CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 320/23

In the matter between:

LUEVEN METALS (PTY) LIMITED Applicant

and

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Respondent

Neutral citation:	*Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service* [2026] ZACC 24
Coram:	Kollapen J, Majiedt J, Mathopo J, Mhlantla J, Nicholls AJ, Rogers J, Savage J, Theron J and Tshiqi J
Judgment:	Theron J (unanimous)
Heard on:	13 November 2025
Decided on:	23 June 2026
Summary:	Value-Added Tax Act 89 of 1991 — section 11(1)(f) — statutory interpretation — VAT consequences of the supply of gold

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ORDER

On application for leave to appeal from the Supreme Court of Appeal (hearing an appeal from the High Court of South Africa, Gauteng Division, Pretoria):

1. The applicant's application for leave to file supplementary written submissions is refused.
2. The appeal is dismissed.
3. The applicant must pay the costs of the respondent, including the costs of two counsel and the costs incurred pursuant to the application for leave to file supplementary written submissions.

JUDGMENT

THERON J (Kollapen J, Majiedt J, Mathopo J, Mhlantla J, Nicholls AJ, Rogers J, Savage J and Tshiqi J concurring)

Introduction

[1] This case concerns the "supply of goods" (gold) to the South African Reserve Bank (Reserve Bank) and other entities identified in section 11(1)(f) of the Value-Added Tax Act[1] (VAT Act) and the proper interpretation of that section. Section 11(1)(f) of the VAT Act reads:

> "Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—
>
> . . .
>
> (f) the supply is to the South African Reserve Bank, the South African Mint Company (Proprietary) Limited or any bank registered under the Banks Act, 1990 (Act 94 of 1990), of gold in the form of bars, blank coins, ingots, buttons,

[1] 89 of 1991.

> wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution."

[2] For convenience, I shall refer to the entities to whom goods are to be supplied under section 11(1)(f) as the prescribed purchasers. I shall refer to the eight forms of gold stipulated under section 11(1)(f) as the prescribed forms.

Background and litigation history

[3] The applicant is Lueven Metals (Pty) Limited (Lueven), who is in the business of trading in and refining precious metals, including gold. It is a registered Category C Value-Added Tax (VAT) vendor under the VAT Act. Lueven is a buyer and reseller of second-hand gold,[2] such as scrap jewellery. The respondent is the Commissioner for the South African Revenue Service (SARS).

[4] Lueven entered into an agreement with Absa Bank Limited (Absa), a prescribed purchaser, to supply gold bars to it that have been refined to a purity level of at least 99.5% (pure gold). In order to do so, Lueven deposits its less pure gold scrap and gold bars with Rand Refinery, one of the largest refining and smelting complexes in the world. Rand Refinery further melts and refines the gold deposited by Lueven and other depositors before delivering the pure gold bars to Absa and other purchasers. For years, Lueven treated its sales to Absa as zero-rated, which effectively allowed Absa to buy the gold bars without VAT. The zero-rating also allowed Lueven to deduct the input tax paid to suppliers of the second-hand gold it purchased.

[5] In 2021, after an audit of Lueven, SARS found that the second-hand gold, which Lueven purchased for its supply of pure gold to Absa, had been subject to previous

[2] For purposes of this judgment, I use "second-hand gold" and "recycled gold" interchangeably. Both terms refer to gold that was previously manufactured into a form that is not one of the prescribed forms.

manufacturing processes. Therefore, SARS concluded that Lueven's supply of gold to Absa did not qualify for zero-rating under section 11(1)(f).

High Court

[6] Lueven instituted proceedings in the High Court of South Africa, Gauteng Division, Pretoria (High Court), seeking a declaratory order in the following terms:

> "2.1 The word 'gold' in section 11(1)(f) of the [VAT Act], refers to, and only applies to: gold (in any of the eight unwrought forms permitted in the subsection) refined to the grade of purity required for acquisition by the South African Reserve Bank ('SARB'), the South African Mint Company (Proprietary) Limited ('Mintco') or by any bank registered under the Banks Act, 1990 (Act No. 94 of 1990) ('bank');
>
> 2.2 'Gold' in the form of 'bars' supplied to the SARB, Mintco or a bank, in terms of section 11(1)(f) of the VAT Act, refers to gold of a purity equal to or greater than 99.5%;
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> 2.3 The phrase 'which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of' in section 11(1)(f) of the VAT Act, precludes the zero rating of a supply of gold:
>
> (i) not being in one of the eight unwrought forms identified in the subsection; and
>
> (ii) that has undergone further manufacturing or production processes once it has reached the state of purity required for acquisition by the SARB, Mintco or a bank.
>
> 2.4 The phrase 'which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of' in section 11(1)(f) of the VAT Act, refers to any manufacturing process(es) carried out by the vendor supplying gold to the SARB, Mintco or a bank, and does not refer to any process(es) to which gold may have been

