

SOUTH AFRICA / JUDGMENT

# XYZ Bank Ltd v Commissioner for the South african Revenue Service (10808) [2001] ZATC 1 (16 May 2001)

[2001] ZATC 1

## COURT

Tax Court

## BEFORE

F C Kirk-Cohen, RJ Heffer, M C van Blerck

## CASE / FILE NUMBER

10808

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

## Source record

## SAFLII

## Note: Certain

personal/private details of parties or witnesses have been  
redacted from this document in compliance with the law  
and SAFLII

## Policy

## REPORTABLE

## IN

## THE INCOME TAX SPECIAL COURT HELD IN PRETORIA

## Case

## Number: 10808

## Date:

16/05/2001

The

Honourable Mr Justice F C Kirk-Cohen -.....

President

Mr

RJ HEFFER

.....Accountant

Member

Mr

M C van

Blerck.....Commercial

Member

In

the matter between: XYZ  
BANK  
LTD.....Appellant  
and  
THE  
COMMISSIONER FOR  
THE  
SOUTH AFRICAN REVENUE  
SERVICE.....Respondent  
Heard  
on 3 and 7 May 2001

## JUDGMENT

### Judgment:

16 May 2001

Kirk-Cohen, J:

The issue before this court relates to one of three similar disputes between the appellant (XYZ) and the respondent involving in toto whether approximately R1 000m is now subject to taxation. The test case now under consideration involves R325m lent to the Greater Johannesburg Transitional Metropolitan Council (Johannesburg).

The parties have agreed, subject to the consent of this court (which was granted), to argue a point in limine raised by XYZ which involves the interpretation and application of certain provisions of the Income Tax Act, Number 58 . of 1962, as amended (the Act). As argument developed it appeared that there was more than one legal issue to be determined, namely:

1. The interpretation and application of section 103 of the Act.
2. The scope of this court's powers and jurisdiction in terms of section 83(13) and (15) of the Act.

As the issues raised are matters of law this judgment has been decided upon by myself as president "and the other members .. have no voice in such decision."

It is desirable to record the agreement between the parties verbatim. It provides as follows:

- "1. The matter has been set down for hearing in the Special Income Tax Court from 2 May 2001.
2. The parties have agreed that the point in limine raised by XYZ be separated from the merits of the matter and be heard separately during the period laid down for the hearing of this matter.

3. Either party may take the decision of the Special Income Tax Court on the point in limine on appeal and, subject to the approach of the President of the Special Income Tax Court, the parties agree that any such appeal will be directly to the Supreme Court of Appeal. The parties will co-operate in expediting the appeal process.
4. Pending final determination by the Supreme Court of Appeal, XYZ shall not have to make any payment of assessments of taxes, or additional taxes levied in terms of section 76 of the Act, made or to be made in regard to the 1996 year of assessment in respect of the Johannesburg Transitional Metropolitan Council, Sappi or Durban Metropolitan Council transactions.
5. If the Supreme Court of Appeal upholds the validity of the assessment dated 2 February 2001 payment will be made by XYZ of the amounts referred to in paragraph 4 above within 2 (two) weeks of the decision of the Supreme Court of Appeal. If the Court finds that the assessment dated 2 February 2001 is invalid, XYZ will not be obliged to make payment of that assessment.
6. The above arrangements are made for the purpose of convenience and saving expense and without admission by either party in any way regarding the merits of the matter which will be separately heard, if necessary, after the above procedures have run their course.

The foregoing was done in terms of rule 19(12) and/or rule 29(4) of the Magistrates' Courts Rules of Court, which apply to proceedings before this court by virtue of regulation B 4 of the regulations issued in terms of section 107 of the Act.

#### THE ASSESSMENT AND ACCOMPANYING DOCUMENTATION.

1. Four documents, all dated 2 February 2001, were delivered by the respondent to the appellant. The first was a covering letter to the appellant (dossier, Vol. 2, p. 212).

The others comprise:

- 1.1 The assessment (dossier, Vol. 2, p. 214);
- 1.2 a calculation of the appellant's taxable income for 1996 (dossier, Vol. 2, p. 213);
- 1.3 a letter setting out the basis on which the assessment was issued by the respondent ("the letter") (dossier, Vol. 2, p. 215-226).
2. The calculation mentioned in paragraph 1.2 refers to an adjustment of R235m in respect of the Johannesburg set of agreements.
3. The contents of the last mentioned letter, as far as it is relevant for present purposes, can be summarised as follows:
  - 3.1 Paragraph 2 thereof, deals with the application of section 103
  - (1) of the Act;

3.2 paragraph 3 thereof, deals with an alternative basis for the assessment, i.e. without reliance on section 103(1) of the Act.

3.3 paragraph 4 thereof, deals with a further alternative basis for the assessment, also without reliance on section 103(1) of the Act.

#### THE RELEVANT FACTS WHICH ARE COMMON CAUSE

1. The references hereunder are to the dossier (two volumes) and to two bundles of documents prepared by the appellant.
2. A graphic description of what occurred appears in dossier Vol. 1, p. 39 and a description thereof on page 40 et seq.

On page 39 the reference to MLS is to the MLS Bank, a wholly owned subsidiary in the XYZ group of companies.

The reference to Lifeco is a reference to Sanlam, a major shareholder in XYZ Ltd, the parent company of XYZ.

The reference to client is to Johannesburg.

3. For practical purposes the transactions innumrated hereunder occurred simultaneously and/or within a day or so of each other.
4. The appellant paid to MLS Bank R235m which MLS Bank then lent to Johannesburg.
5. MLS executed three promissory notes payable to bearer which were delivered to the appellant and which the appellant delivered to Sanlam.
6. Sanlam, immediately upon delivery of the notes, paid to the appellant R20m.
7. The three promissory notes appear in bundle Vol. 1, p. 1, 6 and 11. They are all conditional promissory notes, the only relevant details being the following:

7.1 The first promissory note was for R235m, the second and third promissory notes were for interest; the second and third notes are for approximately R40m and R323m respectively. The interest was payable over a period often years.

7.2 The total amount thus payable under the promissory notes was approximately R598m.

7.3 The notes provided that interest would be payable six monthly in arrears and the capital was to be repaid after a lapse often years.

