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TAX AND EXCHANGE CONTROL ALERT

IN THIS **ISSUE**

UBI IUS UBI REMEDIUM: PROPOSED AMENDMENTS TO THE TAX ADMINISTRATION ACT

Currently, in terms of section 9 of the Tax Administration Act, No 28 of 2011 (TAA) a decision made by a South African Revenue Services (SARS) official and a notice to a specific person issued by SARS, excluding a decision given effect to in an assessment or notice of assessment is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary. Furthermore, s9 makes provision for such a decision to be withdrawn or amended by the SARS official, a SARS official to whom the SARS official reports or a senior SARS official, at the request of the relevant person.

CUSTOMS AND EXCISE HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

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CLIFFE DEKKER HOFMEYR

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It appears that whereas s104 of the TAA defines the decisions against which a taxpayer may object and appeal, s9 deals with the scenario where a decision is made by a SARS official, but which is not subject to objection and appeal.

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The Memorandum states that decisions by SARS are generally subject to the internal remedy in s9 of the TAA.

Section 104 of the TAA

Section 104(2) of the TAA states that the following decisions may be objected and appealed against in the same manner as an assessment:

- A decision in terms of s104(4) of the TAA not to extend the period for lodging an objection;
- A decision under s107(2) of the TAA not to extend the period for lodging an appeal; and
- Any other appeal that may be objected or appealed against under a tax Act.

From the above, it appears that whereas s104 of the TAA defines the decisions against which a taxpayer may object and appeal, s9 deals with the scenario where a decision is made by a SARS official, but which is not subject to objection and appeal.

Proposed amendment

In the Memorandum on the Objects of the Draft Tax Administration Laws Amendment Bill, 2017 (Memorandum), it was noted with regard to decisions that are not subject to objection and appeal, that a taxpayer can potentially be prejudiced by not having access to other effective internal remedies that may provide relief. The Memorandum notes that under such circumstances, the taxpayer's only remedy would then be to take the matter on review before the High Court in terms of the Promotion of Administrative Justice Act, No 2 of 2000 (PAJA). As we know, High Court litigation of this nature can be an expensive exercise.

The Memorandum states that decisions by SARS are generally subject to the internal remedy in s9 of the TAA, in terms of which specified SARS officials may reconsider the decisions. Decisions that are given effect to in an assessment or notice of assessment are however excluded since assessments generally have the separate remedy of objection and appeal. During the public comment process on the 2016 legislation, Government identified a situation where a decision given effect to in a notice of assessment is not subject to objection and appeal. Under such circumstances and based on the current wording of s9 and s104 of the TAA, it would mean that neither the internal remedy in s9, nor the right to objection and appeal in s104, will be available to a taxpayer under certain circumstances.

Although it is not entirely clear when a decision will be given effect to in an assessment or notice of assessment, as envisaged in s9, one such example might be where a taxpayer applies for the suspension of payment of tax in terms of

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CONTINUED

It is proposed in the Memorandum that such a decision, which is given effect to in a notice of assessment, but is not subject to objection and appeal, be subject to the remedy under s9 of the TAA.

s164 of the TAA. SARS's decision to reject an application brought in terms of s164 will most likely not be given effect to in an assessment or notice of assessment.

In light of the above, it is proposed in the Memorandum that such a decision, which is given effect to in a notice of assessment, but is not subject to objection and appeal, be subject to the remedy under s9 of the TAA. This will afford the taxpayer an internal remedy before exercising the external remedy of a review application to the High Court under PAJA.

Comment

While it always appears to be a positive development where legislation is amended to make it easier and cheaper for a taxpayer to exercise its rights, such an amendment will only have the desired effect if the SARS officials who are approached in terms of this section, exercise their powers in a reasonable manner.

Louis Botha

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CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.

This week's selected highlights in the Customs and Excise environment since our last instalment:

Herewith below selected highlights in the Customs and Excise environment since our last instalment:

1. Amendment of Schedule 1 Part 1 to the Customs and Excise Act, No 91 of 1964:
   1.1 Substitution of tariff subheadings 7216.31, 7216.32, 7216.33 and 7216.50 to increase the rate of customs duty on steel wire rod, steel reinforcing bar and structural steel from free of duty to 10%.
2. Please advise if additional information is required.

Petr Erasmus

Disclaimer:

Please note that this is not intended to be a comprehensive study or list of the amendments, changes, occurrences, etc. in the Customs and Excise environment, but merely selected highlights which may be of interest. In the event that specific advice is required, kindly contact us in order to research and provide.

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