Synopsis

Tax today

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A monthly journal published by PwC South Africa providing informed commentary on current developments in the tax arena, both locally and internationally. Through analysis and comment on new law and judicial decisions of interest, it assists business executives to identify developments and trends in tax law and revenue practice that might impact their business.

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When may SARS challenge the jurisdiction of the Tax Court?

Our tax cases contain a few instances in which SARS, or its predecessor, Inland Revenue, has sought to avert an anticipated unfavourable judgment by challenging the procedure under which the dispute has been raised. The most recent attempt was in the matter of* ABC (Pty) Ltd v Commissioner for the South African Revenue Service *[2015] ZAWCHC 8 (judgment delivered on 6 February 2015) ('the* ABC Case*').

The recent challenge is perplexing, as SARS had readily entertained an objection against the assessments in question and had contested the appeal in the Tax Court, and had not at any stage of those proceedings suggested that the decision in question was not subject to objection and appeal.

Background

In the *ABC Case* SARS had assessed a vendor, an international event organiser, for value-added tax which had not been declared in a return in respect of benefits granted to sponsors under a number of sponsorship agreements that it had concluded with large parastatal organisations. The liability of the vendor was determined by reference to the value of the supplies that the sponsors undertook to provide in consideration for the benefits, as specified in the sponsorship agreements. The assessment was made in terms of section 31 of the Value-Added Tax Act ('VAT Act').

The vendor claimed that it was entitled to an input tax deduction in respect of the supplies that it had acquired by reason of the grant to the sponsors. SARS rejected this assertion because the sponsors, despite requests to do so, had not issued tax invoices in respect of the supplies that they had made. SARS relied on section 16(1)(a) of the VAT Act, which states that no amount may be claimed as input tax deduction unless the vendor is in possession of a valid tax invoice. It rejected the assertion by the vendor that the sponsorship agreements contained adequate documentary proof of the supplies, as provided in section 16(1)*(f)* of the VAT Act, and that the sponsorship agreements could be relied upon in order to allow its claim.

The vendor therefore objected to the assessment, and, on disallowance of the objection, appealed to the Tax Court. The Tax Court decided the matter in favour of SARS and the matter then proceeded on appeal to the High Court.

When may SARS challenge the jurisdiction of the Tax Court?

The procedural argument

In the course of the argument in the High Court, SARS' counsel suggested that the matter could not be determined by objection and appeal because the reason for the dispute was an administrative decision by SARS not to apply section 16(1)(f) of the VAT Act. This decision, it was argued, was not subject to objection and appeal in terms of the VAT Act (and its successor in this regard, the Tax Administration Act ('TAA')) but could only be contested by way of a review under the Promotion of Administrative Justice Act ('PAJA').

The right to objection and appeal

Section 32(1)*(b)* of the VAT Act, at the relevant time, specified that a person aggrieved by any

In the event that an objection is disallowed, section 107 of the TAA confers upon the taxpayer the right to appeal to the Tax Court against the decision to disallow the objection. Section 117 of the TAA provides that the Tax Court has jurisdiction over tax appeals.

assessment made in terms of section 31 had the right to object to that assessment. This provision has been superseded by section 104(1) of the TAA, which states that a taxpayer who is aggrieved by an assessment made against the taxpayer may object to the assessment.

In the event that an objection is disallowed, section 107 of the TAA confers upon the taxpayer the right to appeal to the Tax Court against the decision to disallow the objection. Section 117 of the TAA provides that the Tax Court has jurisdiction over tax appeals.

Any decision of SARS is not subject to objection unless the VAT Act or the TAA specifically provides that it is.

Where a decision is not subject to objection, the only recourse is to challenge the decision under section 6 of PAJA, which entitles any person who is aggrieved by an administrative action to apply to the High Court for a review of the administrative action.

When may SARS challenge the jurisdiction of the Tax Court?

The history

The issue of the jurisdiction of the Tax Court, where the decision giving rise to an assessment is an administrative action, was considered in the Appellate Division (predecessor of the Supreme Court of Appeal) in 1948 in the matter of* Irvin & Johnson (SA) Ltd v CIR *14 SATC 24 (AD).

In that matter the majority ruled that the notification of a decision by the Commissioner was not notice of an altered or reduced assessment against which an objection or appeal could be noted. The minority held that no appeal lay against the decision, which was an administrative decision, but found that the notice in question had been improperly issued and applied.

Two conflicting judgments emerged in the Cape Special Income Tax Court in 1959 and 1960. Both cases considered the application of a dictum from the dissenting judgment of Schreiner JA in *Irvin and Johnson (SA) Ltd v CIR*:

> Despite, therefore, the right of appeal given by section 79(1) to a taxpayer who is dissatisfied with 'any' decision of the Commissioner as notified under section 77(6), Act 31 of 1941, if it appears that the decision has been given under a section which requires the Commissioner to exercise an administrative discretion, no appeal lies to the Special Court . . . Had the Legislature intended that an appeal to the Special Court should lie in cases falling under the proviso it would, in all probability, have made express provisions therefor as it did in sections 40, 64(2), 66(2), and 90 of Act 31 of 1941.

