Synopsis
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A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

Through analysis of and comment on new laws and judicial decisions of interest, Synopsis helps executives to identify developments and trends in tax law and revenue practice that may affect their business.

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Trading stock – the Commissioner's discretion

The valuation of trading stock for the purposes of the Income Tax Act has been the subject of some debate in recent years. At the heart of the issue lies the question whether the application of generally accepted accounting practice in the valuation of inventory may be adjusted by SARS on the basis that the practice is not 'satisfactory to the Commissioner'.

Section 22(1)(a) of the Income Tax Act ('the Act') sets out the general principles to be applied in valuing trading stock. Stock must be accounted for at its cost price, 'less such amount as the Commissioner may think just and reasonable as representing the amount by which the value of such trading stock … has been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason satisfactory to the Commissioner.'

Taxpayers have argued for some time that the application of universal principles of valuation as prescribed by International Financial Reporting Standards ('IFRS') should represent a basis satisfactory to the Commissioner where trading stock is recorded at a value that is less than the cost thereof.

Section 22(1)(a) of the Act imposes two requirements on the Commissioner. The first is to identify whether the reason for reflecting stock at a value that is less than cost price is 'satisfactory' and the second is to establish whether the amount by which the value is reduced below cost price is 'just and reasonable'.

In the Tax Court, in *Case No. 13626* (judgment delivered on 18 May 2018), the court was asked to consider whether the adoption of IFRS principles was a satisfactory reason and whether the methods applied resulted in a just and reasonable diminution in the value of the trading stock.

The evidence

The taxpayer ('XYZ') is the South African subsidiary of a multinational group, headquartered in Sweden, which supplies machinery and equipment, including spare parts, to the mining industry and other industries in South Africa. Its trading stock comprises many thousands of items.

In the relevant years of assessment, XYZ had reflected its trading stock at the cost price less a 'reduction amount'. The reduction amount was determined in conformity with the policy of the multinational parent company, which was applied across the entire group.

The policy was that:

- The value of stock that had not been sold within a period of 12 months was reduced by 50%;
- The value of stock that had not been sold within a period of 24 months was reduced by 100%; and
- The value of any 'overstock' was reduced by 50%.

XYZ had applied this policy, and SARS had added the reduction amount back in valuing the trading stock, on the basis that it was determined in an arbitrary fashion.

In evidence, the audit manager of XYZ's auditors confirmed that the application of the policy was in conformity with IFRS, more particularly International Accounting Standard 2 ('IAS2'), and with generally accepted accounting practice in South Africa and the EU.

Employees of XYZ testified that it operates in a niche market which is technologically advanced and in which innovation is frequent and rapid. As a result, equipment and parts become outdated or obsolete, frequently within a short period of time. Owing to the nature of the primary industry that XYZ serves it is required to carry high levels of spare parts and provide 'excellent maintenance services' to ensure that the costs to its customers of any breakdown or failure is minimised. In the event, XYZ carries high levels of stock that have not been sold for some time and may never be sold.

In paragraph [70] of the judgment Ingrid Opperman J recorded that at the accounting date it would not have been possible to sell all of the items of stock and that other items would not have been capable of sale at their original cost. The reasons were summarised in the following terms:

> 'The reasons given by them included that stock items may no longer be used in the industry, stock items may have also become damaged due to wear and tear (for instance, some items have a limited shelf life), stock items may have been ordered specifically for a client, but the client does not then take that stock (referred to as "non-stock articles"). Due to the specialised environment in which XYZ operates where it has to be able to supply spare parts required by its customers within a short time period and often on an urgent basis and its customer base is limited, it knows that it will not be able to sell all trading stock acquired by it; items might be capable of being returned to the Product Company but only at a reduced price (i.e. a price below cost), or XYZ might be able to only sell such stock in a fire sale at a reduced price below cost; the circumstances in which an XYZ Group company will be prepared to purchase trading stock from XYZ are limited (it will not accept any damaged or non-stock items for instance) and the XYZ Closing Stock included demonstration items, which are items which were used for customer demonstrations and which had therefore been worn out to some degree.'

The judgment

The judgment first examined the context and purpose of section 22(1) in relation to the Act as a whole.

Opperman J examined how trading stock is dealt with in the determination of taxable income, noting that the effect of section 22(1) of the Act is to defer the deduction of expenditure actually incurred in the acquisition of trading stock, which is allowed as a deduction in the year in which it is incurred in terms of section 11(a) of the Act.

