



## LEARNING UNIT 1

### INTERPRETATION AND APPLICATION OF LEGISLATION



### LEARNING OUTCOME AND ASSESSMENT CRITERIA

The content of this learning unit is based on the following learning outcomes and assessment criteria of the module:

Learning outcome(s)	Assessment criteria
1. Assess the tax profile of a taxpayer to determine the various taxes payable by a taxpayer.	<ul style="list-style-type: none"> <li>Interpret the tax treatment of a transaction with reference to legislation, double tax agreements and <i>case law</i>.</li> </ul>
3. Advise on specific tax and financial planning opportunities for individuals as well as for business entities.	<ul style="list-style-type: none"> <li>Interpret a taxpayer's tax profile to give ethical advice and provide an opinion on tax planning options available within the legal framework of the different tax acts, including relevant anti-avoidance legislation, and applicable <i>case law</i>.</li> </ul>

#### Learning assumed to be in place:

During your undergraduate studies you were introduced to the principles of legislative interpretation and case law, this learning unit will built on this prior knowledge.

## STUDY PROGRAMME AND TIME FRAME



Your time (1 hour and 10 minutes) should be divided between two aspects:

- Obtaining the required knowledge (1 hour and 10 minutes)
    - Study the following definitions in section 1 of the Income Tax Act: (10 minutes)
      - Financial year
      - Person
      - Taxpayer
      - Year of assessment
    - Work through SILKE (2024), chapter 2. (20 minutes)
    - Work through the notes on interpretation of legislation (see below). (23 minutes)
    - Watch the video entitled: Case Law. (7 minutes)
    - Meet the Beancounter family (10 minutes)
  - Application of knowledge and revision of difficult concepts (covered in later LU's)
- The knowledge obtained in this learning unit will be tested when the case law is analysed and applied in later learning units.

### 1.1 NOTES ON THE INTERPRETATION OF LEGISLATION (23 minutes)

#### 1.1.1 Introduction

Before we start with the learning unit, it is important to understand that the interpretation and application of legislation goes hand in hand with the study of case law which is discussed in the [Case Law Guide](#).

The case law guide deals with the practical scenarios to the interpretation of the basic principles of taxation. It covers 52 prescribed cases (a total of 70 cases are included in this guide, but 18 of these cases are teaching aids). You will not study all the case law in this guide at this stage but you will study the case law applicable to a specific topic covered in a learning unit, as and when it is covered in your study plan during the course of your academic year. You can however take some time to read through the introduction of the Case Law Guide before you proceed.

As you will gather from the discussion in learning unit 1, the various Tax Acts (like all other legislation) uses words and phrases which it does not define. Accordingly, the judiciary has been tasked with determining their meaning. A large body of case law has accumulated over the years and is used as precedence to guide the judiciary, taxpayers and tax planners, as to the meaning of words and phrases in tax legislation.

#### 1.1.2 Importance of legislation and case law

Statutory authority (legislation) is necessary before a tax can be imposed and it is the statute alone that must be consulted to establish the liability for such tax. Accounting or related principles are not normally of concern in determining the tax liability of any taxpayer, except in instances where the Income Tax Act specifically so provides.

Apart from legislation, which forms the main source of tax law, case law also constitutes an authoritative source. A number of provisions of the acts contain terms that are not defined in these acts (for example, "capital nature" in the Income Tax Act) and it is therefore necessary to refer to case law for guidance on

the meaning of these terms. For this reason, you will regularly be referred to some of the more important case law during the course of your studies in taxation.

If a taxpayer's objection to an assessment has been disallowed by the South African Revenue Service ("SARS"), the taxpayer may appeal to the Tax Board which has limited jurisdiction (only deals with appeals where the amount of tax in dispute does not exceed R1 million). If the taxpayer or SARS is dissatisfied with the decision by the Tax Board, the taxpayer or SARS may request that the matter be heard by the Tax Court (previously known as the Special Court for Hearing Tax Appeals). The matter before the Tax Court will be a completely new trial and not an appeal against the Tax Board's decision. If SARS or the taxpayer is dissatisfied with the ruling of the Tax Court, the dissatisfied party may appeal to the Provincial Division of the High Court, or directly to the Supreme Court of Appeal with the leave of the President of the Tax Court (the Supreme Court of Appeal was previously known as the Appellate Division).

