

UNIVERSITY OF CAPE TOWN: FACULTY OF LAW

Compensation Received From Termination of a Contract:

what determines whether it is of a capital or revenue nature.

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The nature of money received as compensation for the early termination of a contract has been determined by Case Law to be of capital or revenue nature to depend on the prevailing circumstances of each case. This paper evaluates Case Law and the principles contained therein which individually or cumulatively provide the guidelines of what presiding Judges have considered make compensation received from the termination of a contract to be of a capital or revenue nature. The cases under study will be those from South African courts as well as other jurisdictions which have had similar cases brought before its courts.

1. Introduction

Leach AJA, when delivering his Judgement in the *WJ Fourie Beleggings CC v Commissioner SARS*¹, said that the case before him differed from those relied upon by the Appellant (i.e. WJ Fourie Beleggings) in its presentation to the Court in that in those cases the Appellant relied upon, the contract terminated was an income producing asset². That is, it was part of the income earning structure of the Appellant³. The compensation received from the early termination of such contracts were thus of a capital nature, the judge concluded. However, in the current case before the distinguished Judge, the Appellant had, even before the inception of the contract in question, conducted its business as a hotelier. The Judge argued that, the terminated contract, albeit a significant contributor to the total income of the Appellant, was thus not the *means* for the Appellant to earn income at all⁴. The Appellant, the Judge argued, could still conduct its business of being a hotelier without the contract being in effect, as it had done before. As such, it was not of part of the income earning structure and was not of a capital nature. The Judge ruled that the compensation was consequently of an income nature and was fully taxable.

Leach AJA had in this Judgement added to the incumbent list of characterises that Judges have through time used to ascertain whether the compensation received for the early termination of a contract is of a capital or revenue nature. As “capital” nature is not defined in the Income Tax Act of (1962), it has been left to the Courts to decide on what make payments or receipts of a capital or revenue nature. It is thus the objective of this Thesis to discuss the Case Law regarding

¹ *WJ Fourie Beleggings CC v Commissioner SARS* [2009] (5) SA 238 (SCA)

² Para 13

³ (*ibid*)

⁴ Para 15

the taxable nature of the compensation received for the early termination of a contract and the reasons given by the presiding Judges on why they ruled those receipts to be of a revenue and not of a capital nature or vice versa. The objective is to collate these characteristics with the view to assist taxpayer in his tax planning by providing him with characteristics that have previously been used by presiding judges to distinguish between revenue and capital nature of the compensation received for termination of a contract. In pre-empting these characteristics the taxpayer can similarly adjust his own characteristics to achieve the desired outcome – to pay less tax.

Admittedly a comprehensive list of the determinants of a capital or revenue nature is not always possible to obtain as each case is different and the Judgements given would have depended on the circumstances prevailing in each case. Thus the objective is to provide a guideline on the circumstances that have prevailed in the cases that will be discussed and how these were used by the presiding Judges to determine if compensation received for the termination of a contract were of a revenue or a capital nature. This may then be used by taxpayers as a guide of the circumstances that have existed for compensation received to be of a capital nature. Ensuring these are similar to their own circumstances may lead compensation receipts to also be taxed as capital receipts by the Tax Authority.

If successful, this will result in the taxpayers (excluding tax exempt entities) paying less tax. Per Income Tax 58 of 1962, as amended, natural taxpayers, individual policy holders and special trusts will only have 33% of the compensation receipts included in taxable income as oppose to

the full inclusion in taxable income that would result if these receipts were found to be of a revenue nature and taxed accordingly⁵. Non-natural taxpayers such as companies will only have 66.6% of the receipts included in taxable income if the receipts are also of a capital nature⁶.

The Thesis has the following structure: first, the general principles determining revenue vs. capital nature will be discussed. Then after the types of compensation receipts will be analysed. Thirdly, an investigation will be made on how termination of a particular contract - which is a trade contract and is the subject of this thesis - gives rise to compensation receipts. This preamble, of course, will lead to an evaluation of the Judgements made on the nature of compensation receipts from a termination of a contract. This will include Judgements made on similar cases in other jurisdictions with a legal framework similar to that of South Africa. Next is an analysis will be made of two recent cases that are the current authority in South Africa on this matter: *WJ Fourie Beleggings CC v Commissioner* and *Case 11470 and Stellenbosch Farmers' Winery v Commissioner for SA Revenue Service*. Then after, the nuances that have made Judges rule that compensation receipts from the termination of a trade contract were of a capital or revenue nature in all the cases discussed will be collated and evaluated. This assessment will include discussions on how the judgements may have changed or stayed the same given differing circumstances. The lessons learned there will then be used to analyse the nature of compensation receipts in a small case study. Then lastly, a conclusion will follow.

⁵ Income Tax Act (1962) *Rates and Monetary Amounts and Amendments of Revenue Laws Act* pp1

⁶ (*ibid*)

2. Gross Income: Capital vs. Revenue

Gross income, as defined in Section 1 the Income Tax Act reads⁷:

“Gross income, in relation to any year or period of assessment means-

- (i) In the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or
- (ii) In the case of any person other than a resident, the total amount, in cash or otherwise received by or accrued to or in favour of such person from a source within or deemed to be within the Republic,

during such year or period of assessment, excluding receipts of accruals of a capital nature....”

However the Income Tax Act does not define what capital nature is. This was left to the Courts to define. Hence the Case Law that currently guides the definition of capital nature. It is this Case Law that will then provide the framework to what the Courts have used to distinguish between compensation receipts of a capital and revenue nature.

The underlying principle in the debate of a capital vs. revenue nature asset is best explained by the analogy of fruit vs. tree. A capital asset, the analogy explains, is the tree from which fruit (income) come⁸. The proceeds of the sale of assets (whether the asset is corporeal or incorporeal) take its nature from that of the asset sold. It follows then that the proceeds from a sale of a capital

⁷ Income Tax Act of (1962)

⁸ Estate AG Bourke v CIR [1991] SATC 86 at Para 93 -94

asset will be of capital nature. The proceeds from a revenue type asset like e.g. trading stock will also be of a revenue asset. The point is further reiterated in the cases below.

