

---

INTERNATIONAL TAX  
**CASE SUMMARY**

**BECHAN & OTHERS vs SARS**

MARCH 2024

---

# ACADEMY OF TAX LAW

## PUBLISHING SERVICES

This Publication is copyrighted under the Berne Convention.

No reproduction or use of this material is allowed without prior permission

**Copyright©, 2024** - Academy of Tax Law (Division of International Institute for Tax And Finance)

First Edition Published on 07 November 2024

Published by Academy Of Tax Law

CONTACT US

[www.academyoftaxlaw.com](http://www.academyoftaxlaw.com) | [info@academyoftaxlaw.com](mailto:info@academyoftaxlaw.com)

---

# HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,  
Dr. Daniel N Erasmus

# PART 1

# SUMMARY

---

---

# JUDGEMENT SUMMARY

## CASE OVERVIEW

<b>Court:</b>	The Supreme Court of Appeal of South Africa
<b>Case No:</b>	1196/2022
<b>Applicant:</b>	Kapeel Bechan and Bechan Consulting (Pty) Ltd
<b>Defendant:</b>	SARS Customs Investigations Unit, SARS Tactical Investigations Unit, SARS Illicit Economy Unit, and Minister of Police
<b>Judgment Date:</b>	5 March 2024
<b>Full Judgment:</b>	<a href="https://academyoftaxlaw.com/document/bechan-vs-sars-judgment/">https://academyoftaxlaw.com/document/bechan-vs-sars-judgment/</a>
<b>View Online:</b>	<a href="https://academyoftaxlaw.com/sars-search-warrant-powers/">https://academyoftaxlaw.com/sars-search-warrant-powers/</a>

# JUDGMENT SUMMARY

The case of *Bechan and Another v SARS Customs Investigations Unit and Others* was heard by the Supreme Court of Appeal (SCA) of South Africa, where Mr. Kapeel Bechan, alongside his company, Bechan Consulting (Pty) Ltd, sought to reclaim property seized by SARS officials during a search warrant operation targeting Bullion Star (Pty) Ltd. The appellants claimed that SARS acted unlawfully by confiscating items from Mr. Bechan's vehicle, which was parked on premises under surveillance for suspected tax non-compliance by Bullion Star. SARS's investigation, which stemmed from alleged tax offences by Bullion Star, was conducted under a warrant issued under sections 59 and 60 of the Tax Administration Act (TAA).

SARS officials arrived at the targeted premises on 29 March 2022, suspecting items related to Bullion Star's tax affairs were being removed from the site and stored in nearby vehicles, including Mr. Bechan's Toyota Fortuner. Upon inspection, officials found electronic devices, financial records, and other materials they believed could be relevant to Bullion Star's investigation. The appellants argued that SARS overstepped its authority by extending the warrant to cover third-party property not explicitly connected to Bullion Star. Seeking a spoliation remedy, they requested the court to compel SARS to return the seized property.

The high court dismissed the application, ruling that SARS's interpretation of the warrant was valid and aligned with the TAA's provisions, which permit broad search and seizure across any premises and items suspected of containing relevant material. The appellants then appealed, contending that SARS's search and seizure violated the TAA's intent, which they argued should apply strictly to the targeted taxpayer. However, the SCA upheld the high court's decision, confirming that SARS's warrant execution was valid and that the broad interpretation was in line with tax compliance enforcement under South African law. The court further noted that SARS's actions required only a suspicion of relevance under section 61(3)(a) of the TAA, allowing search and seizure on the basis of suspected association with the taxpayer.

The court acknowledged a subsequent ruling that set aside the warrant but maintained that this development did not impact the appeal. The appeal was dismissed, reinforcing SARS's power to act broadly on suspicion when enforcing tax laws, especially where assets relevant to compliance may be concealed by third parties. The ruling highlights the need for clear tax risk management by third parties who may unwittingly become involved in tax investigations due to shared premises or associations with investigated entities.

# KEY POINTS OF THE JUDGMENT

## BACKGROUND

The case of *Bechan and Another v SARS Customs Investigations Unit and Others* was heard by the Supreme Court of Appeal (SCA) of South Africa, where Mr. Kapeel Bechan, alongside his company, Bechan Consulting (Pty) Ltd, sought to reclaim property seized by SARS officials during a search warrant operation targeting Bullion Star (Pty) Ltd. The appellants claimed that SARS acted unlawfully by confiscating items from Mr. Bechan's vehicle, which was parked on premises under surveillance for suspected tax non-compliance by Bullion Star. SARS's investigation, which stemmed from alleged tax offences by Bullion Star, was conducted under a warrant issued under sections 59 and 60 of the Tax Administration Act (TAA).