> subjected historically, prior to being refined to the grade of purity required for acquisition by the SARB, Mintco or a bank."[3]

[7] The High Court examined the text, context and purpose of section 11(1)(f). Textually, it held that a simple reading of the words used reveals that three requirements must be met for a VAT rate of zero percent. First, the sale must be to one of the prescribed purchasers. Second, the gold must be in one of the prescribed forms. Third, the gold must not have undergone any manufacturing process other than refining or the manufacturing or production of the prescribed forms.[4]

[8] The High Court also reasoned that a contextual interpretation requires all words in a provision to be given meaning and afforded due weight. On Lueven's reading, the phrase beginning with "which has not undergone" would be superfluous. Such a result, the High Court held, was neither sensible nor businesslike.

[9] With regard to the purpose of the section, the High Court found that the VAT Act's primary purpose is to raise revenue for the benefit of the National Revenue Fund. Certain goods qualify for zero-rating due to policy considerations, such as protecting competition or shielding indigent persons from higher prices. These considerations, the High Court held, were not justiciable.[5]

[10] In sum, the High Court held that a proper interpretation of section 11(1)(f) is that gold, which has undergone a refinement or manufacturing process prior to the refining or manufacturing process required to turn it into one of the prescribed forms, would not qualify for zero-rating.[6]

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[3] *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service* [2022] ZAGPPHC 325 (19 May 2022) (High Court judgment) at para 3.4.

[4] Id at para 5.1.

[5] Id at para 6.5.

[6] Id at para 2.6.

Supreme Court of Appeal

[11] On appeal, the Supreme Court of Appeal primarily dealt with section 105 of the Tax Administration Act[7] (TAA), and the question of whether, absent a directive in terms of that section, the High Court could enter into and pronounce on the merits of Lueven's application for declaratory relief. The Supreme Court of Appeal considered the nature of declaratory relief and ultimately held that an application for declaratory relief was not appropriate and that the dispute should be resolved through the machinery of the TAA.[8] It held that the High Court had erroneously entertained an application for declaratory relief although it had correctly dismissed the application. The Supreme Court of Appeal therefore did not pronounce on the issue presently before this Court and instead dismissed the appeal on a preliminary point.

Constitutional Court in the Five Tax Cases

[12] In the *Five Tax Cases*,[9] this Court held that the Supreme Court of Appeal erred in dismissing the appeal on the basis of section 105 of the TAA and confirmed the High Court's decision to entertain the application on its merits. The legal issue on the merits stood over for later determination by this Court, which forms the basis of this judgment.[10]

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[7] 28 of 2011.

[8] *Lueven Metals (Pty) Ltd v Commissioner for the South African Revenue Service* [2023] ZASCA 144 at para 30.

[9] *United Manganese of Kalahari v Commissioner, South African Revenue Service and Four Similar Cases* [2025] ZACC 2; 2025 (5) BCLR 530 (CC); 2026 (2) SA 227 (CC). The *Five Tax Cases* concerned five consolidated applications for leave to appeal that all implicated the interpretation and application of section 105 of the TAA. One of the applications for leave to appeal (in *Forge Packaging (Pty) Ltd v Commissioner for the South African Revenue Service*) was dismissed on condonation grounds, while in the other four cases, leave to appeal was granted. In two of the remaining matters (*United Manganese (Pty) Ltd v Commissioner for the South African Revenue Service* and *Rappa Resources (Pty) Ltd v Commissioner for the South African Revenue Service*) the appeals were dismissed. This Court held that the remaining issues in the final two matters (*Absa Bank and United Towers (Pty) Ltd v Commissioner for the South African Revenue Service* and the current case) would stand over for later determination.