7.4 If there was any default the appellant would only receive that amount owing at the time of default i.e. MLS Bank was only obliged to pay if and when Johannesburg paid MLS Bank.

7.5 The same applied to Sanlam; it was only obliged to pay the appellant if MLS was paid by Johannesburg. Sanlam's risk from day one was thus R20m which was interest.

8. According to the appellant the payment of R235m by it to MLS Bank was, "by way of purchase for the notes".
9. Also, according to the appellant, "immediately after purchasing the notes, XYZ will sell the notes to (Sanlam)...".
10. MLS Bank, according to the appellant, would "cede and pledge the loans to the holder of the notes as security for payment of the amounts owed under the notes".

APPELLANT'S CONTENTION IN REGARD TO INCOME TAX CONSEQUENCES OF THE  
AFOREGOING (BASED UPON DOSSIER VOL. 1, P. 42 ETSEQ)

These contentions are as follows (not quoted verbatim):

1. As the notes were acquired by XYZ for resale, the notes constitute trading stock in XYZs hands and as such, XYZ is entitled to claim as a deduction, under section 11 (a) of the Act, the cost of such notes i.e. R235m.
2. For the tax year in question, 1996, XYZ will include in its gross income the "upfront amount" received on sale of the notes to Sanlam i.e. R20m, and will thus have a loss of R215m by virtue of its having purchased the notes and then sold them to Sanlam.
3. XYZ will include in its gross income the balance of this purchase price receivable for the notes in terms of the contract with Sanlam as, when and if those payments are received, since receipt of such payment is conditional upon MLS Bank meeting its obligations under the notes, its liability to do so being conditional as set out above.

THE ASSESSMENT OF 2 FEBRUARY 2001 (DOSSIER VOL. 2, P. 214)

The revised assessment for the tax year 1996 was a nil assessment but contained the remark "refer to letter dated 2 February 2001". What in fact occurred is that the sum of R23 5m, despite the appellant's contentions, was regarded as being taxable. Because of the importance of the wording of the letter of 2 February 2001 and the emphasis based thereupon, I regard it necessary to set out certain paragraphs thereof.

"2. Application of section 103(1) of the Income Tax Act

2.1 Effect of postponing liability for the payment of tax

2.1.1 XYZ' s abovementioned tax computation assumes that the value of the claim which it had against Sanlam pursuant to the "Sale

agreement" with Sanlam dated 14 December 1995 should not be included in XYZ's income as trading stock for purposes of the Income Tax Act 58 of 1962. We are satisfied that, if this contention is legally correct, the Johannesburg set of agreements had the effect of postponing liability for the payment of income tax as intended in section 103(l)(a) of the Act..

2.1.2 The postponement of liability is constituted by the following: If the Johannesburg set of agreements did not create the abnormality

referred to below, an amount R235m would have been included in XYZ's income in the 1996 year of assessment. This is the case by virtue of the fact that the claim against Sanlam would have constituted part of the trading stock held by XYZ and not disposed of by it at the end of the year as intended in section 22(1) of the Act.

2.1.3 The liability which was postponed was therefore the income tax liability which would have arisen in the 1996 year of assessment by virtue of the inclusion of the amount of R235m in XYZ's income.

## 2.2 Transaction, operation or scheme

2.2.1 We are satisfied that the Johannesburg set of agreements constitutes a "transaction, operation or scheme" as intended in section 103(1). Furthermore, each agreement in the set constitutes a "transaction" or an "operation".

2.2.2 We are satisfied that the aforementioned transactions, operations and scheme were entered into and carried out as intended in

section 103(1)(a).

## 2.3 Abnormality

2.3.1 For the reasons set out more fully in paragraph 3 below, we are of the view that the transaction between MLS and XYZ constituted a loan by XYZ to MLS in an amount of R235m.

2.3.2 MLS's obligation to repay the capital amount and interest on the loan was subject to the condition that the Johannesburg Council paid to MLS the amounts owing in terms of loans made by MLS to the Johannesburg Council. These conditions appear more fully in the relevant contract documents to which we refer in paragraph 3.3.1 below.

2.3.3 We are satisfied that MLS's aforementioned conditional obligation to XYZ is an obligation which would not normally have been created between persons dealing at arm's length under a transaction, operation or scheme of this nature. (See section 103(l)(b)(ii)).

More specifically, a bank which lent money to a borrower with which it was dealing at arm's length under circumstances such as these would not have lent the monies subject to such a condition.

2.3.4 In terms of the "Agreement of Sale" between XYZ and Sanlam, XYZ ceded its rights in terms of its loan agreement with MLS to Sanlam. In return, Absa received an amount of R20m, together with certain conditional rights against Sanlam. The content of these conditional rights was that Sanlam would have paid to XYZ certain amounts which MLS would have paid to XYZ had the cession not taken place. As was mentioned above, MLS's obligation to pay these amounts was conditional upon the Johannesburg Council making the relevant payments to MLS. The same type of abnormality which attached to the agreement between XYZ and MLS was therefore

incorporated into the agreement between XYZ and Sanlam.

2.3.5 The normal type of right and obligation, as intended in section 103(l)(b)(ii), which would have come into being between XYZ, MLS and Sanlam would have been as follows. XYZ would have lent the amount of R235m to MLS without the attachment of the abovementioned type of condition. XYZ would therefore have obtained an accrued right to repayment of the capital amount of R235m. Upon XYZ disposing of this right to a third party such as Sanlam, XYZ would, in return, have obtained an accrued right against the third party to repayment of the capital amount of R235m. This right would not have been subject to the condition that a further party (here, MLS) would have made certain payments to the third party (here, Sanlam).

2.3.6 In the alternative, it is contended that the transactions between XYZ, MLS and Sanlam were entered into or carried out by means or in a manner which would not normally have been employed in the entering into or carrying out of such transactions between, on the one hand, a bank and a borrower and, on the other hand, a third party such as Sanlam. (See section 103(l)(b)(i).)