SARS officials arrived at the targeted premises on 29 March 2022, suspecting items related to Bullion Star's tax affairs were being removed from the site and stored in nearby vehicles, including Mr. Bechan's Toyota Fortuner. Upon inspection, officials found electronic devices, financial records, and other materials they believed could be relevant to Bullion Star's

investigation. The appellants argued that SARS overstepped its authority by extending the warrant to cover third-party property not explicitly connected to Bullion Star. Seeking a spoliation remedy, they requested the court to compel SARS to return the seized property.

The high court dismissed the application, ruling that SARS's interpretation of the warrant was valid and aligned with the TAA's provisions, which permit broad search and seizure across any premises and items suspected of containing relevant material. The appellants then appealed, contending that SARS's search and seizure violated the TAA's intent, which they argued should apply strictly to the targeted taxpayer. However, the SCA upheld the high court's decision, confirming that SARS's warrant execution was valid and that the broad interpretation was in line with tax compliance enforcement under South African law. The court further noted that SARS's actions required only a suspicion of relevance under section 61(3)(a) of the TAA, allowing search and seizure on the basis of suspected association with the taxpayer.

---

# KEY POINTS

## OF THE JUDGMENT

### CORE DISPUTE

The primary dispute in this case revolved around the scope of SARS's search and seizure powers under the TAA, specifically whether the warrant allowed SARS to search and seize property belonging to third parties present on the premises. The appellants argued that the warrant should be interpreted narrowly, applying only to Bullion Star's property and excluding unrelated third-party items. They claimed that SARS had wrongfully confiscated Mr. Bechan's belongings, which were stored in his vehicle, and sought the return of these items. SARS, on the other hand, argued that the TAA permits a location-specific approach rather than a taxpayer-specific one. Under sections 59 and 60 of the TAA, SARS argued it was within its rights to search all items

within the designated premises if there was a suspicion of relevance to the investigation, regardless of ownership.

The appellants contended that SARS should have provided clear evidence connecting their belongings to Bullion Star's suspected tax violations. SARS rebutted, stating that the TAA empowers officials to act based on suspicion when searching premises and seizing materials relevant to tax compliance. This led to a fundamental clash over the interpretation of "relevant material" and the extent to which SARS's authority extends over third-party property within the premises identified in the warrant.

---

# KEY POINTS

## OF THE JUDGMENT

### COURT FINDINGS

The SCA ruled in favor of SARS, affirming the validity of the warrant's broad scope under the TAA. The court determined that SARS officials acted within their legal rights in seizing materials from Mr. Bechan's vehicle, as the TAA's provisions do not restrict SARS's authority solely to property owned by the taxpayer in question. Instead, sections 59(1) and 60(1) of the TAA explicitly empower SARS to conduct searches on any premises where relevant material may be located, including property belonging to third parties present on those premises. The court noted that limiting SARS's authority to only taxpayer-owned items would undermine the effectiveness of tax enforcement, as individuals could potentially hide relevant material with third parties to evade investigation.

The SCA held that the term "relevant material" in the TAA includes any information or document foreseeably connected to tax compliance, permitting SARS officials to act on suspicion. Therefore, SARS's decision to seize Mr. Bechan's items was deemed lawful. The court further observed that SARS's power to search "any person present on the premises" inherently includes the authority to search third-party items suspected of containing relevant material. This interpretation aligns with SARS's mandate to ensure tax compliance and collect evidence of tax offences. Accordingly, the SCA upheld the high court's dismissal of the spoliation application and confirmed the lawfulness of SARS's actions.

---

# KEY POINTS

## OF THE JUDGMENT

### OUTCOME

The appeal was ultimately dismissed by the SCA, which ruled that SARS acted within the legal boundaries of the TAA in executing the warrant. The court concluded that SARS's interpretation of its search and seizure powers was correct and upheld its right to seize third-party items if there was a reasonable suspicion that the items might contain evidence pertinent to the taxpayer under investigation. Consequently, the appellants were not entitled to reclaim their seized property, and the court affirmed the high court's judgment dismissing the spoliation application.

