

18 FEBRUARY 2021

# TAX & EXCHANGE CONTROL ALERT

## IN THIS ISSUE

### Tax Courts' attitude toward the late filing of notices of objection in tax disputes with SARS

In today's fiscal environment, where the "coffers" are running on low reserves and National Treasury, together with the South African Revenue Service (SARS), are pursuing taxpayers who have not paid their dues, entering into a tax dispute with SARS is something most taxpayers would like to avoid.

## Tax Courts' attitude toward the late filing of notices of objection in tax disputes with SARS

There is a framework available to the taxpayer which provides guidance as to how to engage SARS and importantly, the timelines within which taxpayers must do so.

In today's fiscal environment, where the "coffers" are running on low reserves and National Treasury, together with the South African Revenue Service (SARS), are pursuing taxpayers who have not paid their dues, entering into a tax dispute with SARS is something most taxpayers would like to avoid.

However, should a taxpayer find themselves in a scenario where it is necessary to engage SARS, either to dispute a tax liability allegedly owed or to rectify a mistake made by SARS, there is a framework available to the taxpayer which provides guidance as to how to engage SARS and importantly, the timelines within which taxpayers must do so.

This framework is contained in Chapter 9 of the Tax Administration Act 28 of 2011 (Act) and the rules promulgated under section 103 of the Act (Rules). The Rules allow taxpayers to engage SARS when aggrieved by an assessment or not satisfied with a decision taken by SARS and if the decision is subject to objection and appeal, they have a right to dispute the assessment or decision.

Briefly, the dispute resolution process in terms of the Rules read together with the Act provide that after having received a notice of assessment from SARS, the taxpayer may:

- request reasons to enable it to adequately address the basis of the assessment to the extent that the grounds of assessment are not sufficiently clear,
- file a notice of objection against the grounds of assessment which SARS will consider and either disallow or allow in whole or in part,
- lodge a notice of appeal if the taxpayer is dissatisfied with SARS' decision following the objection, and
- resolve the dispute either through alternative dispute resolution process or by approaching the Tax Board or the Tax Court.

It is important to note that each of the abovementioned steps have prescribed time periods which the taxpayer (and SARS) must adhere to in order to avoid additional steps, such as applying for condonation for late filing and/or requesting an extension

### WEBINAR INVITATION

# VIRTUAL 2021 BUDGET SPEECH OVERVIEW

Join us for an insightful and practical overview of the 2021 Budget Speech.

**DATE:** Wednesday, 24 February 2021

**TIME:** 17h15 – 18h30

**SPEAKERS:**

Emil Brincker, Gerhard Badenhorst, and Annabel Bishop (Investec | Chief Economist)

[REGISTER HERE](#)

## Tax Courts' attitude toward the late filing of notices of objection in tax disputes with SARS...*continued*

The judgment discussed in this article specifically discusses the consequences for non-compliance with the prescribed time period (further discussed below) within which to lodge a notice of objection.

of time within which to comply with the prescribed time periods. The judgment discussed in this article specifically discusses the consequences for non-compliance with the prescribed time period (further discussed below) within which to lodge a notice of objection.

### Tax Court judgment

In the recent Tax Court judgment of *ABC (Pty) Ltd v Commissioner of the South African Revenue Service* (SARSSTC 0085/2019) (as yet unreported), the court provided a reminder to taxpayers as to the importance of adhering to the Rules and most importantly, complying with the prescribed time periods set out in the Rules.

In this matter, the court had to consider a taxpayer's application for condonation in relation to the late filing of its notices of objection to three notices of assessment received for the tax years of assessment 2014, 2015 and 2016, totalling R33,943,594.99 in assessed tax.

The notices of objection fell well outside the time periods allowed in terms of the Rules for filing such notices:

- the 2014 notice was 679 days out of time,
- the 2015 notice was 641 days out of time, and
- the 2016 notice was 395 days out of time.

The Rules provide that a notice of objection must be filed within 30 days of receiving the assessment (or after having received reasons for the assessment after having requesting same). If a taxpayer is late in filing a notice of objection, a

taxpayer must request condonation from SARS and an extension in which to lodge the notice of objection which extension may not be more than 30 additional days unless a senior SARS official deems that exceptional circumstances exist.

In considering whether such exceptional circumstances exist, SARS has issued Interpretation Note 15 (IN15) dealing with "Exercise of discretion in case of late objection or appeal". IN15 is not binding, but lists the factors which SARS would potentially consider when exercising its discretion in granting condonation for late filing and providing the taxpayer with an extension, namely:

- reasons for delay;
- length of the delay;
- prospects of success on the merits; and
- other relevant issues, e.g. SARS' interest in the determination of the final tax liability in view of the broader public interest relating to budgeting and fiscal planning.

Therefore, in order to succeed, the taxpayer had to provide a full and detailed account of the cause(s) for its failure to comply with the prescribed time to allow the court to assess the cause of the delay and make a determination as to the responsibility for the delay.

The taxpayer in this instance simply lodged the objection, failing to apply for an extension of the time period prescribed, and also did not make out a case for condonation. The taxpayer provided neither an explanation as to why it took so long to lodge the notice of objection, nor had it requested an extension from SARS.