Wessels JA in his judgement in *CIR vs. Stott*⁹ ruled that an important factor that makes receipts from the sale of assets to be of a capital or revenue is the intention with which the said asset was first acquired¹⁰. Later in 1975 Holmes JA ruled, in *Natal Estates Ltd vs. SIR*¹¹, that there can be a change in this original intension that alters the nature of the proceeds from the sale of the assets from capital to revenue nature¹². To explain the context of this ruling: Natal Estates had acquired land with the intension of holding it as capital. Later, however, Natal Estates realised that the land could be used for township development activities and started to sell it toward that end¹³. The original intention had thus changed to selling the land as trading stock which meant that the receipts were not of a capital but were of a revenue¹⁴. In other words, Natal Estates had embarked on a scheme of profit making and that made the receipts from the asset sold to be of a revenue nature¹⁵.

This sentiment is echoed again in *CIR v Pick 'n Pay Employee Share Purchase Trust*¹⁶. The intension behind setting up the trust was for the employees of Pick n Pay to own its shares¹⁷. The

⁹ *Commissioner for Inland Revenue vs. Stott* [1923] (3) SATC 253

¹⁰ Page 256

¹¹ *Natal Estates Ltd vs. Secretary for Inland Revenue* [1975] (37) SATC 193

¹² Page 195

¹³ Page 219

¹⁴ (*ibid*)

¹⁵ Page 220

¹⁶ *Commissioner of Inland Revenue vs. Pick 'n Pay Employee Share Purchase Trust* [1992] (54) SATC 271(A)

¹⁷ Page 272

incidental profit made from the buying and selling of the shares did not change this original intention to one of a scheme of profit making, held the presiding Judge Smallberger JA¹⁸.

However capital or revenue nature is not only applicable to the proceeds of the sale of asset.

Income receipts can come from a variety of sources, for example: services rendered and income from owing assets like rental property; and each will have its own taxable nature. It is, however, the receipts from the termination of contracts that will be subject matter under discussion for this Thesis.

Usually the party wishing to terminate any contract pays compensation for early termination of that contract to the other party. The contract in question may be an employment contract, cancellation of a lease contract, or a trading contract. In fact, it was the uncertainty of the nature of receipts from the termination of an employment contract that led to its specific inclusion in paragraph (f) of the Gross income definition in the Income Tax Act. That paragraph makes the receipt from termination of an employment contract to be of a revenue nature and thus fully taxable as was found to be the case in *ITC 6*¹⁹. In that case the Appellant had his employment contract terminated 2 years prior to the contract stipulated end date and the presiding Judge found that receipt to be of a revenue nature²⁰. These compensation receipts are of a revenue nature despite them being lump sums or not. The nature of compensation receipts from the cancellation of a lease contract is also revenue. This is so as gross income definition of the Income Tax Act paragraph (g) specifically deems lease premiums - monies received in lieu of

¹⁸ Page 276

¹⁹ *Income Tax Case 6* [1923] (1) SATC 54

²⁰ Page 55

higher lease income- to be of revenue nature. Less obvious, however, is the nature of compensation receipts from the termination of a trading contract/agreement because the taxable treatment of this is not included in any paragraph in the Gross Income definition of the Income Tax Act.

A trading contract is characterised by two parties agreeing to the terms of a contract where one party requires the services of the other. Should the need no longer exist for the services agreed to one party (Party A) may terminate the contract, before the end date of such a contract, should the other party (Party B) agree. However, compensation for the early termination of this contract must be paid by the party wishing to terminate the contract (Party A). The issue is then whether the compensation receipts of Party B are of a capital or revenue nature. This question has been the reason why so many individuals and companies have gone to court to contest tax assessments issued by the South African Revenue Services as evidenced by the cases discussed below.

3. Compensation for the Early Termination of a Trading Contract: A Historical Analysis of Compensation Receipts Cases from 1975 to date

Taeuber and Corssen (Pty) Ltd had entered into an *agency* contract²¹. This necessitated setting up a fully functioning business operation as a result of the new business afforded to it by the contract. Consequently, premises were acquired to house the business and personnel to run it to ensure that the contractual obligations were met. In 1975, the agency agreement was prematurely terminated and Taeuber and Corssen (Pty) Ltd received compensation in that regard. When the

²¹ *Taeuber and Corssen (Pty) Ltd v Secretary of Inland Revenue* [1975] (37) SATC 129

authorities for Inland Revenue taxed the full amount as revenue receipts, *Taeuber and Corssen (Pty) Ltd* took the matter to court. It is important to note that the *Taeuber and Corssen (Pty) Ltd*, had an established income earning structure before the advent of this contract but Rumpff CJ, the presiding Judge, emphasised the fact that the (specific) agency business was a significant contributor to the Appellant's business and it was in itself a section of the income producing structure²². As that section of the income producing structure had been sterilized by the termination of the contract, the compensation received for its early termination was of a capital nature.

Two years after the Judgement above, another case of a similar nature was brought before the Courts: *ITC 1259*²³. The taxpayer had a *management* agreement with a privately held company. The taxpayer per the agreement was tasked, inter alia, to act as a selling agent for properties owned by the said company. The taxpayer had hired additional staff to create capacity for the new business the contract afforded it. This staff was in addition to the staff complement that already formed part of the established income earning structure of the taxpayer which was a property management business. Notably this contract represented a substantial portion of the income produced by the taxpayer²⁴. However, shortly after the conclusion of the contract, there was a change in the ownership of the privately held company. The new owner terminated the contract the newly acquired company had with the taxpayer and the new owner paid the taxpayer a sum of money as compensation. Using *Taeuber and Corssen (Pty) Ltd v SIR* as authority, the Court ruled that the monies received for the early termination of the contract were of a capital

²² Page 138

²³ *ITC 1259* [1976] (39) SATC 65 (T)

²⁴ Page 66

nature, citing among their reasons the fact that the contract had contributed a substantial portion of income in the overall income generated by the income earning structure of the taxpayer²⁵.

The Judgement of the case above bears a resemblance to that made in ITC 1341²⁶. The facts of this case were that the Appellant was formed by the merger of two entities²⁷. It was the business of the Appellant to register the transfer of shares. These entities were themselves holding companies which, given the agreement between themselves and the Appellant, made their subsidiaries employ only the services of the Appellant. When one of the entities were acquired by a third party several years later, the agreement between the acquired entity and the Appellant was terminated because the acquired entity intended to use the share transfer department of the acquirer.