In ITC 892 23 SATC 358 (C), the validity of a decision to disallow a claim for the deduction of a bad debt was challenged by the taxpayer. O'Hagan J held that the decision was an administrative decision, and, on the strength of the passage cited above, the court did not have jurisdiction to consider the appeal. The Court held, at page 361:

> The jurisdiction of the Supreme Court in matters of this character is an inherent one, as pointed out by Innes C.J. in *Johannesburg Consolidated Investment Co. v Johannesburg Town Council*, 1903 T.S. 111 at 115. The Special Court created by section 79 of the Income Tax Act possesses no such inherent jurisdiction. Its powers are derived solely from the statute – *Connolly v Ferguson*, 1909 T.S. 195. The only jurisdiction given to this Court by section 79(1) is to entertain appeals from any decision of the Commissioner as notified in terms of section 77(6). If in a particular matter an appeal does not lie this Court has no jurisdiction to deal with the matter. It may well be that in cases where it can be proved that the Commissioner has not applied his mind to a matter entrusted to his judgment alone under section 11(2)(g) of the Act, the Supreme Court can interfere on review – see *Rand Ropes (Pty.) Ltd. v C.I.R.*, 1944 A.D. 142 at 150-2. The Special Court has, however, no jurisdiction to do so.

When may SARS challenge the jurisdiction of the Tax Court?

In *ITC 936* 24 SATC 361 (C), the jurisdiction of the Special Income Tax Court was again challenged by counsel for the Commissioner. Here the Commissioner had valued a farmer's produce, and raised an assessment against which objection had been made. Counsel's argument was that the method of valuation of the produce was a determination made in the exercise of the Commissioner's discretion. This was an administrative action, and the appropriate procedure was to bring an application to the (then) Supreme Court for review.

Van Winsen J rejected this assertion. After having regard to the decision in *ITC 892*, the Court expressed the view that the passage relied upon by O'Hagan J could not be interpreted as decisive in this regard. The learned judge examined the powers of the Special Income Tax Court. This forum was a creature of statute and could only act in accordance with the powers conferred upon it by statute. These powers included a right to alter, reduce or confirm an assessment, or, if it thought fit, to refer the assessment back to the Commissioner.

The law permitted an objection against an assessment without regard to the nature of the processes which led to its coming into existence. It was held that a decision of the Commissioner in the exercise of his discretion – against which no objection could be made – which contributed to the making of that assessment cannot render the assessment immune to an objection. It followed that, if the objection was disallowed, the matter could be taken on appeal to the Special Income Tax Court, which had jurisdiction to decide the matter under the laws that brought it into existence.

> inferred from section 79(13) that the Court is given power only where the dispute arose in a case in which the discretionary power of the Commissioner is not involved, or, where it is involved, the exercise thereof is expressly made subject to appeal.
> *(our translation from the Afrikaans judgment)*

A jurisdictional challenge was again raised in 1985 in the matter of KBI v Transvaal Suikerkorporasie Bpk 47 SATC 34 (T)… The decision of the Full Court of the Transvaal Provincial Division stood unchallenged for almost 30 years, and has been applied in the Tax Court.

A jurisdictional challenge was again raised in 1985 in the matter of *KBI v Transvaal Suikerkorporasie Bpk* 47 SATC 34 (T). Van der Walt J (who delivered the judgment of the Full Court) cited the judgment of van Winsen J in *ITC 936* with approval, and quoted extensively from that judgment. Again the Court had regard to the powers that were conferred by statute on the Special Income Tax Court, which at the time were found in section 79(13) of the Income Tax Act.

Van der Walt J found, at page 43:

> In my opinion, this section grants the Special Court power to review an assessment that is wrong by altering, reducing or referring it back to the Commissioner. The Court has these powers notwithstanding that the error in the assessment can be ascribed to the fact that the Commissioner has exercised his discretionary powers improperly. As I see it, it cannot be

The question of the jurisdiction of the Income Tax Special Court was not addressed by the Appellate Division when the Commissioner took this decision on appeal. However, the decision of the Full Court of the Transvaal Provincial Division stood unchallenged for almost 30 years, and has been applied in the Tax Court (see *ITC 1697* 63 SATC 146).

Why has the issue again been raised?

It would appear that the enactments of PAJA and the TAA were seen as events that might afford SARS the opportunity to question the powers of the Tax Court anew. Counsel for SARS in the *ABC Case* pointed out that the power to review administrative action under PAJA was reserved to a 'court' as defined in that statute. This definition did not include the Tax Court: therefore, it followed (so the argument went) that the

When may SARS challenge the jurisdiction of the Tax Court?

