l)(ii)). It will, however, still be zero-rated if the movable property situated in South Africa at the time the services are supplied is exported to the non-resident subsequent to the supply of services (s 11(2)(l)(i)(*aa*)), or if the supply is made to the non-resident in order to enable the non-resident to make a supply to the vendor (s 11(2)(l)(i)(bb)). A further condition for a supply to a non-resident to be zero-rated is that the non-resident may not be in South Africa at the time the services are supplied (s 11(2)(l)(iii)). The last condition that must be met for a zero-rating to a non-resident is that the service may not be services supplied to the non-resident in order to refrain from carrying on an enterprise which would have occurred in South Africa (s 11(2)(l)(i)). In terms of section 11(2)(g)(i) supplies of services may also be zero-rated if they are made relating to movable property that is situated in an export country at the time the services are rendered.

3 Facts

The appellant in this matter operated two *bureaux de change* in the duty-free area of the then Johannesburg International Airport (later renamed OR Tambo International Airport) situated in the Ekhuruleni Metropolitan Municipality in South Africa. This service rendered by the appellant entailed that passengers in possession of a boarding pass and passport could convert South African rand to foreign currency through either or both of the *bureaux de change*. The *bureaux de change* made a profit as the rate at which the currency is bought differed from the rate at which the currency is sold. Furthermore, the appellant charged commissions and transaction fees for these services. These services were rendered only to non-residents as instructed by the South African Reserve Bank (hereinafter "the Reserve Bank"). The Reserve Bank had indicated that South African residents are not allowed to purchase currency as part of their travel allowance beyond the passport control and emigration (par 3).

Initially the appellant used the point-of-sale computer system of Rennies Foreign Exhange which calculated VAT at the standard rate of fourteen per cent. During October 2003 the appellant implemented its own point-of-sale computer system which allowed for VAT to be either included or not included. Assuming that no VAT is charged in a duty-free area, the appellant switched off the function to include and calculate VAT. This assumption was aided by complaints of non-resident customers that VAT should not be charged as the service is exported and assertions of the previous manager of ABSA Bank Ltd who indicated that services supplied in the duty-free area are deemed to be supplied in international territory (par 4).

In 2004 KPMG (the auditor for the appellant) became aware of the assumption made by the appellant during its audit and referred the matter to the South African Revenue Service (hereinafter "SARS") for clarity and confirmation. This prompted SARS to issue a revised assessment as it considered that the commission and transaction fees received by the appellant should be subject to VAT at the standard rate of fourteen per cent.

The appellant appealed against the revised assessment and on the basis that the services should be zero-rated in terms of section 11(2)(l) of the Act (par 5). The Johannesburg Tax Court dismissed this argument and the matter was subsequently brought to the Supreme Court of Appeal (par 1).

4 Supreme Court of Appeal

In the Supreme Court of Appeal the appellant's contention that the services should be zero-rated was based on three pillars. The first pillar was founded on rules of evidence and interpretation, the second on section 11(2)(l) of the Act and the third pillar on section 11(2)(g) of the Act.

4 1 Rules of evidence and interpretation

The first pillar was not founded on any provision of the Act but on rules of evidence and interpretation. The appellant argued that judicial notice, as a rule of evidence, should be taken of the fact that commercial transactions in duty-free areas of an airport conducted by passengers of international flights should not be subject to government duties. This argument was based on the appellant's reasoning that the supplies made in the duty-free area of an international airport are a supply made in international territory. The appellant further argued that, although the long title of the Act was intended to be of general application throughout the Republic, there was no indication of an intention by the legislature to levy VAT in duty-free areas. It was furthermore submitted that the Act was understood and applied by the revenue and other authorities in this manner (par 6).

The court stated that a court will take judicial notice in two situations. The first is where facts are so well-known so as not to be the subject of reasonable dispute. In this regard this will be that facts comprise of general knowledge which requires no external evidence. Second is where the facts can be readily ascertainable by accurate sources so that evidence to prove them would be completely unnecessary or even absurd (Schwikkard and Van der Merwe *Principles of Evidence* (2009) 479; and Zeffertt, Paizes and Skeen *The South African Law of Evidence (formerly Hoffmann and Zeffertt)* (2003) 715.) In this regard a court may take judicial notice of facts without any enquiry. This includes cases where facts are reasonably known among reasonably informed and educated people. "This knowledge must be notorious and not the result of personal observation" (see McGregor "Judicial Notice: Discrimination and Disadvantage in the Context of Affirmative Action in South African Workplaces" 2011 *De Jure* 122; and see also Schwikkard and Van der Merwe *Principles of Evidence* 480).