## Tax Courts' attitude toward the late filing of notices of objection in tax disputes with SARS...*continued*

The taxpayer provided neither an explanation as to why it took so long to lodge the notice of objection, nor had it requested an extension from SARS.

In this matter, the court held that the taxpayer's failure to explain its delay was fatal to the application and the lengthy period of the delay exacerbated the issue. The court stated that SARS cannot be expected to endure an unexplained delay of such a lengthy a period especially in light of the fact that the notice of objection (which was eventually submitted) did not contain any detail in respect of the merits of the applicant's case.

The taxpayer further provided no detail as to why its prospects of success are strong and merely included the entire notice of objection without explaining why it bears any merit. The taxpayer's notice of objection also did not explain why SARS' assessments were incorrect and only stated that its objection enjoys a strong prospect of success, without giving any detail. The court stated that *"this is simply inadequate"* and reminded the taxpayer that in order to succeed with an application of this nature, the taxpayer bears the onus of showing that its case enjoys such a strong prospect of success

that the court should, in the interest of justice, condone its failure to abide by the prescribed time periods for the lodging of its objection. The taxpayer failed to do so in this matter.

The court accordingly dismissed the taxpayer's application and showed its disdain for the taxpayer's disregard for the Rules by making an adverse cost order against the taxpayer.

### Observation

This case demonstrates how imperative it is for taxpayers to keep abreast of their tax obligations to SARS and further, to be mindful of the time periods they have to dispute decisions made by SARS concerning their tax affairs. It is always strongly advisable to appoint an experienced tax practitioner to obtain the most expeditious and favourable outcome for the taxpayer and failing to do so may result in a year's long dispute costing many millions of rands.

*Keshen Govindsamy*

CHAMBERS GLOBAL 2019 - 2020 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 -2020 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 1: Tax: Indirect Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017- 2020 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2020 in Band 3: Tax.

Stephan Spamer ranked by CHAMBERS GLOBAL 2019-2020 in Band 3: Tax.



## OUR TEAM

For more information about our Tax & Exchange Control practice and services, please contact:



**Emil Brincker**  
National Practice Head  
Director  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



**Mark Linington**  
Private Equity Sector Head  
Director  
T +27 (0)11 562 1667  
E [mark.linington@cdhlegal.com](mailto:mark.linington@cdhlegal.com)



**Ben Strauss**  
Director  
T +27 (0)21 405 6063  
E [ben.strauss@cdhlegal.com](mailto:ben.strauss@cdhlegal.com)



**Gerhard Badenhorst**  
Director  
T +27 (0)11 562 1870  
E [gerhard.badenhorst@cdhlegal.com](mailto:gerhard.badenhorst@cdhlegal.com)



**Louis Botha**  
Senior Associate  
T +27 (0)11 562 1408  
E [louis.botha@cdhlegal.com](mailto:louis.botha@cdhlegal.com)



**Jerome Brink**  
Director  
T +27 (0)11 562 1484  
E [jerome.brink@cdhlegal.com](mailto:jerome.brink@cdhlegal.com)



**Keshen Govindsamy**  
Senior Associate  
T +27 (0)11 562 1389  
E [keshen.govindsamy@cdhlegal.com](mailto:keshen.govindsamy@cdhlegal.com)



**Petr Erasmus**  
Director  
T +27 (0)11 562 1450  
E [petr.erasmus@cdhlegal.com](mailto:petr.erasmus@cdhlegal.com)



**Varusha Moodaley**  
Senior Associate  
T +27 (0)21 481 6392  
E [varusha.moodaley@cdhlegal.com](mailto:varusha.moodaley@cdhlegal.com)



**Dries Hoek**  
Director  
T +27 (0)11 562 1425  
E [dries.hoek@cdhlegal.com](mailto:dries.hoek@cdhlegal.com)



**Louise Kotze**  
Associate  
T +27 (0)11 562 1077  
E [louise.kotze@cdhlegal.com](mailto:louise.kotze@cdhlegal.com)



**Heinrich Louw**  
Director  
T +27 (0)11 562 1187  
E [heinrich.louw@cdhlegal.com](mailto:heinrich.louw@cdhlegal.com)



**Ursula Diale-Ali**  
Associate Designate  
Tax & Exchange Control  
T +27 (0)11 562 1614  
E [ursula.diale-ali@cdhlegal.com](mailto:ursula.diale-ali@cdhlegal.com)



**Howmera Parak**  
Director  
T +27 (0)11 562 1467  
E [howmera.parak@cdhlegal.com](mailto:howmera.parak@cdhlegal.com)



**Tsanga Mukumba**  
Associate Designate  
Tax & Exchange Control  
T +27 (0)11 562 1136  
E [tsanga.mukumba@cdhlegal.com](mailto:tsanga.mukumba@cdhlegal.com)



**Stephan Spamer**  
Director  
T +27 (0)11 562 1294  
E [stephan.spamer@cdhlegal.com](mailto:stephan.spamer@cdhlegal.com)

### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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.

### PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

### STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.  
T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

©2021 9766/FEB



CLIFFE DEKKER HOFMEYR