The appellant's (the dissatisfied party) name will appear first in the court case and the respondent's name (the party that won in the previous court case) will appear thereafter. Tax Court cases are reported as ITC cases.

### 1.1.3 Legal precedence

The hierarchical court structure in South Africa is as follows:



- The system of following legal precedence means that a lower court is normally bound by the decision of a higher court.
- The Tax Court is bound by decisions of its Provincial High Court, but need not follow the decisions of the High Court of another provincial division.
- But having said that, the Tax Courts normally do follow the decisions of other provincial divisions.
- Note, however, that decisions of the Tax Court are not binding on other courts.
- In the same way, a provincial division need not follow the decisions of another provincial division.
- All Provincial Divisions and the Tax Courts are bound by decisions of the Supreme Court of Appeal.
- Unlike civil cases, a taxpayer, if he loses in the Tax Court may appeal to the Supreme Court of Appeal directly. He need not in the first instance appeal to the Provincial Division.

The Constitutional Court does not feature in tax matters unless the Constitution is involved, for example, search and seizure procedures. Any decision by the Constitutional Court must be followed without question by any of the lower courts.

#### 1.1.4 Regulations, practice notes and interpretation notes

Section 107 of the Income Tax Act enables the Minister of Finance to make regulations regarding certain matters, for example, fixing of the rate per kilometre for using private vehicles for business travelling *et cetera*. These regulations are thus important as they have an impact on the calculation of certain figures to be used in calculating taxable income.

SARS has an advance ruling system (sections 75 to 90 of the TAA). An advance ruling is intended to promote clarity, consistency and certainty in respect of the interpretation and application of a tax act to an applicant. SARS has the power to issue binding private rulings; binding class rulings or binding general rulings. “*Advance rulings*” are, however, excluded from your syllabus.

SARS further publishes interpretation notes (previously also practice notes of which some still applies), which explain the interpretation of certain provisions of the various acts. Some practice notes are still in existence, for example Practice Note 31 that deals with the normal tax implications of interest paid on money borrowed (it is the intention of SARS to withdraw Practice Note 31 for years of assessment commencing on or after 1 March 2023). Practice notes and interpretation notes do not have the force of law as they represent SARS’ interpretation of these provisions. These notes can therefore be challenged by a taxpayer on good grounds.

Note that some interpretation notes, for example Interpretation Note No 47 (issue 5, issued on 9 February 2021), are published as binding general rulings in terms of section 89 of the TAA. Although binding general rulings are issued to promote clarity, consistency and certainty regarding the Commissioner’s application or interpretation of the tax law relating to the matters these rulings pertain to, these rulings are not binding on taxpayers.



Regulations and binding general rulings included in the Student Handbook are examinable.

Interpretation notes are not included in the Student Handbook. For any interpretation note that creates a practice generally prevailing is examinable, the relevant extract will be provided in a test or the exam if required in a question.

#### 1.1.5 *Contra fiscum* rule

In the case of doubt regarding a taxing statute, the *contra fiscum* rule must be invoked. This means that an ambiguous provision in a taxing statute must be construed against the larger imposition, or the benefit of the doubt must be given to the person sought to be charged. Thus, where a section of the act is reasonably capable of two constructions, the court will place the construction on it that imposes the smaller burden on the taxpayer (thus, against the fiscus). However, if the provision in question does not cause any doubt, the rule cannot be applied.

### 1.1.6 Onus of proof

In terms of section 102 of the TAA, the burden of proof that an amount

- is exempt from or not liable to any tax; or
  - is subject to any deduction, abatement or set-off; or
  - that a valuation is correct; or
  - that a particular tax rate applies to a transaction, event, item, or class of taxpayer; or
  - whether a decision that is subject to objection and appeal, is incorrect,
- rests on the taxpayer claiming such exemption, non-liability, *et cetera*.