[10] Prior to the hearing of the remaining issues, on 17 April 2025, this Court issued directions requiring the parties to address the following issue:

> "The zero-rating of gold in terms of section 11(1)(f) of the [VAT Act] applies where the gold is supplied to a specified institution 'in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution, which has not undergone any manufacturing process other than the refining thereof or the manufacture or production of such bars, blank coins, ingots, buttons, wire, plate, granules or solution'. Excluding manufacture that occurred at some previous time in the gold's history, that is, before the refining thereof and its manufacture into one of the eight

Interpretive principles

[13] This matter concerns the interpretative question whether section 11(1)(f) of the VAT Act allows for the zero-rating of the supply of gold that was previously manufactured into a form other than the prescribed forms set out in that section. The applicable principles of statutory interpretation are set out in *Endumeni*,[11] which dictates a textual, contextual and purposive reading of the section. In that case, Wallis JA put the matter thus:

> "Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. . . . The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."[12] (Footnotes omitted.)

[14] While text, context and purpose are three aspects of the statutory interpretive exercise, this Court has emphasised that statutory provisions should be accorded their textual meaning whenever appropriate and be "interpreted purposively", "properly contextualised" and "construed consistently with the Constitution" at all times.[13] In

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> forms, what disqualifying manufacturing process does the section envisage, bearing in mind that the exemption in any event applies only to refined gold in one of the eight forms?"

[11] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA).

[12] Id at para 18.

[13] *Cool Ideas 1186 CC v Hubbard* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) (*Cool Ideas*) at para 28.

such an interpretive scheme, these aspects are not isolated enquiries but parts of a unitary interpretative exercise. In light of these principles, I address each aspect in turn while acknowledging their intertwined nature and how one aspect of the analysis may be informative to the other aspects.

Textual reading

[15] Overall, Lueven characterises the interpretative exercise as follows: whether section 11(1)(f) is to be interpreted, in light of its text, context and purpose, to mean the zero-rating of the supply of gold to a prescribed purchaser provided that it is in one of the prescribed forms, or whether the section operates to exclude recycled gold from the zero-rating provision. Lueven contends that section 11(1)(f) stipulates only three requirements for the zero-rating of the supply: (i) the supply must be to a prescribed purchaser; (ii) the supply must be of gold; and (iii) the gold supplied must be in one of the prescribed forms. Textually, Lueven contends that the second clause, the phrase starting with "which has not undergone", is not, as SARS suggests, an exclusionary phrase for two reasons.

[16] First, Lueven submits that the phrase is disjunctive. It argues that the refining and the manufacturing of gold into the prescribed forms are fundamentally different concepts. Since refining necessarily eradicates the previous forms in which the gold existed, Lueven argues that the inclusion of the word "refining" renders the recycling of gold allowable. Therefore, Lueven argues, so long as the refined gold is supplied to a prescribed purchaser in a prescribed form, historical manufacturing processes do not disqualify the supply. In this vein, Lueven further contends that during the refining process at Rand Refinery, newly mined gold and second-hand gold are inevitably comingled, making them impossible to distinguish afterwards. Consequently, it is impossible to satisfy a requirement that the gold must not have been subjected to any manufacturing process other than the manufacturing into one of the prescribed forms.

[17] Second, Lueven argues that the phrase governs the form in which the gold needs to be supplied to the prescribed purchasers. It contends that the VAT Act uses many

terms of art that bear a special meaning in context, and that the High Court's reliance on "a simple reading" was fundamentally flawed. Instead, Lueven argues that the forms of gold in the phrase resemble similar lists of "unwrought" or "unmanufactured" gold in the Mining Rights Act[14] (MRA) and the Precious Metals Act[15] (PMA). It submits that none of the MRA, the PMA or the VAT Act contains a distinction between newly mined gold and recycled gold, as long as the gold is in one of the prescribed forms.

[18] SARS submits that the ordinary meaning of the words in section 11(1)(f) is easily ascertainable. This section provides zero-rating for the supply of gold under three requirements, which are: (i) the sale must be to a prescribed purchaser; (ii) the gold must be in one of the prescribed forms; and (iii) the gold must not have undergone a process other than that of the refining thereof or the manufacturing or production of the prescribed forms.

