Synopsis

Tax today

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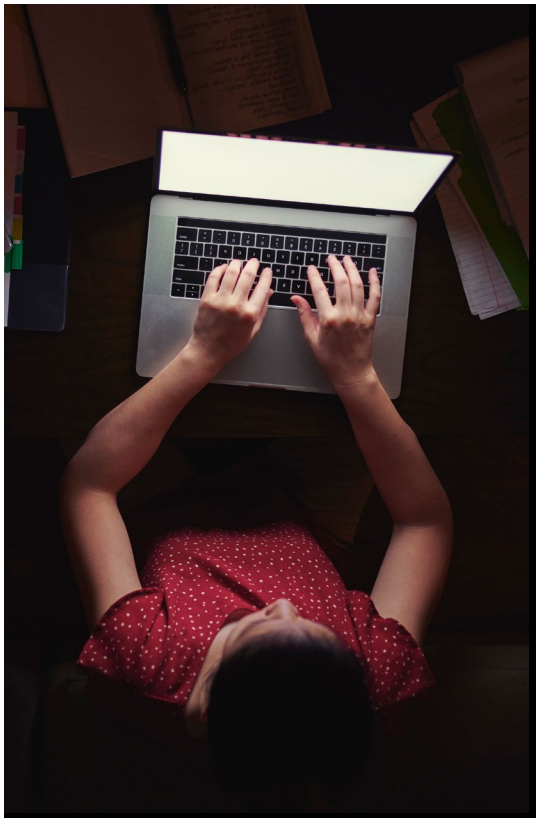
A monthly journal, published by PwC South Africa, that gives informed commentary on current developments in the tax arena, both locally and internationally.

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.

Editor: Al-Marie Chaffey

SARS Watch: Linda Mathatho

Taxpayer confidentiality – no guarantee?



In many jurisdictions, taxpayers are guaranteed confidentiality regarding the information that they submit to the tax authority. The rationale supporting this practice is that it is in the public interest that persons make full and free disclosure to the tax authority without regard to the legitimacy of the source of such proceeds. It is supposed that the removal of the risk of criminal pursuit will encourage declaration and yield greater receipts into the public coffers. Recently, in a highly publicized matter, the High Court considered whether the taxpayer confidentiality provisions in South Africa are indeed a guarantee of secrecy.

The publishers of the Financial Mail ("FM") sought an order declaring that the prohibition on disclosure by the South African Revenue Service ("SARS") of taxpayer information may be overridden in appropriate circumstances. At issue in the matter of *Arena Holdings (Pty) Ltd t/a Financial Mail and Others* v South African Revenue Service and Others [2021] ZAGPPHC 779 (16 November 2021) was the right to obtain copies of the tax returns submitted by Mr JG Zuma, the former State President, for the first seven years of his presidency.

Application had been made to SARS under the Promotion of Access to Information Act ("PAIA") for the FM to be provided with copies of the relevant returns. The application was duly refused by SARS, relying on certain provisions in the Tax Administration Act ("TAA") and PAIA. These provisions, it averred, prohibited it from complying with the request. An internal appeal to the Information Regulator was unsuccessful, and the FM then sought a declaration in the High Court that it was entitled to receive the information.

The thrust of the case urged by the FM was that the law contains provisions that permit the prohibition on disclosure to be ignored in appropriate circumstances. It argued that allegations had been made in the public domain that the former President had not filed returns of income, or, if this defect had since been rectified, that he had received amounts from a variety of sources which may or may not have been reflected in the relevant returns. Thus, it was a matter of public interest that the true state of affairs be investigated and reported.

The law

The TAA requires that taxpayers make full and true disclosure of information in returns to SARS under risk of criminal sanction. True and full disclosure is also required if a taxpayer wishes to either enter into a compromise of a tax debt or make a voluntary disclosure under the so-called Voluntary Disclosure Programme. In addition, through the TAA, SARS is equipped with wide-ranging powers to require or obtain information from a taxpayer or other persons concerning a taxpayer's affairs.

Section 69(2) of the TAA imposes an obligation on SARS officials to preserve the secrecy of taxpayer information and not to disclose such information to any person other than another SARS official.

Every person has a right of access to any information held by the State and to any information held by any other person that is necessary for the exercise or protection

of any right in terms of section 32(1) of the Constitution. PAIA is the supporting legislation governing the exercise of the right under section 32(1), and persons are precluded from directly seeking relief under the Constitution except where the constitutional validity of PAIA is challenged for its failure to recognise a constitutional right.

Section 11(1) of PAIA provides that a public body must give access to information to a person who submits a request in compliance with the requirements of PAIA, unless a ground for refusal contemplated in Chapter 4 of Part 2 of PAIA ("Chapter 4") exists.

Chapter 4 contains a generic ground of exclusion in section 34(1) (if granting access results in unreasonable disclosure of confidential information) and a specific ground in section 35(1) which denies disclosure of any information held by SARS for the purpose of the collection of revenue if it relates to a person other than the person making the request.