The court held that the well-known fact that transactions in duty-free areas is not subject to any government duties is rife with uncertainties, for example the nature of the concepts of "duties" and "transactions" referred to by the appellant. Furthermore, the appellant did not furnish reliable evidence to prove this fact instantaneously. Accordingly, the court held that it could not take judicial notice of the VAT implications in a duty-fee area (par 8). The court added that a duty-free area cannot be seen as international territory due to the fact that the charging of VAT applies to the whole of South Africa

(par 7; and see s 1 definition of Republic). The basis of this aspect of the decision is primarily that the OR Tambo International Airport is physically and geographically located within the Republic and to hold that any area within the airport is not within South Africa would be absurd.

The appellant also relied on a ruling made by the respondent on 21 May 2003. In terms of this ruling, duty-free shops in South African International Airports may supply movable goods at a zero rate to a person who possesses a valid boarding pass for an international flight to an "export country" (par 11).

The court held that the appellant's reliance on the ruling issued by the respondent in support of its argument that services rendered by duty-free shops are free of VAT is misplaced. The ruling is an arrangement by the Commissioner regarding the manner in which certain provisions shall be applied (see s 72). It was necessary for this arrangement to be made to alleviate difficulties or anomalies. In this instance the administrative burden of charging VAT on certain purchases to immediately obtain a refund under the Export Incentive Scheme was alleviated. This ruling therefore does not affect the ultimate liability for tax levied in terms of the Act as it did not deal with the interpretation of the Act (par 11). The ruling was applicable only to instances which the ruling sought to address.

Furthermore, the appellant relied on two rules of interpretation namely *contemporanea expositio* and *subsecuta observatio* (par 9). The first rule refers to the principle that a document or legislation should be interpreted in a manner it would have been interpreted at the time it was made (Martin and Law *Oxford Dictionary of Law* 6ed (2006) 123). In the case of *Oudekraal Estate v City of Cape Town* (2002 3 All SA 450 (C)) the court stated that the manner in which the legislation should be interpreted can be deduced from the way in which officials act in accordance to the particular piece of legislation (461). The latter rule, the *subsecuta observatio*, refers to a continuous practice that arises after legislation has been enacted (461). Here the appellant relied on the matter of *R v Detody* (1926 AD 198), where the Appellate Division indicated that the manner in which a law was administered should also be considered (202). The appellant in essence argued that the court should, in ascertaining the intention of the legislature, consider the fact that the legislation has been consistently applied in a certain manner by the people entrusted with the administration of the legislation. Therefore, the appellant argued that owing to the fact that VAT was not paid in the duty-free SARS, in accordance with the appellant's contention, did not regard services in a duty-free area to be subject to VAT, otherwise SARS would have levied VAT on it in the past Act.

In considering the application of the two rules of interpretation relied upon by the appellant, the court referred to the case of *Nissan SA (Pty) Ltd v Commissioner for Inland Revenue* (1998 (4) SA 860 (SCA)). In this case the court held that there must be room in the language of the provision to accommodate the specific interpretation and the application of the legislation in this manner and that such interpretation should have been maintained for a long time without any contradiction (*Nissan SA (Pty) Ltd v Commissioner for Inland Revenue supra* 870). The court held that, due to the fact that the

appellant's submissions were not based on any provision of legislation, there was no room to interpret the legislation in terms of these two rules (par 10).

Furthermore, the court held that after carefully considering the matter of *R v Detody* it is clear that the manner in which a law is administered cannot take preference over plain and unambiguous wording of legislation as "[n]o usage can control the unambiguous language of the law" (203). From this case it seems that the manner in which legislation is administered should only be considered when the provisions may be subject to two meanings (202).

Accordingly, the first pillar of the appellant's argument was rejected.

4 2 Section 11(2)(l): Exported movable property

The second pillar was based on section 11(2)(l)(ii)(*aa*) of the Act. The appellant claimed that its services conducted in the duty-free area were zero rated in terms of this provision as the services are supplied in connection with movable property, to wit foreign currency, that is being exported. The term "export", according to the appellant, refers to the carrying of something out of a country and also sending of goods out of a country (par 19).

