Kruger Rands and Tax
Tax Court Judgments

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A number of tax court judgments have been handed down in recent years in which the nature of the proceeds from the disposal of Kruger rands was dealt with. In *ITC 1543, 54 SATC 446*, the proceeds from the sale of Kruger rands was held to be capital.

For many years the courts have subscribed to the view that an asset acquired as an investment is an asset from which the purchaser expects a recurring flow of income rather than a resale at a profit.

An asset acquired with a view to resale at a profit, on the other hand, is one which is acquired in pursuance of a scheme of profit-making and is therefore of a revenue nature.

In previous cases involving Kruger rands (*ITC 1355, ITC 1379, ITC 1525*), the taxpayer had always avoided reference to "a hedge against inflation" as this implied an intention to resell at a profit, but had instead argued that the coins were held merely as a store of wealth (a provision for a rainy day). In *ITC 1543*, however, the taxpayer's stated intention in acquiring the coins was as a long-term investment as a hedge against inflation. The court's approach (Fagan J) to the problem in this case was to consider not only the prospect of a sale at a profit but also the degree of permanence and the question of floating and fixed capital. The court held that an asset acquired for resale at a profit (hedge against inflation) is of a capital nature if it is acquired with the intention of holding for a length of time (permanence) as a fixed asset. The court held that it was "satisfied that the sale of the coins during the 1988 tax year was not to obtain a profit but because a change of investment was called for".

It is also possible that this court without actually saying so is supporting the view that a profit which reflects an inflationary gain is in effect not a profit. This possibility was alluded to by Kroon J in *ITC 1509* (54 SATC 18) when he said:

> It seems to us, too, that there is merit in the submission of Mr Haupt, who appeared for the appellant, that in an inflationary climate, it is to be expected that the value of shares will rise, but that where a share is purchased with such knowledge, that is insufficient to make the share a revenue asset.

In *CIR v Nel* (1997) the taxpayer had invested his surplus cash in Kruger rands which he intended to hold as a long term investment. He was subsequently forced to sell some of his Kruger rands to raise liquidity in order to purchase a car for his wife. The court held that his intention in acquiring the Kruger rands was "for keeps". The purpose of the sale was not to make a profit but to realise a capital asset in order to acquire another capital asset. The proceeds were held to be of a capital nature.
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