Tax Alert

In brief

CSARS v Meiring Citrus (Pty) Limited

High Court Judgment

> Self-insurance is not insurance but the antithesis of insurance because there is no transfer or spreading of risk.

On 26 June 2026, the Western Cape Division of the High Court upheld an appeal by the Commissioner for the South African Revenue Service ('SARS') against a previous Tax Court decision. The High Court set aside the Tax Court's order and confirmed that Meiring Citrus (Pty) Limited ('Meiring Citrus') was not entitled to deduct R9.6 million of a R10 million payment made under a 'structured' insurance policy with Santam.

The High Court held that the structured arrangement, frequently referred to as 'self-insurance', did not constitute a genuine insurance contract in law, as there was no actual transfer or spreading of risk in respect of the R9.6 million portion. The court further found that the R9.6 million was not 'expenditure actually incurred' within the meaning of section 11(a) of the Income Tax Act 58 of 1962 ('the Act'), as Meiring Citrus retained an unconditional right to the return of those funds and accordingly suffered no diminution in its assets. In the alternative, the court held that even if expenditure had been incurred, it was of a capital nature.

Furthermore, the High Court confirmed that SARS was not time-barred by prescription under section 99 of the Tax Administration Act 28 of 2011 ('the TAA') because the taxpayer's failure to disclose the actual Santam contract, the experience account statements, and the accrued notional interest constituted a misrepresentation and non-disclosure of material facts which caused SARS's failure to assess the full amount of tax chargeable.

In detail

Background

Meiring Citrus, a citrus farming company in the Eastern Cape, had previously used its own reserves to absorb crop losses. In mid-2017, seeking approximately R10 million in deductible expenses, its accountant recommended a Santam 'structured self-insurance' product with tax-deductible premiums. Meiring Citrus entered into a six-month contract (1 July to 31 December 2017), paying a 'premium' of R10 million (excluding VAT) for an indemnity limit of R12 million. The contract operated via an 'experience account' administered by Santam. Of the R10 million, Santam charged a R400,000 underwriting fee and credited R9.6 million to the experience account. Claims would be paid from the experience account balance, which earned notional interest. On expiry or cancellation, the credit balance plus interest was fully refundable on 30 days' notice. When Meiring Citrus cancelled the policy in June 2021, it received R11,304,932.01 from the experience account. In its 2017 return, Meiring Citrus claimed the full R10 million as a deduction under section 11(*a*), reducing taxable.

During a 2018 verification, SARS queried the increase in insurance expenses, but Mr van Zyl provided only the application form and debit order authority, not the actual contract or experience account statements, and the verification was finalised without adjustment.

In December 2020, SARS commenced a full audit of the 2017 to 2019 tax years and specifically requested the experience account statements. For the first time, in January 2021, the complete Santam contract and experience account statements were provided. SARS disallowed R9.6 million of the deduction (allowing only the R400,000 underwriting charge), added accrued notional interest to gross income, reopened the prescribed 2017 assessment under section 99(2)(*a*)(ii) of the TAA, and levied a 10% understatement penalty.

The judgment

The insurance issue:

The High Court emphasised that for a contract to constitute insurance, it must meet specific legal essentialia, including:

- The insurer assuming the risk of loss;
- The spreading of risk among a large group of persons bearing similar risks (the economic theory of insurance); and
- As consideration, the insured making a ratable contribution to a general insurance fund, called a premium.

The court found that the Santam structured agreement was an investment transaction disguised as an insurance contract. Applying the test in *Commissioner for the South African Revenue Service v NWK Ltd*[1], the court examined the commercial substance of the arrangement and held that its real purpose was to create a tax-deductible 'expense' while retaining what was in truth a capital deposit. Under this arrangement, there was no transfer of risk to Santam for the R9.6 million portion: any claims were paid out of Meiring Citrus's own funds in the experience account, and Meiring Citrus retained an absolute right to demand the return of those funds plus interest, without penalty.

[1] [2010] ZASCA 168.

The court identified several features of the contract that were inconsistent with a genuine insurance contract, including: the insured determining its own premium level; claims below the experience account balance being paid within 72 hours without investigation; the unconditional right to cancel and recover the full balance on 30 days' notice; the ability to pledge the policy as security; and the fact that no risk analysis was conducted at inception.

The High Court noted:

‘Self-insurance is not insurance but an antithesis of insurance, because there is no transfer or spreading of risk... Expenses do not earn interest.’

Of the R12 million nominal indemnity limit, the court found that risk was only truly transferred in respect of R2.4 million (the indemnity covered by the R400,000 underwriting charge). The remaining R9.6 million represented a deposit into a self-insurance investment account.

The deductibility issue

Applying *Labat*[2], the court held that the R9.6 million was not ‘expenditure actually incurred’ under section 11(*a*), as Meiring Citrus retained an unconditional right to recover the funds and its net asset position was unchanged, it had merely swapped cash for an equivalent credit recoverable on demand, together with accruing interest.

