

Taxpayer must prove that a transaction is exempt

By  Graeme Palmer

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A taxpayer bears the burden of proving that an amount or transaction is exempt or otherwise untaxable. In a recent judgment, *The Commissioner for the South African Revenue Service (SARS) v Pretoria East Motors*, the Supreme Court of Appeal (SCA) considered the taxpayer's burden of proof.



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The taxpayer was an authorised dealer for Toyota SA and conducted the business of a car dealership. SARS carried out an audit into its tax affairs, and upon conclusion, raised various additional income tax and VAT assessments, together with penalties, at the maximum rate of 200%.

On appeal the SCA held that, although the onus was on the taxpayer to show, on a preponderance of probability, that the decisions of SARS were wrong, SARS were not free simply to adopt a supine attitude, but must set out the grounds for the disputed assessments. The taxpayer is then obliged to respond with the grounds of appeal and these issues would then delineate the dispute between the parties.

Critical of SARS' approach

The court was critical of SARS' approach to the audit, which was to examine the accounts, and if a discrepancy was found by them which they did not understand, or for which, in SARS' view, no adequate explanation was given, then they would raise an assessment for additional tax. This, however, left the taxpayer with a difficult and formidable onus to discharge in court in order to prove that SARS was wrong.

In its judgment the SCA stated that the raising of additional assessments must be based on proper grounds for believing that, for example, there is undeclared income or an unjustified claim for a deduction. SARS is obliged to engage with the taxpayer in an administratively fair manner by explaining the basis for the additional assessments.

Furthermore, SARS is under an obligation throughout the assessment process, up to the appeal itself, to indicate clearly

what matters and which documents are in dispute, so the taxpayer knows what is needed to present its case.

Another criticism raised by the SCA related to the 200% penalties levied by SARS without explanation as to why the taxpayer met the required standard of conduct for such penalties in that it had been dishonest or evaded tax. There was no evidence presented that the taxpayer intended to deceive and the penalties were therefore set aside. As the taxpayer was substantially successful in setting aside the additional assessments, SARS was ordered to pay its costs.

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