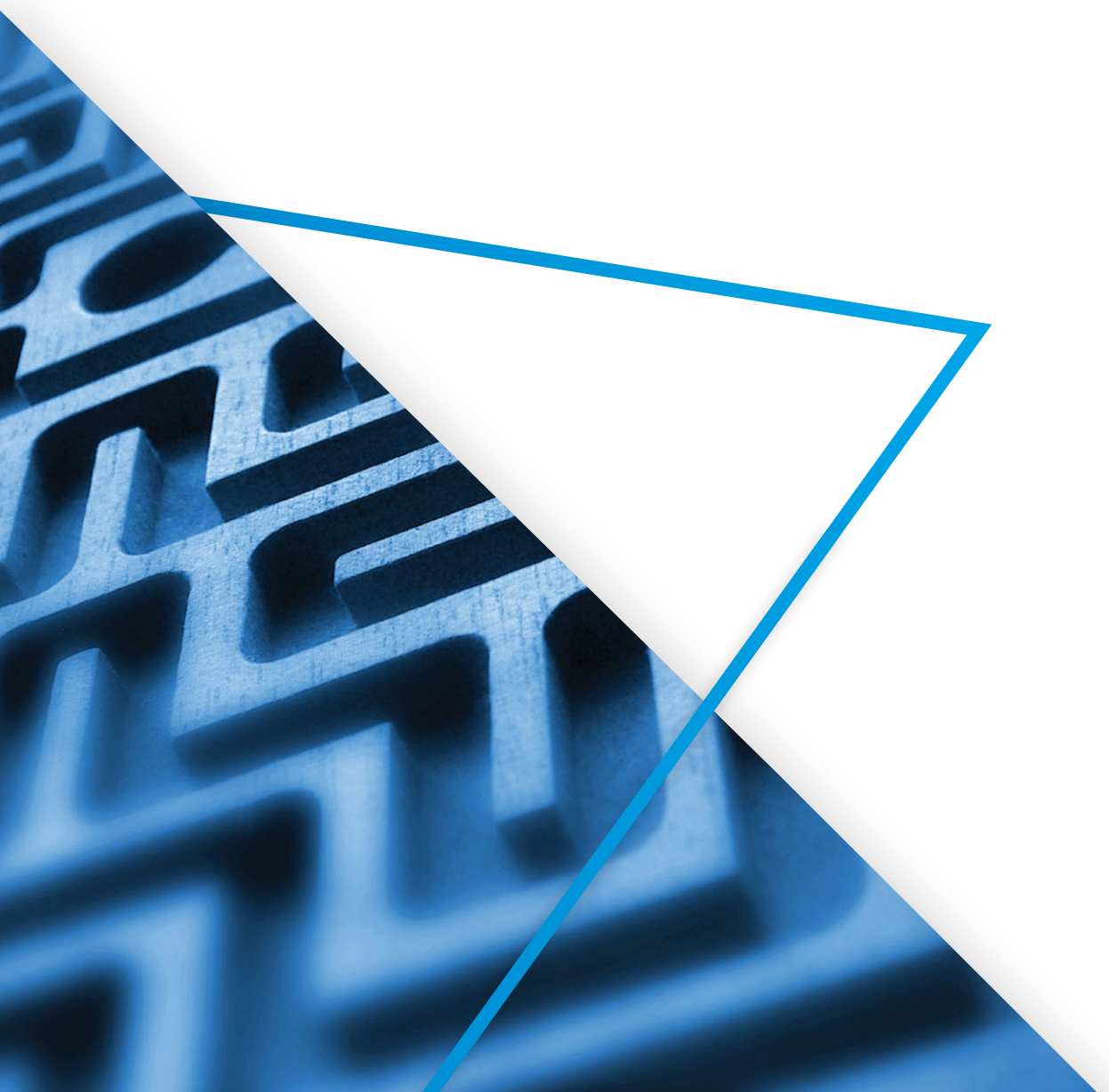
Tax & Exchange Control

ALERT | 6 February 2025



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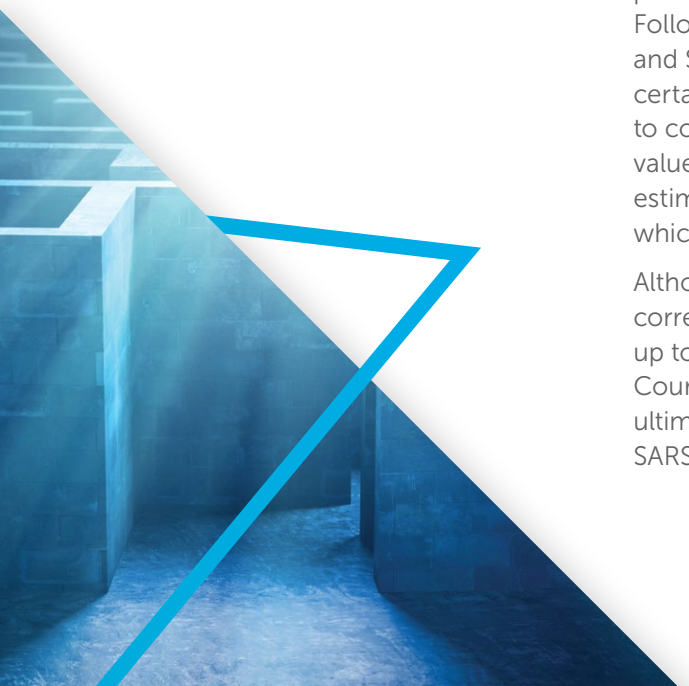

