



## COURT JUDGMENT MEMORANDUM

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**Parties:** IRBA v East Rand Member District of Chartered Accountants (ERMDCA)

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**Theme:** Powers of the IRBA to prescribe assurance and tax practitioner fees and removal of fee concessions. Underlying process.

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### SUMMARY

The Court has reversed the 2019 decision of IRBA to set assurance and tax practitioner fees and the removal of fee concessions for auditors above the age of 65. In doing so they have sent the matter back to IRBA to reconsider and make a decision in line with the guidance given in the judgment. This guidance includes consulting affected parties and setting fees as envisaged in the Auditing Profession Act. All fees paid thus far should be reimbursed or credited against the affected auditors who brought the case.

### FACTS

In 2019, IRBA prescribed the following fees payable for the 2020 financial year (1 April 2019 to 31 March 2020), published under Board Notice 82 of 2019 (the impugned fees):

- a) a percentage fee model for Category C (low risk) assurance work which includes voluntary audits, reviews required by the Companies Act 71 of 2008 (the Companies Act), and other assurance work not included in Category A (high risk audits and related assurance work);
- b) tax practitioner fees;
- c) penalty fees for late submission of the requisite documents for assurance work and the under-declaration of assurance fees; and
- d) above inflation increases in the annual renewal fee for registration and the administration fee for reinstatement, published in Board Notice 24 of 2019.

IRBA also withdrew a fee concession to registered auditors over the age of 65 who previously had received a 50% discount on their annual fees (the fee concession). It did so without giving those auditors an opportunity to make representations as to why the fee concession should not be withdrawn.

### ISSUES

ERMDCA asked the Court to review and set aside, or to declare unlawful, the fees and IRBA's decision to withdraw the fee concession. This was on the basis that IRBA had no powers to set the fees due to the misinterpretation of

the law and that relevant considerations such inflation were ignored. In addition it was alleged that it was procedurally unfair to withdraw concessions without consultation.

## **RELEVANT COURT FINDINGS**

### **The review of Category C assurance fees**

Category C assurance work is low-risk assurance work which is not included in the definition of Category A assurance work, and involves voluntary audits by decision, independent reviews required in terms of the Companies Act and other assurance work. These fees affect small to medium sized firms the most. IRBA is not empowered under s 8(2)(b) of the Auditing Profession Act (APA) to impose assurance fees on an inverted sliding scale, based upon a percentage of the fees earned for assurance work and to extend such assurance fees to Category C assurance work. The APA does not permit the recovery of fees at a percentage of the total audit fee base declared. IRBA correctly applied the provisions of the APA between 2006 and 2012 when it prescribed fees for inspections 'on a cost per hour recovery basis'. Auditors were thus charged an hourly rate for inspections, which IRBA designated as 'inspection fees'.

### **Tax practitioner fees**

IRBA like SAICA, as it relates to tax practitioners, has functions of a Recognised Controlling Body (RCB). These functions include registration services, the receipt and investigation of complaints against tax practitioners, and instituting disciplinary proceedings against them where appropriate. For that they charge a fee. ERMDCA contended that IRBA should offer these services for free as they had no legal basis to charge fees. The Court disagreed with this, as IRBA is indeed offering a service.

### **Conclusion**

The decisions to prescribe assurance fees, tax recognition fees, the increase in the annual renewal of registration fees and administrative fees in excess of consumer price inflation, and the removal of the fee concession, fell to be reviewed and set aside. This was due to the process being unfair. As such the decisions have been sent back to IRBA to reconsider afresh. IRBA must repay to, or credit the accounts of the ERMDCA members with, all amounts paid by them in respect of fees that IRBA was not authorised to prescribe. It is peculiar that the judgment was specific on who needs to have monies reimbursed to or credited to as the IRBA notices may have affected other registered auditors. As such those auditors who were not part of the case would have to raise a claim against IRBA in line with the judgment.