[19] According to SARS, since the last requirement is preceded by the word "which", a relative pronoun describing its antecedent, "the gold to be sold", the last requirement qualifies or restricts the refining, manufacturing or production processes of the gold. More specifically, SARS submits that the words "which has not undergone any manufacturing process other than" are to be interpreted in light of the two permissible manufacturing processes, which are the refining of gold and the manufacture or production of the gold into one of the prescribed forms. Because the manufacture or production of gold into other historical forms falls outside of these permissible processes, second-hand gold is expressly excluded.

[20] SARS contends that Lueven's interpretation of the third requirement, which seeks to preclude the zero-rating of gold "that has undergone further manufacturing or production process once it has reached the state of purity required for acquisition", postulates a further manufacturing process once the gold has reached the required state

[14] 20 of 1967.

[15] 37 of 2005.

of purity. SARS proffers three reasons why such a process cannot be read in. First, section 11(1)(f) makes no reference to such a further manufacturing process. Second, this interpretation is absurd, as there is no need to refine gold after it has been refined to the required purity level and into one of the prescribed forms. Third, the wording of section 11(1)(f) is in the past tense. Had the Legislature envisioned further refining or manufacturing processes, it would have replaced the phrase "has not undergone" with "will not undergo".

[21] SARS further submits that in prayer 2.4,[16] Lueven seeks to declare that "any manufacturing process other than the refining thereof or the manufacture or production of" one of the prescribed forms "does not refer to any process(es) to which gold may have been subjected historically, prior to being refined to the grade of purity required". SARS submits that this interpretation is untenable. In effect, SARS submits that such a declarator would mean that section 11(1)(f) zero-rates all gold supplied to the prescribed list of purchasers in one of the prescribed forms. Such an interpretation would render the entire clause redundant. Instead, SARS submits that the clause "any manufacturing process other than" refers to historical refining or manufacturing processes. This is also SARS' submission in response to this Court's directions.[17]

[22] SARS also disputes Lueven's interpretation of the word "refining". While Lueven submits that the refining process eradicates historical manufacturing processes, SARS submits that the refining process refers to the removal of unwanted materials from the gold to improve its purity level. This process does not erase the fact that second-hand gold has undergone previous manufacturing processes.

[16] Quoted above in [6].

[17] The directions are quoted above in n 10.

[23] It is trite that statutory interpretation should give ordinary meaning to a statute's text[18] and avoid rendering words or phrases superfluous.[19] So construed, it appears that section 11(1)(f) imposes three requirements in order for the supply of gold to be zero-rated, namely: the supply of gold is to a prescribed purchaser; the supply of gold must be in one of the prescribed forms; and the supply of gold must not have undergone any manufacturing process other than the refining of the gold or the manufacture or production of one of the prescribed forms.

[24] This matter concerns the interpretation of the third requirement. The following observations are apparent from the text: the third requirement regulates the manufacturing process of the supply of gold, hence distinguishing the third requirement from the second requirement. Whereas the second requirement concerns the final form in which the gold is supplied, the third requirement focuses on the manufacturing process. It must be noted that the third requirement is structured to only permit two types of manufacturing processes: the refining of gold and the manufacturing of one of the eight prescribed forms.

[25] The gold that Lueven supplies is recycled gold from sources including second-hand jewellery and scrap gold. It is common cause that the gold undergoes three steps before Lueven supplies it to one of the prescribed purchasers. First, the gold is manufactured into its previous form. Then, the gold is refined. Finally, the now refined gold is manufactured into one of the prescribed forms. In other words, such gold has undergone previous manufacturing processes into non-prescribed forms. While refining does eradicate the recycled gold's previous form, it does not alter the fact that such gold previously underwent a disqualifying manufacturing process. Thus, on a purely textual reading, Lueven's supply of recycled gold cannot benefit from zero-rating.

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[18] See, for example, *Cool Ideas* above n 13.

[19] See, for example, *National Credit Regulator v Opperman* [2012] ZACC 29; 2013 (2) SA 1 (CC); 2013 (2) BCLR 170 (CC) at para 99.

[26] Against this backdrop, Lueven contends that section 11(1)(f) only requires that the supply be of gold, to one of the prescribed purchasers and in one of the prescribed forms. The interpretation that section 11(1)(f) does not impose any further requirement of gold cannot stand against the text, as it would render the third requirement identified above redundant. Regarding the clause beginning with "which has not undergone", Lueven's argument that the clause is disjunctive, while correct, does not assist its case. The clause only permits two types of manufacturing, and the historic manufacturing of gold into non-prescribed forms remains excluded.