2.3.7 As will be stated more fully in paragraph 4.1 below, XYZ's approach is that the transaction between XYZ and MLS is not a loan, but a purchase by XYZ from MLS of three promissory notes. XYZ furthermore contends that the "promissory notes" were sold to Sanlam. It also contends that the claim it acquired against Sanlam did not form part of its closing stock in the 1996 year due to its conditionality. We contend that, if the true nature of these transactions is as aforementioned, they were nevertheless abnormal as intended in sections 103(l)(b)(i) and (ii). As far as the "promissory notes" are concerned, we contend that it is abnormal for a promissory note to contain the conditions which are contained in the three notes which are in issue in this matter. The normal rights and obligations, as intended in section 103(l)(b)(ii), attaching to the "promissory notes" would have been that they would not have contained the abovementioned conditions. Our contentions in 2.3.5 and 2.3.6 above otherwise apply *mutatis mutandis*.

#### 2.4 Purpose to postpone liability for the payment of tax

We are satisfied that the aforementioned transactions between XYZ, MLS and Sanlam were entered into or carried out solely or mainly for the purposes of the postponement of liability for income tax to which we referred in paragraph 2.1 above.

#### 2.5 Determination of liability

2.5.1 Pursuant to the foregoing, we have determined XYZ's income tax liability for the 1996 year on the basis as if the rights and obligations created between XYZ, MLS and Sanlam had been normal, as intended in paragraph 2.3 above. If the rights and obligations had been normal, XYZ would, as at the end of the 1996 year, have had an unconditional claim against Sanlam with a value of R235m. This amount would have had to be included in XYZ's trading stock at the end of the year of assessment as described in 2.1.2 above.

2.5.2 If the true nature of the transactions between XYZ, MLS and Sanlam was a purchase and sale of promissory notes as contended by XYZ, the amount to be included in XYZ's trading stock on the : basis of section 103(1) at the end of the year of assessment would be R212 852 020. We refer in this regard to the calculation in paragraph 4 below."

respondent relied, in the alternative, on two other grounds for assessing the said sum of 5m for tax, and I refer only to two further passages, leaving out the reasons therefor:

"3. Inclusion of XYZ's claim against Sanlam as trading stock on the basis of the SARS's view regarding the true nature of the agreements

3.1 If the correct legal position is that the claim against Sanlam did not form part of XYZ's closing stock for income tax purposes, then our inclusion of the amount of R235m in XYZ's income as trading stock would in any event be correct - that is, without reliance on section 103(1).

3.2 We shall furnish you with an additional income tax assessment which makes provision for the inclusion of the amount of R235m in the near future. We contend that that assessment is correct by virtue of the applicability of section 103(1); alternatively on the basis that the amount of R235m formed part of XYZ's income because its claim against Sanlam did, in fact, form part of its closing stock."

'4. Inclusion of PN's ... as trading stock on the basis of XYZ's view regarding the nature of the agreements

4.1 As mentioned in paragraph 3 above, our alternative contention is based on the view that the transaction between MLS and XYZ is a loan by XYZ to MLS of an amount of R235m. XYZ's approach, on the other hand, is that that transaction is not a loan but is a purchase by XYZ from MLS of three promissory notes for an amount of R235m. XYZ's approach entails that XYZ sold the three promissory notes to Sanlam for the considerations set out in the "Agreement of Sale". We contend that, even if XYZ's aforementioned approach is correct an amount, being R212 852 020, should still be included in XYZ's closing stock at the end of the 1996 year of assessment. We say this for the following reasons:

Assuming that the documents are in fact promissory notes, then their acquisition cost was R235m. As we have mentioned, XYZ's contention is that this amount constitutes deductible expenditure to XYZ since it represents the cost of acquiring trading stock. These assets were sold to Sanlam. A part of the consideration was received in cash, viz. the amount of R20m. The amount of R20m was received for the sale of PNB. As far as PN's A and C are concerned XYZ ceded its rights in terms of those notes to Sanlam in exchange for an undertaking by Sanlam to pay to XYZ amounts equal to those which Sanlam would have received from MLS in terms of the notes. XYZ's aforementioned claim against Sanlam constituted part of XYZ's trading stock as at the end of the 1996 financial year. That trading stock must be valued at its cost. The cost is the aforementioned amount of R212 852 020."

By letter dated 9 March 2001 the appellant's attorneys objected to the assessment in a lengthy letter (dossier Vol. 2, p. 231-238). I do not deal with it in detail as its contents were dealt with during argument by counsel for the appellant to which I will refer in a moment.

#### SECTION 103(1) OF THE ACT AS APPLICABLE FOR THE 1996 YEAR OF ASSESSMENT

This subsection provides:

i"103. Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income. -

- (1) Whenever the Commissioner is satisfied that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property)
  - (a) has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax, duty or levy imposed by this Act or any previous Income Tax Act, or of reducing the amount thereof; and
  - (b) having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out -
    - (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
    - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; and
  - (c) was entered into or carried out solely or mainly for the purposes of the ! avoidance or the postponement of liability for the payment of any tax, duty or levy (whether imposed by this Act or any previous Income Tax Act or any other law administered by the Commissioner) or the reduction of the amount of such liability, the Commissioner shall determine the liability for any tax, duty or levy imposed by this Act, and the amount thereof, as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction."

The scope and object of section 103 has been dealt with in numerous cases. In *Glen Anil Development Corporation Limited v Secretary for Inland Revenue* 1975

- (4) SA 715 (A) at 727H Botha, JA describes the purpose of section 103 of the Act as follows:

"Section 103 of the Act is clearly directed at defeating tax avoidance schemes. It does not impose a tax, nor does it relate to the tax imposed by the Act or to the liability therefor or to the incidence thereof, but rather to schemes designed for avoidance of liability therefor."

See also CIR v King 1947

(2) SA 196 (A) at 210-212, and Meyerowitz v CIR 1963

(3) SA 863 (A) at 872F-G.

Counsel for the appellant has submitted, correctly in my view, that, before the respondent may invoke the provisions of section 103, he must be satisfied on a number of issues; i.e. that the transaction, operation or scheme has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax. It was pointed out that some sections of the Act empower the respondent to apply extraordinary measures against taxpayers; those sections include section 79(1) and the provisions of section 103(1) and (2). It is submitted that, in order for the respondent to be able to apply any one of these extraordinary measures, the Act requires that certain specific preconditions or jurisdictional facts should be met. They entail the requirement that the respondent has to be "satisfied" of the existence of the relevant circumstances. In *Natal Estates Ltd v Secretary for Inland Revenue* 1975

(4) SA 177 (A) Holmes, JA, dealing with the requirement of satisfaction required by section 79(1), stated the following at 207E-F:

"However there must be some evidence before the Special Court that he was so satisfied, otherwise there is no displacement of the immunity conferred on the taxpayer by the proviso to sec. 79 (1) and the opening words of para, (a) thereof. A convenient time and place for indicating the Secretarial satisfaction would be in the additional assessment itself, or in a covering letter; or in the notice which the respondent is required by sec. 81 (4) to send to the taxpayer, if the latter's objection to the assessment is disallowed."