The final provision in Chapter 4 is section 46. This operates "despite any other provision of this chapter" and provides for a mandatory disclosure in relation to specific sections in Chapter 4 if:

- such disclosure would reveal a serious contravention of the law or imminent and serious public safety or environmental risk; or
- the public interest in the disclosure seriously outweighs the harm contemplated in the provision in question.

Importantly, section 35 of PAIA is not overridden by section 46. In the judgment (at para [4.17]), Davis J succinctly summarised the provisions thus:

> "In a nutshell, the statutory framework providing for 'taxpayer secrecy' contained in the TAA, which is mirrored by provisions of PAIA, provides that taxpayer information disclosed to SARS may not be disclosed to anyone, except in certain very narrowly described exceptions and generally only as part of tax recovery proceedings and there is no 'public interest override' applicable to these non-disclosure provisions."

The Constitution contains what may be described as competing interests. Section 14 provides protection of the right to privacy, which includes the right not to have the privacy of one's communications infringed. Contrarily, section 16 protects the freedom of the press and the right of everyone to receive or impart information.

These competing interests are found in the Bill of Rights section of the Constitution. The interplay of the competing interests is described at para [4.21]:

> "Where two competing constitutional rights intersect, the exercise of one right may result in a corresponding limitation of the other. The Bill of Rights portion of the Constitution provides in section 36 thereof that any such limitation may only take place in terms of law of general application and only to the extent that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and then only after taking into account a number of relevant factors."

The questions

The two critical issues for determination were:

- Whether the prohibition in the TAA limits the constitutional right of access to information and/or to freedom of expression; and
- If the prohibition does so limit either or both rights, whether the limitation is justifiable in terms of section 36 of the Constitution.

The arguments

FM argued that specific allegations had been made in a book, *The President's Keepers*, that Mr Zuma:

- owed tax in respect of fringe benefits identified in respect of improvements to his Nkandla residence;
- had received payments from a number of specified sources;
- had failed to submit returns of income for a number of years;
- had appointed a Commissioner at SARS who would not prosecute investigations into his affairs; and
- could not from available information be said to have been tax compliant at the time of publication of that book, nor was it apparent that SARS was pursuing recovery of taxes due from him.

Certain of these allegations had been corroborated in public documents and in evidence led in commissions of enquiry.

On the strength of these allegations, FM argued that there was credible evidence that Mr Zuma had not been tax compliant when he was President. These allegations have never been contested by Mr Zuma. FM contended that accusations of non-compliance by a head of state that are in the public domain without protest entitle them to invoke their right of access to information and, if such right is limited by statute, to challenge the constitutionality of the limitation.

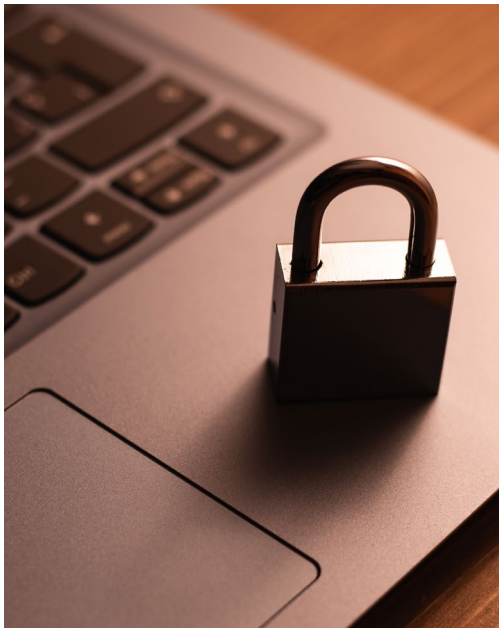
SARS' view was simply that the prohibition on disclosure of information was a right afforded to every taxpayer, irrespective of his, her or its status. This view is grounded in the proposition that the promise of secrecy is a *quid pro quo* for full and frank disclosure by taxpayers – a bargain, as it were. The Commissioner, in his affidavit, described the basis in the following terms (at para [7.2]):

> "The guarantee of confidentiality is what the taxpayer gets in return for the compulsion to provide full information to SARS. Without this statutory guarantee of confidentiality, the expectation that the taxpayer will be candid and accurate with SARS diminishes. The compact, written into law, between a tax authority and the public is the foundation of the tax system, without which the tax system cannot properly function."

The guarantee of confidentiality is found in a number of other jurisdictions and in international agreements concluded between South Africa and foreign jurisdictions for the exchange of taxpayer information, which, upon formal adoption, become law.

SARS argued further that full disclosure of information relating to taxes deprives a taxpayer of the privilege of protection against self-incrimination but that the confidentiality provisions in the TAA and PAIA protect that privilege in all other respects.

