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When is tax payable on sale of property?

By Graeme Palmer

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The Tax Court in M v the Commissioner for SARS recently addressed the question of when does income accrue to a taxpayer from the sale of immovable properties in the course of its trade.

In 2013, the taxpayer, in the course of its trade, entered into 25 agreements for the sale of properties. Although the agreements were concluded in the taxpayer's 2013 year of assessment, it only received payment against transfer of the properties in the 2014 tax year.

SARS raised assessments for income tax on the amounts on the basis that the purchase consideration accrued to the taxpayer in 2013. In the alternative, SARS contended that in terms of section 24(1) of the Income Tax Act the amounts are deemed to have accrued to the taxpayer in 2013. The taxpayer argued that amounts only accrued when it became entitled to receive payment after transfer of the properties in the 2014 tax year.

After considering the common law, the Court held that the right to payment vested in the taxpayer as soon as it was in a position to be able to tender transfer to the purchaser in terms of the agreements. Some of the agreements had suspensive conditions as they were subject to the purchaser obtaining mortgage bond finance, and in those matters, payment could not vest in the taxpayer until the conditions were fulfilled.

Often various requirements and ‘legal permissions’ must be satisfied after the sale agreement has been entered into but before the taxpayer is legally able to give transfer. For example, there had to be FICA compliance, the purchase price had to be adequately secured, and rates clearance obtained. The taxpayer is entitled to payment at the date of the fulfilment of any suspensive conditions, or the date upon which the taxpayer had obtained the legal permissions necessary to enable it to tender transfer, whichever occurred later. In other words, the date conveyancers were ready to lodge transfer in the deeds office. On this approach, the taxpayer became entitled to payment in 18 of the 25 contracts in the 2013 tax year.

SARS, however, argued that all 25 transactions are in any event deemed to have accrued to the taxpayer by virtue of section 24(1). This contains a provision where the purchase price is deemed to have accrued to the taxpayer on the day on which the agreement was entered into. This being the case, the common law interpretation of the timing of the accrual of income becomes academic. The taxpayer argued that section 24(1), which is headed ‘Credit Agreements and Debtors Allowance’, did not apply, as the sales had not involved credit agreements. The Court held that it was bound by an Appeal Court case that said section 24(1) did apply and therefore dismissed the taxpayer’s appeal.

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