[27] Lueven's argument that the phrase "which has not undergone" governs the form in which gold is supplied is fallacious. As shown, the third requirement concerns the manufacturing process of the supply of gold, and the second requirement already deals with the form of the gold. If Lueven's argument stands, then section 11(1)(f) could just as well have ended before "which has not undergone". This is untenable. Expressed differently, if a refiner engages in a process of manufacture which results in its gold not being in one of the prescribed forms, it is the second requirement – that the supply of gold must be in one of the prescribed forms – which would cause that end-product to not qualify for zero-rating. The disqualifying manufacture or production process which is the subject of the third requirement must thus refer to some earlier processes which the gold underwent.

[28] The contention by Lueven that such a textual reading is impermissible because it would prevent even newly mined gold from being zero-rated also falls to be rejected. Gold mines typically cast gold into doré bars before depositing them with Rand Refinery. Doré bars are typically bars of lower grades of purity created after an initial refining and production process. The mines then pass these bars onto Rand Refinery for further refining and manufacturing. The process from mined gold to doré bars includes refinement and the production of bars, both permissible processes under section 11(1)(f). Nothing in section 11(1)(f) precludes a gold bar from being refined multiple times.

[29] Lueven further posits that the third requirement is meant to exclude "manufacturing processes beyond" the manufacturing of the prescribed forms. More specifically, it points to value-added products, such as cast bars, as products that do not qualify for zero-rating. This argument is unconvincing. As noted above, the second requirement already disqualifies supplies of gold that are not in one of the prescribed forms. To the extent that Lueven suggests that there are, for example, multiple types of gold bars, the differences between them are immaterial and wholly unmentioned in section 11(1)(f).

[30] In conclusion, the text of section 11(1)(f) strongly favours the interpretation, as the High Court correctly found,[20] that in order for a supply of gold to qualify for zero-rating, the gold must not have undergone a historical manufacturing process other than refining or the manufacturing or production of the prescribed forms. This section, thus, excludes second-hand gold.

Contextual reading

[31] Lueven points to several pieces of context that supposedly support its interpretation: the Explanatory Memorandum for the Value-Added Tax Bill, 1991 (Explanatory Memorandum), the overall scheme of VAT and the treatment of zero-rated supplies, the binding class rulings and the purportedly comparable legislations (the MRA and the PMA). I deal with these in turn.

Explanatory Memorandum

[32] The Explanatory Memorandum states at paragraph 5.9.6:

> "The supply of gold in certain forms to the Reserve Bank, the South African Mint or a registered deposit-taking institution is zero-rated under clause 11(1)(f)."

[20] High Court judgment above n 3 at para 5.1.

[33] Lueven argues that this statement accords with its interpretation that any supply of gold to a prescribed purchaser qualifies for zero-rating, as long as it is supplied in one of the prescribed forms. SARS argues that Lueven's reliance on the Explanatory Memorandum is misplaced. Paragraph 5.9.6, it submits, cannot shed light on the interpretation of section 11(1)(f), as it presumes that the provisions of section 11(1)(f) have been complied with. Additionally, SARS submits that the Explanatory Memorandum is not a detailed memorandum on the legislative history of the VAT Act.

[34] In *Thistle Trust*,[21] this Court stated that "particular caution should be applied before using explanatory memoranda to inform the interpretation of tax laws".[22] In that matter, it was deemed appropriate to do so since both parties invoked the explanatory memoranda to support their interpretation. There is a clear difference in these proceedings, as SARS argues that the Explanatory Memorandum in this case cannot be placed in the same category as the detailed explanatory memorandum that outlines the history of the provision similar to the ones in *Thistle Trust*.

[35] Even if the Explanatory Memorandum could be used to interpret section 11(1)(f), in my view, it does not take the dispute any further. First, as SARS submits, paragraph 5.9.6 does not purport to describe the requirements under section 11(1)(f) or how to comply with them. Instead, it explains the effect of the section: the zero-rating of certain supplies of gold. Second, while Lueven seizes on the phrase "certain forms", the Explanatory Memorandum contains no explicit suggestion that the phrase refers strictly to the prescribed forms and not to the exclusion of prior manufacturing. Paragraph 5.9.6, so construed, could support either interpretation, as both interpretations regulate which "certain forms" of gold qualify for zero-rating. The parties simply put forth different versions of *which forms* qualify.