The appellant further submitted that since a zero-rating is secured in terms of section 11(2)(l)(ii)(*aa*) of the Act, section 11(2)(iii) should not be applied to disqualify the zero-rating. The appellant argued that sections 11(2)(l)(ii)(aa) and 11(2)(l)(iii) should not be read together because of the use of "or" as the coordinating conjunction between subparagraph 11(2)(ii) and subparagraph 11(2)(iii). Therefore, if a transaction qualifies as a zero rated transaction in terms of section 11(2)(l)(ii)(aa) the zero rate cannot be disqualified in terms of section 11(2)(iii) (par 15).

In dealing with the second pillar of the appellant's argument the court examined section 11(2)(l)(ii)(aa). This section uses the phrase "exported *to* the said person" and the court held that the non-resident recipient cannot be called the exporter in this instance as it will unduly strain the meaning of the word. The movable property must be exported *to* the said person, the non-resident, by the exporter. Section 11(2)(l)(ii)(aa) is therefore concerned with a direct export where the recipient, the non-resident, is outside of South Africa. Therefore the service of exchanging foreign currency in the duty-free area does not fall within the ambit of section 11(2)(l)(ii)(aa) and cannot be zero-rated (par 16).

Nevertheless, the court held that even if the services qualify for a zero rate in terms of section 11(2)(l)(ii)(aa), the Act does not provide the supplier with a secured zero-rated status as subparagraph (aa) and (bb) provide further requirements to the definition of services as outlined in paragraph (ii). If paragraph (ii) and (iii) were meant to be understood separately, it would not be necessary for paragraph (iii) to refer to "other than in circumstances contemplated in subparagraph (ii)(bb)" in order to save the zero-rating in terms of paragraph (ii)(bb) (par 15).

4 3 Section 11(2)(g): Character of banknotes

The last pillar of the appellant's argument that the services rendered is zero-rated was embedded in section 11(2)(g) of the Act. The appellant contended that banknotes, defined as currency in section 2(2) of the Act, are movable property and the exchange of currency is a service in terms of section 2(1) of the Act. Furthermore, the appellant contended that banknotes contain personal rights which are located at the place of issue, in this instance where the debtor resides. With these contentions the appellant argued that the banknotes exchanged by the *bureaux de change* are movable property situated in an export country and accordingly the zero-rating should apply.

The court regarded the appellant's third pillar based on section 11(2)(g) as creative but flawed (par 21). The appellant furnished no evidence as to the nature of the banknotes and disregarded the history of central banking. This led the court to conclude that foreign money does not constitute documents which embody incorporeal rights situated in the country where the money was issued (par 22). With this the third pillar of the appellant's argument for zero-rated services was rejected and the court concluded that the appellant's services in the duty-free area were subject to VAT at the standard rate of fourteen per cent. Accordingly, the appeal was dismissed with costs (par 23 and 24).

5 Critique

In this matter the appellant based its argument on various assumptions. The most pertinent assumptions were firstly, assuming that judicial notice can be taken of the fact that transactions in duty-free areas are not subject to any government duties. Secondly, the ruling furnished by the respondent meant that its services were zero-rated. With these assumptions coupled by, as the court stated, an ingenious argument relating to section 11(2)(g) it created a picture of a taxpayer who failed to comply with section 7 of the Act and *ex post facto* tried to create arguments to substantiate his non-compliance. Even on the appellant's argument relating to subsection 11(2)(l)(ii) and its zero-rated status it is apparent from the wording of the section that this subsection cannot be read independent from section 11(2)(l)(iii).

In reflecting on the appellant's arguments in this case one wonders why this matter had to be decided by the Supreme Court of Appeal as the wording of the applicable sections seems to be clear. Perhaps it was not the fact that the appellant did not understand the wording of the applicable sections that made the matter proceed to the Supreme Court of Appeal but rather the fact that with these words a clear departure from the intention to levy VAT on consumption of services in South Africa was created (National Treasury 89). The aim of section 11(2) of the Act was to assure that when the benefit of services is not enjoyed in South Africa those services will be subject to VAT at a rate of zero per cent (National Treasury 89). Therefore only if the services are consumed in South Africa will such services be subject to VAT at the standard rate.

One of the key interpretative lessons subtly maintained in this case is that where the words of a statute are clear and unambiguous, the court will give

effect to those words and not consider the legislative intent (*Venter v R* 190 TS 910 913; Kellaway *Principles of Legal Interpretation: Statutes, Contracts & Wills* (1995) 65; De Ville *Constitutional and Statutory Interpretation* (2000) 94; and this principle was also recently confirmed in *XYZ (Pty) Ltd v CSARS* [2012] JOL 28881 (GNP)).