At paragraph [30] Opperman J concluded:

> 'Therefore, section 22 is a timing provision – it is not a deduction provision and does not provide for any deduction.'

An examination was made of decisions relating to the valuation of trading stock, most notably *Case No. 13539*, a decision in the Tax Court against which SARS has noted an appeal. The judgment quoted extensively from the judgment in Case No. 13539, which had found that:

> 'Once it is accepted that the calculation by the appellant of the NRV of the trading stock in issue accords with IAS2, and it was common cause at the hearing that it did, it seems to me that it would be just and reasonable to recognise the difference between the cost price and the NRV as representing the amount by which the value of such trading stock has been diminished.'

However, *Case No 13539* had dealt with a situation in which the net realisable value of each item of trading stock had been identified and compared to its cost. In this matter, the diminution in value arose as a result of the application of a prescribed percentage to a large volume of stock items.

Opperman J referred to the judgment of Conradie J in *Income Tax Case 1489* and SARS *Practice Note No 36* of 13 January 1995, both of which stated that a method of reducing the value of stock by a percentage may be adopted in appropriate circumstances. She could therefore conclude that it could never have been intended that the realisable value of stock would have to be determined with absolute accuracy. In paragraph [55] this reasoning is explained:

> 'The fact that such a requirement does not exist is recognised in the reference in section 22(1)(a) to the amount which is a "*just and reasonable [representation of] the amount by which the value of [the] trading stock … has been diminished*." It does not refer to the amount which is the amount by which the value of the trading stock has diminished. At the time when the value of Closing Stock has to be included in terms of section 22(1) of the Income Tax Act, such stock is "*held and not disposed of*" by the taxpayer. Therefore, at that time the taxpayer does not know what the selling price of the stock will be and, indeed, whether the stock will even be sold. It follows that the value of Closing Stock is not a definitely ascertainable amount; it is an estimated amount. If and when such stock is ultimately sold, its value becomes a definitely ascertainable amount (namely, the amount of the sale proceeds if sold, or zero if scrapped). However, in the year in which the sale or scrapping occurs, the stock no longer comprises Closing Stock and therefore, although any sale proceeds are included in the trader's gross income, they are not the "*value*" referred to in section 22(1)(a).'

Finally, Opperman J clarified that there is no requirement in section 22(1)(a) of the Act that the stock should be unsaleable, nor that it should ultimately be proven to have been sold at the estimated realisable value.

Turning to the questions that required determination, Opperman J was satisfied (at paragraph [71]) that the evidence provided demonstrated that:

> '[T]here can be very little doubt that the "*value of [the relevant] trading stock … had been diminished by reason of damage, deterioration, change of fashion, decrease in the market value or for any other reason….*" as contemplated in section 22(1)(a) i.e. there was a Diminution Amount in each Relevant Year.'

As to determining what is a 'just and reasonable' amount, Opperman J identified that the Commissioner had failed to exercise the discretion vested in him and that it was open to the Court, in such a circumstance, to exercise its own original discretion.

A considerable amount of evidence had been given by XYZ that demonstrated that the percentages and the circumstances that caused them to be applied were reasonable by reference to the actual stock write-offs, the year-on-year experience and the methodologies applied to ensure that the percentage diminution in value was not applied to trading stock generally but was limited to high-volume parts stock.

On the basis of the extensive detailed evidence, Opperman J stated, at paragraph [102]:

> 'I have very little hesitation in concluding that stock items of the nature held by the AM division of XYZ which have for a period of 12 months not had any sales, have diminished in value. Such conclusion is reinforced if regard is had to the fact that not all stock can be returned to the parent company in Sweden and a special return price is negotiated less a further 15%, administration fee. In addition, the parent company does not re-imburse used goods or goods damaged en route, the only other options available to dispose of such items is to sell them at a discounted price at scrap values based on requests for offers.'

After considering and rejecting arguments raised by SARS as to the methodologies used by XYZ, Opperman J finally concluded (at paragraph [110]):

> 'In my view, the NRV as determined in accordance with IAS2 provides an appropriate method for purposes of section 22(1) for the determination of the actual value of trading stock at the end of the relevant years. Where this value is less than the cost price, a diminution of value has occurred. The reason for the diminution is to be found in the reduction in the reasonably anticipated taxable income that will be derived from the disposal of the trading stock. For the reasons set out earlier this is a satisfactory reason in the context of section 22(1). It was accepted by SARS that the calculation by XYZ of the NRV of the trading stock accords with IAS2. That being so, in my view, it would be just and reasonable to recognise the difference between the cost price and the NRV as representing the Diminution amount.'

