



Tax Practice – On the move

Tax Controversy 3 of 5 **MEANING OF “ASSESSMENT”**

Judge Dennis Davis
Nico Theron CTA (SA)

YOUR KEY TO THE TAX COMMUNITY

Intro

- Assessments form the subject matter of most disputes with SARS.
- Understanding what it is, is vital.

Assessments in the context of TDR

- S 104: objection to an assessment.
- Rule 7 – place the assessment under objection.
- Rule 10/32 – new grounds on appeal– assessments not placed under objection.
- Section 104(5) – 3 years from the date of assessment – objection cut off.

Assessments in the context of TDR

- Prescription and finality of assessments:
 - from the date of assessment.
 - Prescription carve out – to give effect to a resolved dispute.
- Burden of proof.
- The coming into existence of a tax debt.
- Assessment v Notice of Assessment.

Important Case law on assessments

- **First SA Holdings**
- HR Computek.
- **ACCSA**
- **ITC 1912** (IT14570; The Tall; Executor of the Estate late Lot Maduke Ndlovu etc; Free State Development Corporation, Capitec (CC)).
- **I-CAT**
- **CSARS v M** (A5036/2023) [2023] ZAGPJHC – (6 July 2023)
- (Singh and Top Watch and (Henque) – when a tax debt arises).

First SA Holdings

- Each line item constitutes an assessment;
- Example 1:
 - SARS raises an additional income tax assessment for 2023 in which it disallows the following expenses.
 - Salaries and wages - R1m
 - Foreign travel - R2m

First SA Holdings

- The disallowance of the salaries and wages is one assessment, and the disallowance of the foreign travel is another.
 - This is so despite there being only one Notice of assessment (i.e. only one ITA34) containing both adjustments. (Confirmed also in HR Computek).

First SA Holdings

- Each line item constitutes an assessment;
- Example 2:
 - SARS raises an additional VAT assessment for 2023/06 in which it standard rates supplies declared as zero rated and disallows certain input tax.

First SA Holdings

- The Standard rated sales and disallowed input tax are each assessments on their own.
- This is so despite there being only one Notice of assessment (i.e. only one VAT217) containing both adjustments) (Confirmed in HR Computek).

ACCSA

- Background:
 - SARS raised additional assessments in which it disallowed some expenses.
 - Taxpayer objected to some of the expenses disallowed in the NOO but not to all of them.
 - Objection disallowed.
 - Dispute proceeds to appeal.

ACCSA

- At appeal stage, the taxpayer got new advice – some other expenses ought to also have been placed under objection.
- At that stage the notice of assessment > 3 years.
- Taxpayer launched: application to amend an objection.

ACCSA

- Tax Court:
 - Application to be dealt with in terms of High Court rules.
 - High Court rules allow it (in the circumstances).
 - Application allowed.

ACCSA

- SCA:
 - The assessment > 3 years old.
 - The hitherto undisputed amounts were not placed under objection.

ACCSA

- The hitherto undisputed amounts are separate assessments.
- The assessment on those amounts is final under section 100 TAA.
- Cannot allow an amendment to the objection.
- (Also – objection is not a pleading).

Recap Relevance

- Section 104:
 - When you object to an assessment.
 - Object to the “line item” placed under objection.
 - In example 2:
 - If you take issue with standard rate and input tax – **object to both on the NOO form.**
 - Cannot later argue the whole VAT217 was placed under objection.

Recap Relevance

- Example 2 continued:
 - VAT217 is the notice of assessment but the assessment is to both standard rate and input tax.
 - You are not objecting to a notice of assessment – you are objecting to the various assessments (“determinations” in that notice of assessment).

Recap Relevance

- Prescription:
 - From the date of assessment: old “trick”: add R1 to income on return to get a new assessment issued today and then object without “prescription issue?”

Recap Relevance

- That's why:
 - Section 104 – object to **assessment** (not notice of assessment).
 - Rule 7
 - object to assessment (not notice of assessment).
 - Specify the amount placed under dispute.

ITC1912 (and Kie)

- Rule 10 and rule 32
 - Context
 - Appeals and new grounds.
 - Taxpayer may not raise a ground that constitutes a new objection to an assessment not placed under objection.
- Think back to ACCSA
 - Previously, some expenses not objected to.
 - Dispute reached appeal stage.
 - Adding it to the dispute would have been an impermissible new ground under rules 10 and 32.
 - Application to amend an objection?

ITC1912 (and Kie)

- Example:
 - SARS raises VAT217's in which it disallows input tax.
 - Taxpayer claimed input tax deductions for amounts paid to principal ito agency agreement as opposed to not declaring gross receipts as output tax.
 - Taxpayer objects – places only input tax under dispute.
 - The objection will not succeed.
 - Can you add output tax to the dispute when the objection is disallowed.
 - No!

CSARS v M

- Bank Deposits.
- Nowadays – Revenue Augmentation.
- Same – capital recon/lifestyle audits.
- Each deposit = assessment.
- Burden of proof to overturn each assessment.
- Each capital recon adjustment = assessment.

I-CAT

- Background
 - Dispute on 2014.
 - Settlement reached: part of the expense incurred in 2014 and another part in 2015.
 - Reduced assessment request filed for 2015.
 - Denied its prescription.
 - Court ruled: exception to prescription in 99(2)(d)(i) applies.

I-CAT

- Incorrect?
 - The exception in 99(2)(d)(i) can only be to the assessment that was placed under dispute.
 - The 2015 determination/assessment was not under dispute.
 - Probably correct under section 99(2)(d)(iii).

TAA def vs old IT definition of assessment

- TAA: the determination of a tax liability.
- ITA: the determination of a tax liability but also the determination of an amount on which the tax liability is determined.
 - ACSA (post TAA), First SA Holdings and HR Computek (pre-TAA).
- The correct position?

Singh and Top Watch

- The issue of NOTICE of assessment brings into existence a tax debt.

Thank you

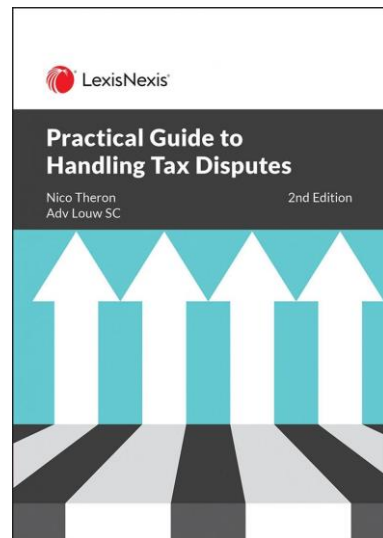
✉ ntheron@unicustax.co.za

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in Nico Theron

in Unicus Tax Specialists SA

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