Zero-rating of goods and services applies where goods are exported, that is, if the benefit of the goods and services will be enjoyed in an export country. If a person purchases goods in South Africa and emigrates immediately, arguably that person will enjoy the benefit of the goods in the country of their destination. Along the same logic, if a person receives a service just prior to departure, in the form of currency conversion, to a currency other that the Rand, that person will enjoy the benefit of the service (foreign currency) in a country other than the Republic, in light of the fact that only the Rand is legal tender in South Africa. In the current matter the appellant only rendered services to non-residents just before boarding an international flight. It is therefore submitted that the benefit of these services would only be enjoyed by the non-resident in the country of arrival. Accordingly, the consumption of these services will not take place within the Republic of South Africa. In a general sense of VAT principles, considering the fact that it is a consumption tax, the benefit should not be taxable in South Africa. Perhaps the appellant was right that "there was no indication of an intention to levy VAT in duty free areas". The court does not seem to have considered this an argument worth entertaining.

5 1 Judicial notice

The first argument raised by the appellant was that the court should take judicial notice of the "clear and well-established fact" that there are duty free areas at many airports where commercial transactions by passengers boarding international flights are free from government duties.

It is submitted that the appellant misaligned this valuable argument, or at the very least diluted its cogency by alleging that the Act was "understood and applied by the revenue and other authorities in this manner". For judicial notice to be taken, it would not have had to be for the tax authority to understand and apply the Act in any particular manner. It would have been sufficient if the appellant corroborated the argument by extending and supporting the pressure by non-resident customers that non-residents understood that VAT was not chargeable in the duty-free area. These non-resident customers having been cleared through emigration and holding a valid boarding pass are unarguably "reasonably informed and educated people". It does seem, however, that the appellant was half-hearted with this argument since, as Malan JA stated, there was no reliable evidence presented in support of the nature of duties and transactions. Regardless of the strength of the arguments, it would be casting the tax-free nature of duty free areas too wide if Malan JA agreed to take judicial notice on any basis as such notice would arguably apply to all other taxes, such as normal income tax.

5 2 Rulings

The appellant relied on a ruling granted by SARS that provided for the zero-rating of movable goods supplied to persons who have already been cleared by immigration and who are in possession of a valid boarding pass for an international flight to an "export country". The basis of the appellant's argument was that there are numerous duty-free shops in the duty-free area where goods can be obtained without payment of VAT.

Two lessons can be learnt from the decision of the court in relation to this ruling. As stated by the court, ruling concerns goods only. Rulings are only binding to SARS *vis-à-vis* the person to whom the ruling is granted. Rulings are binding on the Commissioner and both the Commissioner and taxpayers can cite them as precedent in tax proceedings before the courts (see s 82(3) of the Tax Administration Act 28 of 2011; and see also Meyerowitz *Meyerowitz on Income Tax* (2008) par 33.27). Secondly, a ruling is applicable to a specific set of facts. An "advance ruling" does not have "binding effect" upon SARS in respect of a person unless that person's set of facts or "transaction" are the same as the particular set of facts or "transaction" specified in the ruling (see s 82(2) read with s 83(b) of the TAA). Thus, in light of the clearly distinct treatment of services *versus* goods for VAT purposes, it would be particularly crude and irresponsible to seek to apply a ruling applicable to goods to transactions which involve a supply of services. The appellant made an error by trying to apply a ruling applicable to goods.

In support of its arguments the appellant also relied on two rulings on taxidermists which involved hunters who were in the Republic at the time the services were rendered (see s 84(1)(a) of the TAA). This argument raises an important aspect regarding the essence of the materiality of the transactions for which rulings are cited. The materiality of the transaction is important because a ruling is void *ab initio* if the "proposed transaction" as described in the ruling is materially different from the "transaction" actually carried out (see s 84(1)(a) of the TAA). It therefore follows that if a ruling is to be relied on as precedent in any proceedings, the material facts and circumstances of the ruling and the transaction being tested should not be materially different.

