

# Dispute Resolution

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SOUTH AFRICA

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**DISPUTE RESOLUTION  
ALERT**

## When does the proverbial clock begin to tick under section 7(1) of PAJA?

A ruling was made by the Constitutional Court at the end of last year in *Sasol Chevron Holdings Limited v Commissioner for the South African Revenue Services* [2023] ZACC30, confirming that the 180-day period afforded by section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) starts running from the date that reasons for the decision are provided with sufficient detail to allow the offended party to file an objection against the decision. A party's request for more detailed reasons does not afford that party room to argue that the 180-day period only starts running once those more detailed reasons are provided.

Before the Constitutional Court was an underlying question of whether the South African Revenue Service (SARS) had correctly ruled against an extension to the 90-day period prescribed under Regulation 15(1)(a) of the Export Regulations and a consequent value-added tax (VAT) refund in respect of certain invoices that had been issued. On 7 November 2016, SARS allowed the extension on some of the invoices, but not others – ruling, *inter alia*, that the application had been received only after the 90-day period and certain invoices had already expired.

Further representations were made by SARS, however, in a letter dated 6 December 2017 the Commissioner confirmed that there would be no VAT refund on certain invoices. Reasons for this decision were contained in this letter.

In a further letter dated 26 March 2018, the Commissioner reaffirmed this stance, elaborating on the reasons given on 6 December 2017.

On 21 September 2018, a High Court application to review the Commissioner's decision not to provide a VAT refund was launched in terms of PAJA.

The Commissioner opposed the review application and provided a preliminary objection on the grounds that section 7(1) of PAJA had not been complied with, as the application was instituted after the 180-day period had expired.

The High Court dismissed the objection and upheld the review, finding, *inter alia*, that the review application was instituted on 21 September 2018, 179 days after reasons were provided on 26 March 2018.

On appeal, the Supreme Court of Appeal (SCA) confirmed that the time within which to institute a review application starts to run from the date on which the reasons for the administrative action became known to the applicant. However, the SCA ruled that the 180-day period started running from 6 December 2017, not 26 March 2018. Consequently, the SCA ruled that the review application was instituted outside of the 180-day period prescribed in section 7(1) of PAJA and the appeal was upheld.

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## When does the proverbial clock begin to tick under section 7(1) of PAJA?

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### **Appeal before the Constitutional Court**

The SCA's decision was taken on appeal to the Constitutional Court.

The Constitutional Court found that the SCA's reasoning was unassailable and endorsed its finding. The Constitutional Court was of the view that the Commissioner had explained, in its letters on 7 November 2016 and 6 December 2017, in sufficient detail, the reasons for denying the refund. These reasons, the Constitutional Court found, were sufficient for formulating an objection in terms of PAJA. The further explanation afforded on 26 March 2018 did not contain new reasons but was rather an elaboration of the reasons already given on 6 December 2017.

The Constitutional Court confirmed that if a court were to hold that the 180-day period within which to institute review proceedings in terms of section 7(1) of PAJA only begins to run when a reviewing party is satisfied with the reasons given to it for a decision, this would enable parties to indefinitely extend the 180-day period by simply requesting additional reasons. The court reasoned that this would be counterintuitive to the very purpose of section 7(1), which is to promote certainty regarding the lawful status of administrative decisions.

Parties intending to use the review proceedings afforded by section 7(1) of PAJA should thus be mindful of when sufficient reasons for administrative action have been given, as this would determine when the 180-day period stipulated in the section would begin to run.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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