When a taxpayer is aggrieved by an assessment raised by the South African Revenue Service (SARS), the first step in disputing this is to file an objection under section 104 of the Tax Administration Act 28 of 2011 (TAA). In the recent case of *Dr X and Dr X Inc v Commissioner, SARS* (52/2023), the Tax Court dealt with the importance of complying with the requirements of Rule 7(2)(b) of the dispute resolution rules promulgated under section 103 of the TAA (Rules) in order for an objection to be valid. The Tax Court also clarified some of these prescribed requirements.

Background

The taxpayers were a neurologist (Dr X) and his medical practice (Dr X Inc), of which Dr X was the public officer. Following a lengthy back and forth between the taxpayers and SARS during which SARS repeatedly requested certain financial information from the taxpayers in order to conduct an audit on the taxpayers' income tax and value-added tax affairs, SARS issued both taxpayers with estimated assessments based on the limited information which SARS had in its possession.

Although it makes for interesting reading, the minutia of the correspondence between the taxpayers and SARS leading up to the estimated assessments is not relevant to the Tax Court's final decision. Suffice to say that the taxpayers ultimately did not provide the information requested by SARS. The upshot was that, in addition to the estimated tax assessed, SARS levied hefty understatement penalties on both taxpayers, citing intentional tax evasion and obstructive behaviour on the part of the taxpayers as the reasons for imposing the penalties.

Aggrieved by the estimated assessments, the taxpayers filed an objection with SARS. This objection was declared invalid by SARS, and a notice to this effect was provided to the taxpayers.

Although the taxpayers initially intended to challenge SARS' declaration of invalidity in the Tax Court, they came to an agreement with SARS that they would file a second objection. However, SARS also declared this second objection invalid for lack of compliance with Rule 7(2)(b) of the Rules. It is the validity of this second objection which became the subject of the dispute in the Tax Court.

In short, SARS' reasons for treating the taxpayers' second objection as invalid were that:

- the taxpayers' grounds of objection were contradictory and misleading;
- the taxpayers failed to provide evidence to support their reasons for why certain amounts should not be included in their gross incomes; and
- the taxpayers failed to provide the documents necessary to substantiate their grounds of objection.

It is worth noting that the documents which SARS alleged were missing from the taxpayers' second objection were the documents which SARS originally requested from the taxpayers and which the taxpayers ultimately did not provide, leading to the imposition of understatement penalties.

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Disagreeing with SARS' decision to treat their second objection as invalid, the taxpayers approached the Tax Court under Rule 52(2)(b) of the Rules for an order declaring their second objection to be valid for purposes of Rule 7(2)(b). It was this request by the taxpayers that the Tax Court was called upon to answer.

Requirements for a valid objection

Section 106(1) of the TAA provides that: *"SARS must consider a valid objection in the manner and within the period prescribed under this act and the Rules."*

Giving further content to this section, Rule 7(2)(b) of the Rules provides that in order for an objection to be valid, it must, *inter alia*:

"(i) [specify] the part or specific amount of the disputed assessment objected to;

(ii) [specify] which of the grounds of assessment are disputed; and

(iii) [submit] the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment."

In the event SARS determines that an objection is invalid, then Rule 52(2) of the Rules allows a taxpayer to:

"apply to a Tax Court under this part:

[...]

(b) if an objection is treated as invalid under Rule 7, for an order that the objection is valid."

Tax Court decision

Reading section 106(1) of the TAA with Rule 7(2)(b) of the Rules, the Tax Court stated that an objection which complies with the three requirements set out in Rule 7(2)(b) is a pre-requisite for that objection being adjudicated on its merits by SARS. Given this, the Tax Court had to compare the taxpayers' objection in this case to those three requirements in order to assess whether it was valid or not.

It was when considering the requirement in Rule 7(2)(b)(iii) of the Rules that the Tax Court found that the taxpayers' objection became unstuck. The Tax Court considered the documents submitted by the taxpayers with their objection not to support the taxpayers' grounds of objection with sufficient detail so as to be of evidentiary value. This was mainly as a result of these supporting documents being an aggregation of the taxpayers' financial information, and not the detailed records maintained by the taxpayers on their accounting system and which SARS had previously requested from the taxpayers on multiple occasions. On this basis, the Tax Court agreed with SARS that the taxpayers' second objection was invalid.

