

Alan Lewis Tax Law Services



Forcing SARS to Act: A different approach?

Tax compliance hurdles

- Continuous and complex amendments to existing fiscal legislation;
- Complex filing requirements;
- Unclear communications from SARS;
- Repeated audits of your clients by SARS, and
- SARS apparent inability to deal with routine matters

Frustrations

SARS's failure to

- deal with your enquiries
- respond to your requests for reasons for assessment
- attend to objections

And

- Their invalidating objections for spurious reasons

How should you advise your clients?

The RULES

Rules as promulgated on 11 July 2014 provide the framework for challenging assessments and certain decisions made by SARS

The rules regulate :

- noting of objections and appeals;
- alternative dispute resolution process;
- appearances before the tax board and the tax courts.

ADR AND THE OMBUDSMAN: THE PROBLEM

- Neither the ADR facilitator nor the Tax Ombudsman are able or obliged to make any ruling which is binding on SARS or the taxpayer
- In effect therefore they are both a waste of the taxpayers time

So where does that leave taxpayer, in those cases where SARS allegedly fails to act?

THE ANSWER: RULE 56

- Rule 56 is an extremely effective remedy, to hold SARS accountable, and force it to comply with every prescribed time period, or obligation, imposed by the rules.
- Sadly it is a highly under utilised remedy, and is probably the most effective one!

How does Rule 56 work?

You give SARS notice that you intend to approach the tax court unless they remedy the default within 15 business days

If they fail to comply, you deliver application

The tax court can:

- either grant an order directing SARS to comply with the obligation or time period, or
- It can grant a final order

What must the taxpayer do?

- They must act within 20 days of SARS failure to comply
- Application takes the form of
 - a notice of motion, setting out the relief which the taxpayer seeks from the court, and
 - an affidavit on which the application is founded

Some examples

How an application can work :

- Karl year 1: SARS issues assessment disallowing deductions after documents delivered
- Karl year 2: SARS disallows all deductions, without requesting supporting documents

SARS's (favourite) trick

SARS can declare an objection to be invalid

Rule 7: within 30 days of offending objection, and in prescribed circumstances only

Exotic reasons: too many objections; notice invalid

Again ... the taxpayer can approach the tax court for an order declaring the objection to be valid

What about Appeals?

- For disputes less than R1 million, the taxpayer has 35 days to request the registrar of the tax board to set the matter down
- The registrar must provide notice of the hearing, with in 30 business days failing which the taxpayer entitled to request a default judgement

Example: Janine's case ...

Disallowance of input tax deductions

- PAJA: SARS must inform you that they intend to do so, and offer you opportunity to respond
- If not: assessment invalid
- ITC 13726: failure to inform taxpayer of audit progress ito section 40 of TAA
- assessment=administrative action: written reasons
- No reasons: assessment invalid

And finally....

A long, true story

SARS pays R 1, 3 million, plus interest

THE END