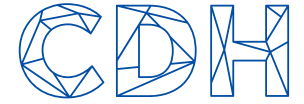


Tax & Exchange Control

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SOUTH AFRICA

Know your grounds: Why SARS must explain assessments



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Know your grounds: Why SARS must explain assessments



A taxpayer's ability to challenge an assessment issued by the South African Revenue Service (SARS) stems from the fundamental rights to just administrative action and access to courts. These rights are protected and enforced through the provisions of the Tax Administration Act 28 of 2011 (TAA), which provide a structured framework for objections and appeals. A key component of this framework is Rule 6 of the rules promulgated under section 103 of the TAA, which empowers taxpayers to request reasons for an assessment prior to lodging an objection.

The effectiveness of the mechanism in Rule 6 hinges on the quality and adequacy of the reasons provided by SARS. Clear and sufficient reasons are essential for enabling taxpayers to understand the basis of an assessment and to formulate a meaningful objection.

On 23 May 2025, the Tax Court handed down judgment in the case of *BCJ v Commissioner for the South African Revenue Service* (2024/8) [2025] ZATC 7. The judgment addresses critical aspects of SARS' obligations under Rule 6. Specifically, the Tax Court was required to consider whether the reasons furnished in response to the taxpayer's request for reasons were adequate, in the context of SARS' conclusion that a series of transactions had triggered the General Anti-Avoidance Rules (GAAR) under the Income Tax Act 58 of 1962 (ITA).

Background to the dispute

On 22 June 2023, SARS issued a letter of findings (LOF) to the taxpayer in respect of the 2020 year of assessment, together with a notice in terms of section 80J of the ITA, pertaining to a series of transactions including, *inter alia*, the sale of shares and the realisation of a capital gain. Section 80J of the ITA requires SARS to notify a taxpayer of its intention to invoke the GAAR and to provide the taxpayer an opportunity to respond. In the LOF, SARS set out the application of the GAAR as an alternative basis of the assessment. It is the focus on the GAAR that brought into question the scope of Rule 6, particularly in relation to the standard required from SARS when providing reasons for an assessment.

In the LOF, SARS identified several indicators from the transactions that formed the basis for its conclusion that the impugned transactions resulted in the avoidance of dividends tax or capital gains tax. The indicators cited by SARS include round-trip financing, non-arm's length dealings, offsetting or cancelling elements and a lack of commercial substance, among others. Consequently, SARS concluded that the transactions constituted an "*impermissible avoidance arrangement*" in terms of sections 80A and 80L of the ITA.

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In response to the LOF and the section 80J notice, the taxpayer outlined its grounds for disputing SARS' intention to invoke the GAAR, indicating, *inter alia* that SARS appeared to have applied the criteria applicable to an arrangement concluded in a business context, without demonstrating how the arrangement in question had occurred in a business context. It is important to note that section 80A of the ITA distinguishes between avoidance arrangements entered into **in the context of business** and those occurring **in a context other than business**.

SARS issued a finalisation of audit letter (FOAL) and a notice of assessment (NOA) on 20 November 2023, for the capital gain from the sale of shares. Again, SARS did not demonstrate how the arrangement occurred in the context of business.

The taxpayer then formally requested reasons from SARS under Rule 6 as to why it had accepted that the arrangement was concluded in the context of business. When SARS subsequently responded, the taxpayer was not satisfied.

On 22 March 2024, the taxpayer instituted proceedings in the Tax Court to compel SARS to provide adequate reasons, specifically regarding SARS' position that the arrangement was concluded within a business context. The taxpayer argued that the reasons furnished by SARS were insufficient and did not meet the standard required by Rule 6.

The Tax Court's findings

The court held that the reasons furnished by SARS enabled the taxpayer to understand why SARS alleged the existence of an arrangement that yielded a tax benefit and lacked commercial substance. However, when specifically requested to provide reasons for its conclusion that the arrangement occurred in a business context, SARS instead reiterated its reasons for concluding that the arrangement lacked commercial substance. This, the court held, was not the issue SARS was asked to provide reasons for.

The court held that SARS would have had to make a preliminary determination that the arrangement occurred within a business context before concluding that it lacked commercial substance. As such, SARS' failure to provide the specific reasons requested by the taxpayer constituted a failure to comply with its obligations under Rule 6.

Ultimately the court found that the reasons provided by SARS were inadequate as they failed to address why SARS accepted that the arrangement occurred within a business context. The court ordered SARS to properly respond to the taxpayer's request for reasons in respect of the assessment issued for the 2020 tax year, within 10 days of the order.