Tax Court lacked the power to determine whether or not the administrative action of SARS in refusing to apply section 16(1)(f) of the VAT Act was justifiable.

Binns-Ward J, who delivered the judgment of the Full Court of the Western Cape Division in the *ABC Case*, remarked that the jurisdictional challenge was similar to that raised in *KBI v Transvaalse Suikerkorporasie Bpk*. After setting out the argument as summarised by the Court in that matter, the learned judge stated (at para [22]):

> The Full Court rejected the argument. It held that save in respect of decisions in relation to which a right of appeal was expressly excluded by the tax legislation, the tax court was empowered to take into consideration whether or not the Commissioner had properly exercised his discretion in respect of making assessments that were subject to appeal. In that context, so the Court held, where the exercise of discretion is pertinent to the making of the impugned assessment, the 'appeal' is in reality a 'review' of the Commissioner's decision on customary review grounds.

Turning then to the question whether PAJA applied in the matter before the Court in priority to the TAA, Binns-Ward J stated (at para [23]):

> PAJA regulates the bringing and determination of review applications in terms of s 6 of the statute; it is not directed at the bringing and determination of appeals in terms of the tax laws administered under the TAA. The appellant in the current matter was exercising a right of appeal to the tax court against the assessments; it was not seeking the review and setting aside of a decision in terms of s 16(2)(f) of the VAT Act. The fact that the determination of the appeal might entail the tax court in considering the legality of an administrative decision that was integral to the making of the assessment does not deprive the court of its jurisdiction to decide the appeal. To interpret and apply the legislation as requiring the dichotomous procedures enjoined in the argument advanced on behalf of the Commissioner would in many cases defeat the very purpose of the establishment of the specialist tax court. The jurisdiction of the tax court to determine tax appeals is conferred without any limitation in s 117(1) of the TAA. The court must be taken to have been invested with all the powers that are inherently necessary for it to fulfil its expressly provided functions.

SARS' challenge was therefore rejected.

Developments in the North Gauteng High Court

The ink on this article had barely dried when the North Gauteng High Court issued judgment in the matter of* Ackermans Ltd v Commissioner for the South African Revenue Service *Case No. 16408/2013, on 20 February 2015.

In this matter, the taxpayer sought to bring an application under PAJA for the review of a decision by SARS to issue assessments after a delay of five years from the time of the last previous correspondence between the taxpayer and SARS. The taxpayer alleged that the delay was unreasonable and procedurally unfair.

Lo and behold, SARS contested the application on the ground that the High Court did not have jurisdiction to hear the matter because the issues raised were complex matters requiring the expertise of the Tax Court.

The Court rejected the argument of SARS. Mothle J noted (at paragraph [16]) that section 105 of the TAA states:

> A taxpayer may not dispute an assessment or 'decision' as described in section 104 in any court or other proceedings, except under this Chapter or by application to the High Court for review.

The Court also cited extracts from the Constitutional Court

judgment in *Metcash Trading Ltd v C:SARS & Another 2001* (1) SA 1108 (CC) in which Kriegler J clarified that the dispute resolution provisions in the VAT Act at that time did not exclude judicial review, stating, at paragraph [33]:

> The Act contains a tailor-made mechanism for redressing complaints about the Commissioner's decisions, but it leaves intact all other avenues of relief.

Mothle J therefore concluded, at paragraph [20]:

> The objection by SARS that this court does not have jurisdiction to hear this application has no merit and must therefore fail.

In considering the question whether the delay was or was not unreasonable, Mothle J concluded that the dispute between the parties on the reasonableness or otherwise of the delay required oral evidence. While the Court found no rules that would prohibit it from hearing oral evidence on this issue, Mothle J concluded, at paragraph [38]:

However, the disputed facts and issues raised in this application require, in my view, the expertise of a tax court to adjudicate. It seems to me therefore that the adjudication of the disputed facts on the allegations of misrepresentations and non-disclosure of material facts, will bring this matter to finality.

The matter has therefore been referred to the Tax Court for final adjudication.

SARS' approach to disputes

Taxpayers involved in disputes with SARS must be understandably confused at the prospects that may face them when they get to court. In one instance, in a complex VAT matter, SARS argued that the appropriate forum is the High Court, whereas in another it argued that the Tax Court is the appropriate forum for adjudicating complex tax matters.

Should taxpayers not expect that SARS will deal with disputes on their merits rather than attempt to take fine points relating to the appropriateness of the forum? Taxpayers are entitled to fair and reasonable treatment.

Where the taxpayer elects to proceed to the High Court, SARS' challenge to jurisdiction may indeed be justifiable, as SARS had no choice in the selection of the forum. However, where an objection is disallowed, the taxpayer's resort is an appeal to the Tax Court. It is submitted that, where SARS disallows an objection without disputing the procedural right to object, it should be held, by its conduct, to have impliedly consented to the jurisdiction of the Tax Court.