The takeaway

This decision is closely reasoned. Meticulous examination of the law and practice and an extensive review of the evidence and the application of the law to the facts have given rise to a judgment of compelling logic.

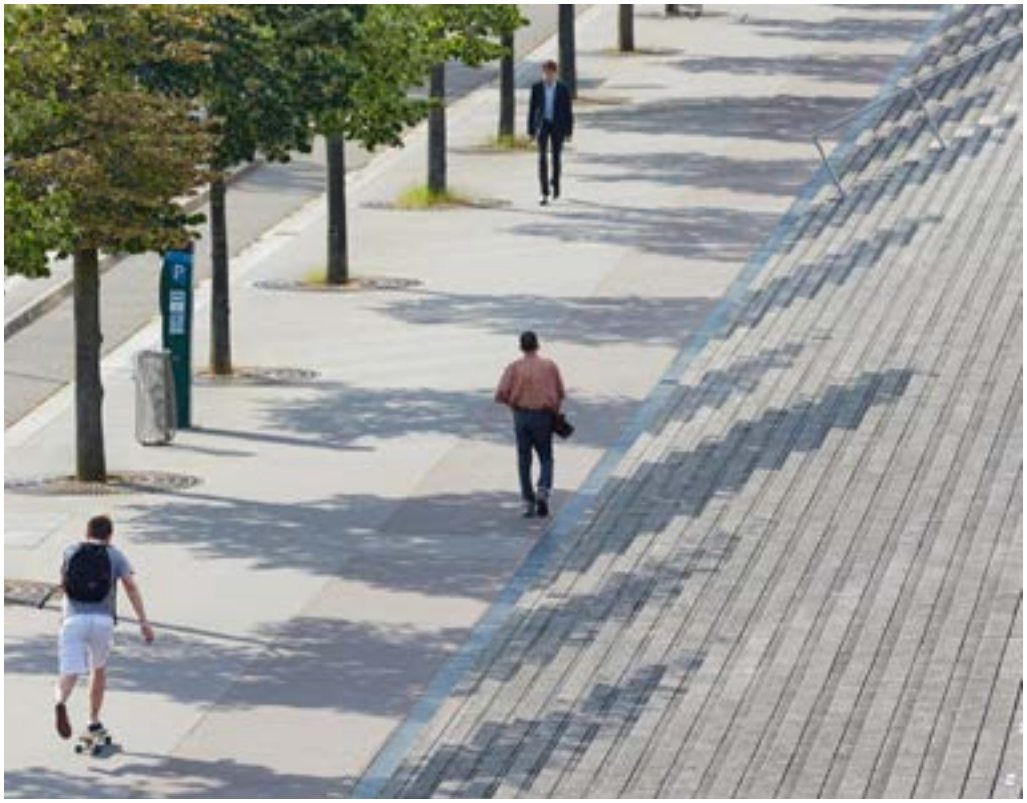
That said, it may not necessarily be concluded that the application of IAS2 will automatically result in a diminution that is just and reasonable. In this instance, the body of evidence was sufficient to satisfy the Court that the amount by which the value of the stock had been diminished was reasonable.

What the decision has emphasised, however, is that it is not a requirement that taxpayers should be able to establish that each item of stock has not been disposed of for more than the estimated realisable value. What is most relevant is that, at the time that the estimates of net realisable value are made, they should be reasonable.

It would be a great step forward if the valuation of trading stock for tax purposes could be aligned with the IAS2 methodology. This would provide greater certainty to taxpayers and reduce the potential for lengthy disputes with SARS.

Tax compliance status

A critical element of doing business with government or quasi-government institutions is possession of a tax clearance certificate. This statement that a person is compliant with tax obligations must be produced in order to tender for and be awarded contracts in the public sector.



Taxpayers need, therefore, to be critically aware of the obligations that rest on SARS and the duties to which taxpayers are subject in the management and retention of tax compliant status.