[21] *Thistle Trust v Commissioner, South African Revenue Service* [2024] ZACC 19; 2024 (12) BCLR 1563 (CC); 2025 (1) SA 70 (CC).

[22] Id at para 68.

[36] Accordingly, the Explanatory Memorandum is not useful in determining the correct interpretation.

VAT scheme

[37] Lueven argues that the scheme of VAT, as a whole, envisages tax to be levied on the value added at each stage of the production and distribution process. A recipient vendor is thus entitled to deduct the amounts of input tax incurred from the output tax levied by itself, and the total burden of VAT is borne by the final consumer. Zero-rating allows a vendor to claim input VAT, without levying output VAT at the normal 15%. It is applied only to a limited range of transactions to achieve specific objectives. According to Lueven, zero-rating in non-export transactions is primarily aimed at benefitting the recipient of goods. It argues that the VAT scheme does not regulate the zero-rating of goods based on the forms the goods might have taken previously in the supply chain. Rather, since VAT is imposed on the current supply of goods, the VAT treatment of a particular transaction depends on the nature or type of goods being supplied.

[38] SARS, on the other hand, submits that this contention is inconsistent with the clear wording of the VAT Act, and that there are other examples in respect of which vendors have to vet the source or origin of their supplies.

[39] Zero-rating applies to a limited range of transactions with the purpose of achieving specific objectives acknowledged by the government as being more important than the collection of the additional amounts of VAT. It applies to export and non-export goods. When it applies to export goods, the purpose is often to ensure a competitive environment against the international market. Regarding non-export goods, the norm is for certain goods, often seen as essentials, to be more affordable for consumers (such as bread and sanitary towels). When an item is classified as zero-rated, it means that the VAT vendor is charging zero percent VAT as output tax.

[40] As discussed, Lueven argues that the VAT scheme does not regulate the zero-rating of goods based on the forms the goods might have taken previously in the supply chain. Rather, since VAT is imposed on the current supply of goods, the VAT treatment of a particular transaction depends on the nature or type of goods being supplied.

[41] This argument cannot rescue Lueven. Zero-rating may be used for various policy purposes. Absent unequivocal evidence, it would be premature for this Court to impute policy rationales behind the zero-rating of essential goods onto section 11(1)(f). Further, even if, as Lueven suggests, section 11(1)(f) seeks to regulate the current supply of gold, nothing precludes it from imposing conditions on the forms the gold previously underwent in the supply chain. As stated above, Lueven's reading would render the phrase beginning with "which has not undergone" superfluous. In my view, generalised observations of the VAT scheme do not override the clear statutory language of section 11(1)(f).

Binding class rulings

[42] Lueven also relies on the binding class rulings, which were issued by SARS pursuant to Rand Refinery's queries regarding, among others, the proper accounting and documentation of gold deposited with it, since gold from various depositors was comingled. Regarding these rulings, Lueven submits that SARS historically applied section 11(1)(f) in line with Lueven's interpretation in consecutive rulings. It contends that SARS is bound by its previous class rulings, that it has changed its interpretation in contravention of section 82(1) of the TAA and that the zero-rating of all gold to prescribed purchasers was a generally prevailing practice.

[43] SARS submits that the binding class rulings do not constitute its interpretations of section 11(1)(f). Instead, they specifically stipulate that suppliers such as Lueven have to meet the requirements of section 11(1)(f). When taken in context, SARS submits that it is apparent that the rulings clarify the documentary proof vendors need

to furnish under section 11 of the VAT Act and do not interpret the requirement that gold should not have undergone previous manufacturing processes.

[44] SARS makes three submissions in respect of the gold being comingled at Rand Refinery. First, it submits that for purposes of section 11(1)(f), the only relevant issue is whether the gold, prior to arriving at Rand Refinery, has undergone a disqualifying manufacturing process. Any comingling after delivery to Rand Refinery is, therefore, irrelevant. Second, it is a vendor's obligation to properly declare its taxable supplies. The fact that Rand Refinery mixes gold does not detract from Lueven's responsibility to ensure that the gold it deposits has not undergone a disqualifying manufacturing process. Third, Rand Refinery tracks the volume of gold received from each depositor, meaning that both Rand Refinery and each depositor have knowledge of the quantity of gold sales.