In the alternative, the court held that even if expenditure had been incurred, it was of a capital nature: the experience account was an enduring, interest-bearing asset, the ‘tree’ in the classic *Visser*[3] distinction, and amounts laid out to acquire such an asset are capital.

The prescription issue: Misrepresentation and non-disclosure

Under section 99(1) of the TAA, an assessment prescribes after three years unless section 99(2)(*a*) applies, namely, where the failure to assess was due to fraud, misrepresentation, or non-disclosure of material facts.
The High Court found prescription was overcome on two bases:

- **Misrepresentation:**

Characterising the premium as deductible under an insurance contract was a misrepresentation, as the contract was not in fact one of insurance and its actual terms were not provided to SARS during the 2018 verification.

- **Non-disclosure of material facts:**

Meiring Citrus failed to declare the notional interest and to provide the experience account statements. The court rejected the view that the small quantum (R1,197) rendered the non-disclosure immaterial, materiality related to the nature of the fact (that the ‘premium’ accrued interest), not the amount. The two grounds were ‘the flip side of the same coin’.

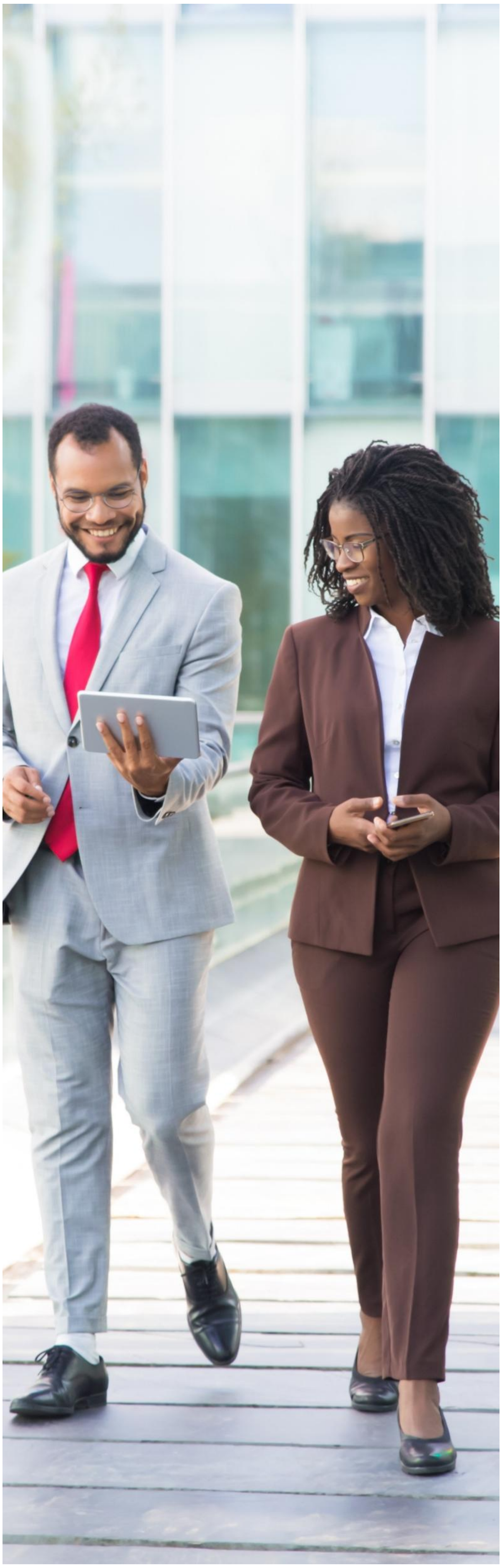
On causation, the court held it was self-evident that SARS could only have scrutinised the arrangement had it been provided with the actual contract and experience account statements; the failure to disclose prevented SARS from understanding the transaction within the prescription period.

Understatement penalties

The understatement exceeded both R1 million and 5% of the tax properly chargeable, meeting the ‘substantial understatement’ threshold in section 221 of the TAA. The High Court confirmed the 10% penalty being the lowest category, which does not require culpable conduct.

2 *Commissioner for the South African Revenue Service v Labat Africa Ltd* (669/10) [2011] ZASCA 157.
3 *Commissioner for Inland Revenue v Visser* 1937 TPD 77 (8 SATC 271).

Key takeaways



The *Meiring Citrus* judgment confirms that labels such as 'insurance' and 'premium' will not determine tax treatment; courts will strip away the form and examine the commercial substance of the arrangement. Where a taxpayer retains an unconditional right to recover the funds contributed, together with interest, the arrangement may be characterised as a capital investment or deposit rather than genuine insurance, with the result that the payment will not constitute 'expenditure actually incurred' under section 11(*a*) and, in any event, will be of a capital nature. The judgment also reinforces that full and transparent disclosure to SARS remains critical: failure to provide the actual contractual documents and to declare all income (even notional amounts) can defeat the protection of prescription under section 99 of the TAA and expose taxpayers to understatement penalties.

Let's talk

For a deeper discussion on how this judgment may impact your corporate insurance structures or tax compliance practices, please contact:

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