Finally, SARS conceded that there are provisions in the TAA under which disclosure of a taxpayer's affairs may be permitted but argued that these circumstances are strictly prescribed and disclosure may only be made where the circumstances permit disclosure and subject to compliance with prescribed formal procedures. These specific circumstances, SARS argued, provide an appropriate balance between a taxpayer's right to secrecy and the rights of access to information and freedom of speech.



The judgment

In the judgment, Davis J commenced with an examination of SARS' fundamental premise. The research provided by expert witnesses indicated that *"[in] those regimes where there is less taxpayer secrecy, tax administration is neither hampered nor prevented thereby"* (para [8.1]). An inextricable link between taxpayer secrecy and taxpayer compliance *"is not a universal truth"* (para [8.2]). There is evidence in the studies to which the court was referred that perceptions of corruption in state organs and of taxes being levied in excess of what is perceived to be a fair burden play a role in taxpayer compliance. Davis J concluded (at para [8.4]):

> "Although these are only academic papers, expressing the opinions of their authors, they appear to reflect generally known facts or perceptions but either way, they cast some doubt on the assertion by SARS that voluntary compliance, at least as far [as] disclosure goes, is dependent on the secrecy "compact' written in to law. It appears that there might be far weightier compulsions to voluntary tax compliance than the guarantee of confidentiality at play."

Further, the learned judge stated at para [8.5]) that it was doubtful that true and full disclosure was based on the so-called "compact" with taxpayers. Failure to make full and true disclosure places a taxpayer at risk of criminal prosecution in terms of the TAA. The disclosure obligation is enforceable by criminal sanction provisions – a consequence that SARS had sought to downplay.

The linchpin to SARS' submissions was dealt with in paragraph [8.6]:

> "To put it bluntly, there is no direct or factual evidence that taxpayers in South African rather make disclosure of their affairs because of the secrecy provisions as opposed to the coercion of the penalties and sanctions which follow upon non-disclosure."

For the application to succeed, it still had to fall within the requirements of section 36 of the Constitution, that *"[the] rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom…"* and after taking into account all relevant factors, including those listed in section 36(1)(a) to (e).

Davis J considered the factors listed in section 36(1) of the Constitution (at para [8.10]). The factors he was required to take into account were:

- The nature of the right, in relation to the right of privacy of a prominent individual and the right to privacy in a disclosure to SARS that may reveal contraventions of the law;
- The importance and purpose of the limitation, with which the court had dealt, being the so-called bargain between taxpayer and SARS to procure full disclosure;
- The nature and extent of the limitation, which was a point of dispute, with SARS asserting a blanket limitation and FM arguing for a specific or case-by-case approach in exceptional and limited circumstances;
- The relationship between the limitation and its purpose, which the Court considered to be linked to the "secrecy agreement" averted to by SARS; and
- Whether less restrictive means exist to overcome the alleged transgression of rights, in which SARS had asserted that there were no less restrictive means available and FM had argued that a targeted lifting of the limitation in clearly defined circumstances was a less restrictive means.

Davis J was fortified in observing that the Constitutional Court had, on occasion, struck down statutory prohibitions against public disclosure. He summarised his decision in para [8.14]:

> "In weighing up the limit imposed by the absolute taxpayer secrecy on the rights to freedom of speech and access to information when the exercise of those rights are in the public interest against the contentions raised by SARS, I find the following observation by Cora Hoexter in *Administrative Law in South Africa* (2nd Ed) at 98 (albeit in a slightly different context) to be apposite: *'the claim [is] that free access to official (state-held) information is a prerequisite for public accountability and an essential feature for participatory democracy'*. When this principle is then juxtapositioned to the right of taxpayer confidentiality or personal privacy of those in whose affairs the public have a legitimate interest (such as members of the Executive), I find that the limitations on the access to information are not justified. The corollary is that I find that the public interest override encroachment or limitation of taxpayer confidentiality is, on the other hand justified."