In its ruling, the court emphasized that SARS's investigative powers under the TAA allow for searches across a targeted location, not limited solely to the taxpayer's property. The

judgment reinforces SARS's ability to act on suspicion when seizing materials potentially linked to tax offences, granting it considerable discretion in enforcing compliance. Notably, the court acknowledged a subsequent high court decision that invalidated the search warrant in a separate proceeding by Bullion Star. However, it clarified that this subsequent judgment had no bearing on the present appeal, as the validity of the warrant was assessed based on the circumstances at the time of execution. The SCA's decision highlights the importance of comprehensive investigative powers for SARS in cases involving complex tax compliance investigations, setting a precedent for the application of the TAA in future cases.

# PART 2

## SIGNIFICANCE

---

---

# MAJOR ISSUES

## AREAS OF CONTENTION

The central contention in this case was the interpretation of SARS's search and seizure powers under the TAA, particularly regarding third-party items located on premises under investigation. The appellants argued for a restrictive interpretation, claiming that SARS's warrant only applied to Bullion Star's assets, while SARS advocated for a broader, location-specific reading. Another contentious issue was the standard of suspicion required for a search, with the appellants asserting that SARS needed definitive evidence linking their property to Bullion Star. SARS's rebuttal, which the court upheld, argued that the TAA permits searches based on suspicion without conclusive proof, a critical point for effective enforcement.



---

# EXPECTED OR CONTROVERSIAL?

The decision can be considered both expected and controversial. It is expected in the sense that revenue authorities, such as SARS, require broad investigative powers to effectively enforce tax compliance, particularly in cases where evidence might be obscured or withheld. The SCA's interpretation aligns with SARS's mandate to pursue comprehensive investigations and prevent taxpayers from circumventing scrutiny by hiding relevant material with third parties.

However, the decision is also controversial due to its implications for privacy and the potential for overreach. The court's endorsement of SARS's authority to search and seize third-party property based on suspicion alone may raise concerns about

infringement on individual rights. Critics argue that such broad powers could lead to abuse, as innocent third parties not directly involved in tax disputes could have their property seized without prior notice or clear evidence. This ruling reinforces SARS's discretion under the TAA but also raises important questions about balancing state powers with third-party protections. By allowing suspicion to serve as a basis for search and seizure, the judgment sets a precedent that may spark future legal debates over the limits of SARS's authority, especially where third-party rights are at risk. This tension highlights the need for a nuanced approach in future tax legislation that maintains tax enforcement efficiency while safeguarding individual rights.

---

# SIGNIFICANCE FOR MULTINATIONALS

The implications of this case for multinationals are substantial. The court's decision demonstrates that even third-party entities can become subject to investigation and asset seizure when located on premises targeted by SARS. For multinational enterprises (MNEs) conducting business through subsidiary arrangements or shared offices, this case underscores the importance of clearly distinguishing the assets and premises associated with each legal entity. In light of the SCA's broad interpretation of SARS's powers, MNEs must ensure robust documentation and compliance protocols to protect confidential materials from being inadvertently caught in a tax investigation aimed at another party.

Moreover, multinationals should recognise

that SARS's authority to seize third-party materials based on suspicion means that any intercompany documents or digital files stored at a shared location could potentially be accessed during a tax probe. MNEs should adopt strict tax governance policies, considering alternative storage options for sensitive materials to mitigate the risk of seizure. Ensuring that important documents and financial records are housed in secure, independent locations may help shield them from the reach of unrelated investigations. The case emphasizes the value of proactive tax risk management for multinationals, particularly in high-compliance jurisdictions like South Africa, where revenue authorities have significant investigative reach.



---

# SIGNIFICANCE

## FOR REVENUE SERVICES

The ruling reinforces the legitimacy of SARS's wide-ranging powers under the TAA, affirming the agency's authority to act on suspicion when conducting investigations. This decision is pivotal for SARS and similar revenue services worldwide, as it validates the use of broad search and seizure tools to collect evidence in complex tax cases. The SCA's interpretation of sections 59 and 60 of the TAA supports a location-based approach, empowering SARS to search any materials within premises under investigation, even if owned by third parties. This flexibility is essential for revenue authorities facing sophisticated tax evasion schemes that may involve intricate intra-group transactions or external entities.