Compensation for the termination of the agreement was paid and the Tax Authority fully taxed the sum as it regarded it to be of a revenue nature²⁸. It argued that the payments were simply compensation for the loss of future income²⁹. But the presiding Judge of ITC 1341 disagreed and ruled that the compensation receipts were in fact of a capital nature because a portion of the income producing structure of the Appellant had permanently been severed by losing the acquired entity's business³⁰.

²⁵ Page 68

²⁶ ITC 1341 [1980] (43) SATC 215

²⁷ Page 218

²⁸ Page 216

²⁹ (*ibid*)

³⁰ Page 223

Thus the similarity between this case and ITC 1259: the income earning structure was itself impaired by the termination of the contract. The compensation was thus paid for having impaired the structure. Therefore the receipts were of a capital nature as they were payments made for having impaired a capital asset.

So far the Judgements made in the above cases (*Taeuber and Corssen (Pty) Ltd v SIR, ITC 1259 and/or ITC 1341*) reveal two characteristics that the Judges had used to distinguish between receipts of a capital or revenue nature. The first is that the terminated contract represented a substantial portion of overall income generated by the aggrieved taxpayers³¹. The second was that the contract had resulted in the taxpayer having formed, in addition to an already established income earning structure, extra capacity that would attend to the new business resulting from the contract³². These factors would be important deliberations when the presiding Judges determined whether compensation receipts for the termination of said contracts were of a revenue or capital nature.

The principal of linking the contract to the income earning structure in assessing whether receipts are of a capital or revenue nature is by no means a new concept as evidenced by the earlier case of *BOS vs. C: SARS (TPD)*³³. In that case in 1945, a Judgement was made that relied on this link to assess the nature of compensation receipts. The facts of the case were that a *partnership*

³¹ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129 at Page 138; *ITC 1259* [1976] (39) SATC 65 (T) at Page 66 and *ITC 1341* [1980] (43) SATC 215 at Page 216.

³² *ITC 1259* [1976] (39) SATC 65 (T) at Page 65 and *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129 at Page 129

³³ *BOS v C: SARS (TPD)* [1945] (70) SATC 187 at Para 194

arrangement that the taxpayer was party to was prematurely terminated. Compensation was paid and the Revenue Service considered these receipts to be of a revenue nature and taxed them as such. A disagreement ensued between the taxpayer and the Tax Authority and the matter was brought to Court. The Judgement was that the receipts were indeed of a capital nature and the reason cited was that the partnership arrangement was the very cornerstone of the taxpayer's income earning structure³⁴. That is to say the formation of the partnership and the income it produced was the direct result of the contract in question. The Court ruled that, given this correlation, the conclusion was clear: of a capital nature too then was compensation received for the early termination of the contract. As these services were the only means of earning an income for the taxpayer, the Judge ruled that the termination of the contract thus cut of the income earning structure itself – a capital asset of the taxpayer. As such the compensation was capital in nature.

With the authority thus established in South African Courts, cases further afield in other jurisdictions would blur the lines between capital and revenue nature to the extent that they would receive mention in South African Academic books (Emslie et al (2011): 105) . Emslie et al draw attention to the Judgement in *Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation* in the United States of America³⁵. The taxpayer, in that case, had a *distribution* agreement that gave it the sole right to distribute certain biscuit products. This business was only part of the taxpayer's several businesses. This distribution agreement was more than just the means to produce income, but rather, it produced profits itself. This, the Tax Authority, argued

³⁴ *BOS v C:SARS (TPD)* [1945] (70) SATC 187 at Para 194-195

³⁵ *Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation* [1989] (19) ATC 1724

was evident even in intent of paying the compensation when the contract was terminated. It argued that the payment of the counterparty to the taxpayer was made to compensate the latter for loss of revenue that resulted from the termination of the contract and thus the compensation was of a revenue nature.

This introduces a nuance: where taxpayers' have contracts cancelled and compensation is received for the loss of revenue that would have accrued to the taxpayer had the contract still been in effect, these receipts are usually of a revenue nature as was found to be the case in *Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation*³⁶. Also, presiding Judges have, in deciding whether receipts are of a capital or revenue nature, considered how significant the contract in question was to the overall business of the taxpayer³⁷. Emslie et al (2011: 105) makes the point that this draws attention to the fact that it matters then the nature of the contract (*distribution, agency etc*) and the reason for the termination of the contract. This is because in *Allied Mills Industries (Pty) Ltd* the Court held that given; the fact that the distribution agreement resulted in a profit being made, that the contract was not simply the means to those profits and the contract contributed but a small portion of the taxpayer's income, the compensation received for its termination was thus of a revenue nature³⁸.

³⁶ *Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation* [1989] (19) ATC 1724

³⁷ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] 37 SATC 129 at Page 138

³⁸ Taken from: www.Law.atg.gov.au/atplaw/view.htm?docid-AOD/AID_2003105/00001 (downloaded 30 June 2013)

In earlier English cases such as *Glenboig Union Fireclay & Co Ltd v IRC*³⁹ and *California Copper Products Ltd (in liquidation) v FCT*⁴⁰, the Courts held that compensation receipts were of a capital nature because the termination of the contract was effectively the termination of the taxpayers' business - which is a capital asset⁴¹. Of interest is the observation that, in *California Copper Products Ltd (in liquidation) v FCT*, the Judgement was reinforced by the fact that the receipts had not been calculated with reference to forgone revenue (or income). This is despite the compensation having been received made in recurring instalments. The manner in which the compensation is received is therefore unimportant. This is because compensation receipts can be one lump sum amount (which implies a capital amount) or a recurring amount paid over time (implying revenue). The Judgement of the Court in *California Copper Products Ltd (in liquidation) v FCT* made it clear that the frequency of receipt is not necessarily indicative of the nature of the receipts⁴². Rather, the capital nature of the compensation receipt is determined by the fact that the termination of the contract permanently impaired the income structure⁴³. So, by deduction, the manner in which the resulting compensation was paid does not determine the nature of the compensation.