Therefore, if it is SARS' contention that a dispute relates to a 'decision' and not an assessment, SARS should make this point at the time that it disallows the objection and not attempt to ambush the taxpayer in a court of appeal.

Where does the law stand?

The Full Court in two divisions of the High Court has determined that an assessment is not immune from objection if the taxpayer's grievance relates to an administrative action that is an integral part of the process of assessment of the taxpayer's liability. The decisions are binding on courts in those divisions, and otherwise persuasive authority in other divisions.

The arguments that support this stance are compelling. The primary purpose of the Tax Court is to determine disputes relating to assessments. To separate an assessment from the processes leading to its issue would limit the effectiveness of the Tax Court and increase the case load in the High Court.

There remains a possibility that SARS may seek to take the decision in the ABC Case on appeal to the Supreme Court of Appeal. Should this step be undertaken, it is to be hoped that the SCA will adjudicate finally on the issue of the jurisdiction of the Tax Court where an administrative decision is integral to an assessment.

Challenge to SARS under the Promotion of Administrative Justice Act

In this issue we have focused on the SARS tactic of challenging the forum to which a taxpayer brings a dispute with SARS. These challenges illustrate that the selection of the procedure to be followed in a dispute with SARS may be critical to success.

In the matter of *Ackermans Ltd v Commissioner for the South African Revenue Service* Case No 16408/2013 in the North Gauteng High Court, the taxpayer had elected to bring an application for a review of the actions of SARS as unconstitutional in terms of section 6 of PAJA. It should be mentioned that the taxpayer had also, on the merits of the dispute, noted an objection and appealed to the Tax Court against the disallowance of that objection.

The matter at issue was the conduct of SARS in an inquiry into a transaction entered into by Ackermans Ltd ('the applicant') in 1997. In this regard:

SARS instituted the inquiry in October 2003, by requesting relevant information;

Information was supplied and correspondence flowed between the parties in regard to the request and the supply of information;

In February 2005, SARS gave notice of its intention to raise additional assessments relating to the transaction;

In July 2006, a further notice to the same effect was issued by SARS;

There was no further communication between the applicant and SARS until 9 November 2011, when SARS issued a letter of findings arising out of its 2003 inquiry, indicating an intention to raise additional assessments for the years 1998 to 2003 and inviting comment; and

A response was made on 12 March 2012 and additional assessments were issued on 19 September 2012.

In raising the additional assessments outside the three-year period within which an assessment usually prescribes, SARS alleged that the returns of income contained incorrect statements and misrepresentations and that its failure to assess the amounts for tax timeously was a result of such statements and misrepresentations.

The applicant's arguments

Three arguments were advanced.

The first was that the assessments had prescribed and additional assessments could not be raised after the expiration of three years from their date of issue.

Secondly, the raising of additional assessments after a very lengthy period of delay was unreasonable and procedurally unfair and constituted unreasonable administrative action in terms of PAJA.

Finally, SARS' decision to issue the assessments, in the circumstances, was so unreasonable that no reasonable person would have done so, and accordingly was unreasonable administrative action.

SARS' arguments

The arguments of SARS were directed firstly to the forum for deciding the dispute. SARS argued that the Tax Court had jurisdiction to deal with the issues in dispute.

Secondly, it argued, in terms of section 7 of PAJA, an applicant must first have exhausted all available remedies. This, it averred, the applicant had not done.

The Court's findings

Mothle J, at para [14], identified that the parties had raised points that could dispose of the matter, in the High Court at least. The applicant's contention was that the delay in the decision was so unreasonable that it was ground for the setting aside of the decision. SARS' contention was that the High Court did not have jurisdiction to deal with the matter, which, on account of the disputes as to fact, should be adjudicated in the Tax Court.