At 208C-D the learned Judge stated that satisfaction was not a merely formal decision:

"... on the contrary, the Secretary's "satisfaction" is a substantive and far-reaching determination, which should be communicated to the taxpayer, if not before, then at the very latest at, the hearing in the Special Court."

Counsel for the appellant have referred to the word "satisfied" as contemplated in section 103(1) and I agree that the following is a correct analysis of the word "satisfy" (the unsigned Afrikaans text "oortuig"). I refer to the following dictionary definitions:

The New Shorter Oxford English Dictionary:

"7v.t. Provide with sufficient proof or information; free from doubt or uncertainties; convince".

"Convince", in the passive form, is defined in this dictionary as:

"Be firmly persuaded". Webster's Third New International Dictionary:

4b: to put an end to (doubt or uncertainty)".

In the unsigned Afrikaans text of the Act, the word "oortuig" is used in section 103(1) (this word is also used in sections 79(1) and 103(2)).

Verklarende Handwoordeboek van die Afrikaanse Taal gives the meaning of "oortuig" as:

"dit vas glo, daar seker van wees".

The English equivalent of "oortuig", according to Bosman, van der Merwe and Heimstra; Tweetalige Woordeboek is:

"Convince, satisfy, persuade, carry conviction".

Thus both the signed English text and the Afrikaans text ascribe a similar meaning to the word "satisfy".

The decision of the respondent and the manner in which he decided and was satisfied that section 103 applies appear from his letter of 2 February 2001 (this is not disputed). The crux of the appellant's point in limine is that, on his own showing, the respondent could not have been satisfied that there was an avoidance or postponement of a liability

for the payment of tax. Linguistically speaking, it was submitted, one cannot be satisfied and at the same time be not satisfied.

Logically speaking, that is correct. The submission is that the respondent therefore cannot invoke section 103 and, in the alternative, rely upon the taxing provisions of the Act as, to do so, destroys the very satisfaction upon which the respondent relies for the invocation of section 103. It follows from the appellant's submissions that the respondent may only rely on section 103 if the ordinary taxing provisions of the Act are unavailable or cannot be invoked. Once they are available, and the respondent relies upon

them, even in the alternative, the respondent cannot invoke the provisions of section 103 because, in that event, on his own showing,

the respondent could not have been satisfied of tax avoidance or postponement. Counsel for the appellant made these submissions having regard to the fact that, in the alternatives relied upon by the respondent, the same sum of money, namely R235m, was in issue.

Counsel for the appellant have carefully analysed what they submit are the alternative reasons relied upon by the respondent which leads to the inevitable conclusion (according to them) that the respondent could never have been "satisfied" as required by the provisions of section 103. This entails an analysis of paragraphs 2, 3 and 4 of the letter of 2 February 2001. I quote the analysis as contained in the heads of argument (MLS being a reference to MLS Bank):

"2.4.1 The Johannesburg set of agreements has the effect of postponing a liability for tax by Appellant in terms of section 103(l)(a), because (but for the conditionality referred to hereinafter) the amount of R235 million would have been included in Appellant's income for the 1996 year of assessment (paragraph 2.1.2).

2.4.2 In contending that the transactions were abnormal, as contemplated in section 103(l)(b) of the Act (as it read in 1996):

2.4.2.1 Respondent postulates the true nature of the transaction between Appellant and MLS as being a loan of R235 million by Appellant to MLS. Furthermore Respondent postulates the true nature of the transaction between Appellant and Sanlam, as a cession of Appellant's rights under the MLS loan, to Sanlam (paragraphs 2.3.1 and 2.3.4).

2.4.2.2 The loan agreement between Appellant and MLS was subject to a condition, namely that MLS's obligation to repay the capital amount and the interest, was subject to Johannesburg paying to MLS the amounts owing to MLS in terms of loans made by MLS to Johannesburg (paragraph 2.3.2).

Likewise, the amounts payable by Sanlam to Appellant, in terms of the cession agreement, were subject to the aforementioned conditionality (paragraph 2.3.4).

2.4.2.3 The aforementioned condition would not normally have been created between persons dealing at arm's length as contemplated in section 103(l)(b)(ii) of the Act (paragraphs 2.3.3 and 2.3.5).

2.4.2.4 Alternatively, the transactions between XYZ, MLS and Sanlam were entered into or carried out by means or in a manner which would not normally have been employed, as contemplated in section 103(l)(b)(i) of the Act (paragraph 2.3.6).

2.4.2.5 Alternatively, even if the true nature of the transactions are not a loan and cession of rights under the loan, but a purchase by Appellant from MLS of three promissory notes and the sale thereof by Appellant to Sanlam, as Appellant contends, Respondent contends that the transactions were nevertheless abnormal as contemplated in sections 103 (1 )(b)(i) and (ii) because of the conditionality thereof (paragraph 2.3.7).

2.4.3 Respondent states that he is satisfied that the transactions were carried out solely or mainly for the purposes of the postponement of liability for income tax in terms of section 103(l)(c) of the Act (paragraph 2.4).

2.4.4 Accordingly Respondent sets out how Appellant's liability is to be determined in terms of section 103(1) of the Act (paragraph 2.5):

2.4.4.1 In paragraph 2.5.1 Respondent contends in the alternative that if the obligations created between Appellant, MLS and Sanlam had been normal, Appellant would, at the end of the 1996 tax year, have had an unconditional claim against Sanlam with a face value of R235 million. Respondent further states:

"This amount would have had to be included in XYZ's trading stock at the end of the year of assessment as described in 2.1.2 above."

In paragraph 2.1.2 Respondent also states that an amount of R235 million, in the absence of any abnormality, would have been included

in Appellant's income for 1996 "by virtue of the fact that the claim against Sanlam would have constituted part of the trading stock held by XYZ and not disposed of by it at the end of the year as intended in section 22(1) of the Act."