Whereas the frequency with which the compensation is received did not determine the nature of those receipts in *California Copper Products Ltd (in liquidation) v FCT*, their timing may play an important factor in determining the taxable nature of compensation receipts: consider the

³⁹ *Glenboig Union Fireclay & Co Ltd v IRC* [1922] 12 TC 427

⁴⁰ *California Copper Products Ltd (in liquidation) v FCT* [1934] (52) CLR 28

⁴¹ Taken from www.lexisnexis.com/au/aus/academic/text_updater/guiders/pdf/ch03.pdf (downloaded 30 June 2013)

⁴² *California Copper Products Ltd (in liquidation) v FCT* [1934] (52) CLR 28

⁴³ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129, *ITC 1259* [1977] (39) SATC 65

Australian case of *Heavy Minerals Pty Ltd v FCT*⁴⁴. To explain the relevance of this case to the discussion on whether the timing of the compensation receipts plays a factor in determining their nature, consider the context of the case below.

The taxpayer had a mining agreement that afforded it with the right to mine a mineral. To do this, the mine subsequently purchased machinery. As is customary in the mining sector, the mine also entered into supply contracts with the buyers of the raw minerals that were mined. This is done to secure, for the mine, buyers of the mined mineral. However, the demand of the mineral fell in the years after the contracts were in effect. The fall in demand affected the counterparties that entered into supply contracts with *Heavy Metal* because they had a declining number of customers to sell the acquired mineral to. That is, while the mine had supply contracts, the counterparties to the contract had a falling demand from the customers they on sale the mineral. The counterparties requested to cancel the contracts and decided to pay a lump sum of money as compensation.

At this stage the *Heavy Metals* (having admitted the inevitable) had already decided to close its mine and had resorted to buying the mineral from other mines in order to fulfil its obligations per the supply contract. Of note is the fact that the supply contracts were cancelled after the mine began to close down. This, held the presiding Judge Windeyer J, only aided in making the compensation receipts of a revenue nature. The Judge maintained that the supply contracts did not represent a means to produce income (the mine was the means to produce an income). This,

⁴⁴ *Heavy Minerals Pty Ltd v FCT* [1966] 115 CLR 512

together with the fact that the compensation was received after the mine had closed and the capital asset permanently impaired, resulted in the receipts being of a revenue nature. Thus the timing of the compensation receipt was important in this case. Because it was received after the capital asset (the mine) had been impaired, they were thus of a revenue nature.

To sum up, the analysis of cases from other jurisdictions revealed further characteristics that determine the taxable nature of compensation receipts, in addition to the two characteristics from the domestic cases- which are the significance of the contract to the income earning structure and whether the terminated contract impaired the income earning structure. The first characteristic from the analysis of foreign cases is: where the terminated contract provided just some of the business to the taxpayers' many types of businesses, then the contract is not seen as part of the income earning structure and is of a revenue nature⁴⁵. Secondly, calculating compensation by measuring forgone income because of the termination of a contract usually results in revenue authorities arguing that the compensation was thus of a revenue nature⁴⁶. The third characteristic is that the manner that the compensation is received - whether it is a lump sum or recurring amount - does not determine its taxable nature because compensation that was paid in recurring amounts was nevertheless regarded as capital⁴⁷. Then lastly, the timing of the compensation receipts may play an important factor in assessing their taxable nature⁴⁸. It may be argued in the above case of *Heavy Minerals Pty Ltd v FCT* that had the compensation been received before the decision to close the mine, then this may have led the Court to decide the receipt were of a capital nature because the capital asset, the mine, had not been impaired and the mineral mined

⁴⁵ *Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation* [1989] (19) ATC 1724

⁴⁶ *California Copper Products Ltd (in liquidation) v FCT* [1934] (52) CLR 28

⁴⁷ (*ibid*)

⁴⁸ *Heavy Minerals Pty Ltd v FCT* [1966] 115 CLR 512

could still be mined⁴⁹. However, because the mine had already been closed when the compensation was received, the Court could not argue that the compensation was paid for the impaired a capital asset. This is because at the time it was the compensation was received, the mine had already closed and the asset already impaired. Therefore compensation received was of a revenue nature⁵⁰.

4. Analysis of Recent South African Cases

A. *WJ Fourie Beleggings CC v Commissioner (SARS) [2009] (5) SA 238 (SCA)*

This was the context of the case: WJ Fourie Beleggings had always conducted the business of being a hotelier. It leased Elgro Hotel in Potchefstroom from Bultfontein Property Investments (Pty) Ltd. In April 2001, it entered into an agreement with Naschem which was a division of Denel (Pty) Ltd. This agreement entailed that WJ Fourie Beleggings accommodate members of the forces of the United Arab Emirates in its hotels from April 2001 to 30 May 2003⁵¹. These members were receiving training in South Africa during this period that was provided by Naschem. A significant number of hotel rooms were thus set aside to provide accommodation for the members that were staying for various periods. Furthermore, resources were dedicated to provide meals to these members during their stay in the said hotel⁵².

⁴⁹ *Heavy Minerals Pty Ltd v FCT* (1966) 115 CLR 512

⁵⁰ (*ibid*)

⁵¹ *WJ Fourie Beleggings CC v Commissioner (SARS) (2009) (5) SA 238 (SCA)* at Para 3

⁵² (*ibid*)

The contract - i.e. the trade agreement between WJ Fourie Belleggings and Naschem- was worth approximately R 8.7 million and the Appellant, WJ Fourie Beleggings, began providing accommodation from April 2001 as stipulated in the contract⁵³. To secure this contract, WJ Fourie Beleggings CC had to effect several structural changes to the hotel to prove that the hotel was able to accommodate the large number of anticipated students. However in September of 2001, the students left the hotel. The terrorist attacks on the World Trade Centre in September may have prompted their sudden departure. Yet they, suddenly and without warning, left without citing any reason. Furthermore, the students had left the hotel rooms in complete disrepair.

The swift departure of these students led Naschem to cancel the agreement with the Appellant. At that date the Appellant had only earned R 4 million from this contract⁵⁴. The Appellant then demanded compensation for breach of contract and threatened to take the matter to court. The dispute was however settled out of court and in the year of assessment ending 28 February 2002, the Appellant received R 1292 760 as full and final settlement for all claims it had against Naschem⁵⁵.

The full amount was included in the tax assessment of the Appellant as gross income in 2002 by the South African Revenue Services (SARS). The Appellant objected to this assessment and

⁵³ *(ibid)*

⁵⁴ *WJ Fourie Beleggings CC v Commissioner (SARS)* (2009) (5) SA 238 (SCA) at Para 6

⁵⁵ *(ibid)*

having lost in the High Court in Bloemfontein, it appealed to the Supreme Court of Appeal⁵⁶. It is the Judgement at the Supreme Court of Appeal that this Thesis will discuss.