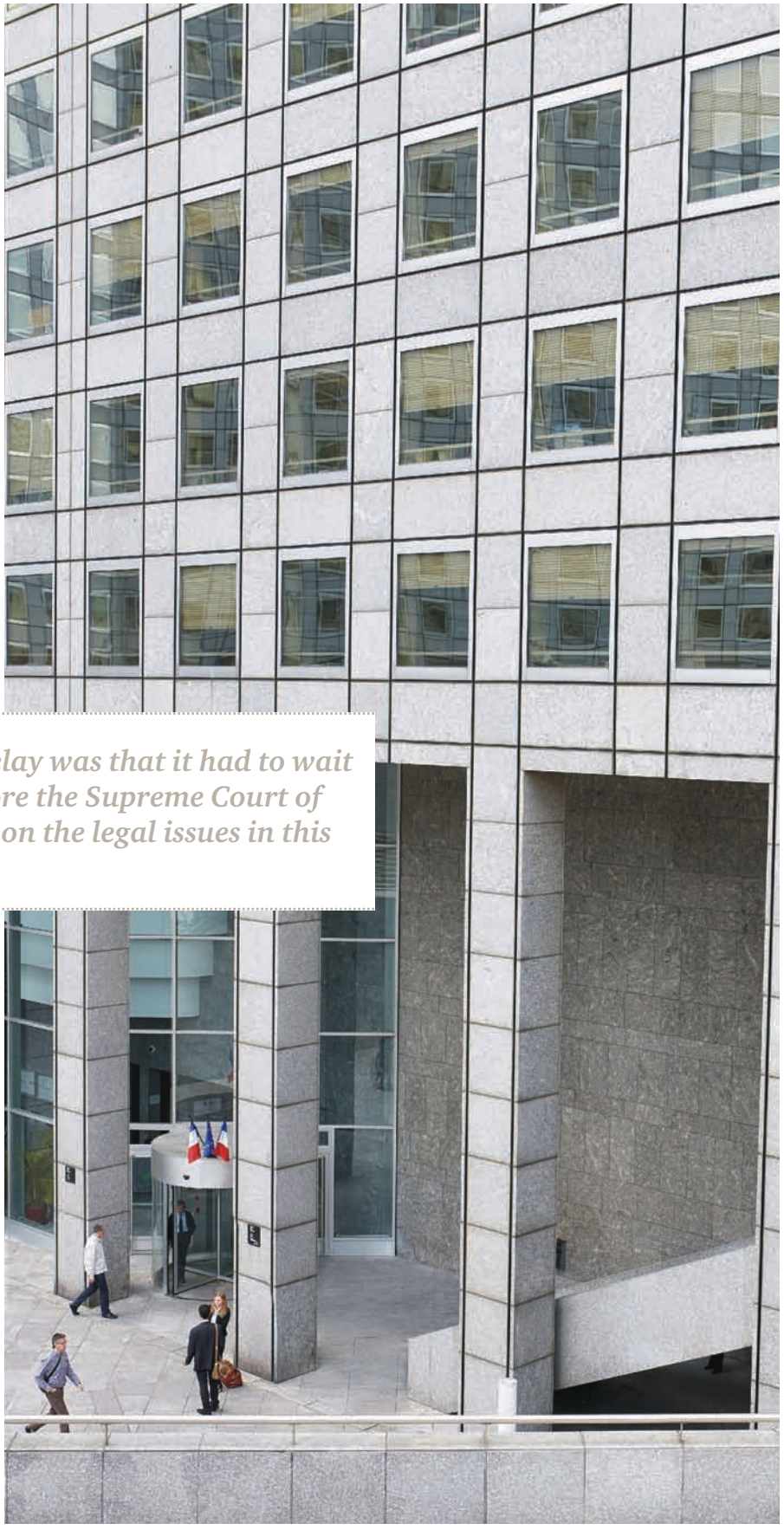
Jurisdiction

Dealing first with the issue of jurisdiction, after a review of the authorities, Mothle J concluded at para [20] that:

> The objection by SARS that this court does not have jurisdiction to hear this application has no merit and must be rejected.

Delay

On the question of delay, the applicant had contended that the period of silence between 2006 and 2011 was unreasonable. It asserted that, since early 2005, SARS had all the information and documents at its disposal to enable it to make the decision in good time and it had failed to do so.



SARS' explanation for the delay was that it had to wait for a judgment of a case before the Supreme Court of Appeal which had a bearing on the legal issues in this dispute.

SARS' defence and explanation for the delay was that it had to wait for a judgment of a case before the Supreme Court of Appeal (*C:SARS v NWK Ltd* [2010] ZASCA 168) which had a bearing on the legal issues in this dispute. *(Editor's note: The case referred to was finally determined in the Income Tax Court in July 2008 and in the SCA in November/December 2010: the matter could therefore only have been referred to the SCA in or about August 2008.)*

In para [27] of the judgment, Mothle J recognised the application of PAJA in the matter:

Challenge to SARS under PAJA

It is submitted that the Court erred in finding that the issue of reasonableness fell to be determined by reference to the right to raise additional assessments. The inquiry of the Court should have been into the reasons why SARS, having received all information by early 2005, delayed until 2012 before raising additional assessments.

> It is indeed imperative that all Constitutional obligations executed by organs of State in the exercise of public power, must be performed diligently and without delay. An unreasonable delay will result in a procedurally unfair administrative action, which is a reviewable conduct in terms of section 6 of PAJA. The decision to raise Additional Assessments is an administrative action which is an exercise of public power and it falls within section 237 of the Constitution …

The Court noted that the Constitution does not prescribe what constitutes an unreasonable delay, and that this was left to the courts to determine in the circumstances of each case. Mothle J therefore turned to the Income Tax Act, section 79, which, at the relevant time, provided that SARS could not raise an additional assessment after the expiration of three years from the date of the assessment unless the failure to assess an amount for tax was the result of fraud, misrepresentation or misstatement of material fact.