2.4.4.2 In paragraph 2.5.2 Respondent states, apparently in the alternative, that if the true nature of the transactions was the purchase and sale of promissory notes, the amount to be included in Appellant's trading stock on the basis of section 103(1) at the end of the 1996 year of assessment, would have been R212,852,000.20.

## 2.5 Paragraph 3 of the letter:

In paragraph 3 Respondent contends in the alternative that without reliance on section 103(1) of the Act, the amount of R235 million

should also have been included in Appellant's trading stock, if the correct legal position was that the claim against Sanlam formed part of Appellant's trading stock. The basis upon which this is contended by Respondent, can be summarised as follows:

2.5.1 The true nature of the transaction between MLS and Appellant is a loan by Appellant to MLS in an amount of R235 million. MLS's

obligations in terms of the loan are evidenced by three instruments (paragraphs 3.3.1).

2.5.2 The instruments were ceded by Appellant to Sanlam and consideration totalling R29,426,872.00 was received by Appellant from Sanlam during the 1996 year of assessment (paragraphs 3.3.2, 3.3.3 and 3.3.4).

2.5.3 Sanlam also agreed to pay the amount of R235 million to Appellant as soon as MLS paid it to Sanlam.

Respondent accordingly contends that Appellant's claim against Sanlam in the amount of R235 million, formed part of Appellant's trading stock at the end of Appellant's 1996 year of assessment and as such should be included in Appellant's income in terms of section 22(1) of the Act (paragraph 3.3.4).

## 2.6 Paragraph 4 of the letter:

In paragraph 4 Respondent contends that once again without reliance on section 103(1) of the Act, the assessment can be justified even if the true nature of the transaction was not a loan and the cession of right under the loan, but a purchase and sale of the three promissory notes, as contended by Appellant.

2.6.1 The basis for the Respondent's contention, is that Appellant's claim against Sanlam constitutes a part of Appellant's trading stock at the end of the 1996 year of assessment, and should therefore be included in Appellant's income in terms of section 22(1) of the Act.

2.6.2 The value of the aforementioned trading stock, according to respondent, is R212,852,020.00 (paragraph 4.1)."

It was submitted that, in view of the allegation in paragraph 3.2 of the letter in question, the alternative there postulated was destructive of any possible satisfaction as required by section 103. This alternative assessment is based on the view that the transaction between MLS Bank and the appellant was a loan and not the purchase and sale of promissory notes. Counsel further argued that paragraph 4 of the letter postulates a further reliance upon the taxing provisions of the Act, in particular section 22 thereof which, again, destroys any possibility of satisfaction.

The submission, therefore, is that the respondent, on his own showing, cannot have been satisfied that there was an avoidance or

postponement of the liability for payment of tax. He could only have been satisfied if he was of the view that the "ordinary"

(non-avoidance) provisions of the Act are not applicable; i.e. that they have been bypassed in a manner where the liability for tax is avoided or postponed.

Counsel for the appellant relied upon two judgments in the Special Court by the same learned Judge. The first is ITC 1611, 59 SATC 126 at 152 where the learned Judge stated the following:

"The respondent argued, in the alternative, that he had assessed the appellant on the value of the building in terms of s 103(1). After the first draft of this judgment had been prepared we were informed by the respondent that this argument was abandoned. The concession was a wise one, not necessarily because the transactions or the scheme would not have been vulnerable to the application of s 103(1), an issue on which we express no view... but because we would not have been satisfied, if the argument had been persisted in, that the respondent had in fact issued an assessment in terms of s 103(1)... when his view was that tax was indeed payable by reason of the appellant having acquired the taxable right and he had issued an assessment based on that view."

In the second judgment, ITC 1625, 59 SATC 383 at 395 the learned Judge said:

"This is not the first case in which I have expressed my difficulty with the reliance by the Commissioner on s 103 when at the same time he says that tax has not been avoided. A precondition to the invocation of section 103 is that the Commissioner has to be satisfied that tax has been avoided. Unless he demonstrates that he is of the opinion that tax has been avoided, he is not entitled to issue an assessment in terms of s 103. He obviously cannot demonstrate that, unless he is, in fact, satisfied that tax has been avoided. If he says that a taxpayer is

not entitled to a deduction which gives rise to the avoidance of tax because, for example he contends that expenditure which it is sought to deduct was not incurred in accordance with s 11(a) and 23(g), he has deprived himself of the jurisdiction for saying that tax was avoided. He therefore cannot rely on s 103." (My emphasis).

The appellant also relied upon certain Australian authority, where the relevant taxing statute contains a similar provision in regard to the avoidance of tax (but apparently not a postponement of tax).

The relevant provisions are as follows:

The New South Wales Act of 1895 (59 Victoria C 15), a precursor to the present Australian Income Tax Assessment Act, 1936, was used as the model by the officials responsible for the drafting of the First Union Income Tax Act, 28 of 1914. The 1914 Income Tax Act was one of the precursors of the present Act. Reference to Australian judgments dealing with provisions of the Australian Income Tax Act are therefore often appropriate.

See: CIR v Golden Dumps (Pty) Ltd [1993] ZASCA 89; 1993

(4) SA 110 (SCA) at 117B-C; ITC 1634 60 SATC 235\ at 247.

Until 27 May 1981, the general anti-avoidance provision contained in the Australian Income Tax Assessment Act (ITAA) was section

260. With effect from the aforementioned date, section 260 was substituted by part IV A of the ITAA, comprising of sections 177A – 177G.

In regard to section 260 of the ITAA the following was stated by Lord Denning in delivering the Privy Council's judgment in *Newton v FCT* (1958) 1998 CLR 1 at 8 (7 AITR 298 at 304):

'In order to bring the arrangement within the section you must be able to predicate - by looking at the overt acts by which it was implemented

- that it was implemented in that particular way so as to avoid tax. If you cannot so predicate, but have to acknowledge that the transactions are capable of explanation by reference to ordinary business or family dealings, without necessarily being labelled as a means to avoid tax, then the arrangement does not come within the section."

