

Not to be overlooked: The importance of an accurate tax return

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Recent South African case law emphasises the extreme importance of ensuring tax returns are completed accurately. The incorrect disclosure of factual information in a tax return could have far-reaching consequences for the taxpayer – despite such incorrect disclosure being innocently made.

Prescription does not run

Far reaching implications for the taxpayer in circumstances where tax returns are completed incorrectly include SARS being in a position to issue additional assessments in respect of historic tax periods (dating back more than 3 years from the date of the original assessments) with no bar thereto on the basis of prescription. Ordinarily, SARS may not issue additional assessments for tax periods dating back more than three years, unless there is fraud, misrepresentation or non-disclosure of material facts on the part of the taxpayer.

In the recent decision of the Supreme Court of Appeal (“SCA”) in *The Commissioner for the South African Revenue Service v Spur* (Case No. 320/20 [2021] ZASCA 145 (15 October 2021), SARS averred that there was misrepresentation and non-disclosure of material facts on the part of the taxpayer as it was common cause that the taxpayer had answered the introductory questions to the tax return incorrectly.

Notably, the SCA held that the taxpayer's attempt to put the blame for the error in the tax return on a newly appointed accountant who was not fully apprised of all the required details of the matter at hand was not a justifiable excuse as the public officer of the taxpayer was its CEO – and such CEO had signed the return and accordingly asserted the correctness thereof.

In addition, the SCA held that although the supporting information (annual financial statements) submitted to SARS together with the tax return contained the correct information, this was considered by the court to be irrelevant in determining whether the tax return gave rise to misrepresentation and/or non-disclosure of material facts. In this regard, it was pointed out that SARS's assessment process depends on the contents of the return, not the supporting information submitted together with the return.

The SCA accordingly held that SARS was permitted to issue additional assessments for the historic periods and that prescription was not a bar to doing so.

Significant penalties

Should an error in the completion of a tax return give rise to an understatement, significant understatement penalties (and interest thereon) may be levied – unless the understatement arose from a *bona fide* inadvertent error. There are numerous cases where courts considered whether an understatement arose from a “bona fide inadvertent error”.

In the recent Cape Town Tax Court decision of *W Taxpayer v Commissioner for the South African Revenue Service* (IT 45627), the court accepted that the taxpayer did not act intentionally or grossly negligently when it made an error in the completion of a tax return, but that given the materiality of the amount in question, the taxpayer failed to exercise reasonable care in doing so. In addition, the court held that the chartered accountant who was responsible for ensuring the tax returns were accurate should have picked up the error as it was a glaring one. As no contrary evidence was provided by the taxpayer, its appeal was dismissed.

It is evident from the above that the completion of tax returns, which is often viewed by taxpayers as a purely administrative function, can have detrimental implications if not attended to correctly. Extreme caution should be exercised when completing all fields of a tax return and should there be any uncertainties in this regard – taxpayers should seek professional assistance to avoid harsh consequences.

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