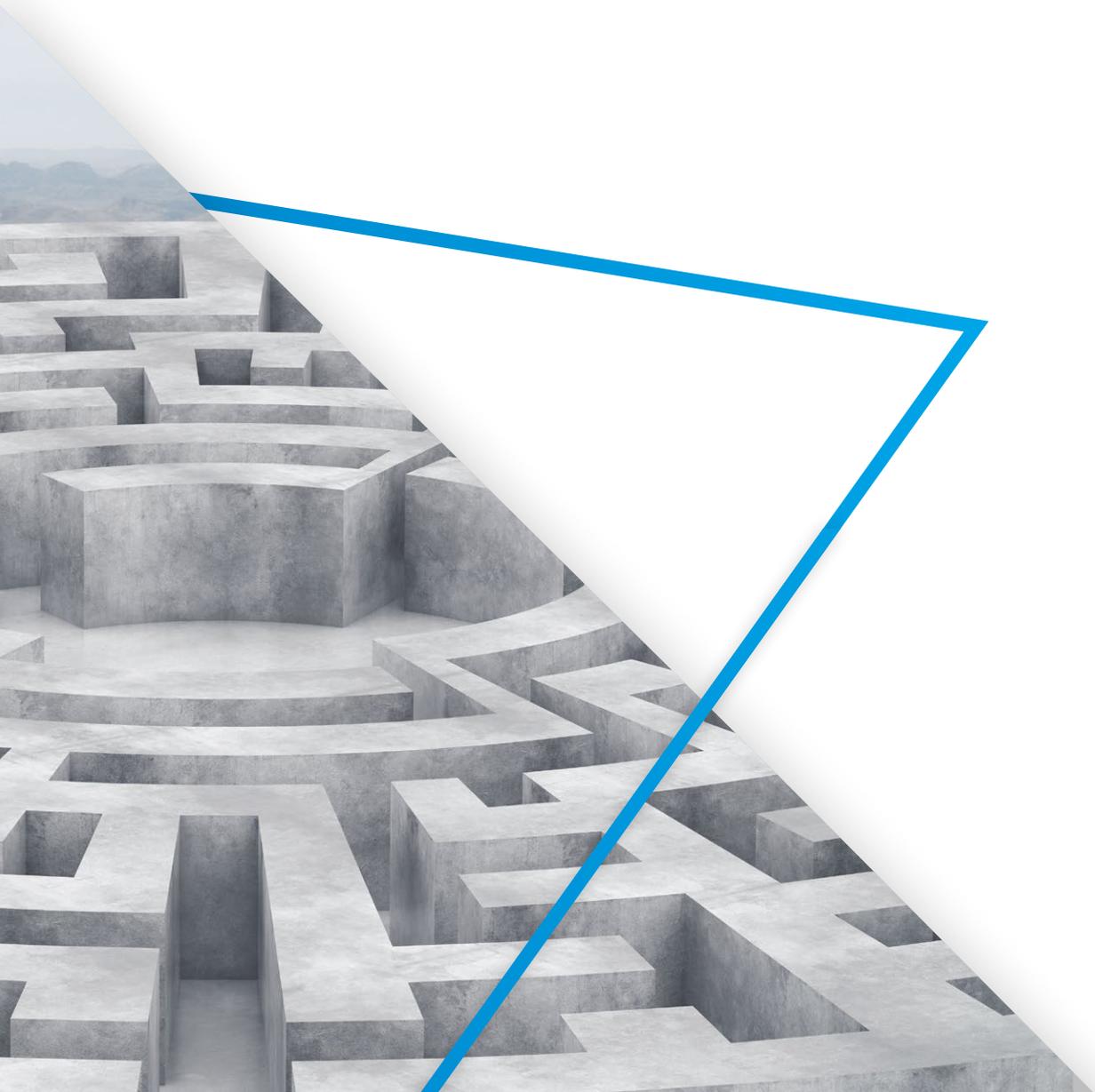
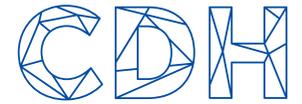


Tax & Exchange Control

ALERT | 31 October 2024



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**TAX & EXCHANGE CONTROL
ALERT**

There is no greatness in your lateness: Not sticking to the Tax Court Rules in respect of discovery

Earlier this year, the Tax Court handed down judgment in the matter of *CZY (In liquidation) v The Commissioner for the South African Revenue Service (Case No.: IT 45997) (27 February 2024)*.

The matter related to an application for condonation filed by the taxpayer for the late submission of a Rule 36(6) notice, requesting further and better discovery from the South African Revenue Service (SARS).

Background

The taxpayer's matter was on appeal to the Tax Court and related to an assessment by SARS for the 2016 tax year in respect of certain section 24C allowances, penalties and interest.

In this alert we do not deal with the merits or the hearing of that appeal, but rather the process leading up that hearing.