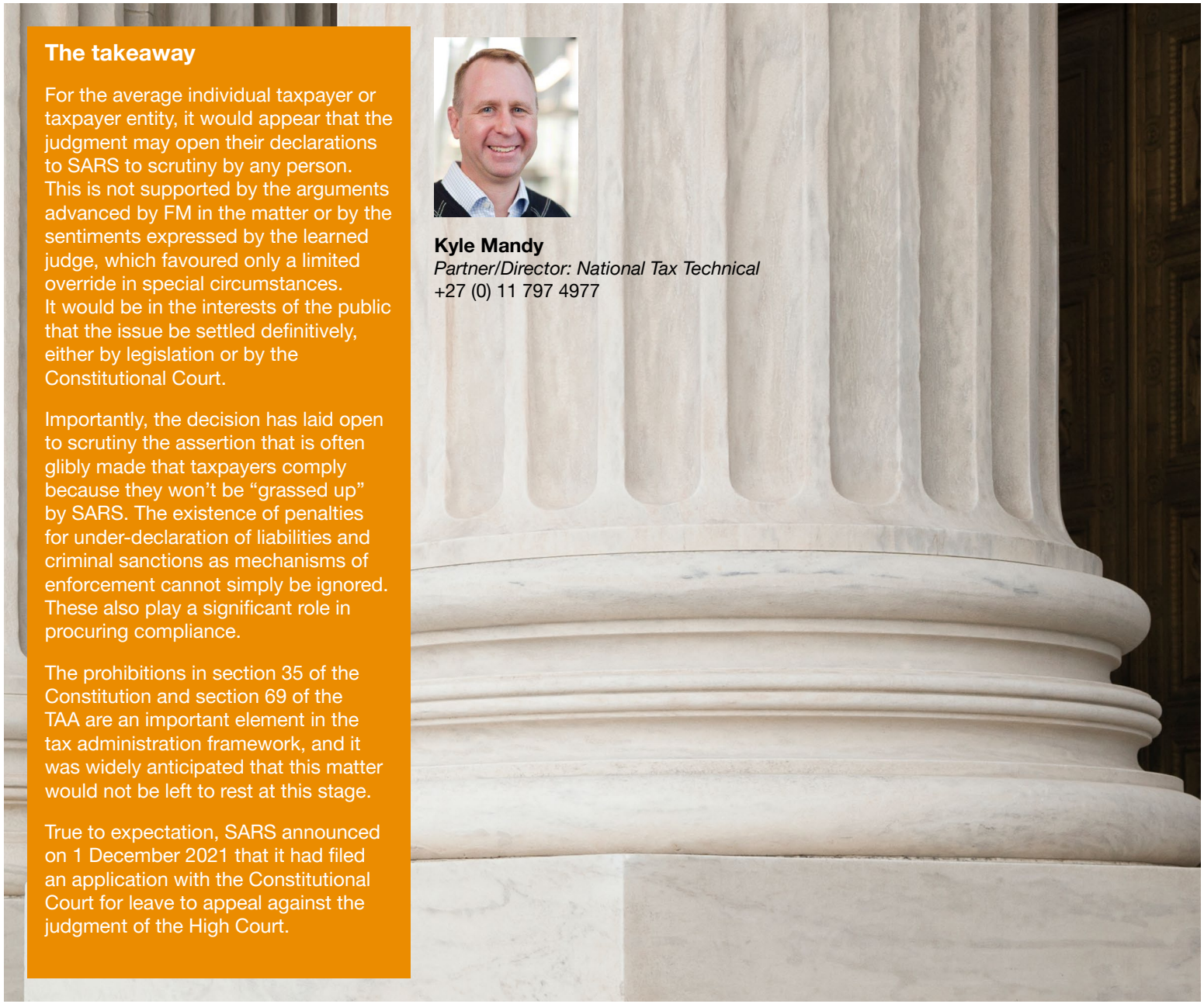
As to SARS' argument that a targeted lifting of the limitation would be contrary to undertakings given in international treaties and would invalidate them, Davis J observed (para [9]):

> "SARS claims that if this provision is allowed or adopted, all the DTAs, TIEAs would be breached and the benefit of the CMAA might be lost with the consequential dire consequences for revenue collection. From a reading of SARS' affidavit, it does not appear that this would automatically be the position. It might or might not follow once disclosure of such exceptions had been made. But there is, to my mind, a more fundamental solution to SARS' objections sourced in a point well made by the applicants: disclosure of taxpayer information which would otherwise satisfy the public interest override, might not be in the public interest if it involves information received in terms of these international instruments and which may lead to a breach of their terms. Notionally then, disclosure of the information can then still be refused."

The judgment therefore concluded that:

- The blanket prohibition of disclosure of taxpayer information in section 35 of the Constitution and section 69 of the TAA limits the rights of access to information provided in section 32 of the Constitution; and
- The limitations in question are not justifiable in terms of section 36 of the Constitution.

Davis J was quick to add that it was implicit in his finding that the existence of a public interest requirement was fundamental to this finding and that the prohibition should be lifted only in exceptional cases.



The takeaway

For the average individual taxpayer or taxpayer entity, it would appear that the judgment may open their declarations to SARS to scrutiny by any person. This is not supported by the arguments advanced by FM in the matter or by the sentiments expressed by the learned judge, which favoured only a limited override in special circumstances. It would be in the interests of the public that the issue be settled definitively, either by legislation or by the Constitutional Court.