The case also sets a judicial precedent

endorsing SARS's ability to rely on suspicion alone to justify searches, a critical asset in enforcing tax compliance effectively. By allowing revenue authorities to act without definitive evidence, the judgment enables swift action that can prevent the destruction or concealment of relevant materials. For revenue services, this decision underscores the necessity of legislative frameworks that support robust enforcement. However, the ruling also highlights the importance of transparent and accountable procedures to mitigate concerns about potential overreach. SARS and other authorities may find it beneficial to develop guidelines that outline clear standards for executing such searches, balancing enforcement needs with third-party protections.

---

# RELEVANT CASES

## USA VS BISCEGLIA

In *United States v. Bisceglia*, the Supreme Court of the United States ruled on the extent of the Internal Revenue Service (IRS)'s investigatory powers under the U.S. tax code. The case involved an investigation into unexplained large cash deposits in a bank account. The IRS issued a summons to the bank to obtain records related to the deposit, even though the bank was a third party to the suspected taxpayer. The bank challenged the summons, arguing that the IRS did not have specific evidence of tax violations and thus should not be entitled to access these records.

## M VS HER MAJESTY'S REVENUE & CUSTOMS

This case involved HM Revenue and Customs (HMRC), the UK's tax authority, exercising search powers under the Proceeds of Crime Act 2002 (POCA). HMRC conducted a search of the taxpayer's premises, confiscating documents and data it believed were connected to suspected tax evasion. The taxpayer contested the search, claiming that HMRC had exceeded its authority and breached procedural safeguards, especially in terms of seizing items owned by third parties present on the premises.

## CANADA VS MONTREAL REAL ESTATE BOARD

In this Canadian Supreme Court case, the Canada Revenue Agency (CRA) sought access to real estate transaction records held by the Greater Montréal Real Estate Board (GMREB) to investigate tax compliance among real estate agents. The GMREB resisted, arguing that releasing these records would infringe upon the privacy rights of individuals who were not directly under investigation for tax violations.

---

# ENGAGING EXPERTS

# PART 3

# PREVENTION

---

Engaging with tax lawyers is crucial for multinational enterprises (MNEs) to navigate the complex landscape of international tax compliance and minimize exposure to risks. Tax laws and regulations vary significantly across jurisdictions, and tax authorities are increasingly collaborating globally to enforce compliance. Tax lawyers provide MNEs with strategic guidance tailored to specific jurisdictions, ensuring that transactions and tax structures align with both local and international tax laws.

One of the primary advantages of consulting tax lawyers is their expertise in safeguarding sensitive information under legal professional privilege, especially in cross-border contexts. This confidentiality is essential for MNEs, as it allows open communication with legal counsel, protecting strategic tax planning discussions from disclosure to tax authorities. Tax lawyers are also well-versed in complex anti-avoidance laws, transfer pricing

regulations, and disclosure obligations, which vary across jurisdictions but significantly impact MNEs.

Moreover, tax lawyers play a vital role in risk management, advising MNEs on compliance strategies and helping establish robust tax governance frameworks. With proactive legal advice, MNEs can adopt preventative measures—such as setting up a tax steering committee or implementing a tax risk management process—that help in identifying, managing, and mitigating tax risks before they escalate into costly disputes or reputational issues.

In an environment where global tax regulations are continually evolving, engaging tax lawyers allows MNEs to stay compliant and responsive to regulatory changes, reducing potential risks while upholding best practices in tax transparency and governance.

---

# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

### TAX RISK MANAGEMENT PROCESS

- Implementing a comprehensive tax risk management process is essential to identify, assess, and mitigate tax risks associated with cross-border transactions. This process should involve:
- Regular reviews of intra-group transactions to ensure they have genuine economic substance.
  - Proactive engagement with tax authorities to seek clarity on the application of anti-abuse rules.
  - Thorough documentation of the business rationale for each transaction to support

### DOWNLOAD FREE BOOK

#### **TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES**

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

<https://support.academyoftaxlaw.com/product/tax-intelligence-by-prof-dr-daniel-n-erasmus/>

---

# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

### TAX STEERING COMMITTEE

- Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:
- Review all significant cross-border transactions before they are executed.
  - Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
  - Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like the X BV case.

### DOWNLOAD FREE E-BOOK

#### **DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE**

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

<https://support.academyoftaxlaw.com/product/essential-role-of-the-tax-steering-committee/>

---

INTERNATIONAL TAX  
**CASE SUMMARY**

**ACADEMY OF TAX LAW**

---

Copyright © 2024/2025

International Institute for Tax and Finance Ltd (I/I/T/F) Academy of Tax Law

This publication was accurate at time of publishing.  
It may be necessary for reasons beyond the control of the organisers to alter the content.