The taxpayer requested discovery of documents from SARS, which SARS duly provided.

However, the taxpayer required further and better discovery from SARS. To that end, it delivered a notice in terms of Rule 36(6) of the dispute resolution rules issued in term of section 103 of the Tax Administration Act 28 of 2011 (Rules).

That rule requires such a notice to be delivered within 10 business days of the date on which SARS filed its discovery affidavit.

The taxpayer filed the notice 96 days after the deadline. SARS challenged the late filing and raised a procedural objection by giving notice of an irregular step in terms of Rule 30 of the Uniform Rules of Court.

There was agreement that the irregular step proceedings would be stayed, pending the outcome of an application for condonation by the taxpayer to the Tax Court (which application was only 134 days after the deadline).

SARS' argument

SARS opposed the condonation application, arguing that the taxpayer had failed to adequately explain the delay or provide details on the relevance of the documents sought. It also claimed that the taxpayer lacked prospects of success in the appeal.

Taxpayer's argument

The taxpayer argued that SARS failed to make full discovery as required by the Rules and that it was entitled to the documents to prepare its case for the tax appeal. The delay was attributed to the complexity of the discovered documents and the need for consultation with liquidators and former employees of the taxpayer.

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The court's decision

The court accepted the taxpayer's explanation for the delay, finding that the extensive and technical nature of the documents justified the time taken for analysis.

While the taxpayer's founding affidavit did not fully detail the relevance of the documents, the court determined that some of the documents requested were likely relevant to the issues in the tax appeal, particularly those related to the imposition of understatement penalties.

Ultimately, it was noted that the fundamental question was whether it was in the interest of justice to grant the application. The court found that it was "manifestly" in the interest of justice for SARS to share the documents. It was also noted that granting the application would not prejudice SARS.

The court declined the taxpayer's request to compel the production of documents at this stage, but left the door open for relevance issues to be addressed in future proceedings.

The court reserved judgment on costs until after the issue of document relevance is fully addressed.

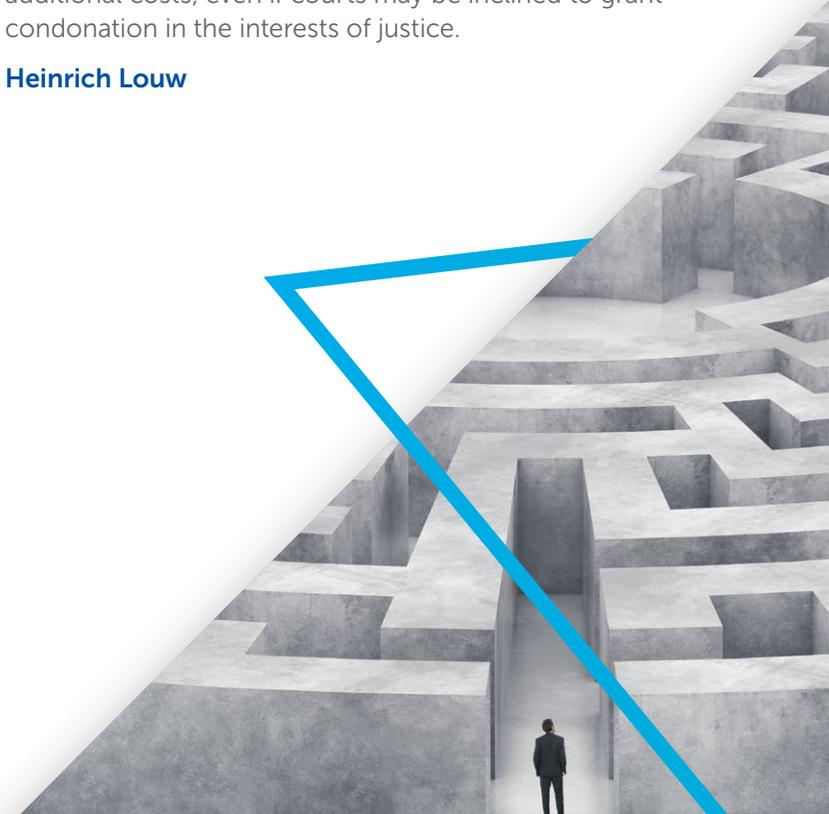
Conclusion

While the judgment is in no way groundbreaking, it does emphasise some important aspects of the nature and purpose of discovery, and serves as a reminder to tax court litigants of the complications that they could face if they don't stick to the Rules.

Firstly, the court has a truth-finding function, and discovery plays an important role in the court performing that function. The court specifically noted that "[i]t is the duty of organs of state to put all relevant material before a court so that the court is fully assisted in coming to a decision."

Secondly, not following the Rules could lead to unnecessary court applications, resulting in delays and additional costs, even if courts may be inclined to grant condonation in the interests of justice.

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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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