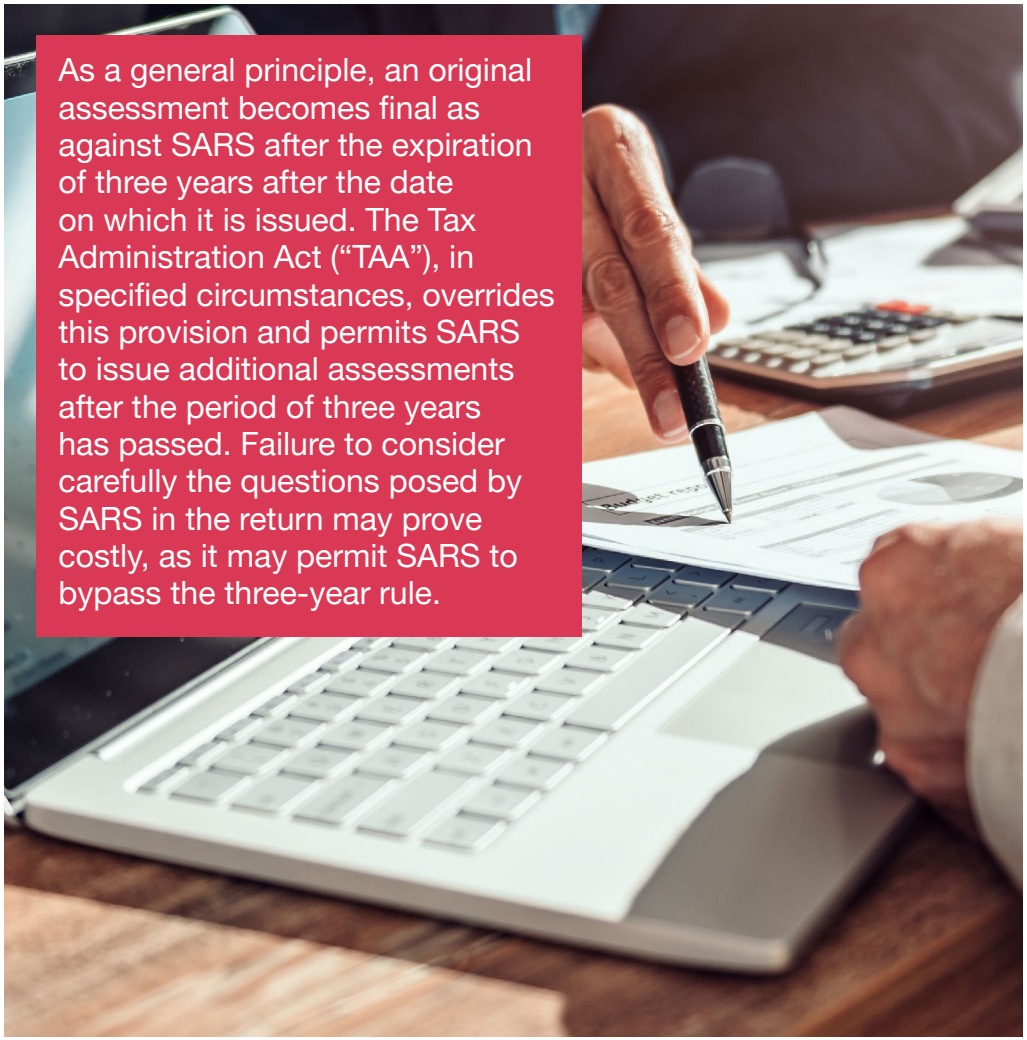
Importantly, the decision has laid open to scrutiny the assertion that is often glibly made that taxpayers comply because they won't be "grassed up" by SARS. The existence of penalties for under-declaration of liabilities and criminal sanctions as mechanisms of enforcement cannot simply be ignored. These also play a significant role in procuring compliance.

The prohibitions in section 35 of the Constitution and section 69 of the TAA are an important element in the tax administration framework, and it was widely anticipated that this matter would not be left to rest at this stage.

True to expectation, SARS announced on 1 December 2021 that it had filed an application with the Constitutional Court for leave to appeal against the judgment of the High Court.

Kyle Mandy
Partner/Director: National Tax Technical
+27 (0) 11 797 4977

Tax return preparation – a slippery path!



As a general principle, an original assessment becomes final as against SARS after the expiration of three years after the date on which it is issued. The Tax Administration Act ("TAA"), in specified circumstances, overrides this provision and permits SARS to issue additional assessments after the period of three years has passed. Failure to consider carefully the questions posed by SARS in the return may prove costly, as it may permit SARS to bypass the three-year rule.

In the Supreme Court of Appeal ("SCA"), the question whether the limitation period could be bypassed was recently considered in the matter of *Commissioner for the South African Revenue Service v Spur Group Limited* [2021] ZASCA 145 (15 October 2021).

SARS had conducted an audit of the returns issued by the taxpayer ("Spur") for the period 2005 to 2009. In the course of its examination, it identified that in 2005 Spur had made a payment to an employee share incentive trust to provide financing for an incentive scheme. Spur had claimed the amount paid as a deduction in the determination of its taxable income, and, in accordance with the provisions of section 23H of the Income Tax Act, had claimed the deduction evenly over a period of 84 months between 2005 and 2011, based on the requirements of the incentive scheme, which locked the participating employees in for a period of seven years.