In para [34] the Court stated that there was a dispute between the parties about whether or not SARS had the right to issue the additional assessments after the expiration of the three-year period, the applicant asserting that there had been no fraud, misrepresentation or misstatement of material fact, and SARS contending that there had indeed been such conduct.

Then, in para [35], Mothle J delivered the reason for his decision:

> There is clearly a dispute of fact on this part of the evidence, which is relevant in deciding whether, apart from other explanations, the delay in raising Additional Assessments falls or does not fall within the proviso in subsection (1)(c)(i) of section 79. If it is concluded on the resolution of the disputed facts, that there was misrepresentation or non-disclosure of material facts on the part of Ackermans, the delay by SA (sic) will be covered by the proviso in paragraph (aa) and will thus be reasonable. If, however, it is found that there was no misrepresentation and that there was a disclosure of the material facts, the delay from 2006 to 2012 when additional assessments were raised, would constitute an unreasonable delay in contravention of i (sic) section 79(1)(c)(i) …

Mothle J, it is submitted, appears to have confused or, at least, conflated the issues. What he appears to be saying is that a delay is always reasonable if there has been fraud, misrepresentation or misstatement of material fact. It is true that these factors permit the issue of an additional assessment more than three years after the issue of the original assessment. However, it is questionable whether a lengthy delay may be considered reasonable once SARS is in possession of all the material facts (i.e. is no longer deceived or misinformed). In the context of the dispute, the reasonableness of the delay should have been considered by reference to the time when SARS was placed in possession of all the material facts.

It is submitted that the Court erred in finding that the issue of reasonableness fell to be determined by reference to the right to raise additional assessments. The inquiry of the Court should have been into the reasons why SARS, having received all information by early 2005, delayed until 2012 before raising additional assessments. If, as it contended, it was satisfied that there had been misrepresentation or misstatement of material facts, this would have been known to it in 2005 – after all, it notified an intention to issue additional assessments in February of that

year, yet failed to follow through until 2011, at the very earliest.

Consider the following hypothetical situations:

> SARS issues an assessment in 2003. In 2011 it becomes aware of material facts that indicate that additional amounts should have been subjected to tax, which were not disclosed to it in the return of income. It issues additional assessments in 2012. In this case, the Income Tax Act gives SARS the right to issue the additional assessment more than three years after the issue of the original assessment. The taxpayer's constitutional right to the performance of administrative action diligently and without delay is not infringed, as SARS has acted without undue delay to issue the additional assessment.
>
> SARS issues an assessment in 2003. In 2005 it becomes aware of material facts that indicate that additional amounts should have been subjected to tax, which were not disclosed to it in the return of income. It issues additional assessments in 2012. Here, the Income Tax Act also gives SARS the right to issue the additional assessment more than three years after the issue of the original assessment. However, it is submitted that the failure to take administrative action within the period from 2005 to 2012 infringes the taxpayer's constitutional right to the performance of administrative action diligently and without delay.

In both situations, the right to issue the additional assessments is unquestioned. However, there is a profound difference in the time delays between obtaining the information and performing the administrative action of issuing the additional assessment. Surely, both situations cannot be regarded as indicative of reasonable administrative action solely because SARS has a right to issue an additional assessment?

The takeaway

No-one can dispute that SARS has a right to collect tax and that it should have powers to enable it to assess amounts for tax long after the original assessments were issued if it has been prevented by the actions of the taxpayer from identifying the amounts that should be taxed. The provisions that enable it to do so are necessary and desirable.

However, the power to collect tax should not be seen to give SARS carte blanche to ignore the rights of citizens to fair and reasonable administration. SARS, as an organ of state, must act with diligence and without delay once it has become apprised of the facts which justify its right to act.

By referring the matter to the Tax Court in the case of the applicant, the High Court, effectively, deprived the applicant of the right to argue the merits of its constitutional right to reasonable administrative action. It will be interesting to see if Ackermans will take the judgment of the High Court on appeal to the Supreme Court of Appeal.

A preservation order is not of itself a 'tax collection' measure – but it may well be followed by tax collection processes

On 1 December 2014 the Pretoria High Court confirmed a provisional preservation order that had been granted in terms of section 163 of the Tax Administration Act 28 of 2011 against Africa Cash and Carry (Pty) Ltd and various members of the Hathurani family in their personal capacities and in their representative capacities as trustees of trusts. (The judgment – thus far published only on the SARS website – is reported as Commissioner for the South African Revenue Services, as applicant, and 19 respondents, including trustees of the Edrees Hathurani Family Trust; case 49274/2014.)