The Court ruled that the compensation received was in fact of a revenue nature⁵⁷. The argument advanced by SARS was as follows: the first question, SARS contended, that needed to be answered was the nature of the agreement. By the facts presented in the above paragraphs, the agreement was a *trade* agreement. This is an important question to ask as compensation paid for the early termination of a trade agreement *may* be of a revenue nature despite the cases analysed in section 3 of this thesis concluding that the receipts were of a capital nature.

But more than the above, the following has to be assessed in the evaluation of the nature of compensation receipts: first, the manner in which the compensation receipt calculated⁵⁸. For instance, compensation receipts are sometimes calculated with reference to lost revenue that resulted from the early termination of the contract or with reference to the value of the lost right afforded to the taxpayer by the contract. But the presiding judge in the *WJ Fourie Beleggings* maintained that in this case, the compensation was paid for the loss of profit (which is of a revenue nature) that the Appellant had suffered because the members left the hotel before the end of the contract⁵⁹. It follows then that the compensation itself was of a revenue nature too.

⁵⁶ *WJ Fourie Beleggings CC v Commissioner (SARS)* [2007] (70) SATC 8 at Para 33

⁵⁷ *WJ Fourie Beleggings CC v Commissioner (SARS)* [2009] (5) SA 238 (SCA) at Para 16

⁵⁸ Para 8

⁵⁹ (*ibid*)

This leads to the second factor to be considered when assessing the nature of compensation receipts: the intentions of the parties when paying or receiving the compensation. If the parties, as is the circumstance in *WJ Fourie Beleggings* case, understood the money to be compensation for lost profits during the time of negotiations then the compensation is of a revenue nature. The alternative to this, which does not apply in this case, is if both parties had intended the compensation to be for the loss of a capital asset which would suggest that the compensation receipt was of a capital nature.

This distinction underscores the third factor that is important in assessing the nature of compensation receipts which is that the income earning structure - the capital asset - has to be correctly identified. In this case, the hotel (albeit leased) was the income generating structure. It was thus incorrect to argue that the capital asset was the sole right to accommodate students which was afforded by the contract to the Appellant⁶⁰.

This is important as the fourth factor is to determine how important the terminated contract was to the capital asset identified. An evaluation of the evidence presented to the Court would lead any objective person to conclude that the contract facilitated the operating of the capital asset, the hotel, which was already there albeit leased⁶¹. The ability of the Appellant to work the capital asset (which was the hotel had remained intact) was in no way inhibited by the termination of this contract. Yes, the students had damaged the hotel but this is the normal risk taken in the

⁶⁰ Para 9 and 10

⁶¹ *WJ Fourie Beleggings CC v Commissioner (SARS)* (2009) (5) SA 238 (SCA) at Para 15

nature of this industry. The damages did not impair the capital asset by making it unworkable. So, to use the Leach AJA's words: "[the contract was] therefore a product of the appellant's income earning activities, not the means by which it earned income... [and therefore] the appellant's contract with Naschem cannot be construed as being an asset of a capital [nature]"⁶².

His judgement was that the compensation received was in fact of a revenue nature. He held that the loss of the contract was not severe enough to undermine the income earning structure of the taxpayer, WJ Fourie Beleggings⁶³. Had it been, then (by deduction) the compensation receipt would be of a capital nature as it was paid for impaired a capital asset. Furthermore, from the evidence presented to the Court, the hotel, an income generating structure, had to be altered to secure the contract. But the fact that the Appellant had to effect changes to the structure of the hotel to secure the contract does not in any way affect the nature of compensation received. Changes to the physical structure of an already established and functioning capital asset- the hotel- does not affect the nature of the receipt.

An observation one can take from the Judgment is that, the significance of the loss suffered by the early termination of the contract also does not in itself change the nature of the compensation received. Consider that members had occupied two thirds of the hotel during their stay. This points to how significant the loss of forgone revenue was for the Appellant who had to turn several clients away during length of the member's stay. The last observation that can be made

⁶² Para 15 & 16

⁶³ Para 16

from the Judgement is that where the intension of the parties is to compensate for loss of profit, it can be concluded that the compensation was of a revenue nature.

Now, the conclusion that compensation received was of a revenue nature is not in any way changed by what the Appellant *actually* uses the money received for. In the WJ Beleggings case, the Appellant used the money to settle debt. However had they used it for improving, not repairing, the hotel then the expenditure would be capital in nature and would be duly capitalised to the cost of the hotel. However, the initial compensation receipt would still remain revenue in nature for all the reasons noted above.

SARS had relied on three cases in its argument that the compensation received was of a capital nature: *Taeuber and Corssen (Pty) Ltd vs. Secretary for Inland Revenue, ITC 1341* and *ITC 1259*. Given the analysis of these cases in section 2 of this thesis, it is clear that in all cases the presiding Judges had ruled that the compensation received by the Appellant for the termination of a contract was of a capital nature. In the *Taeuber and Corssen (Pty) Ltd vs. Secretary for Inland Revenue* case, the Appellant was the sole distributor of the products sold by the counterparty (principal). This *agency* relationship also entailed that the Appellant not sell any products that competed with the products of the principal⁶⁴. When the agreement was terminated, the principal gave a sum of money to the Appellant as compensation for early termination of the contract. The presiding Judge Rumpff CJ defended his ruling - which was that the sum of money was indeed capital - by arguing that what the agency relationship entailed that, for the term of

⁶⁴ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129 at Page 132

that contract, the agent was restrained from earning income from that part of the income-earning structure that sold products that competing with that of the principal⁶⁵. Therefore the sole right afforded to the Appellant by the distribution agreement was the capital asset. As this structure was of a capital nature, it followed then that the compensation paid when this agreement was terminated was also of a capital nature.

In *ITC 1341* the presiding Judge observed that the contract resulted in the formation of a business structure whose only revenue was earned from the receipts of monies from the member company. As the contract was terminated that income earning structure - a capital asset - was severed⁶⁶. Compensation thus received was of a capital nature. Likewise in *ITC 1259*, a contract had also necessitated the formation of a separate income earning structure by the Appellant from that of its normal course of business⁶⁷. Termination of the contract meant the destruction of this separate structure and the Judge ruled that the compensation received was of a capital nature. An important observation to make is what the common denominator in the three cases is: income was generated from the contracts in question⁶⁸.