' The appellant's counsel relied on a judgment of the Federal Court of Australia reported as *Federal Commissioner of Taxation v Jackson* 21 ATR 1012. The dispute was whether the Australian anti-avoidance provisions could be applied subsequent to an assessment based on non-avoidance provisions having been issued. It was held that, as it was a prerequisite for applying the anti-avoidance provisions that a tax benefit should have been obtained, the Commissioner should issue a fresh assessment replacing the previous assessment which would then fall away. The facts of that case were as follows. A Mr Jackson, an accountant, created a trust and funnelled his professional fees to that trust. The Commissioner taxed him on the fees so funnelled in terms of the ordinary taxation provisions. The taxpayer objected and the matter went before the

equivalent of our Special Court. The question formulated for decision of that court was as follows (see page 1015 in fin of the report):

"In an appeal against the disallowance by the respondent (i.e. the Commissioner) of an objection against an assessment of the taxable income of a taxpayer for a year of income made on the ground that a particular amount is included in the assessable income of the taxpayer by reason of the provisions of the Act other than Pt IV A, is the Commissioner entitled to place reliance upon a determination, made pursuant to s 177 F(1) and made after the disallowance of the objection and after the institution of the appeal, that a like amount should be included in the assessable income of the taxpayer pursuant to s 177 F(1)(a)?"

Part of the ratio decidendi upon which the appellant relies in this case appears at page 1026 of that report:

"A prerequisite of the Commissioner making the determination, however, will be his conclusion that but for the operation of Pt IV A the whole of the amount would not have been included in the assessable income. Notionally, therefore, the Commissioner will commence the process of making a determination under Pt IV A, in a case such as the present, by excluding the amount included in assessable income in the previous assessment (in this case that assessment being itself a default assessment), presumably because he has taken the view that that amount was not assessable income of the taxpayer. Having done so, he then proceeds to make his determination under s 177 F(1).

The result of this process can be seen, therefore, to be that the Commissioner must be taken to have removed from the assessable income theretofore calculated the amount of gross income derived by the trustee, and to have added to that assessable income the amount referred to in his determination."

The appellant relied heavily upon this judgment as well as ITC 1611 and ITC 1625. The conclusion, so it was argued, is that the precondition (satisfaction) for the application of the provisions of section 103(1) was absent and/or the respondent has deprived himself of the jurisdiction to apply the provisions of that section.

I turn now to the equally well argued case for the respondent. The respondent points out that the decision in this matter will probably

also determine the tax consequences of the other two sets of agreement which are similar and that the total disputed amount of

taxable income for the 1996 year will be increased to approximately R939 612 823 (see dossier Vol. 1, p. 85, third last entry).

It was submitted on behalf of the respondent that, if the legal interpretation of the facts is that XYZ's claim against Sanlam did

not form part of its trading stock, then the Johannesburg set of agreements would have the effect of postponing tax; i.e. income tax on the sum of R235m. The agreements in such an event were abnormal and were entered into mainly for the purpose of postponing that liability to pay tax. On that view, so it was so argued, if XYZ's contention regarding the true nature of the contract was upheld by a court, then the requirements of section 103(1) would be met. The submission is that, therefore, the respondent was entitled and, indeed obliged, to apply section 103(1). (XYZ's aforesaid contention is referred to in the letter of 2 February 2001 in paragraph 2.1.1 thereof).

I agree with the contention of counsel for the respondent that the Commissioner did not state that he "was of the view" or "was satisfied" that the claim against Sanlam formed part of XYZ's trading stock. Counsel is correct when he submits that the respondent was of the view that if, on a legally correct approach to, or assessment of the facts, XYZ's claim against Sanlam did not form part of the trading stock, then the inevitable result is that there was a postponement of liability for tax. Ergo, and in view of the further requirements of section 103(1), the respondent sets out in the remainder of paragraph 2 of his said letter the requirements of section 103; having taken them into consideration and postulating that, if he is wrong in his legal assessment of the transactions, he is satisfied that the requirements of section 103 are present. It is, of course, only when a court (which could be the Supreme Court of Appeal) has finally decided the factual issue of the true interpretation of the transactions, that it can be decided whether there was in effect a postponement of tax liability.

Counsel for the respondent, as I understood the argument, concedes that it is a sine qua non for the invocation and application of section 103 that tax has been avoided or postponed. He argues however that it does not follow that the respondent may not rely on section 103 in the alternative, depending upon the final determination of the facts and interpretation in issue. In developing this argument counsel referred to the following passage in the Glen Anil case *supra* at 727 in fin / 728 and to the following words:

"It should, in my view, therefore, not be construed as a taxing measure but rather in such a way that it will advance the remedy provided by the section and suppress the mischief against which the section is directed. ... The discretionary powers conferred upon the Secretary should, therefore, not be restricted unnecessarily by interpretation."

Counsel also pointed out that in Glen Anil the court held that the words "affecting any company" had to be regarded as having been included in the section although they were not mentioned therein (729H). This approach indicates a wide interpretation of the provision.

Counsel dealt in detail with the learned Judge's remarks in ITC 1625 and 1611 (in that order). Dealing with ITC 1625 first, counsel submitted the following (I quote):

"1. The court's statement in regard to the point in issue was obiter. In any even, judgments of the Special Court are not binding on any other court.

2. The point was apparently never argued before the court. It would appear from the judgment that it was raised *mero motu* by the court. Furthermore, the taxpayer's counsel stated that he did not wish the court to decide the case on the basis of the court's view on the point. It would therefore seem as if the taxpayer's counsel himself did, with respect, not have substantial faith in the correctness of that view.
3. The judgment also does not cite any authority for the court's view. That view is stated briefly in the judgment and very little reasoning is given for it. In any event, the judgment would indicate that none of authority (mentioned in this judgment hereafter) were provided to the court. Had such authority been ... provided, the court might well have come to another conclusion.
4. It is not clear from the judgment how the Commissioner stated his satisfaction as regards the question whether or not there had been an avoidance of tax. It is consequently not known whether the Commissioner stated his satisfaction in the way in which it was stated in this case. As has been mentioned, the Commissioner's approach to this aspect of section 103(1) in the present matter

appears from paragraph 2.1.1 at dossier p 215. It is submitted that this approach is in accordance with the powers granted to the

Commissioner in terms of section 103(1). It is furthermore submitted that the approach does not create any prejudice for the taxpayer or lead to any uncertainty.