A dispute recently came before the Gauteng Division of the High Court in Pretoria in the matter of *Red Ant Security Relocation and Eviction Services (Pty) Ltd v Commissioner for the South African Revenue Services (Case No. 2999/18*, judgment delivered 21 May 2018), in which the rights, duties and obligations were considered.

Facts

The facts are not well described in the judgment, but the information indicates that this was an urgent application against the 'withdrawal' of tax compliant status by SARS.

The applicant ('Red Ant') had enjoyed tax compliant status. SARS, in November 2017, had agreed to accept payment of certain amounts of tax under a deferred payment plan. This plan terminated on 31 March 2018. On the date of termination, Red Ant was still indebted to SARS for amounts of tax which were disputed, but in respect of which, it would appear, no arrangement had been made for suspension or deferral of payment.

Following termination of the deferred payment arrangement, SARS recorded Red Ant's tax compliance status as 'non-compliant'.

Red Ant was therefore in the difficult position that it could not obtain work from its principal customers, mainly municipalities, and was placed in severe financial distress.

It therefore sought an order declaring that SARS was prohibited from withdrawing its tax compliant status because it had failed to give 14 days' notice of its intention so to do, as required under section 256(6) of the Tax Administration Act, No. 28 of 2011 ('the TAA').

The arguments

For Red Ant, the issues are well summarised in paragraph [2] of the judgment:

> The basis of the application is that [SARS] failed to comply with the procedural requirements of section 256(6) of the Tax Administration Act 28 of 2011, the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and the Constitution in revoking [Red Ant's] tax compliance (*sic*) status without affording it notice.

SARS responded that it was not obliged to give notice in the circumstances. The status had lapsed by operation of law, and it was Red Ant's responsibility to negotiate further in relation to the outstanding tax debt if it wished to have its status revert to tax compliant.

The judgement

SARS had argued that section 256(6) of the TAA does not apply in the circumstances in dispute, and it was not obliged to follow the procedures set out in that subsection in the circumstances.

Dippenaar AJ was not receptive of this submission. In paragraphs [17] and [18] he states:

> [17] It appears that [SARS] may not fully appreciate its obligations in relation to procedural fairness being that '*decision makers who are entrusted with the authority to make administrative decisions by any statute are … required to do so in a manner which is consistent with PAJA*.' [SARS] did not directly address this issue either in its written or oral argument. (Footnotes removed)
>
> [18] It was not contended by [SARS] in argument that as a matter of statutory construction, the legislature has expressly or by necessary implication enacted that

> the [*audi alteram partem*] rule should not apply or that there are exceptional circumstances which would justify a court not giving effect to it.

Having so determined, the Court found that Red Ant would suffer irreparable harm if the relief sought were not granted but also recognised that SARS would be significantly constrained in exercising its statutory or constitutionally authorised power if the relief were to be granted. However, Dippenaar AJ found that the balance favoured Red Ant in this instance.

The judgment is somewhat critical of SARS in examining whether there was any alternative remedy open to Red Ant. In paragraphs [29] and [30] Dippenaar AJ stated:

> [29] [SARS] contended that [Red Ant] has a suitable alternative remedy, being to approach it for the conclusion of a further deferral agreement, which would render [Red Ant] tax compliant and result in it being able to obtain a tax clearance certificate.
>
> [30] This argument assumes that such agreement would indeed be concluded and does not cover the eventuality that the parties are unable to conclude such an agreement on mutually acceptable terms. Moreover, such request is not a remedy for appealing [SARS's] decision or its failure to apply the audi alteram partem principle.

To the argument that it was open to Red Ant to challenge the status, Dippenaar AJ commented at paragraph [31]:

> In any event, [SARS] declined to restore [Red Ant's] tax compliance (sic) status when requested to do so.

It was therefore found that Red Ant had no alternative remedy and was granted interim relief.

Commentary

The judgment does not set out the provisions of section 256(6) of the TAA on which Red Ant apparently relied. This subsection provides:

> (6) SARS may alter the taxpayer's tax compliance status to non-compliant if the confirmation—
>
> (a) was issued in error; or
>
> (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts,

and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 14 days prior to the alteration.

The subsection appears eminently fair administratively. It postulates that there is a tax compliant status recorded, but that the status has been so recorded as a result of an error or having *prima facie* been obtained by fraud or misstatement. It therefore requires that SARS should give the taxpayer an opportunity to respond to allegations that the status had been erroneously or fraudulently obtained. The subsection deals with an alteration (revocation) where there has been no change in the underlying circumstances, but there was an apparent defect in the original grant.