SARS instituted an audit of the 2011 return and considered that the payment was not deductible. The audit was then extended to the earlier years in which the deduction had been claimed and SARS issued additional assessments on 28 July 2015 disallowing the deductions over the years concerned. Spur challenged the disallowance for the 2005 to 2009 years of assessment, asserting that the original assessments had been issued more than three years before the additional assessments were issued and, therefore, SARS was precluded from issuing the additional assessments.

Section 99(1)(*a*) of the TAA provides:

> "An assessment may not be made … —
>
> (a) three years after the date of assessment of an original assessment by SARS…"

Section 99(2)(*a*) then states:

> "Subsection (1) does not apply to the extent that—
>
> (a) in the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to—
>
> (i) fraud;
> (ii) misrepresentation; or
> (iii) non-disclosure of material facts…"

SARS placed reliance on section 99(2)(*a*) of the TAA and noted specific omissions or misstatements in the relevant returns. These were:

- Negative answers to these questions in the 2005 return of income – "Were any deductions limited in terms of s 23H?", "Did the company make a contribution to a trust?" and "Was the company party to the formation of a trust during the year?";

- A negative response in the 2006 return of income to the question "Were any deductions limited in terms of s 23H?"; and
- The disclosure of amounts limited by section 23H in the returns from 2005 to 2008 as "other deductible items" and not as "'prepaid expenditure (as limited by s 23H)".

Spur averred that the errors referred to were negligently or inadvertently made. It argued that the errors did not in any way affect the original assessments and that SARS had not established that these errors led to its failure to have assessed what it considered to be the correct amount of tax within the prescribed three-year period.

The SCA gave this explanation short shrift, as reflected in the following passage from the judgment:

> "[48] Spur's assertion that the wrong entries in the tax returns were negligent and inadvertent is patently false. Central to this entire dispute is the contribution of R48 million that Spur made to the trust in 2005. The answer 'no' to the question whether any contribution was made to a trust or whether the company was party to the formation of a trust, is, in my view, plainly false and a misrepresentation. These were questions pertinently, and for tax purposes, seriously raised. It required specific attention and an honest answer. Strikingly, the answers were repeated.
>
> [49] In each of the 2005 to 2009 years of assessments, deductions claimed by Spur were in fact limited in terms of s 23H of the ITA. It simply boggles the mind that Spur answered 'no' to the relevant question for each and every subsequent year from 2005 to 2009. Moreover, Spur's failure to include the said amounts in a separate line item which specifically required a disclosure of deductions limited by s 23H, and their inclusion in a general line item, amounts in my view, to a deliberate misrepresentation and a non-disclosure of material facts. It simply could not, by any stretch of imagination, be ascribed to any inadvertent error."

The explanation by Spur that the errors were occasioned by the employment of a new accountant who was unfamiliar with the company was also rejected by reason that the Public Officer was the CEO and she had certified the correctness of the information in the returns.

Spur also argued that the annual financial statements which form part of the return reflected the true information and that SARS could at any time have established this information. Again, the assertion was roundly rejected[1]:

> "Spur's further argument that the Commissioner had all the relevant and correct facts at his or her disposal because Spur's annual financial statements were submitted together with the tax returns, and that the correct information could be distilled from them, is unhelpful. The mere fact that an astute auditor or assessor could have been able to ascertain from supporting documentation the fact that the return contains a misrepresentation, cannot mean that there is no misrepresentation in the first place."

The SCA was mindful that SARS must prove that the omissions or misrepresentations caused the relevant amounts not to be assessed within the three-year period. It considered the evidence led by SARS in the Tax Court in which its witness had described the practice that had prevailed by which information reflected in a manually submitted return was at that time captured into the system by data capturers, after which an assessment was system-generated. The judgment records that[2]:

> "Mr Singh testified that only the tax return, and not any supporting documents or schedules, is taken into account for purposes of issuing an original assessment. Clearly, the integrity of the SARS assessment process depends largely on the correctness of the information provided in the return, and on SARS' ability to conduct audits of returns in the ensuing three-year period to ensure a proper tax treatment."

There followed a description of the volume of returns that SARS received and the inability of SARS to inspect each return it received. SARS had therefore developed triggers which enabled it to identify issues that might require a more detailed consideration. These were encapsulated in specific questions in the return. A positive answer considered together with the amount reflected in the appropriate line item would potentially signal the need to obtain clarification regarding that amount. Based on this evidence, Mbha JA found[3]:

> "The Commissioner submitted that in the present case a 'yes' answer to the s 23H question, and to the question whether a contribution was made to a trust, are risk factors which, according to Mr Singh's testimony, would have triggered a risk alert for SARS at the time when the returns were submitted for the relevant year of assessment. Mr Singh's evidence makes perfect sense. I am satisfied that a 'no' answer to these questions would not, accordingly, have triggered a risk alert for SARS."