This is of vital importance, as a decision of the Commissioner cannot be reversed or altered upon the hearing of an appeal unless the taxpayer shows it to be wrong. The burden of proof is squarely upon the shoulders of the taxpayer to show that it is incorrect. He does this by proving on a “balance of probabilities” (as opposed to “beyond reasonable doubt”) that his argument of the facts is more correct (greater than 50%) than the Commissioner’s. While this does not imply that the Commissioner would seek to take advantage of the situation, it is a fact that taxpayers in certain cases lost their appeals against assessments issued by the Commissioner (causing additional tax liabilities) because they had failed to discharge the onus of proof placed upon them by this section (or the former section 82 of the Income Tax Act).

The burden of proving the facts on which SARS imposes an understatement penalty in terms of Chapter 16 of the TAA, is upon SARS.

### 1.1.7 Some problems identified in the interpretation of the Income Tax Act and VAT Act provisions

Some students battle with the interpretation and application of the provisions of the Income Tax Act and VAT Act. Below are some pointers on ***how to read and understand the wording of these Acts*** better.

Firstly, it is important to note that a particular provision should be considered taking into account the literal, grammatical meaning of the wording within the context and purpose of the provision and, where a particular provision is open to more than one meaning, the *contra fiscum* rule will apply – refer above.

Secondly, when you read through a certain section of the Income Tax Act or VAT Act, note the lay-out of the section – i.e. numbering in the section, for example, is one dealing with a subsection (e.g. section 11(e) of the Income Tax Act is a subsection of section 11 – we do not refer to it as “subsection 11(e)”; however, it is strictly speaking a subsection of the main section, namely section 11), or perhaps a proviso in the subsection (e.g. refer to provisos (iA) to (ix) to (sub)section 11(e) of the Income Tax Act)? Where a particular section or subsection is subject to a proviso –

- the proviso may refer to an exception or exceptions to the provisions of that particular section/subsection – in other words, it states a different rule/interpretation/application from the general rule which preceded the proviso; or
- the proviso refers to a condition or conditions that are present where the particular section/subsection or part of it will not apply; or
- it sets out certain limitations to which the general rule is subject; or
- it may prescribe additional condition(s) or stipulation(s) to which the particular section/subsection is subject to –

however, whatever the purpose of the particular proviso – do not ignore it, as it is there for a reason.

Thirdly, look out for words such as “or” and “and” between provisions of a particular section or subsection. For example, refer to paragraphs (i) to (iv) of the proviso in section 11(c) (legal expenses) – they are linked

by the word “and”, which means that all the conditions listed under paragraphs (i) to (iv) must be present for a legal expense to be deductible in terms of section 11(c). But the word “or” refers to the one or the other, but not both or all conditions/requirements/provisions have to be present or satisfied. An example of where the word “or” is used is section 23H (prepayments). Refer to paragraphs (aa) to (dd) of the proviso – if any one of the conditions under paragraphs (aa) to (dd) is present, section 23H will not apply to limit the deduction of the prepayment under review.



### Activity 1 (7 minutes)

Please watch the following video on [Case Law](#) (7 minutes)



## 1.2 MEET THE BEANCOUNTER FAMILY (10 minutes)

We created a fictitious Beancounter Family and in most learning units you will encounter the happenings of this family. These encounters with the Beancounter family are also included as a cartoon series (*please note that the cartoon series will contain older dates due to being created during 2022*). You will always be able to read the information in the learning unit and/or watch the [video](#) which will contain the same information.

### Beancounter Episode 1

We assume that you are employed at a public accounting and auditing firm and are currently busy with your training contract with a partner that supervises your work. Barry Beancounter visits your firm on Friday, 5 January 2024. He requests the firm to take care of his family’s taxation matters.

The family consists of Barry (51 years old) who is married in community of property to Bizzie (37 years old). He has a son (Soya, 25 years old) from his previous marriage. Soya emigrated and lives in a foreign country. Jelly (Barry and Bizzie’s daughter) is ten years old.

Barry’s mother, Exotic Beancounter, passed away during the year at the age of 74. Her estate is in the process of being finalised notwithstanding the fact that the Butterbean testamentary trust had already been formed. Barry wants to donate cash to the trust once the estate has been finalised. The only beneficiaries of the trust are Jelly and Soya.