VAT is a transaction tax while income tax is a tax on income. For income-tax purposes the determination of the income earned is central to the probe on the tax treatment applicable to the transaction. The details of the items giving rise to the income are less important than the nature of the amounts received. Thus, for example, it does not matter for income-tax purposes that the taxpayer sold a vehicle or a computer, what matters is whether he held that computer as a capital asset or revenue asset, and it is the capital or revenue nature of the asset that determines the nature and therefore tax implications of the transaction. On the other hand, for VAT purposes, being a transaction tax, the transaction and elements thereof are material to the determination on the tax applicable to the transaction. The details of the items involved are important. Thus, it is submitted that the glaring differences between a currency trader and a hunter or taxidermist was a far-fetched proposition for the appellant to expect the court to accept. The judge appropriately ruled against the argument that the rulings supported the

appellant's case that "[s]uch a conclusion, however, cannot be drawn from the wording of the two rulings. On the contrary, the opposite seems more likely" (par 20).

5 3 Statutory zero-rating of supplies of goods in an inbound duty and tax-free shop

In 2008 the Act was amended to allow for the zero-rating of the supply of goods by an inbound duty- and tax-free shop (s 11(1)(v) and the definition of "inbound duty and tax free shop were inserted in the Act by the Revenue Laws Amendment Act 60 of 2008). In terms of section 1 of the Act an "inbound duty and tax free shop" means an inbound duty- and tax-free shop as contemplated in the Customs and Excise Act. In terms of the Customs and Excise Act an "inbound duty and tax free shop" means a duty- and tax-free shop located before the customs-control point for inbound travellers (see Customs And Excise Act, 1964 Amendment of Rules (No. DAR/52) definition of "inbound duty and tax free shop").

The Explanatory Memorandum on the Revenue Laws 2008 merely states that "[r]egarding the insertion of subsection (v) into section 11, this amendment is proposed in order to make provision for the zero-rating of supplies of goods in an inbound duty- and tax-free shop" (Explanatory Memorandum on the Revenue Laws 2008 135). This section only applies to the supply of goods and not services. Furthermore, this section only applies to an inbound duty-and tax-free shop and not an outbound duty-and tax-free shop, such as the appellant's (An outbound duty- and tax-free shop can be defined as "a duty and tax free shop located after the customs control point for outbound travellers" see Customs and Excise Act, 1964 Amendment Rules (No. DAR/52)). Therefore, the amendment does not change the position as it stood at the commencement of the litigation process in *Master Currency* and as decided in that case. Thus, the supply of services in the duty-free area remains taxable at the standard rate of fourteen per cent.

6 Conclusion

The *Master Currency* case addresses VAT implications where the service is rendered immediately prior to the customer departing from South Africa and is therefore the current authority on this matter. It is clearly distinguishable from cases such as *South African Rugby Football Union v CSARS* (2000 (1) SA 279 (A) 61 SATC 406), where the court dealt with non-resident customers who were already out of the country when the services were rendered and *Stellenbosch Farmers Winery Ltd v CSARS* (2012 (5) SA 363 (SCA) 74 SATC 235), where a service was supplied directly in connection with movable property situated in South Africa.

In *Master Currency* the consumption of the service did not take place in South Africa. However, due to the clear and unambiguous wording of the relevant sections, the court did not consider the purpose of VAT, namely to tax on consumption in South Africa. It seems that the court deliberately preserved the principle of "*ius dicere, non dare*" by complying with the letter of the law, as opposed to making or adjusting the law. Accordingly, in order

for services in a duty-free area to be zero-rated such service would need to comply with the requirements of zero-rating in accordance with the Act.

The decision *in Master Currency* interpreted the technical aspects of the Act and maintained core rules of evidence and interpretation, with regard to judicial notice, tax rulings and literal interpretation of the law *versus* purposive interpretation. In the end the case makes it clear that "duty free" is not synonymous with "VAT free".

Based on what duty free actually means in relation to other taxes, the IBFD definition is much broader than the SARS definition. The definition found in the SARS website defines a duty-free area or zone as an area or zone within which goods and services may be supplied without being subject to customs duties, (see SARS Customs and Border management external standard operating procedure inbound and outbound duty and tax free shops" 1 November 2010 http://bit.ly/1mqk2zx (accessed 2014-07-07). This definition limits the duty-free character to supplies being free of customs duties. The IBFD on the other hand applies the duty-free character to "customs duties or other type of indirect tax". By the IBFD International Tax Glossary's own admission "[t]here is no generally accepted distinction between direct and indirect tax". Therefore extending the duty-free character to indirect taxes would cast the net of tax exemption in duty-free areas too wide and too indeterminable. It is therefore submitted that the decision of the Supreme Court of Appeals in *Master Currency* was a correct decision, albeit that it was based mainly on legal interpretation rules.

Carika Keulder
University of Pretoria

and

Thabo Legwaila
University of Johannesburg