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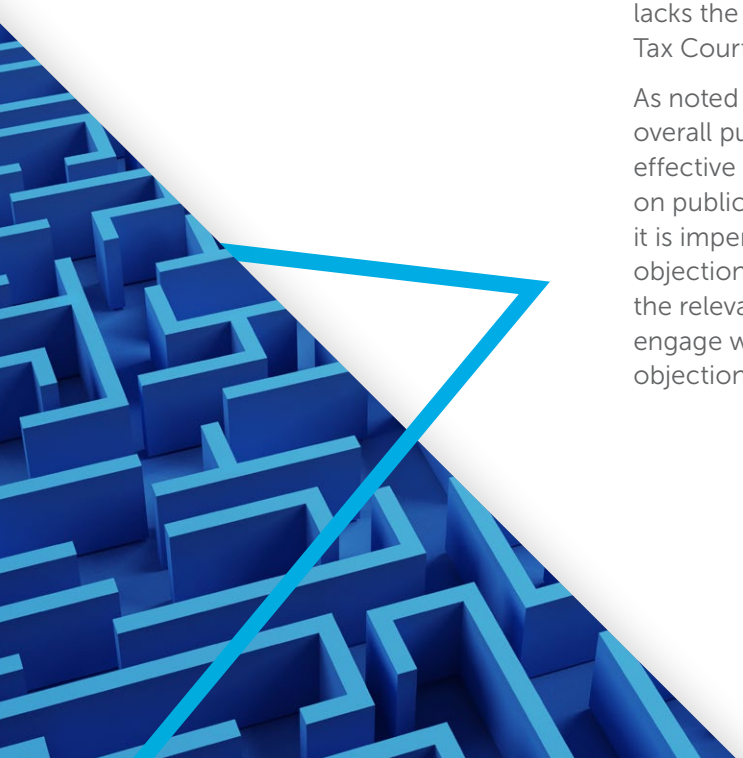

In coming to this conclusion, the Tax Court was unpersuaded by the taxpayers' arguments that the requirement in Rule 7(2)(b)(iii) of the Rules merely means a taxpayer must submit documents which it (the taxpayer) considers necessary to support its grounds of objection, and in the event that SARS finds these documents insufficient, SARS should in any event exercise its discretion in favour of the taxpayer and find the objection to be valid. The Tax Court agreed with SARS that these arguments go against the ordinary meaning of the words used in Rule 7(2)(b)(iii).

When dealing with these arguments, however, the Tax Court also set out the importance of the validity requirements. The essential goal of an objection is to place SARS in a position to properly determine the merits of the objection. Therefore, where an objection is imprecise or lacks the specificity necessary for SARS to do this, then the Tax Court found that such an objection will be invalid.

As noted by the Tax Court, this is also consistent with the overall purpose of the TAA which is to provide for the effective and efficient collection of tax. As SARS relies on public funds and acts in the general public interest, it is imperative that a taxpayer sets out their grounds of objection with sufficient specificity, and supported with the relevant documentary evidence, so that SARS can engage with, and come to a decision on, the merits of the objection without wasting resources.

As was clear from the Tax Court's decision, this reasoning must inform a taxpayer's understanding of what constitutes a valid objection. In short, it is not merely enough for supporting documents to be provided by a taxpayer when lodging an objection. Rather, these documents must evidence, in adequate detail, the facts supporting a taxpayer's grounds of objection. As the Tax Court put it, a taxpayer is not entitled to play possum when objecting to an assessment.

Takeaway

The reasoning provided by the Tax Court when coming to its decision in this case makes two points clear. Firstly, that it is a requirement for SARS to consider an objection on its merits for that objection to be valid, and secondly, that the determination of whether a taxpayer's objection is in fact valid does not lie within the subjective view of that taxpayer.

What is less clear from the Tax Court's decision is whether the discretion afforded to SARS to determine the validity of an objection is also not based on SARS' subjective view. Arguably, although the decision lies with SARS, this question of whether a taxpayer's objection is valid or not should be determined on an objective basis. Deciding otherwise may result in an abuse of the dispute resolution process by either party – if the determination lies within the taxpayer's subjective view, then it can force SARS to consider an objection on its merits without the necessary

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information at its disposal (as the Tax Court pointed out), or if the determination lies within SARS' subjective view, then it can prevent a taxpayer's dispute from reaching the Tax Court, thus forcing the taxpayer to waste resources on an application in terms of Rule 52(2)(b) of the Rules.