Bizzie (Barry’s wife) was employed by Cleaning Equipment Manufacturers (Pty) Ltd until 30 November 2023. She has resigned and wants to start her own business and has already identified suitable premises for her dry-cleaning business. The business will be trading as a sole proprietor and therefore Bizzie does not consider the utilisation of a close corporation or a private company. She does not like administrative red tape.

Barry is the managing director of Clothing Manufacturers (Pty) Ltd. Clothing Manufacturers (Pty) Ltd is registered for VAT purposes. He also has a 10%-shareholding in the company.

The audit firm does not hold the appointment as auditors, but merely provides tax advice and related services.

## **Critical issues**

The following critical issues always play an important role in taxation:

### **Identify the potential taxpayers**

- Barry
- Bizzie
- Soya
- Jelly
- Exotic
- Deceased estate of Exotic
- Butterbean testamentary trust
- Clothing Manufacturers (Pty) Ltd.

### **Establish the residence of the taxpayers**

- Everyone is ordinarily resident in the Republic except for Soya.

### **Establish the age of the taxpayers**

- Exotic is older than 65 years and qualifies for a larger interest exemption. She further qualifies for the secondary rebate.

### **Establish the various taxes that might be applicable to each taxpayer**

- All the persons mentioned above will be liable for normal tax (remember that different rules apply to non-residents).
- Withholding taxes can be applicable since Soya is a non-resident.
- The dry-cleaning business may have to register for VAT purposes.
- Clothing Manufacturers (Pty) Ltd has already been registered for VAT purposes.
- Clothing Manufacturers (Pty) Ltd will be liable for withholding tax on dividends declared.
- Exotic's estate may be liable for estate duty.
- Any donation made by any taxpayer will be subject to donations tax except donations made by Soya, because only residents are liable for donations tax.

### **Establish the tax period**

- Normal tax is calculated for a year or period of assessment.
- VAT periods range from one to 12 months, depending on the category of registration.
- Dividends tax is withheld when a dividend is declared (liability of the beneficial owner in the case of a cash dividend; liability of the company in the case of a dividend *in specie*) and should be paid over by the end of the month following the month during which the dividend declared is paid by the company.
- Donations tax is payable by the end of the month following the donation.
- Estate duty could be payable after the death of an individual taxpayer.

## **Logical assumptions**

An example of a logical assumption in this case will be that all persons are residents of the Republic, except Soya. You cannot assume that a person is a non-resident, except if you can draw such a conclusion from the facts provided.

## **Outcomes**

### **Understand the task**

Barry or a family member will give you an assignment in each of the learning units to follow.

### **Identify the issues and analyse the information**

Use the information provided in the learning unit to identify the issues and break the information down into smaller parts.

### **Integrate**

Use the information in the learning unit and integrate it with information to follow.

## **Outcomes (continued)**

### **Use professional values and attitudes and enabling competencies**

Consider all relevant information and taxes when you have to give tax advice. You will need to employ your professional values and attitudes (including ethics, citizenship and lifelong learning) and enabling competencies (including business, decision-making, relational and digital acumens) if the scenario requires. You must be able to make an informed suggestion to Barry or any of his family members. You should be able to answer Barry Beancounter's query in a specific learning unit (starting from LU 2). Share your solution on the online platform of Unisa under the Discussion Forum, then refer to the solution that will be made available on the online platform of Unisa on the Friday of your study week.

### **Communicate your findings**

In practice you have to leave an audit trail while in tests and examinations you have to leave a marking trail. This is the only evidence that your actions are professional and well considered.

## **1.3 CONCLUSION**

After working through LU 1, and applying the knowledge obtained in conjunction with the technical topics covered in the learning units to follow, you should be able to interpret tax legislation and know how to apply tax legislation and the relevant case law, to a practical example.

### ***List of References***

- UNISA. 2024. TAX4862 Case Law Guide. . Pretoria, UNISA.
- Stiglingh, et al. 2024. 'Chapter 2: Taxation in South Africa', *Silke: South African Income Tax*, Durban, LexisNexis.

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END OF LEARNING UNIT 1