



# DAVEY'S Locker



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## USP and *bona fide* inadvertent error

### Understatement penalties—Part 2

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#### ***Bona fide* inadvertent error**

As stated in 164 TSH 2016, s 222(1) of the Tax Administration Act refers to the imposition of an understatement penalty, unless the understatement results from 'a *bona fide* inadvertent error'.

It follows that this expression is required to be considered by SARS before the application of s 223, which comprises the understatement penalty percentage table.

In the absence of a definition of 'a *bona fide* inadvertent error' in the act, regard must be had to dictionary definitions of its component words.

My interaction with SARS in a recent tax case suggests that it also adopts the dictionary-approach. Thereafter, the law (dictionary definitions) is applied to the facts of each case.

#### ***Bona fide***

The *Oxford Dictionary* states that the origin of this component is Latin, and literally means 'with good faith'. It is also defined as

'genuine; real; without intention to deceive'.

*Black's Law Dictionary* defines '*bona fide*' as 'in or with good faith; honestly, openly, and sincerely; without deceit or fraud'.

#### **Inadvertent**

Burton's *Legal Thesaurus* defines 'inadvertent' as 'accidental, blind, careless, disregarding, heedless, imprudent, inattentive, neglectful'. Significantly, it also states that associated concepts are 'neglect, negligence'.

The *Concise Oxford Dictionary* defines 'inadvertent' as '1. unintentional. 2. a. not properly attentive. b. negligent'.

#### **Error**

The *Oxford Dictionary* defines 'error' as 'a mistake'. It also gives the following synonym: 'The state or condition of being wrong in conduct or judgment.'

*Black's Law Dictionary* defines 'error' as 'a mistaken judgment or incorrect belief as to the existence or effect of matters of fact, or a

false or mistaken conception or application of the law'.

#### **Conclusion**

The dictionary definition of a '*bona fide* inadvertent error' in the context of s 222(1) is the innocent misstatement of a taxpayer in his return, leading to an understatement, while the taxpayer acted in good faith and without the intention to deceive, perhaps including some negligence.

This approach, using dictionary interpretations, was confirmed in a recent tax case, TC IT 13772 (4 November 2016) (164 TSH 2016).

Acknowledgement: C de Villiers (23979658) in a Master's thesis dated May 2015 at North-West University, entitled 'Exploring key considerations when determining *bona fide* inadvertent errors resulting in understatements'.