It appears that section 256(6) had no relevance in the dispute and the court should have made this clear.

Section 256(7) of the TAA deals with the situation in point:

> (7) A taxpayer's tax compliance status will be indicated as non-compliant by SARS for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3) and ending on the date that the taxpayer remedies the non-compliance.

It seems that the application of this subsection caused the change in the tax status of Red Ant. It still had a tax debt owing to SARS on termination of the agreement for deferred payment. No arrangement had been made for deferral or suspension of that tax debt. It therefore did not meet one of the requirements for recognition as tax compliant and its compliance status changed from green to red, as it were.

SARS does not take an administrative decision in the circumstances set out in section 256(7) of the TAA. The status changes by operation of law based entirely on the facts – it '*will be indicated as non-compliant*'.

SARS is not given discretion to alter the status to non-compliant or retain the status as compliant, nor is it required to afford the taxpayer an opportunity to contest the statutory imperative.

To require 'decision makers' in such a circumstance to hear the other side does not appear to fit with a statutory construction of a provision which does not confer a deliberative power on SARS, and it is submitted that the remarks in paragraphs [17] and [18] of the judgment were, in the circumstances, inappropriate.

That said, having regard to the observation that counsel had not argued for a statutory construction that the legislation excluded the *audi alteram partem* principle, the Court had apparently not been referred to the fundamental differences between section 256(7) and section 256(6) of the TAA. The judgment appears to have been delivered as if section 256(7) did not exist.

The takeway

Tax status is a question of fact. In principle one cannot apply to have one's status declared as compliant unless one has actually complied with the requirements of the relevant legislation. It is therefore difficult to establish how hearing the argument of Red Ant would result in a restoration of tax compliant status. This could only be achieved if Red Ant applied for and secured an agreement to the deferment of payment of the amounts owing.

This is an unfortunate judgment. SARS is portrayed as if it had acted in an unreasonable and unfair manner. The judgment reflects the change in tax status as administratively unfair, whereas, in law, it would appear that the change in status in the circumstances was peremptory and not the result of administrative action at all.

Decision based on procedural issues rather than the merits

The decision of the Western Cape Tax Court in ITC 1904 (2018) 80 SATC 194, recently published in the Income Tax Reporter and delivered on 17 October 2017, is a decision based on procedural issues rather than the merits.

At issue were income tax assessments by SARS, totalling some R44 million, in respect of ten years of assessment, against which the taxpayer company had lodged a formal objection and appeal.

In the final result, the Tax Court was never called on to determine whether the assessments were right or wrong.

In its judgment, the Court made trenchant criticism of SARS's conduct in the procedural aspects of the taxpayer's appeal against the disputed assessments – in particular, SARS's failure to provide a full and reasonable explanation when applying for condonation of its late delivery of an answering affidavit, and its complete failure to ask the court for condonation of the late filing of its Rule 31 statement.

The Tax Court said that SARS's non-compliance in this matter was *inexcusable*, and it handed down a default judgment, altering the disputed assessments to accord with the taxpayer's notice of appeal, commenting that, in this matter, SARS 'has paid little, if any, regard to the proper administration of justice'.

The taxpayer appealed against the assessments

SARS had issued income tax assessments in respect of the taxpayer for the years 2005 to 2012. The taxpayer requested reasons for the assessments and SARS responded.

The taxpayer then filed a notice of appeal against the assessments in terms of s107(1) of the Tax Administration Act, read with Rule 10.

SARS failed to deliver its Rule 31 statement timeously

In terms of the Tax Court Rules laid down in terms of s103 of the Tax Administration Act, SARS was required to deliver (within a stipulated number of days) a Rule 31 statement setting out the grounds of assessment and opposing the taxpayer's appeal.

At SARS's request, the taxpayer reluctantly agreed to a 45-day extension of time to file its Rule 31 statement, but SARS failed to meet this undisputed deadline.

The taxpayer applied to the Tax Court for a final order

The taxpayer then delivered a notice in terms of Rule 56(2) informing SARS that it intended to apply for a default judgment in the form of a final order if SARS failed to deliver its Rule 31 statement within the next 15 days.

SARS failed to comply with that deadline, and the taxpayer proceeded to file an application with the Tax Court for default judgment, in which it asked the court to issue a *final order upholding its appeal against the disputed assessments* and, in the alternative (if the court found that there was good cause for SARS's default), an order that SARS deliver its Rule 31 statement within five days.

