



Timing of accrual of proceeds from cash sales of property

Taxpayers are taxed on amounts at the earlier of receipt or accrual of those amounts. The recent judgment in *Milnerton Estates Ltd v CSARS* in the Supreme Court of Appeal shows that the question around timing of an accrual is still a contentious one. In this case the court considered the application of a deemed accrual provision. It concluded that the amounts accrued to the seller when the agreements were entered into, as opposed to when the property was transferred to the purchasers.

A taxpayer is generally taxed on amounts at the earlier of accrual or receipt of those amounts. If one looks back at case law over the years, the timing of accrual of amounts has often been a contentious matter. The recent judgment in *Milnerton Estates Ltd v CSARS* in the Supreme Court of Appeal dealt with a case where this aspect was the subject of the dispute. This article provides a brief review of the case and some practical matters considered.

Facts and dispute

The taxpayer, Milnerton Estates Ltd ('ME'), concluded 25 agreements for the sale of erven in a residential estate. By the end of the 2013 tax year the purchasers had paid the nominal deposits required, obtained funding required in terms of some suspensive conditions, and provided the necessary guarantees or deposits to secure the purchase price. ME had obtained municipal approvals necessary to give the purchasers possession of the stands and in fact already given possession to some purchasers. The costs of effecting transfer had either been paid or secured.

The taxpayer argued that its entitlement to the purchase price remained conditional on the transfer of the stands to the purchasers, which had not yet happened by the end of the 2013 tax year. SARS contended that the purchase price had accrued to ME, or been deemed to accrue to it in terms of section 24(1) of the Income Tax Act during that year of assessment.

Judgment

Wallis JA approached the matter by considering the application of the deemed accrual provisions of section 24(1), which SARS relied on, thereby avoiding the potentially complicated questions that may arise if the meaning of *accrual* were to be considered in accordance with ordinary principles. The deeming provision reads:

"Subject to the provisions of section 24J, if any taxpayer has entered into any agreement with any other person in respect of any property

the effect of which is that ... in the case of immovable property, transfer shall be passed from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into."

The taxpayer argued that this provision only applied to agreements for the sale of property on credit. This argument was based on the heading of the section as well as certain elements of the provision, for example, the debtors allowance in section 24(2) which only finds application if payment is deferred. The court rejected these arguments and held that a cash sale of property fits well into the requirements of the deeming provision (i.e. ownership passes on or after receipt of the whole purchase price). This view was supported by an earlier judgment in *SIR v Silverglen Investments (Pty) Ltd*. It was held that where this deeming provision applies accrual occurs when the agreement is entered into, which had already occurred by the end of the 2013 tax year.

Some practical considerations

Despite not giving a definite view, Wallis JA pointed out that contracts that are subject to a true suspensive condition only come into existence when the conditions are fulfilled. A proper interpretation of section 24(1) may well be that no binding agreement, and therefore no trigger event for the provision to apply, exists until suspensive conditions in an agreement are met.

The interaction between the deeming provision and the capital gains tax was briefly considered. It was indicated that the Eighth Schedule has a self-contained method to determine when capital gains tax should be accounted for. It is worth noting that the time of a disposal for capital gains tax purposes is generally also based on the conclusion of an agreement for such disposal.