[45] I agree with SARS that the binding class rulings primarily address the relevant documentary requirements, which formed the main purpose of the requests in each ruling. The one aspect of the class rulings that is of some concern is that they seem to imply that Lueven and other relevant class members were permitted to supply gold at a zero-rating. However, in my view, notwithstanding this, the rulings do not provide any interpretative guidance to the content of section 11(1)(f).

[46] The binding class rulings were not directed at the interpretation of section 11(1)(f). They were concerned with the documentary difficulties created by the fact that, due to comingling at Rand Refinery, parties such as Lueven (referred to in the rulings as "depositors") could not directly link the gold they deposited at Rand Refinery with the refined gold they received after processing by the Refinery. The factual background to the documentary difficulties may have included SARS' view at the time that the depositors were entitled to supply gold at the zero-rate in accordance with section 11(1)(f), but the rulings as such did not determine the issue in this case. The rulings essentially established that the documentary difficulties would not preclude depositors from claiming the tax benefit of various sections of the VAT Act, including

section 11(1)(f), provided the documentary arrangements set out in the rulings were followed. One will search in vain, in the rulings, for any discussion of what I have identified as the third requirement contained in section 11(1)(f) and of the question as to what would constitute a disqualifying manufacturing or production process.

[47] Accordingly, this Court's dictum in *Marshall*[23] finds application. In *Marshall*, this Court held the following in relation to the question of the extent to which a court may defer to an administrative body's interpretation of legislation:

> "Why should a unilateral practice of one part of the executive arm of government play a role in the determination of the reasonable meaning to be given to a statutory provision? It might conceivably be justified where the practice is evidence of an impartial application of a custom recognised by all concerned, but not where the practice is unilaterally established by one of the litigating parties. In those circumstances it is difficult to see what advantage evidence of the unilateral practice will have for the objective and independent interpretation by the courts of the meaning of legislation, in accordance with constitutionally compliant precepts. It is best avoided."[24]

[48] Therefore, I conclude that the binding class rulings are not conclusive of Lueven's interpretation of section 11(1)(f).

The MRA and the PMA

[49] Lueven refers to the MRA and the PMA for the proposition that, like these statutes, the VAT Act draws no distinction between newly mined and recycled gold. Therefore, Lueven argues that imposing such a distinction would amount to an impermissible reading-in. SARS contends that the VAT Act on the one hand, and the MRA and PMA on the other, are unrelated, do not deal with similar subject matters and

[23] *Marshall NO v Commissioner, South African Revenue Service* [2018] ZACC 11; 2018 (7) BCLR 830 (CC); 2019 (6) SA 246 (CC).

[24] Id at para 10.

are not *in pari materi* (concerning a similar subject). Thus, SARS submits that they serve no purpose in this interpretative exercise.

[50] I agree with SARS that this submission of Lueven's is incorrect. The fact that the gold qualifying for zero-rating is manufactured from newly mined gold is a consequence of the section's application and import. Consequently, SARS' interpretation is not an impermissible reading-in. Further, the mere fact that the MRA and the PMA do not distinguish between newly mined and recycled gold does not imply that such a distinction should also be absent in section 11(1)(f). Not only do the MRA and the PMA concern different subject matters from the VAT Act, the definitions Lueven points to form parts of the overall definition of "precious metal", which bears no relation to the zero-rating of certain supplies of gold.

[51] In sum, the context of the provision, including the Explanatory Memorandum, the scheme of VAT generally, the binding class rulings and the MRA and the PMA, do not support Lueven's interpretation of section 11(1)(f).

Purposive reading

[52] Lueven contends that the purpose of section 11(1)(f) of the VAT Act is two-fold: (i) to enable prescribed purchasers to obtain gold in the prescribed forms at a zero-rate of VAT, given the importance of gold (in the required state and condition) to their functions and mandates in relation to investment, liquidity and currency; and (ii) to ensure the availability, sustainability, continuity and longevity of gold supply to the prescribed purchasers. This is done by placing VAT vendors supplying such gold to them at a zero-rate on a footing equal to any other suppliers of gold at the standard rate insofar as the deductibility of the suppliers' input tax is concerned.