A month after the taxpayer had delivered this notice that it was applying for default judgment, SARS delivered its Rule 31 statement (107 days after the initial deadline) and filed a notice of its intention to oppose the taxpayer's application for default judgment – but SARS failed to timeously deliver its answering affidavit in respect of that application and made no application at all for condonation of the late filing of its Rule 31 statement.

SARS applied to court for condonation of the late filing of its answering affidavit, but made no similar application in respect of its Rule 31 statement

A mere five days before the Tax Court hearing in respect of the taxpayer's application for a default judgment, SARS gave notice of application for condonation for the late filing of its answering affidavit on the grounds that it had believed that, when it eventually filed its Rule 31 statement, this rendered it unnecessary to ask for condonation of the late filing of the answering affidavit.

Non-compliance with the time limit for delivering a document is not automatically cured by the eventual delivery of the document

In giving judgment, the Tax Court was explicit (at para [19]) that, where a time limit laid down in the Tax Court Rules for filing a formal document in the appeal process is not complied with, such non-compliance (contrary to what the SARS averred in these proceedings) is not automatically remedied by the eventual albeit late filing of the document.

The judgment makes clear that, if there was no agreement between the litigants permitting a late filing, condonation by the court must be sought.

The court (at para [27]) cited a Constitutional Court judgment which held that, in determining whether a court should grant condonation, the criterion was the interests of justice, and that all relevant factors in the particular case must be considered in this

regard. Moreover, that an applicant for condonation must give a full explanation for the delay, and such explanation must be reasonable.

In the present case, said the Tax Court, (at para [30]) SARS's explanation for the delay was grossly inadequate, incomplete and, moreover, unreasonable. As a result, the court refused to grant condonation.

Where formal time limits are not complied with, SARS and the taxpayer should not allow the matter just to drift

The court quoted (at para [28]) an earlier Tax Court judgment in which the court said that –

> 'one sees time and time again that neither SARS nor the taxpayers comply with [formal time limits laid down in the Rules]; they simply seem to go along in their own way. This is strongly to be discouraged. SARS, in particular, should take the lead and should display efficiency in the conduct of litigation. It should comply with time periods, and where it does not, it should promptly raise that matter in correspondence, providing reasons and seeking written agreements to extensions.
>
> Having said that SARS should take the lead, taxpayers themselves should not allow matters to drift. If SARS does not comply with a requirement imposed by the rules, a taxpayer is entitled, in terms of Rule 26 [now 56], to bring an application to compel compliance with the Commissioner's obligations.'

The Tax Court pointed out (at para [34]) that in the present matter there was 'a further more fundamental difficulty', namely, that SARS had failed to make any application at all to the court for condonation of the late filing of its Rule 31 statement. The only application before the court by SARS was for condonation of the late filing of its answering affidavit.

Even if the latter application for condonation were granted, said the court (at para [34]), this would not cure the lack of an application to condone the late filing of the Rule 31 statement and, as matters stood, SARS's Rule 31 statement was not properly before the court.

It is no excuse for SARS or a taxpayer to blame the attorney for non-compliance

The Court went on to quote (at para [38]) from an Appellate Division judgment which held that it is insufficient for a litigant to blame his attorney for neglect in the conduct of the litigation and to contend that procedural failures should therefore be overlooked.

The Appellate Division Court pointed out that the attorney was a person chosen by the litigant himself. Moreover, that where a litigant realises that he has not complied with a Rule of Court, he should, without delay, apply to court for condonation.

The Tax Court judgment goes on to say (at para [41]) that, although the amount of tax at issue in this case (some R44m) was substantial, SARS's conduct fell into the category of 'inexcusable' and that in this matter SARS 'has paid little, if any, regard to the proper administration of justice and the effect of its delay, both on the taxpayer in this matter and the *fiscus*'.

SARS application for condonation was dismissed and the court issued a final order

The court held (at para [54]) that SARS's application for condonation of the late failing of its answering affidavit must therefore fail.