The finding of the court is summarised thus[4] :

> "Spur accepted that false statements were contained in the returns. Against that, it contended that scrutiny of the financial statements and a more alert auditing process would and should have ensured a proper assessment within the prescribed period. It overlooked the face value assessment process understandably undertaken by SARS. Audits are implemented because of triggers caused by specific answers in tax returns. If the questions that would give rise to the triggers are wrongly answered, as happened in this case, the matter may not come before an auditor within the three-year period, and the clarification questions will therefore never be asked."

It was therefore found that SARS was not precluded from issuing the additional assessments after the expiration of the three-year period.

1 Paragraph 52 of the judgment

2 Paragraph 57 of the judgment

3 Paragraph 60 of the judgment

4 Paragraph 62 of the judgment

The takeaway

The message is clear:

- The preparation of a return of income is a serious responsibility which should not lightly be delegated. Information in a return should be thoroughly reviewed by a suitably qualified person prior to its submission to SARS.
- When a form is requested on efiling, a "form wizard" is displayed which contains a number of questions which the taxpayer must answer. Based on the responses to the questions, a system-generated return is then displayed. If the responses are incorrect, it is possible that fields in the return that should be completed will not form part of the return.
- Failure to pay due attention to the information requirements may leave a taxpayer exposed to the risk of unwelcome additional assessments issued many years after the return was filed.

While it may be considered that the labels applied to Spur's conduct may have been harsh, there is no doubt that the decision of the SCA on this issue was correct.

One aspect of the judgment that bears scrutiny is the statement that SARS bears the burden of proof that its failure to assess amounts within the three-year period was caused by the behaviour prescribed in section 99(2)(*a*). Section 102 of the TAA, which deals with the burden of proof in disputes with SARS, does not expressly place such a burden on SARS.

Before enactment of the TAA, the Income Tax Act provided that SARS could only issue an additional assessment more than three years after the date of the original assessment if the Commissioner was satisfied that the failure to assess the amount was due to fraud or misrepresentation or non-disclosure of a material fact.

The requirement that the Commissioner must be satisfied that the taxpayer's behaviour led to the failure to assess does not appear in section 99(2)(*a*) of the TAA. That said, it is clear that SARS cannot simply state that a return contains misstatement or misrepresentation. It must establish that there is a sufficient nexus between the misstatement or misrepresentation and its failure or inability at the time of assessment to associate information in a return with a foreseeable risk. In the circumstances, the statement that SARS bears the burden of proving a causal connection between the behaviour and its failure to assess an amount to tax is correct.

Elle-Sarah Rossato
Partner – Africa Lead: Tax Controversy and Dispute Resolution
+27 (0) 11 797 4938

SARS Watch

SARS Watch 1 November 2021 – 30 November 2021

Legislation		
26 November 2021	Incidences of non-compliance by a person in terms of section 210(2) that are subject to a fixed amount penalty	Notice R1531 published in Government Gazette No. 45540 with a date of implementation of 1 January 2022.
26 November 2021	Notice in terms of section 25(7) extending the date for certain persons to submit income tax returns for the 2021 tax year to 2 December 2021	Notice R1530 published in Government Gazette No. 45539 with a date of implementation of 26 November 2021.
16 November 2021	Technical Tax Proposals for 2022 Budget review proposals	Comments are due to SARS and national Treasury by Friday, 3 December 2021.
11 November 2021	Tax Administration Laws Amendment Bill (Bill No. 23 of 2021)	The Tax Administration Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 11 November 2021.
11 November 2021	Taxation Laws Amendment Bill (Bill No. 22 of 2021)	The Taxation Laws Amendment Bill was introduced in the National Assembly by the Minister of Finance on 11 November 2021.
11 November 2021	Rates and Monetary Amounts and Amendment of Revenue laws Bill (Bill No. 21 of 2021)	The Rates and Monetary Amendment of Revenue Laws Bill was introduced in the National Assembly by the Minister of Finance on 11 November 2021.
11 November 2021	Presentation to the SCoF on the Draft Response to the 2021 Draft Tax Bills, 10 November 2021	National Treasury and SARS presented to Parliament's Standing Committee on Finance a Draft Response Document on the DTLAB on 10 November 2021.
8 November 2021	Publication of explanatory summary of the Tax Administration Laws Amendment Bill, 2021	Notice R1488 published in Government Gazette No. 45537 with a date of implementation of 8 November 2021.
Customs and excise		
26 November 2021	Draft Amendments to Forms DA 260, Tobacco products (SOS) DA 260, Tobacco products (VM)	Comments are due to SARS by Friday, 3 December 2021.
19 November 2021	Amendment to Note 6 to Section C in Part 1 of Schedule No. 6 to provide more clarity to clients on the legal requirements for the relevant refund items	Tariff amendment notice R1510 published in Government Gazette No. 45501 with a date of implementation of 19 November 2021.
10 November 2021	Draft Amendment to Part 1 of Schedule No. 1, Super fine maize meal	Comments are due to SARS by Friday, 8 December 2021.
5 November 2021	Amendment to Part 1 of Schedule No. 1, by the insertion and substitution of various tariff subheadings under tariff heading 73.04, in order to increase the rate of customs duty on certain tubes, pipes and hollow profiles from free to 15% and 10% to 15%, respectively, ITAC Report 643	Tariff amendment notice R1481 published in Government Gazette No. 45427 with a date of implementation of 5 November 2021.
Case law		
In accordance with date of judgment		
16 November 2021	Arena Holdings (Pty) Ltd t/a Financial Mail and Others v CSARS and Others (88359/2019) [2021] ZAGPPHC	Whether the blanket prohibition on the disclosure and dissemination of taxpayer information, also protected by the taxpayer's constitutional right to privacy and dignity, could be limited by the applicants' constitutional right to access to information and freedom of speech.
19 October 2021	SARSTC 25330, 25331 and 25256	Whether SARS correctly invoked uniform rule 30 and has demonstrated prejudice.