[53] Lueven contends that SARS' interpretation frustrates this purpose because finite newly mined gold will eventually be depleted. The beneficiaries, according to Lueven, should be the entities identified (the prescribed purchasers), not mines, which are not identified in the section.

[54] Lueven further submits that any policy consideration relevant to the section would have the sole aim of enhancing the neutrality principle of the VAT scheme. The neutrality principle holds that indirect taxes should be neutral with respect to choice of production and distribution channels. Lueven submits that, therefore, mines would be indifferent as to whether to export the gold or sell it to the prescribed purchasers. This supports Lueven's interpretation that the section was enacted for the benefit of the prescribed purchasers in the prescribed forms.

[55] SARS submits that section 11(1)(f) should be interpreted in the context of the VAT Act as a whole and that "the purpose of the VAT Act is to raise revenue for the benefit of the National Revenue Fund", with zero-rating being the most beneficial form of VAT treatment. SARS further submits that the policy consideration underlying section 11(1)(f) is to afford the gold mining industry a favourable tax regime. Such a regime would promote and enhance the viability of gold mining in South Africa and extend the lifespan of the mines, including marginal mines, in the context of a highly capital-intensive industry.

[56] It is trite that statutory provisions must be interpreted purposively, with regard to the broader scheme of the Act, the context in which it operates and its intended effect.[25]

[57] At first blush it appears that Lueven raises sound arguments. The principle of sustainable resource use enriches the interpretive enquiry by situating fiscal policy within broader constitutional and environmental commitments. Gold, as a finite resource, should be preserved. On SARS' interpretation, it would seem that the Act deliberately excludes providing a tax benefit to suppliers of second-hand gold.

[25] *Bertie van Zyl (Pty) Ltd v Minister for Safety and Security* [2009] ZACC 11; 2009 (10) BCLR 978 (CC); 2010 (2) SA 181 (CC) at para 21. See also *Cool Ideas* above n 13 at para 28.

[58] What this argument must contend with, though, is the deliberate wording of the legislation. The High Court correctly held that zero-rating is based on policy considerations, which are often not justiciable. On my reading of section 11(1)(f) and the VAT Act as a whole, neither party's formulation of the section's underlying policy considerations is clearly evidenced from the text. Both formulations are plausible suggestions, but neither can be readily derived from the VAT Act as read with any admissible parliamentary material. It is not permissible for individual litigants (including SARS) to assert a purpose which is not clearly grounded.

[59] Accordingly, a purposive reading of section 11(1)(f) of the VAT Act does not clearly support either party's interpretation. This brings me back to a holistic assessment of text, context and purpose. As I found above, the textual reading is squarely against Lueven, and the contextual pieces do not render it much assistance. The purposive reading is ambiguous, and Lueven cannot escape the clear text of section 11(1)(f) by reference to its purpose.

Leave to file supplementary written submissions

[60] Before concluding, I address Lueven's application for leave to file supplementary written submissions. This application was filed on 21 November 2025, eight days after the hearing. It is opposed by SARS. Lueven submits that these submissions clarify its textual interpretation of section 11(1)(f) following several questions that arose during the hearing. Lueven, however, has had ample opportunities to present its case regarding the interpretation of section 11(1)(f). It dealt, at length, with the textual reading in both written and oral submissions, and in answer to the directions from this Court. The supplementary written submissions introduce no novel arguments on these issues, and Lueven must be refused leave to file such submissions. Costs must follow this result.

Conclusion

[61] After considering the text, context and purpose of section 11(1)(f) of the VAT Act, I must conclude that the High Court's interpretation of the section was correct: section 11(1)(f) of the VAT Act excludes the supply of second-hand gold (in other words, any gold that has undergone a historical manufacturing process other than refining or manufacturing into one of the eight forms) from zero-rating. Accordingly, the appeal falls to be dismissed with costs, including those of two counsel.

Order

[62] The following order is made:

1. The applicant's application for leave to file supplementary written submissions is refused.
2. The appeal is dismissed.
3. The applicant must pay the costs of the respondent, including the costs of two counsel and the costs incurred pursuant to the application for leave to file supplementary written submissions.

For the Applicant:	PA Swanepoel SC, F Pelser, CA Boonzaaier and MN Davids instructed by Edward Nathan Sonnenburg Incorporated.
For the Respondent:	EM Coetzee SC, HJ De Wet SC and S Maritz instructed by VZLR Attorneys.