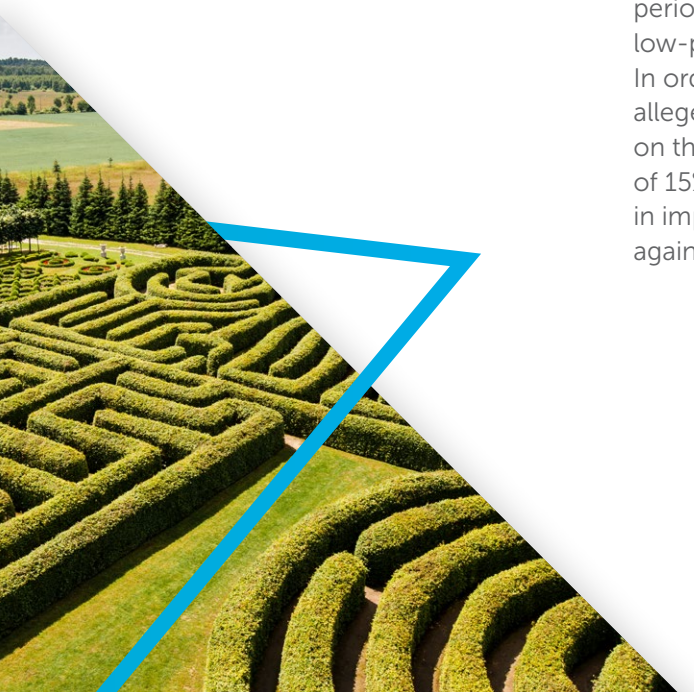
It should be kept in mind that SARS approaches a tax dispute 'blind', and it is the taxpayer that has full knowledge of the background facts. As pointed out by the Tax Court, this is what leads to the requirement in Rule 7(2)(b)(iii) of the Rules being present. Therefore, when objecting to an additional assessment, it is incumbent on a taxpayer to provide SARS with the information and documents objectively necessary to establish an understanding of the factual background and to assess the grounds of objection in light thereof.

In many instances, an additional assessment will be raised by SARS due to a factual (as opposed to legal) misunderstanding between a taxpayer and SARS, there having been no intentional tax evasion on the part of the taxpayer concerned. Whether this case is one of those instances is unknown, however, it does point to the importance of providing SARS with the information and documents it will need when assessing the merits of an objection so that any areas of contention which can be easily explained are dispensed with and only the core elements of the dispute (if there are any remaining) can be dealt with.

A taxpayer engaging experienced legal advisors from early on in the tax dispute process can assist with this, as these advisors can help the taxpayer when making submissions to SARS. This will ensure the dispute is dealt with in the most efficient manner possible. Moreover, in the event the dispute moves to the Tax Court, this will ensure the taxpayer's case has a solid grounding and only the core issues remain in dispute.

Nicholas Carroll

Request for steel shoulder couplers tariff increase submitted to the International Trade Administration Commission



The Department of Trade, Industry and Competition issued Notice 2944 of 2025 in respect of the International Trade Administration Commission's (ITAC) first customs tariff application for the year 2025, the same having been gazetted on 24 January 2025.

Rand York Castings (Pty) Ltd (the applicant) made an application to the ITAC in respect of the increase in the rate of customs duty on steel shoulder couplers, classifiable under tariff subheadings 7307.11.90, 7307.19.80 and 7307.19.90 by way of creating additional eight-digit subheadings from free or 10% *ad valorem* to the World Trade Organization (WTO) bound rate of 15% *ad valorem*.

The logic behind the application

The applicant submitted that the downstream steel industry has been under considerable pressure for a protracted period of time, predominantly as a result of the influx of low-priced imports from China and other Asian countries. In order to give due regard to this matter, the applicant alleged that it is imperative to hike up the customs duty on the relevant tariff subheadings to the WTO bound rate of 15% and that such an adjustment would play a key role in improving the domestic industry's price aggressiveness against the unyielding pressure from lower-priced imports.

The applicant stated that this course of action would concurrently help safeguard the current employment levels in the industry, assist in creating an environment advantageous to job growth, and bolster investment in the reindustrialisation of plant and equipment. The applicant further stated that the cruciality of this intervention is underlined by the loss already experienced in the grooved coupling sector within the South African Customs Union region (Botswana, Lesotho, Namibia, South Africa and Eswatini), where import competition has given rise to the complete disintegration of domestic manufacturing. The domestic industry was said to now have to contend with a similar threat in the shouldered coupling sector, as import volumes remain at insupportable proportions.

What is on the line for the industry?

The applicant argued that without swift and expeditious action to curb these imports, the domestic manufacturing industry may risk facing the same doom. Emphasis was given to the fact that the rate of duty mentioned in the application was as requested by the applicant and that the ITAC reserves its right, contingent on its findings, to recommend a lower or higher rate of duty.

The deadline for submissions to be made to the ITAC is 21 February 2025.

Petr Erasmus and Savera Singh

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