But the overriding reason why the presiding Judge Leach ruled that compensation received by WJ Fourie Beleggings was of a revenue nature was that he believed that the contract in question

⁶⁵ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129 at Page 137

⁶⁶ *ITC 1341* [1980] (43) SATC 215 at Page 223

⁶⁷ *ITC 1259* [1976] (39) SATC 65 (T) at Page 66

⁶⁸ *Taeuber and Corssen (Pty) Ltd v SIR* [1975] (37) SATC 129 and *ITC 1259* [1977] (39) SATC 65 and *ITC 1341* [1981] 43 SATC 215

was essentially different to the cases above⁶⁹. WJ Fourie Beleggings could generate an income without the contract with Naschem. It remained a hotelier before and after the contract with Naschem. It does not follow then that the contract was the means to earn income albeit the most significant income generator for the business during the contract term. Here then lies the overriding principle that determines whether compensation received for termination of contracts is of a capital or revenue nature: it is only capital if the contract gave rise to an income earning structure.

B. Analysis of Case 11470 and its appeal in the Supreme Court of Appeal in - *Stellenbosch Farmers' Winery v Commissioner for SA Revenue Service* [2012] ZASCA 72

The facts of *Case 11470*⁷⁰ as presented in the Tax Court were that ABC Ltd had entered into a distribution agreement with F Co. The agreement entailed that ABC Ltd be the sole distributors of JK, YZ and ST whiskeys to South Africa Swaziland, Botswana and Lesotho for 10 years starting 1 February 1991. In 1997, structural changes in Europe, where F Co was based, resulted in it having to terminate the distribution agreement between itself and ABC Ltd. Negotiations ensued and in 27 August 1998, the agreement was terminated and F Co paid ABC Ltd R67 million⁷¹. The agreement had been terminated some 41 months before the end of the contract date⁷². South African Revenue Services issued, for the 1999 tax year, an assessment that recognised as gross receipts the full R67 million that ABC Ltd received from the termination of the distribution agreement. Additionally SARS levied interest on the said amount. ABC Ltd

⁶⁹ *WJ Fourie Beleggings CC v Commissioner (SARS)* [2009] (5) SA 238 (SCA) at Para 13-15

⁷⁰ *Case 11470* [2011] SATC

⁷¹ *Case 11470* [2011] SATC at Para 8

⁷² (*ibid*)

maintained that the money was of a capital nature and should thus not have been charged income tax on it. ABC Ltd, however, lost the case. It appealed to the Tax Court where it lost and finally the case was heard before the Supreme Court of Appeal. Judges J Louw and Kroon AJA presided on the former and the latter respectively.

Before an analysis of this case can ensue, it is rather important to speak about the nature of the distribution agreement and the effect it had on the business of ABC Ltd. Previously, wholesalers like ABC Ltd could freely import liquor made by F Co and sell it to retailers. What the distribution agreement constituted was a guaranteed distribution right given solely to ABC Ltd to import and then sell the JK, ST and YZ whiskeys (collectively called JK in the Judgement) to the four markets in South Africa, Swaziland, Lesotho and Botswana. On the other hand it also disallowed ABC Ltd to sell whiskeys that competed directly with JK⁷³.

Judge Louw of the Tax Court made Judgements on two issues: first, whether the R67 million was of a revenue or capital nature and secondly; whether SARS correctly charged the interest from the late payment of the tax on the R 67 million⁷⁴. On the first issue the Appellant, ABC Ltd, made the argument below.

The first point that ABC made was that, the agreement constituted a distribution right and as that right was of a capital nature so then was the compensation received from losing it which was the

⁷³ *Case 11470* [2011] SATC at Para 5-7 and 21

⁷⁴ Para 10 and 11

direct result of terminating of the agreement. The Appellant relied on several cases like *Estate AG Bourke v CIR*⁷⁵ and contended that the monies received was to “fill a hole” in the income earning structure which was the business- a capital asset⁷⁶. The JK brand, it continued, contributed over a fifth to its total income. Therefore the termination of this agreement meant a loss of much more than an insignificant portion of the income of ABC Ltd. Also poignant however, in the demonstration that the agreement constituted an asset, was the fact that the distribution right afforded ABC Ltd with leverage that allowed it to promote its other products. That is to say ABC Ltd could, given the popularity of the JK brand, demand to have its other products placed in the premier locations within a retail store at which the JK brand was being sold⁷⁷.

This, the Appellant concluded, showed that the agreement provided it with much more than just income but it was the asset from which additional income was attained that affected other brands in its business. The termination of the contract that brought about the sterilization of the distributive right (a capital asset) resulted in an income decline of about 30% in 1999⁷⁸. The losses continued in 2000 with a further reduction in income of almost 20%⁷⁹. The losses were so catastrophic that ABC Ltd had to structurally change its business by merging with LC Corporation to avoid bankruptcy in 2001.

⁷⁵ *Estate AG Bourke v CIR* [1991] SATC 86 at Para 93 -94

⁷⁶ *Case 11470* [2011] SATC at Para 23

⁷⁷ Para 21

⁷⁸ (*ibid*)

⁷⁹ (*ibid*)

Despite the taxpayer's arguments, Judge Louw ruled against the taxpayer advancing the following as his reason: the evidence brought before the court, he charged, showed that the compensation paid did not relate to the value of the right over the remaining 41 months. Rather the figure was based on the value of lost future profits. The amount was thus paid to fill a hole in the Appellant's profit. As such the compensation was of a revenue nature, concluded Judge Louw. However, the Appellant, the Judge continued, was correct that the distribution right constituted a capital asset. But that right does not in itself constitute a business. ABC Ltd does not carry on the business of buying and selling distribution rights, he charged⁸⁰. So, it does not follow then that the right was a business, and in that way, a capital asset.

The taxpayer appealed Judge Louw's judgement at the Supreme Court of Appeal. Kroon AJA was the presiding Judge in the Supreme Court of Appeal. In his ruling Kroon AJA agreed with Judge Louw that the Appellant did not conduct the business of selling the right to purchase alcohol. But Kroon AJA went further. He argued that as the Appellant was not in the business of buying and selling liquor licences and it thus did not conduct a scheme of profit making doing so⁸¹. Rather, the terminated contract impaired the distribution right (a capital asset) it previously afforded to the appellant. The Appellant was successful in proving that the compensation was of a capital nature. The respected Judge thus did not uphold the ruling made in the tax court by Judge Louw.

