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New High Court case on SARS' information-gathering powers

Why this matters?

Typically, SARS requests information from taxpayers via a request for relevant material, as envisaged in section 46 of the Tax Administration Act No. 28 of 2011 ("TAA"). However, a recent high court matter demonstrates that this is not the last line of defence for SARS in gathering information from taxpayers. The judgment evidences that where complex transactions have been undertaken by taxpayers, their approach in responding to information requests from SARS should be carefully considered. Taxpayers can expect related parties to such transactions to also be interrogated as part of SARS' information-gathering powers.

The Detail

SARS has a duty to ensure that tax is collected in a manner that is both effective and efficient. This is usually done through the procedures contained in section 46 of the TAA. What is less well known is the right which SARS has to invoke an inquiry into the affairs of the taxpayer, in terms of section 50 of the TAA.

An application to the court in terms of section 50 is usually made in the form of an unopposed motion, i.e. the taxpayer may not challenge the application. In order for the court to grant such an order, SARS needs to satisfy the court that there are "reasonable grounds" to believe that a taxpayer has failed to comply with an obligation imposed under a tax Act; or committed a tax offence, and that it must be likely that relevant material will be revealed during the inquiry which proves the alleged misconduct.

The details of this judgment are as follows:

SARS had previously investigated one of the taxpayer's clients, and successfully concluded that a structure was designed and implemented by the taxpayer solely for tax benefits. SARS extended its scope of investigation utilising section 46 of the TAA, and obtained relevant material from third parties (such as banks and external auditors), where SARS was alerted to multiple other structures involving

the taxpayer and its clients. On this basis, SARS submitted numerous section 46 requests, however, the taxpayer refused to provide information relating to other parties to the transactions.

SARS was of the view that the information obtained as part of the information request procedure was unsatisfactory for its purpose and proceeded to apply to the court to grant an order for an inquiry in terms of section 50. In this particular case, SARS elected to proceed on notice to the taxpayer, demonstrating SARS' confidence in its allegations. SARS alleged that it had reasonable grounds to believe that there were structures in place for the taxpayer and its clients which shared similar tax avoidance features to the previous investigation. In addition, SARS purported it was necessary to conduct an investigation into multiple taxpayer's affairs, across group entities. For various reasons, the taxpayer alleged that SARS failed to satisfy the jurisdictional requirements of an inquiry under the TAA.

The key findings by the court are as follows:

- An inquiry under section 50 of the TAA does not involve a substantial infringement of the taxpayer's right to freedom and security or to self-incrimination under the Constitution;
- SARS does not have to satisfy the court that the respondents have factually contravened a tax obligation or committed an offence under a tax Act on a "balance of probabilities", but should merely satisfy the court that there are "reasonable grounds" for believing so;
- There are no specific requirements under the TAA which require SARS to exhaust all available information-gathering remedies before utilising section 50 of the TAA; and
- There is no bar against SARS seeking information, and conducting an inquiry into the tax affairs of multiple taxpayers on a structure-based approach.

The court concluded that SARS had met the jurisdictional requirements of an inquiry under section 50 of the TAA and used its discretion to rule in favour of SARS, authorising the application for inquiry.

Should you receive a section 46 request for relevant material or an inquiry order under section 50 of the TAA, do not hesitate do contact us on how best to approach this request.

For more information, please contact:



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