CONVERTING A DEBT INTO CONSIDERATION

Section 22(3) of the Value Added Tax Act (the "**VAT Act**") states that where a vendor has claimed an input tax deduction on the basis of a tax invoice remitted, but has not made payment of the relevant consideration within a period of 12 (twelve) months, the transaction is effectively reversed.

A recent question considered by our courts was whether the crediting of a loan account constitutes payment of full "consideration" after the taxpayer claimed an input tax deduction for the VAT with respect to section 22(3). In the case of *CLDC v The Commissioner for the South African Revenue Service, 2016* the taxpayer entered into an agreement with its wholly owned subsidiary, in terms of which the Subsidiary undertook to develop land owned by the taxpayer.

The Subsidiary issued a tax invoice to the taxpayer in respect of its services rendered. The taxpayer subsequently claimed an input tax deduction in respect of the VAT and in return paid the input VAT it received to the Subsidiary, which in turn paid it to SARS.

The taxpayer was still liable to the Subsidiary for an amount of nearly R72 million. This amount was credited to the Subsidiary's loan account in the taxpayer's statements. SARS alleged that the requirements of section 22(3) of the VAT Act had not been complied with.

On the facts, the court found that there was no deliberate manipulation in creating a bad debt with a view to creating a tax benefit either by the Taxpayer or the Subsidiary. Section 22(3) is not applicable to *bona fide* transactions between companies within a group in circumstances in which there is no loss for SARS. It follows that the crediting of a loan account in the context of funding arrangements between two companies amounts to the payment of "consideration".

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