A preservation order is not a tax collection measure

The only point of law of interest to emerge from the judgment is the affirmation by Phatudi J (at paras [16] and [19] of the judgment) that a preservation order in terms of s 163 of the Tax Administration Act –

is not a tax collection step but a mere preservation of assets that can be realized at a later stage . . . All that [SARS] needs to establish is prima facie that the respondent will or is likely to dissipate assets with the intention of defeating [SARS's] claim.

Thus stated, a preservation order sounds innocuous.

A fast-track judgment secured by SARS can be executed against the preserved assets

The sting (as is clear from the judgment of the Pretoria High Court on 1 April 2011 in Hathurani v Commissioner for the South African Revenue Service [2011] ZAGPPHC 43 – it is not clear whether this was an earlier phase in the same litigation as that referred to above) derives from the fact that SARS can, separately, take a fast-track 'judgment' against the taxpayer by filing a certification of the amount of tax due with the clerk or registrar of the court in terms of section 172 of the Tax Administration Act.

In that event, the assessed tax, even if disputed by the filing of an objection, is forthwith due and payable – unless the taxpayer applies to SARS for the payment of the disputed tax to be suspended while the dispute is ongoing, and unless SARS agrees to that request – and in this particular case, SARS refused to suspend payment.

There seems to be no impediment, once SARS has obtained such a judgment, to its issuing a writ of execution against the property and funds in respect of which a preservation order has been granted.

Thus, although the preservation order is not of itself a 'tax collection measure', it has the effect of preserving the taxpayer's assets so that a fast-track judgment, taken by SARS, can be executed against those assets and payment of at least some of the assessed tax thereby secured by the sale in execution of those assets.

SARS Watch 21 February to 20 March 2015

Legislation

25 Feb	Notice to amend regulations made under section 72 of the Long-Term Insurance Act, 1998	The notice was published in Government Gazette No. 38507 and has been in force since 1 March 2015.
25 Feb	Notice in terms of section 12T(8) of the Income Tax Act, 1962, in respect of persons or entities that may administer financial instruments or policies as tax-free investments	The notice was published in Government Gazette No. 38508 and has been in force since 1 March 2015.
25 Feb	Notice of regulations made in terms of section 12T(8) of the Income Tax Act, 1962, on the requirements for tax-free investment	The notice was published in Government Gazette No. 38509 and has been in force since 1 March 2015.
25 Feb	Taxation Proposals for Tariff Amendments in terms of the Customs and Excise Act, 1964	The proposals were tabled by the Minister in his Budget Review 2015 at 14h59 on 25 February 2015.
26 Feb	Notice to increase the rate of customs duty on sugar from 142,5c/kg to 207,1c/kg, in terms of the Customs and Excise Act, 1964	The notice was published in Government Gazette No. 38514 and has been in force since 27 February 2015.
27 Feb	Notice for persons indicated to submit returns in terms of section 25 of the Tax Administration Act, 2011 and section 4(1) of the Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 2013	The notice was published in Government Gazette No. 38506 and has been in force since 27 February 2015.
27 Feb	Notice to fix the rate per kilometer in respect of motor vehicles and the rates for meals and incidental costs in terms of section 8(1) of the Income Tax Act, 1962	The notice was published in Government Gazette No. 38516 and has been in force since 1 March 2015.
5 Mar	Notice of provisional payment imposed on alleged dumping of certain wheelbarrows in terms of the Customs and Excise Act, 1964	The notice was published in Government Gazette No. 38538 and will be in force from 6 March 2015 up to and including 4 September 2015.
5 Mar	Notice to align the rules under sections 59A, 60 and 120 of the Customs and Excise Act, 1964 with section 246 of the Tax Administration Act, 2011	The notice was published in Government Gazette No. 38521 and has been in force since 6 March 2015.
6 Mar	Notice published by the Financial Services Board (FSB) determining the requirements for certain hedge funds under sections 42, 90(2) and (4), and 114(4)(b) of the Collective Investment Schemes Control Act, 2002	The notice was published in Government Gazette No. 38540 and has been in force since 6 March 2015.
6 Mar	Notice published by the Financial Services Board (FSB) determining conditions and the manner in which participatory interest in collective investment schemes in securities, property and participation bonds may be issued to an investor as a tax-free investment under sections 46, 51 and 114(4)(b) of the Collective Investment Schemes Control Act, 2002	The notice was published in Government Gazette No. 38540 and has been in force since 6 March 2015.
9 Mar	Notice of regulations made on allowances for energy efficiency savings under section 12L of the Income Tax Act, 1962	The notice was published in Government Gazette No. 38541 and will be in force from 1 April 2015.

