



**16 SEPTEMBER 2024**

**6.2024**

**Editor's Note:**

In this sixth newsletter for 2024 we consider the following:

Right of Appearance in Tax Court Expanded

ADR Process accelerated to Objection Stage

Introducing a “new” Ground of Appeal, post original Objection

SARS Interpretation Notes (INs), Draft Ins, BGRs, BCRs, BPRs, guides and draft guides Noter-Up

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**RIGHT OF APPEARANCE IN TAX COURT EXPANDED**

It is proposed that section 12 of the Tax Administration Act (TAA) be amended by the Tax Administration Laws Amendment Bill, 2024 to permit a natural person (other than a legal practitioner duly admitted and enrolled under the Legal Practice Act 2014) to appear on behalf of a taxpayer in the Tax Court, provided the president of the Tax Court is satisfied that such person is a fit and proper person to appear. (See Davey's Locker 4.2024 and 5.2024 re *Poulter v C: SARS*).

This amendment enacts the recent decision of the High Court in the Poulter case in which the taxpayer appealed the Tax Court's decision refusing her father the right (as a layman as distinct from a legal practitioner) to represent her in the said court. The full

bench of the High Court allowed the appeal and referred the matter back to the Tax Court for hearing of the main dispute.

The effective date of this enactment is the date the proposed Bill is approved and promulgated as an Act, which in our experience is likely December 2024

### **ADR PROCESS ACCELERATED TO OBJECTION STAGE**

The Tax Administration Laws Amendment Bill, 2024 proposes to expand Section 104 of the Tax Administration Act (TAA) to permit Alternate Dispute Resolution (ADR) proceedings to commence at the earlier phase of Objection against an assessment. The current position is governed by Section 107, under which ADR commences only at the Appeal phase.

The proposed additional subsection to Section 104 provides that by mutual agreement, SARS and the taxpayer may attempt to resolve the dispute through ADR under the procedures specified in Rules 13 to 25.

Objection proceedings will be suspended while the ADR proceedings are ongoing. Clearly, the objective of the proposed amendment is to resolve disputes more timeously and earlier in the protected cycle of Objections and Appeals.

### **INTRODUCING A “NEW” GROUND OF APPEAL, POST ORIGINAL OBJECTION**

In the recent case of *TALT v C: SARS* (2024 ZAGPJHC, 27 August 2024) after disallowance of Objections by SARS, the taxpayer upon Appeal raised an additional ground of Objection in its Tax Court Rule 32 Statement, to its original Objection grounds.

The Tax Court upheld SARS contention that the introduction of this additional ground was a new ground (not an additional ground) and was thus impermissible. On appeal to the full bench of the High Court, the taxpayer succeeded and was thus granted leave to

introduce this additional ground. The essence of this matter is contained in Tax Court Rule 32 (3) which states that 'The appellant may include in the statement a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to under rule 7'.

The High Court held that the fact that the taxpayer originally objected only on the grounds of prescription (being a time-bar) does not exclude the addition of a ground of appeal on the substantive merits of the dispute as the prescription ground should be broadly read as implicitly including an objection to the inclusion of a CGT gain in its taxable income. Simply put, the High Court held that this ground constituted an additional ground and not a new ground of appeal and was thus permissible. A broad and generous interpretation in our view and we await whether SARS will take this on appeal to the SCA.

### INTERPRETATION NOTES

Date of issue	IN	Tax	Section	Description
30.08.2024	15 (Issue 6)	TAA	104 & 107	Exercise of Discretion to Extend the Period to Lodge an Objection or Appeal
15.08.2023	133	IT	1(1) and 10(1)(f)(ix)	Income Tax Exemption: Water Service Provider
05.08.2024	98 (Issue 2)	IT	30(1), 30(3)(f) & PBA 10(iii) in Part I of the Ninth Schedule	Public benefit organisations: The provision of funds, assets or other resources to any association of persons
29.07.2024	132	TAA	240(3)(d)	Persons not eligible to register as a tax practitioner and deregistration of registered tax practitioners for tax non-compliance

### DRAFT INTERPRETATION NOTES

Date of issue	IN	Tax	Section	Description
30.08.2024	-	IT	23(e)	The meaning of reserve fund under s 23(e)

**BINDING GENERAL RULINGS**

Date of issue	BGR	Tax	Section	Description
30.07.2024	73	IT	20(1)(a)(i)	Meaning of taxable income for purposes of setting off the balance of an assessed loss by a company

**BINDING CLASS RULINGS**

Date of issue	BCR	Tax	Section	Description
05.08.2024	090	IT/STT	8C, 10(1)(k)(i), 11(a), 23(g), 23H, 56, & 58; paras 2 & 11A of the Fourth Schedule & para 35 of the Eighth Schedule; 1 definition of 'transfer'	Award of listed shares under a share incentive scheme
30.07.2024	089	IT	8EA(1), (2) and (3)	Qualifying purpose and third-party backed shares

**BINDING PRIVATE RULINGS**

Date of issue	BPR	Tax	Section	Description
11.09.2024	410	IT	9H(3)(b) & (5) & para 64B of the Eighth Schedule	Disposal by a controlled foreign company of equity shares in a foreign company
05.08.2024	409	It/STT	10(1)(cN) and para 63A of the Eighth Schedule; 1(1) definition of 'transfer' and 8(1)(d)	Acquisition by a PBO of forfeited share incentive scheme shares
02.08.2024	408	iT/STT	1(1) definitions of CTC and trading stock, 24BA, 40CA, 41(1) and 42; paras 1 definition of 'capital asset and para 20(1)(a) of Eighth	Corporate restructuring using s 42 of the Act

			Schedule; 1 definitions of 'taxable amount' and 'transfer', 2, 3 and 8	
02.08.2024	407	IT	12BA	Generation and supply of renewable energy
31.07.2024	406	IT	10(1)(gC) and article 18 of Belgium-SA tax treaty	Treaty relief - supplementary pension fund payments
30.07.2024	405	IT	8EA(1), (2) and (3)	Third-party backed shares and hybrid interest
15.07.2024	404	IT	37C and 37D	Expenditure incurred in respect of environmental conservation

### GUIDES

Date of issue	Description
29.08.2024	Guide for Tax Rates / Duties / Levies (Issue 17)

### DRAFT GUIDES

Date of issue	Description
01.08.2024	Draft Guide on the Mineral and Petroleum Resources Royalty Act
30.07.2024	Draft Guide on the Allowances and deductions relating to assets used in the generation of electricity from specified sources of renewable energy