⁸⁰ *Case 11470* [2011] SATC at Para 27

⁸¹ *Stellenbosch Farmers' Winery v Commissioner for SA Revenue Service* [2012] ZASCA 72 at Para 46

The Kroon AJA maintained that Judge Louw observation that the fact that the compensation amount was calculated in relation to the profits forgone and not the value of the distribution right, which the Judge used to deduce that the compensation was thus of a revenue nature was in fact incorrect⁸². Nowhere, argued Judge Kroon, was there any reference made in the evidence presented that the compensation was payment for lost profit⁸³. The Judge ruled that the compensation was of a capital nature, given the fact that the distribution right had been impaired by the termination of the contract.

But there was another matter presented by the Appellant to both the Tax Court and the Supreme Court of Appeal. SARS had charged, in accordance with Section 89 of the Income Tax Act, interest and penalties on the late payment of the tax on the compensation receipt. The Appellant, ABC, argued that it had acted on the advice of tax consultants who said that the R67 million would attract neither VAT nor income tax. As such, ABC Ltd had neither wished to defraud SARS nor hide this receipt in its financial statements by not declaring it. Having sought legal counsel, which turned out to have given the wrong advice, ABC Ltd argued that this had created unfortunate circumstances outside its control. This wrong advise now prejudiced it as it was liable to pay the interest due on income tax it was advised would not be payable.

Judge Louw of the Tax Court responded to this by exercising the authority given to him by Section 89 quat (5) and ruled that the interest be waived and that ABC Ltd not be liable for the

⁸² *Stellenbosch Farmers' Winery v Commissioner for SA Revenue Service* [2012] ZASCA 72 at Para 45

⁸³ (*ibid*)

interest SARS wanted it to pay. The Supreme Court of Appeal agreed with this Judgement and SARS's assessment was set aside⁸⁴.

5. The Nuances Described

An analysis into the cases discussed in section 3 and 4 above has revealed the following as considerations Judges have given regard to when assessing whether compensation received is of a capital or revenue nature. The first consideration was the significance of the revenue that resulted from the contract in relation to total revenue (*Taeuber and Corssen (Pty) Ltd v SIR*). This consideration also encompasses deliberations of how many incumbent businesses the taxpayer has and their importance to its income generating structure versus the importance of the business that the terminated contract afforded the taxpayer (*Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation*).

Second is the result of the contract - that is if the contract had resulted in taxpayer having to increase the capacity of its existing income earning structure (*ITC 1259*) and (*BOS v C:SARS* (TPD)) or not. If the contract resulted in the formation of a separate income earning structure, compensation received from the termination of the contract was likely to be of a capital nature.

⁸⁴ *Stellenbosch Farmers' Winery v Commissioner for SA Revenue Service* [2012] ZASCA 72 at Para 58

Thirdly, the intent of the parties when determining the compensation amount is also important. The prima facie intension of both parties in negotiating compensation for a terminated contract may differ between negotiations centred on measuring compensation due in reference to an anticipated loss in earnings or valuing a right afforded to the taxpayer by the contract (*Allied Mills Industries (Pty) Ltd v Federal Commissioner of Taxation* and Case 11470). The intension is usually evident in the manner in which the compensation amount was calculated. If compensation is measured in reference of a valuing a right, then the compensation is of a capital nature. If compensation is measured by valuing forgone income, then it is of a revenue nature. Fourthly, the frequency of the compensation payments and the timing of its receipt have an impact in the determination of whether compensation receipts are of a capital or revenue nature as seen in *Heavy Minerals Pty Ltd v FCT* .

However, the overriding criteria in determining whether compensation be of a revenue or capital nature is if the termination of the contract resulted in the permanent impairment of the income generating structure (*WJ Fourie Beleggings CC v Commissioner (SARS) 2009 (5) SA 238 (SCA)*, *ITC 1259* and *ITC 1341*). Silke (2010: 3-14) concurs as he concludes that compensation received for giving up a capital asset or impairing an income producing structure is of a capital nature. Compensation received for the termination of a trade contract, he continues, is of a capital nature if it represents a large portion of the income earning structure of the taxpayer. With these nuances described, what follows next is a miniature case study that demonstrates the effect of each of the observations above.

6. Case Study and its Analysis

This section of the thesis seeks to demonstrate the principles mentioned in section 3 - 5. The demonstration will take the form of a case study. This is so because a case study presents the best opportunity in which the facets of the principles learned can be demonstrated. The facts of this study are fictitious and are used only for demonstrative purposes. Assume that all entities have the same financial year end of 31 August.

Bopeng Consulting (Pty) Ltd was formed by Duma Bopeng 27 years ago. The entity is a business consulting firm. However the services offered excluded tax advisory as Bopeng lacked the staff and expertise to offer these services to their clientele. This all changed, however, in October 2008 when there was a change in the shareholding of Bopeng. Xu (Pty) Ltd - a consulting firm - bought 40% of the shares in Bopeng. The incumbent shareholders, Bopeng Family Trust and Bopeng key management, each held 50 percent of Bopeng. In October 2008, the incumbent shareholders chose to sell an equal percentage (20% each) of their shareholding to Xu. It is in that way Xu acquired 40% of the company.

The acquisition was a strategic move for Xu Ltd. Its business strategy was to grow by acquiring small competitor firms like Bopeng. As said Xu, like Bopeng, is also a consulting firm but has a much broader service line which includes tax advisory. The 40% acquisition meant that the staff and expertise of Xu could be used by Bopeng in its operations but this arrangement would only

be on a temporary basis. All equipment, additional office space and permanent staff would have to be hired and acquired by Bopeng for tax service contracts Bopeng may acquire in future.

With the impetus of the expertise support anticipated from Xu, Bopeng quickly marketed its newly established tax advisory division. The first contract acquired by this division was that of Sechaba (Pty) Ltd on 1 April 2009. This contract entailed that Bopeng Consulting provide tax advisory services to Sechaba for a term of 7 years ending on 1 April 2016. The contract was effective 1 April 2009.

Given the significance of the revenue to be made from the contract in its duration and additional capacity it required, Bopeng acquired equipment, office space and hired permanent staff to work exclusively on the Sechaba contract. This investment in additional capacity was also made in the hope that more tax advisory contracts would materialise as Bopeng's reputation grew as a tax consultant.