SARS Watch 21 February to 20 March 2015

Legislation (cont)		
11 Mar	Updated Customs & Excise Rules, 1995	The amended rules include amendments up until 6 March 2015.
12 Mar	Notice to increase customs duty rate for wheat and wheaten flour from 15,7c/kg to 46,1c/kg and 23,5c/kg to 69,2c/kg respectively under Schedule No. 1, Part 1 of the Customs and Excise Act, 1964	The notice was published in Government Gazette No. 38563 and has been in force since 13 March 2015.
16 Mar	Notice of reportable arrangements and excluded arrangements in terms of sections 35 and 36 of the Tax Administration Act, 2011	The notice was published in Government Gazette No. 38569 and has been in force since 16 March 2015.
19 Mar	Notice to insert rules for section 47 of the Customs and Excise Act, 1964	The notice was published in Government Gazette No. 38575 and has been in force since 20 March 2015.
19 Mar	Notice to amend rules for section 21A of the Customs and Excise Act, 1964	The notice was published in Government Gazette No. 38575 and will come into force on the date that the regulations under the Special Economic Zones Act, 2014 take effect.
Interpretation		
12 Mar	Interpretation Note (IN) 81	This IN deals with the VAT treatment of various supplies of goods and services by professional hunters and taxidermists to non-residents.
Binding rulings		
9 Mar	Binding Private Ruling (BPR) 190: Notional Funding Arrangement - The issue and potential repurchase of ordinary shares	This BPR deals with the issuing and repurchase of ordinary shares. The proposed arrangement is based on contractual rights and restrictions established separately from any class provisions applicable to those shares in terms of the applicant company's memorandum of incorporation.
11 Mar	Binding Class Ruling (BCR) 008: Tax consequences of proceeds of annuity policies purchased by employers to settle post-retirement medical aid subsidy obligations	The underlying principles confirmed in this BCR are currently under review.
12 Mar	Binding General Ruling 26: VAT treatment of the supply and importation of herbs	This BGR deals with the VAT treatment applicable to the supply and importation of herbs, specifying what qualifies for the zero rate and what should be standard rate supplies.
Case law		
23 Feb	Ackermans Limited v CSARS	The High Court referred the matter to the Tax Court, as it was held that that the High Court does not have the jurisdiction to decide on the merits and cannot make an order because the merits have to be clarified first before the validity of the assessments can be decided on.
13 Mar	IT 13238 & IT 13164	The Tax Court ordered in favour of the taxpayer to strike out changes to CSARS's rule 10 statements as it was held that CSARS cannot support his existing assessment on the basis of matters which he was not satisfied with when he issued the first assessment.

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SARS publications

23 Feb	Comprehensive Guide on Dividends Tax	This guide is to assist users in gaining a more in-depth understanding of dividends tax.
24 Feb	The latest IT3 Business Requirements Specification (BRS)	This BRS was updated with requirements on withholding tax on interest and tax-free investments.
24 Feb	Prescribed Withholding Tax on Interest Declaration (WTID) form	The WTID must be submitted to SARS before payment of interest is made and must be kept for five years.
25 Feb	Draft Rates and Monetary Amounts and Amendment of Revenue Laws Amendment Bill and its Explanatory Memorandum	The Draft Bill was published, allowing the 2015 budget review's amendments to be enacted in Parliament.
5 Mar	Draft notice for the reduction of Unemployment Insurance Contributions	The draft notice was published for comment that had to be submitted no later than 20 March 2015.
12 Mar	Second Draft Binding General Ruling on the VAT treatment of the supply and importation of fruit and vegetables	The draft BGR was published for comment to be submitted no later than 31 May 2015.
12 Mar	Taxation in South Africa (2014/2015)	This is a general guide providing an overview of the various forms of tax legislation administered in South Africa by the Commissioner for the South African Revenue Service.
16 Mar	Double Taxation Agreements (DTAs) signed, but not yet ratified	DTAs were signed with Cameroon and Qatar on 19 February 2015 and 6 March 2015 respectively.
20 Mar	SARS Guide on Rates/Duties/Levies (issue 11)	The guide provides an overview of the various forms of tax legislation administered in South Africa by the Commissioner for the South African Revenue Service.

PwC publications

25 Feb	PwC Budget Card for the 2015/2016 year of assessment	This PwC Budget Card was issued with the 2015 budget review announcements.
9 Mar	PwC Tax Alert - income protection policies - revised tax treatment	A Tax Alert that reminds taxpayers that, with effect from 1 March 2015, employer-paid premiums to income protection policies are taxable in the hands of employees.
10 Mar	PwC Tax Alert - Tax-free savings and investment accounts publication of Notice and Regulations	A Tax Alert that deals with the final Notice and Regulations that allow for the introduction of tax-free savings and investment accounts.
19 Mar	PwC Tax Alert - Reportable arrangements and excluded arrangements	A Tax Alert that deals with the reportable arrangements and excluded arrangements for purposes of the Income Tax Act and Tax Administration Act, as published by the Commissioner for the South African Revenue Service in the Government Gazette on 16 March 2015. The public notice has been effective since the 16 March 2015 publication date and replaces all previous reportable arrangement notices.