Rulings		
5 November 2021	BPR 370: Registration of shares in the name of beneficial holder	This ruling determines the donations tax, securities transfer tax and transfer duty consequences for the co-applicant on the registration of shares held in the name of the co-applicant, the registered holder, in the name of the applicant and the beneficial owner.
5 November 2021	BPR 369: Deductibility of interest incurred pursuant to liquidation of company	This ruling determines that interest that arose out of the investment proceeds of assets sold in the course of a liquidation and was paid to trade creditors in terms of sections 95 and 103 of the Insolvency Act 24 of 1936 (the Insolvency Act) was not deductible in the determination of taxable income.
5 November 2021	BPR 368: Payments made pursuant to an agreement relating to a permission to occupy	This ruling determines the income tax and donations tax consequences resulting from payments to be made pursuant to an agreement relating to a permission to occupy.
4 November 2021	BGR 58: Purchase of different types of annuity at retirement	The purpose of this BGR is to confirm that, for income tax purposes, any annuity purchased or provided by any retirement fund must be compulsory, non-commutable, payable for and based on the lifetime of the retiring member or the value of the member's retirement interest, if applicable.
Interpretation Notes		
15 November 2021	Draft IN 28 (Issue 3): Deductions of Home Office Expenses Incurred by Persons in Employment or Persons Holding an Office	Comments are due to SARS by Friday, 14 January 2022.
10 November 2021	IN 70 (Issue 2): Supplies Made for No Consideration	This Note sets out the legal framework for the VAT treatment of supplies of goods or services which are made by vendors for no consideration in certain circumstances.
4 November 2021	IN 118: Value-added tax consequences of points-based loyalty programmes	This Note clarifies the VAT implications resulting from participation in loyalty programmes based on the current provisions of the VAT Act.
3 November 2021	Draft Interpretation Note: Extraordinary dividends treated as income or proceeds on disposal of certain shares	Comments are due to SARS by Friday, 14 January 2022.
2 November 2021	Draft Interpretation Note: Meaning of "employee" for purposes of the Employment Tax Incentive Act	Comments are due to SARS by Friday, 3 December 2021.
Guides and Forms		
10 November 2021	Customs guide on Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events	This guide provides information on the legislative framework governing the temporary admission of goods for display or use at exhibitions, fairs, meetings or similar events.
10 November 2021	Tax Guide for Small Businesses 2020/2021	This guide contains information about the tax laws and some other statutory obligations applying to small businesses. It describes some of the forms of business entity in South Africa, namely sole proprietorships, partnerships, CCs and private companies.
Other publications		
24 November 2021	OECD: Building Tax Culture, Compliance and Citizenship	This report aims to help tax revenue authorities in designing and implementing taxpayer education initiatives.
22 November 2021	OECD: 2020 MAP Statistics presented during the third OECD Tax Certainty Day	These are the latest mutual agreement procedure (MAP) statistics covering 118 jurisdictions and practically all MAP cases worldwide.
19 November 2021	Tax Alert: Taxation Laws Amendment Bill	This alert discusses the Taxation Laws Amendment Bill which was tabled by the Minister of Finance on 11 November 2021.
9 November 2021	OECD: Tax Inspectors Without Borders – Annual Report 2021	This report from the Secretariat covers TIWB activity from July 2020 to June 2021.
4 November 2021	Tax Alert: Amended List of Physical Impairment or Disability Expenditure Effective 1 March 2020	On Friday, 29 October 2021, SARS issued a revised list, effective from 1 March 2020, of qualifying physical impairment or disability expenditure. This alert highlights the amendments made to the previous list and available methods to correct a filed 2021 tax return to claim the additional benefit.

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