

## **F Taxpayer v The Commissioner for the South African Revenue Service (Case no: IT 45842)**

### **Introduction**

This matter, which was heard in the Tax Court (Western Cape Division) on 27 January 2022, involves two applications in terms of which -

1. the applicant taxpayer ("Taxpayer") applied for a final order against the South African Revenue Service ("SARS") due to SARS' failure to deliver a rule 31 statement timeously; and
2. SARS applied for condonation and determination of a further period for delivery of the rule 31 statement.

By way of background, once a taxpayer has been issued with an assessment, the dispute resolution process can be summarised, in simple terms, as follows:

- to the extent that the grounds provided in the assessment do not sufficiently enable the taxpayer to understand the basis of the assessment, the taxpayer may request SARS to provide reasons for the assessment;
- the taxpayer may object against the assessment and SARS must consider the objection and either disallow it or allow it in whole or in part;
- if the taxpayer is dissatisfied with SARS' decision following the objection, the taxpayer may lodge an appeal against such decision; and
- the dispute may be resolved either through Alternative Dispute Resolution, the Tax Board or the Tax Court.

Considering the above background, the relevant facts, arguments made by the respective parties and findings of the Tax Court are summarised below.

### **Facts**

The time limits prescribed in the rules ("Rules") promulgated in terms of s103 of the Tax Administration Act, 28 of 2011 ("TAA") are crucial in this matter.

SARS raised **additional assessments** (on 17 March 2020) in respect of the Taxpayer's 2016 to 2018 years of assessment. The crux of the dispute pertains to the income tax treatment of various aspects of an insurance product taken out by the Taxpayer.

The Taxpayer duly requested SARS to provide **reasons for the additional assessments** within the time frame afforded by Rule 6<sup>1</sup> (on 2 April 2020), however, SARS failed to provide such reasons within 45 days (i.e. by 10 June 2020) of the date of delivery of the Taxpayer's request. Rule 6(6) allows SARS to extend the 45 day period, where there are exceptional circumstances or the matter, principle or amount involved are complex. Importantly, the notice of such extension must be delivered to the taxpayer *before* the expiry of the initial 45 day period.<sup>2</sup> In this instance, SARS only notified the Taxpayer of the extension it required 16 days after the expiry of the initial 45 day period. The reasons were finally delivered by SARS on 7 September 2020, on the last day of the extension.

In accordance with Rule 7(1)(a), the Taxpayer correctly delivered its **notice of objection** within the required timeframe<sup>3</sup> (on 20 October 2020). In accordance with Rule 9(1)(a), SARS was required to deliver its **decision on the objection** within 60 days, however, SARS failed to meet this deadline. Only once the Taxpayer delivered a Rule 56(1)(a)<sup>4</sup> notice, did SARS partially disallow the objection on 22 February 2021.

<sup>1</sup> In terms of rule 6, a taxpayer aggrieved by an assessment may, prior to the lodging of an objection, request SARS to provide reasons, which request must be delivered within 30 days from date thereof.

<sup>2</sup> The extension may also not exceed a further 45 days.

<sup>3</sup> Within 30 days after delivery of reasons requested in terms of rule 6.

<sup>4</sup> Rule 56(1)(a) stipulates that if a party has failed to comply with a period or obligation prescribed under the rules, the other may deliver a notice informing the defaulting party of the intention to apply to the tax court for a final order under s 129(2) of the TAA in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice.

The Taxpayer delivered its **notice of appeal** within the prescribed timeframe<sup>5</sup>, as provided in Rule 10(1)(a) (on 31 March 2021). SARS was required to deliver its **Rule 31 statement**<sup>6</sup> by 7 June 2021. Again, SARS did not adhere to this deadline. On 8 June 2021, SARS notified the taxpayer that the appeal had been referred to the Tax Court. It is important to note that SARS did not make a request to condone the late filing of the Rule 31 statement and no explanation was given for the delay. On 11 June 2021 the taxpayer delivered its rule 56(1)(a) notice putting SARS to terms to remedy its default within the prescribed 15-day period, failing which it intended to apply for a final order under s129(2) of the TAA. Following a number of requests by SARS for extensions, the Rule 31 statement was ultimately delivered on 21 September 2021.

### Arguments made by the relevant parties

The court made an interesting observation in relation to how the information required to prepare the Rule 31 statement should have been available to SARS long before expiry of the period in which it was obliged to file that statement. For instance -

- the additional assessments were raised in March 2020 following SARS' own audit;
- SARS provided reasons for the additional assessments after having specifically required an extension for this purpose, which could only have been because of "*exceptional circumstances, the complexity of the matter or the principle or the amount involved*"; and
- SARS partially disallowed the taxpayer's objection.

Accordingly, it seems that at each of these stages, the SARS officials concerned would, or should, have properly applied their minds to all of the information, along with their knowledge and understanding of the relevant statutory provisions. SARS appeared to suggest that the officials concerned were duty bound to consider the matter afresh at each stage, but there is nothing in its papers to support this assertion.

The Taxpayer set out the respects in which SARS' conduct in relation to its tax compliance status<sup>7</sup> had caused it severe prejudice. The Taxpayer was unable to obtain export permits, credit facilities were jeopardised and it was disqualified from government funding to attend international trade exhibitions, all because of SARS' decision to declare the company 'non-compliant' during the dispute.

### Findings of the Tax Court

The Court found that SARS has "*displayed an egregious lack of regard for the taxpayer's constitutionally entrenched right to fair administrative action*" and has failed to fulfil its obligations, both under s195 of the Constitution as well as the TAA and its Rules. The Taxpayer's appeals in relation to its 2016 to 2018 years of assessment were upheld and SARS condonation application was dismissed. In addition, SARS was ordered to pay the Taxpayer's costs.

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<sup>5</sup> Within 30 days following the delivery of a notice of disallowance of the objection.

<sup>6</sup> Rule 31 provides that SARS must deliver to the appellant a statement of the grounds of assessment and opposing the appeal within 45 days after receiving the notice of appeal.

<sup>7</sup> On 11 June 2020, the Taxpayer had submitted a request to SARS in terms of s 164(2) of the TAA for suspension of payment which SARS formally approved on 3 September 2020. SARS was accordingly obliged to reflect the taxpayer's status as compliant on e-filing. However, SARS insisted that the Taxpayer first pay the disputed (yet suspended) tax debt before it would reflect it as compliant in relation to its tax affairs. SARS finally corrected the status to "tax compliant" on 29 January 2021, however following the partial disallowance of the objection on 22 February 2021, SARS informed the taxpayer that the payment suspension had been revoked.