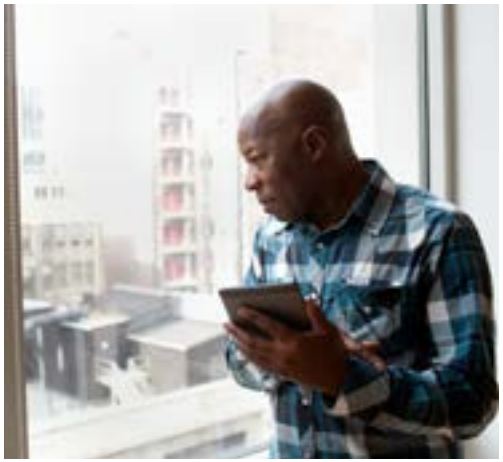
In the end, the court handed down a final default judgment, altering the disputed assessments for the years in issue in accordance with the taxpayer's notice of appeal – in essence, upholding in their entirety the taxpayer's appeals against the assessments.

Thus, the merits of the taxpayer's objection and appeal against the disputed assessments never came up for consideration by the court, and the matter was determined on the basis of SARS's non-compliance with the Tax Court rules regarding the timeous filing of an answering affidavit in an opposed application by the taxpayer for default judgment.

Critical comment

This judgment will stand as a final determination of the disputed assessments in favour of the taxpayer unless the judgment is reversed on further appeal to the High Court and the Supreme Court of Appeal.

It should be borne in mind that, even if the court had granted SARS condonation for the late filing of its answering affidavit in the taxpayer's application for default judgment, it seems overwhelmingly likely that the court would – in separate proceedings – later have granted a similar default judgment in favour of the taxpayer on the grounds that SARS had not applied for condonation of the late filing of its Rule 31 statement and was unable to provide an acceptable explanation for such late filing.



The takeaway:

- Where SARS or the taxpayer fails to comply with a time limit laid down in the Tax Court Rules in relation to the process to be followed in an objection and appeal against an assessment, SARS and the taxpayer can agree on an extension of time.
- If there is no such agreement as to an extension of time, the non-compliance is not cured simply by delivery, albeit late, of the document in question.
- The party in default should immediately make a formal application to the Tax Court for condonation of non-compliance with time limits, and each act of non-compliance must be the subject of such an application.
- In deciding whether to condone the non-compliance, the criterion taken into account by the court is the interests of justice in the circumstances of the particular case.
- In an application for such condonation, the party in default must make full disclosure as to why there was non-compliance, and the explanation must be both full and reasonable. Supporting affidavits should be filed, attesting to the relevant facts.
- If the court does not grant condonation for non-compliance by SARS with an essential step in the process of objection and appeal, the court can grant a final judgment by default against SARS and in favour of the taxpayer, effectively upholding the appeal and setting aside the assessment.
- If either SARS or the taxpayer fails to comply with time limits laid down in the Rules for objection and appeal, SARS should take the lead in taking appropriate action. For their part, taxpayers should not allow the matter to drift and a taxpayer is entitled, in terms of Rule 56, to apply to court for a final order disposing of the disputed assessment.
- Unless good cause to the contrary is shown, the court may make an order in terms of Rule 129, and this can include a final order (in favour of SARS) confirming the assessment or – as in this particular case – a final order (in favour of the taxpayer) that the assessment be altered in accordance with the taxpayer's notice of appeal against the assessment.

SARS Watch:

Legislation		
16 Jul	2018 Draft Tax Laws Amendment Bill and Tax Administration Laws Amendment Bill	Comments are due to SARS and National Treasury by Thursday, 16 August 18.
13 Jul	Amendment to Part 1 of Schedule No. 1, by the substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to reduce the rate of customs duty on wheat and wheaten flour from 43,72c/kg and 65,59c/kg to 28,17c/kg and 42,26c/kg respectively, in terms of the existing variable tariff formula – Minute 07/2018	Notice R.714 published in Government Gazette No.41770 with an implementation date of 13 July 2018.
4 Jul	Customs MAA with Uruguay, 4 Jul 18.	The Mutual Agreement has a date of entry into force of 1 September 2018.
15 Jun	Amendment to Part 1 of Schedule No. 1, by the insertion and substitution of various items under heading 73.12 in order to review the rates of customs duty on stranded wire, ropes and cables – ITAC Report No. 571 as amended by minute M02/2018	Notice R.603 published in Government Gazette No. 41705 with an implementation date of 15 June 2018.
Case law		
Date of delivery:		
11 Jul	TCIT 14294	Practice – Exception – The excipient, SARS, excepts to the Rule 32 statement of grounds of appeal of the respondent, on the grounds that it lacks averments sufficient to sustain the appeal.
6 Jul	TCIT 13879	An appeal against a decision of the CSARS to disallow an objection against an assessment in which the Commissioner had assessed two amounts for income tax purposes.
Interpretation Notes		
17 Jul	IN 102 - Classification of risk policy and the once-off election to transfer certain policies or classes of policies issued before 2016 to the risk policy fund	The Note provides guidance on the interpretation and application of the definition of 'risk policy' in section 29A(1) and the once-off election by an insurer to transfer certain policies or classes of policies issued before 1 January 2016 to the risk policy fund under section 29A(13B).
4 Jul	IN 101 – Section 24I – Gains or losses on foreign exchange transactions	This Note provides guidance on the interpretation and application of section 24I. Section 24I income tax treatment of foreign exchange gains and losses on exchange items as well as premiums or like consideration received or paid in respect of FCOCs entered into and any consideration paid in respect of an FCOC acquired by certain persons.
Rulings		
25 Jul	BGR 48 – Temporary letting of dwellings by developers and the expiry of section 18B	This BGR provides clarity on the VAT treatment of residential fixed properties consisting of dwellings which were developed for the purpose of sale, but were subsequently temporarily let by the residential fixed property developers. Clarity is also provided in respect of the cessation of section 18(B).
6 Jul	BCR 063 – Income Tax implication of settlement agreement	This ruling determines the treatment of contributions made by employer companies to a trust in terms of a settlement agreement and how the amounts accruing to or received by the trust and the beneficiaries of the trust will be treated.
6 Jul	BCR 064 – Participatory interest in a collective investment scheme	This ruling determines security transfer tax consequences of the transfer of a security that constitutes a participatory interest in a collective investment scheme, regulated by the Collective Investment Schemes Control Act 45 of 2002 (CISCA).
4 Jul	BPR 307 – Relief from double taxation of interest	This ruling determines whether South Africa or Brazil has the taxing rights in respect of interest income on bonds issued by the government of Brazil and paid to a South African resident.

Guides		
25 Jul	VAT quick reference guide for non-executive directors	This a reference guide provides information and guidelines regarding the VAT treatment of non-executive directors (NEDs) and should be read in conjunction with BGR 40, BGR 41 (Issue 2) and VAT and PAYE: Non-executive directors – FAQs on BGRs 40 and 41.
25 Jul	Guide on mutual agreement procedures	This is a general guidance on the mutual agreement procedure (MAP) that allows competent authorities from the governments of contracting jurisdictions to interact with the intent to resolve international tax disputes.
OECD		
22 Jul	OECD Secretary-General Tax Report to G20 Finance Ministers	Part I is a report on the activities and achievements of the OECD's tax agenda. Part II is a Progress Report to the G20 by the Global Forum on Transparency and Exchange of Information for Tax Purposes.
22 Jul	OECD/IMF Report on Tax Certainty – 2018 Update	This updated report identifies a set of practical approaches and solutions to enhance tax certainty. It also discusses initiatives that aim to improve tax certainty in developing countries.
22 Jul	OECD/G20 Inclusive Framework on BEPS: Progress Report July 2017-June 2018	This report outlines the major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the MLI, and shows how countries are progressing in the implementation of the BEPS package.
11 Jul	OECD – Africa's Development Dynamics 2018	The report identifies innovative policies and offers practical policy recommendations, adapted to the specificities of African economies
3 Jul	OECD releases BEPS discussion draft on the transfer pricing aspects of financial transactions.	Comments must be provided by 7 September 2018.
Other Publications		
23 Jul	2018 Legislative Cycle: Proposed VAT amendment	The alert highlights the proposed VAT amendments.
20 Jul	Tax Alert – 2018 Legislative cycle: proposed revisions to debt relief rules	The draft Taxation Laws Amendment Bill, 2018, proposes important amendments to the debt relief rules contained in section 19 and paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962 which are addressed in this Alert.
18 Jul	Tax Alert – 2018 Legislative Cycle: Draft TLAB and TALAB released for public comment	The Alert highlights the proposed legislative amendments in the draft Taxation Laws Amendment Bill, 2018, and the draft Taxation Administration Laws Amendment Bill, 2018, which were released by National Treasury and SARS for public comment.
6 Jul	TCDR Alert – SARS Service Charter	The Alert highlights the service levels that should be expected from SARS.