5. Our comments above regarding ITC 1625 apply *mutatis mutandis* as regards ITC 1611."

In regard to the reliance upon the Australian legislation and decisions and, in particular, Jackson's case, the submission is made that, at best, the authorities are only persuasive and that in fact they do not support the appellant's

contentions but provide "strong support" for the respondent's contentions. I quote the submissions made:

"The Australian Commissioner has over a long period of time applied section 260 and Part IVA in the alternative to other taxing

provisions. The aforementioned anti-avoidance provisions also contain the requirement that there should have been an (effective) ... avoidance of tax. The Commissioner's application of the anti-avoidance sections in the aforementioned manner was therefore of necessity made on the assumption that the relevant taxing provision (on which he relied) would have been found ; to be inapplicable. In no instance was this approach criticized by the courts. See *John v FCOT* 20 ATR1; *Peat v Commissioner of Taxation of the Commonwealth of Australia* (1966) 2 All ER 766 (PC); *Spotless Services Limited v FCOT* 32 ATR 309 (see the majority judgment of Cooper J at 331-346, especially at 331:25-40; 335). The Commissioner's application of Part IVA in the latter case was contested on appeal in *FCOT v Spotless Services Limited* [1996] HCA 34; 34 ATR 183. The latter court did not criticize in any respect the Commissioner's aforementioned alternative approach.

See also *Richard Walter (Pty) Limited v FCOT* 31 ATR 95, especially at 97:10-40; 107:7-12; 110-112;114-115.

The appellant relied on *FCOT v Jackson* 21 ATR 1012 (appellant's heads p 15 par 3.2.4). We submit the following in this regard:

1. The cases mentioned ... above were decided in the period 1966 to 1996, that is both prior to and after the Jackson decision.

Therefore, if Jackson had intended to lay down that the Commissioner is not entitled to follow the alternative procedure, one would have expected the court to refer to those decisions. The court made no mention of any of them. In any event, the cases of Peate and John and the appeal in *Spotless Services* were all decided by higher courts.

2. In Jackson the court referred to the Fletcher decisions (see 1020 and 1021:42-51). The court indicated that, in the Fletcher decisions, the Commissioner had applied Part IVA on the alternative basis. A perusal of the Fletcher decision shows that this was in fact the case. However, in the Jackson case, no criticism was levelled against that procedure.
3. The issue which the court had to decide in Jackson was clearly not the same as that in the present case. In Jackson the question was whether the Commissioner was entitled to rely on a determination which had been made in terms of par IVA after the assessment

concerned had already been made; an objection had been lodged there against; the objection had been disallowed, and an appeal had been instituted (see 1015:45-50). The Commissioner did not issue an assessment in terms of Par IVA. He merely made a determination under the Par IVA provisions (subsequent to the relevant assessment) and then sought to justify the assessment on the basis of that determination. The court held that, on a proper interpretation of Par IVA and a number of other provisions of the Act, such a procedure was not competent: When the Commissioner applied Par IVA, he also had to issue an assessment to give effect to that application (see 1027:22-31). (This was also the gravamen of Gummow J's decision in the Court *a quo*.)

These issues do not, at all, arise in the present matter. In this case the Commissioner specifically applied section 103(1) when he made the assessment.

4. Appellant's counsel referred to p 1026 of the report. Here the court indicated that an application of Part IVA implied writing back the tax which had been assessed in terms of the taxing provision concerned. Even if it be assumed that such a procedure is, in fact, what takes place when Part IVA is applied, then it is submitted that this does not mean that the Commissioner cannot, in the alternative, rely on the applicability of the taxing provision itself. As has been mentioned, the Australian decisions indicate that he can."

I have considered these cases, copies whereof are annexed to the heads of argument, and the heads of argument do reflect what is stated in them. It is not necessary to analyse them in further detail. In like manner counsel's criticism of the two ITC cases aforementioned is not without substance.

Counsel argued that the respondent is entitled to rely, in the alternative, on more than one provision of the Act in order to justify an assessment (ITC 673 16 SATC 230). The submission is also made that the Court of Appeal has *mero motu* held that a provision other than the one on which the Commissioner had initially relied was applicable: See *De Beers Holdings (Pty) Ltd v CIR* 1986

- (1) SA 8 (A) at 34A-B and 37B-E. I do not think this authority applies in *casu* for section 103 is not a taxing provision.

A far more important consideration is that it has been held that the respondent is entitled to rely upon section 103 in the alternative to taxing provisions. (See ITC 1496 53 SATC 229 where the Commissioner contended that the deduction concerned was not allowable due to non-compliance with the requirements of section 11 (a); alternatively due to the applicability of section 103(1).)

I refer to the judgment of Melamet, J in ITC 1518 (54 SATC 113). At 122 the learned Judge referred to the Commissioner's reliance upon section 103(1) and, in the alternative, sections 7(3) and 7(5) of the Act. There was no criticism of this procedure adopted by the Commissioner in that case (see page 132).

In *Erf3183/1 Ladysmith (Pty) Ltd v CIR* 1996

- (3) SA 492 (A) the respondent relied upon the provisions of the Act and, in the alternative, section 103(1) (see page 956F-G). It is correct, as counsel for the appellant submits, that the issue now raised in this court was not argued in that appeal; he submitted that, had it been so argued, the court would have held that the alternative reliance on section 103 was not legally valid. The same comment was made in regard to the case of *CIR v Conhage (Pty) Ltd* 1999

- (4) SA 1149 (SCA).

During argument counsel for the appellant mentioned the example of a sale and leaseback of a farm. It was submitted that, if the respondent wished to contest the deductibility of the rental paid by the seller pursuant to the lease, a court would hold that he had to decide whether to disallow the deduction of the rental in terms of the taxing provisions of the Act (section 1 l(a)) or refuse the deduction by the application of section 103. He submitted that the respondent would, in such a case, not be entitled to rely on the taxing provision and, in the alternative, on section 103.

Counsel for the respondent submitted that this example was most unfortunate for the appellant because exactly such a situation was dealt with in the Conhage case, In that case the Commissioner did rely on sections 1 l(a) and 103(1) in the alternative. The Supreme Court of Appeal considered fully both bases of assessment and held that neither was applicable to the facts (see 1156C-1161 A). The Supreme Court of Appeal dealt thus with both alternatives relied upon by the Commissioner and ruled against him on both.