Cliffe Dekker Hofmeyr

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Getting to the bottom of your tax assessment

Taxpayers must be aware of their rights when engaging with SARS, especially the right to request reasons for an assessment. This raises a critical question: what exactly qualifies as “adequate reasons”? Before exploring the issue of adequate reasons, it is essential to revisit the purpose of Rule 6 and its critical role in safeguarding taxpayers during the dispute resolution process.

Rule 6 enables an aggrieved taxpayer to request that SARS provide reasons for an assessment prior to lodging an objection. The request must be submitted within 30 business days from the date of assessment and SARS may, upon request, grant an extension of up to 45 business days. If SARS determines that adequate reasons have not already been provided (such as in the grounds of assessment), it is obliged to respond within 45 business days of receiving the request. SARS may extend the period to respond by another 45 business days on notice to the taxpayer.

The rule is designed to ensure that taxpayers can prepare a well-informed and comprehensive objection to an assessment by SARS. Without adequate reasons, a taxpayer is left to speculate, which undermines the fairness and effectiveness of the dispute resolution process.

Furthermore, the SARS Guide on Dispute Resolution notes that the important effect of the request for reasons is that a taxpayer is not required to lodge an objection until SARS has provided a response.

What then are adequate reasons? The Tax Court in the BCJ judgment provided some guidelines as to what would constitute adequate reasons, including that:

- they must constitute more than just mere conclusions; and
- not only should SARS inform the taxpayer of its decision, but also the reasons for its decision in a simple manner which does not require the taxpayer to speculate or assume the reasons.

In assessing the adequacy of the reasons provided by SARS, the Tax Court referenced several precedents. Notably, it referenced the case of the *Commissioner for the South African Revenue Service v Sprigg Investment 117 CC t/a Global Investment 73 SATC 114* where the Supreme Court of Appeal (SCA) was similarly tasked with evaluating whether SARS had furnished sufficient reasons in response to a taxpayer’s challenge. The SCA in *Sprigg*, in turn cited with approval the judgment in *Minister of Environmental Affairs and Tourism v Phambili Fisheries (Pty) Ltd* [2003] (6) SA 407 (SCA), which itself drew on principles developed by the Federal Court of Australia. From that jurisprudence, key criteria for evaluating the sufficiency of reasons were extracted, aptly described as the “Phambili test” by the SCA. These criteria include:

- the decision maker must explain their decision in a way which will enable an aggrieved person to say, “even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision involved an unwarranted finding of fact, or an error of law, which is worth challenging”;



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- the decision maker should set out their understanding of the relevant law, any findings of fact on which their conclusions depend, especially facts in dispute and reasoning which led them to those conclusions; and
- the decision maker must provide reasons using clear and unambiguous language, avoiding vague generalities or the formal language used in legislation.

From the above criteria, it is clear that adequate reasons must go far beyond a mere statement of conclusions. The taxpayer must be placed in a position to meaningfully assess whether the decision involves a misapplication of the law or an unwarranted finding of fact.

In essence, the *Phambili* test reinforces the principle of procedural fairness and the importance of administrative accountability in tax assessments. It affirms that the right to request reasons under Rule 6 is not a mere formality, but a safeguard that enables taxpayers to exercise their rights effectively.

If a taxpayer is not satisfied with the reasons provided by SARS, they may apply to the Tax Court for an order compelling SARS to furnish reasons within a timeframe determined by the court.

However, while this right is a valuable procedural safeguard, it must be exercised responsibly and not misused. In the *Sprigg* case, for example, the SCA found that SARS had already provided adequate reasons and that the taxpayer's application was merely a delaying tactic as there was no reason why the taxpayer was unable to formulate its objection.

It is also important to distinguish between a statement of grounds for an assessment as required under section 96(2)(a) of the TAA, and the reasons for an assessment. This distinction is highlighted in SARS' Guide on Dispute Resolution, which notes that grounds for a decision are generally not as extensive as reasons for a decision. The distinction is important because a taxpayer only acquires the right to request reasons under Rule 6 when they are aggrieved by the assessment. Requiring SARS to provide adequate reasons for every adverse decision would be administratively burdensome.

Conclusion

Taxpayers, whether individuals or corporates, must be vigilant in reviewing any assessments issued by SARS and should not hesitate to invoke their right under Rule 6 to request reasons where the basis of an assessment is unclear.

SARS is not only required to state **what** it has decided, but also **why**. Especially in complex matters involving anti-avoidance provisions like the GAAR, taxpayers must be equipped with sufficient information to understand the legal and factual foundation of SARS' conclusions. Without this, the ability to lodge a meaningful objection is compromised.

Taxpayers should carefully review any letters of findings or notices of assessment; request reasons promptly if the rationale is unclear or incomplete; and be mindful of deadlines for submitting requests for reasons and objections.

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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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