The contract went ahead as planned and for almost 4 years both parties, Sechaba and Bopeng, honoured their respective sides of the contract. Unbeknownst to Bopeng, Sechaba started experiencing financial difficulties as early as November 2011. On May 2013 Sechaba, unable to continue using the services of Bopeng, terminated the contract and offered to pay compensation to Bopeng for the early termination of the contract. Bopeng, now fully aware of the financial

difficulties experienced by Sechaba, opted to accept the compensation in lieu of receiving nothing at all as it believed Sechaba would soon be liquidated.

A sum of R4 million was the compensation received and legal counsel from both sides agreed that this was the estimated amount of forgone revenue from the contract. Bopeng was quite keen on getting the compensation amount as high as it can because, despite, every effort to obtain other significant tax advisory contracts, Bopeng had never managed to secure a contract as significant as the Sechaba contract.

The termination of the Sechaba contract meant that all the capacity that was acquired to service the newly formed tax advisory department of Bopeng was now idle. Bopeng management advised the shareholders that the cost inefficiencies of this department and the fact that it had failed to secure other contracts meant that it must be closed down to avoid further losses. Thus, management concluded, the shutdown of the tax division will be done in the financial year ended 2014, i.e. in the next financial year.

The issue under investigation is the taxable nature of the compensation receipt of R4 million and how will it be taxed in the year of assessment ended 2013 which is the year of its receipt. The first consideration is the significance of the Sechaba contract to the revenue of the tax advisory department (*Taeuber and Corssen (Pty) Ltd v SIR*). The case study above says that the Sechaba contract was in fact the single contract of tax advisory department. Since the start of the contract

to the time it was terminated, it was the single largest contributor to the income of the tax advisory department. It is argued that the significance of the Sechaba contract to Bopeng itself should not be considered as the issue here as the tax advisory department was the additional capacity directly created to service Sechaba and it is the importance of that contract to the tax advisory department that must be considered.

This leads to the second consideration. The tax advisory department was formed as a direct result of the Sechaba contract and extra capacity was created to service that contract (*ITC 1259*). Thus an income-earning asset was created as a result of this contract. After the termination of the contract, the equipment and people employed in the tax advisory department were rendered idle. So the significance of the Sechaba contract would lead one to believe that the termination of the contract sterilised the income-producing asset - the tax advisory department - and thus the compensation receipts were of a capital nature. This principle is demonstrated by *ITC 1259*.

The case study mentioned that the R4 million was an agreed upon estimate of the anticipated lost earnings that resulted from the termination of the contract. The principle that came out of Case *11470* was that the nature of the compensation receipt can also be determined by evaluating the intention of the parties when estimating the compensation amount. The parties can estimate the compensation to be lost income, as was the case in the case study. Under these circumstances, the nature of the compensation receipts can be revenue. Alternatively, the parties may have estimated the compensation receipt to be the value of the lost asset - e.g. a distribution right. The compensation was thus paid would be to fill a hole in the income earning structure which is a

capital asset. But presiding Judge J Louw of Case 11470 does make the important point later in the judgement that the method of calculating the compensation is important but not by itself indicative of the nature of the receipts⁸⁵. He ruled that the compensation was paid to fill a hole in profits and, like in the case study, this contributed to making it of a revenue nature.

The manner or frequency in which the compensation receipts are received does not, as learned from in *Heavy Minerals Pty Ltd v FCT*, alter their taxable nature. Whether the compensation receipt is a lumpsum or recurring amount, the nature of the receipts are thereby not altered.

But perhaps the consideration that best indicates the nature of the compensation receipt is whether the termination of the Sechaba contract impaired the income earning structure of Bopeng. So far, many of the considerations above have led to the suggestion that the compensation receipts may be of a capital nature. But a different conclusion may have been arrived at if there was no tax advisory department created because of the contract.

Consider this; if the contract necessitated the use of resources already possessed by Bopeng, then one may argue that the contract only used the income earning asset already possessed by Bopeng and that the termination of the contract did not sterilise the income earning asset Bopeng already had and continues to have. Similar to WJ Fourie Beleggings, Bopeng's income earning structure had not been sterilised by the termination of the Sechaba contract. Under these circumstances

⁸⁵ *Case 11470* [2011] SATC at Para 32

then, the compensation received was of a revenue nature. This, it is argued, is re-enforced by the fact that the compensation been received for lost income, further demonstrating the fact that the sum was in fact of a revenue nature. The fact that Bopeng had unsuccessfully attempted to branch into tax advisory does not make the compensation received to be of a capital nature. The termination of the contract did not sterilise the income earning structure of Bopeng which is the taxable entity and not the tax advisory department, it is concluded. As so this finding of the case study re-enforces the principles of WJ Fourie Beleggings which is the authority of terminated trade contracts and their the taxable nature. The principle of the WJ Fourie Beleggings case in relation to the case study is that just as Bopeng continued to be a consulting firm before and after the termination of the Sechaba contract (like WJ Fourie Beleggings continued to be a hotelier after the termination of the Naschem contract), the compensation received by both entities from the early termination of their contract were of a revenue nature.

7. Conclusion

The objective of the thesis was to evaluate Case Law on the termination of trade contracts and the nature of compensation received. Before this could be done basic concepts were explained: capital vs. revenue nature. An explanation then ensued of the types of contracts available and the discussion was said to be limited its trade contracts and the termination thereof. Case Law on this subject was analysed from recent history to the current authority on this subject. Cases from other jurisdictions were also discussed to demonstrate principles those courts have considered in deciding whether compensation receipts were of a revenue or capital nature.

Then after, the application of the learnt principles was done by the means of a case study.

Together with the evaluation of Case Law, the principles discussed in the case study are intended to inform taxpayers of the main characteristics that Judges consider in evaluating whether receipts are of a capital or revenue nature. Yes, each taxpayers circumstances will differ, but the provided principles can be used by each taxpayer to evaluate the nature of their compensation receipt and the taxpayer's success of any appeal against assessments made by the Tax Authority.

If used in this way, the original intention of this thesis would be achieved which is to assist taxpayers to pay less tax by ensuring that the circumstances prevailing in the Cases discussed which led to a ruling that the nature of the compensation receipts are of a capital nature are similar to their own circumstances so that the compensation receipts may also be of a capital nature. This will result in paying less income tax.

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