Implied in this judgment, and I say so with respect, is an acceptance and finding that the Commissioner is entitled to rely upon a taxing provision and, in the alternative, upon section 103. I find it difficult to accept, and do not do so, the appellant's submission that, had the present argument been raised, the unanimous decision of the Appeal Court in both judgments would have been different.

One must not regard the concept of satisfaction in vacuo, applying simply a logical approach without having regard to the Income Tax Act, its purpose and provisions. Prior to the assessment of 2 February 2001 the respondent was aware of the somewhat complicated facts of this matter which consists of various transactions and contains various conditional provisions. He was aware of the taxpayer's version and contention that no tax was payable in respect thereof. He did not, at the outset, rely upon a transaction such as was dealt with in *Zandburg v van Zyl* 1919 AD 302 at 309 and which is analysed at page 952C-953A in the *Ladysmith* case *supra*. He acted upon the postulate that, if a court in the future, upon a consideration of the facts and the law applicable thereto, concludes

that the appellant's contentions are correct, he then was satisfied (and is satisfied) in terms of section 103 that the transactions had the effect of avoiding or postponing the liability for tax. Ergo he was entitled to invoke and apply section 103. That attitude and conclusion is justifiable and it cannot be said that, in the

circumstances, he could not be and was not "satisfied" in terms of section 103(1). The appellants contention has the result that the respondent, when faced with a complicated set of transactions as those in question, is forced to take a decision on the facts and law, which ultimately will be decided by the court, when he makes his assessment. If he is right, he can invoke section

103. If he is wrong there will be no assessment.

This argument leads to an unsatisfactory if not impossible situation. According to the appellant's contention, if the respondent is wrong in his stance, he will, in the future, be obliged to issue a fresh assessment based upon the court's finding (if he is empowered so to do and counsel for the respondent submits that he may well not be able to do so) and the whole process will have to be repeated. There is also a further problem. A court may only give a final judgment after the three year prescriptive period has elapsed (see section 79(1)(ii)).

It is wrong to suggest, as does the appellant, that, where the respondent relies upon section 103, it follows as a matter of logic that he cannot rely upon any of the taxing provisions of the Act in the alternative as that would amount to a negation of being "satisfied". It is, of course, trite that a court may be satisfied on a finding of fact or law - only to discover that a higher court may hold otherwise. All that that entails is that the satisfaction held by the lower court was wrong. It does not follow as a matter of logic that the lower court was therefore not satisfied.

The same reasoning applies to the respondent's decision in terms of section 103. The respondent is not obliged to query the true nature of the set of agreements in the first instance and, in the alternative, apply section 103. What he has done in paragraph 2 of the letter is that, on the postulate of the appellant (which may be upheld by a court), he is satisfied that there has been ; a postponement of taxation (common cause) warranting his invocation of section 103 (which is not common cause).

I refer to paragraphs 3.1 and 3.2 of the letter of 2 February 2001. The respondent here sets out in the alternative that the sum of R235m constitutes trading stock and is taxable in terms of section 22 of the Act. This alternative is based upon the respondent's "view regarding the true nature of the agreements" and is based upon the following contention, namely the transaction between MLS and XYZ "constituted a loan by XYZ to MLS in the amount of R235m" (see paragraph 3.3.1 of the letter) and also that the delivery of the promissory notes by XYZ to Sanlam was a mere cession of XYZ's rights under the loan. The consequence thereof would be that the said sum formed part of XYZ's closing stock. The respondent's reasons for so contending are set out in the balance of paragraph 3.

What the respondent contends in paragraph 3 (the first alternative) is that, properly construed, the contract between the appellant and MLS Bank was not a purchase and sale of promissory notes for R235m but a loan and this approach is:

"merely a branch of the fundamental doctrine that the law regards the substance rather than the form of things - a doctrine common, one would think, to every system of jurisprudence and conveniently expressed in the maxim *plus valet quod agitur quam quod simulate concipitur*".

See the judgment of Innes, C J in *Dadoo Ltd and Others v Krugersdorp Municipal Council* 1920 AD 530 at 547. The principle is also dealt with in the *Ladysmith* case *supra* at page 951A-953 A. The application of this principle is not based necessarily upon mala fides or dishonesty. It is of application where parties bonafide believe that their contract is A when in effect it is B. In this regard I refer to the judgment of Hefer, JA in the said passage where the Learned Judge discusses the first possibility mentioned by Lord Russell in the case of the Duke of Westminster (see page 951H-I).

The second alternative is also based upon the view that the transaction between MLS Bank and XYZ is a loan and that XYZ's claim against Sanlam constituted part of XYZ's trading stock at the end of the fiscal year in question. It follows from my finding that the respondent is entitled to rely upon section 103 on the grounds referred to, that, on a parity of reasoning, he is also entitled to rely on the alternatives set out in paragraphs 3 and 4 of the letter.

My conclusion is that the respondent was entitled to base the assessment on the three grounds in the alternative as referred to above. In doing so I reject the appellant's contention that, by relying on the alternatives, the respondent ipso facto could not, and cannot be "satisfied", as is required for invocation of section 103(1). The main contention and the alternatives are thus not mutually destructive nor a negation of the concept of "satisfaction" referred to in section 103. Insofar as the views expressed by the learned Judge in ITC 1611 and ITC 1625 may conflict with the foregoing I, with respect, differ therefrom. I repeat that I find implied support in two Appeal Court judgments to which I have referred, especially that of Conhage.

It is thus not necessary to consider the second dispute which was argued before me; i.e. what order this court, being a creature of statute, could or could not make in the event of my upholding the point in limine.

My conclusion: the point in limine is dismissed.

FC KIRK-COHEN

President

Counsel for Taxpayer:.....P Ginsberg, SC

.....with him P J J Marais, SC

.....instructed by Jowell, Glyn and Marais.

Counsel for SARS: .....C E Puckrin, SC

.....with him A G Derksen, SC

.....instructed by The State Attorney

---

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.saflii.org/za/cases/ZATC/2001/1.html>

CASE PAGE              <https://chat.esheria.ai/case-law/south-africa/xyz-bank-ltd-v-commissioner-unknown-topic-atc-2001>

Prepared on 13 October 2026 · Esheria