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Tax Developments on one page

Prescription of self-assessed taxes arising from low-interest loans

The Tax Administration Act makes provision for prescription of assessments. This ensures that taxpayers have finality in relation to assessments. The SCA recently considered the application of the prescription rules to an assessment for STC that was raised by SARS in circumstances where the taxpayer never submitted any return. Despite the fact that STC is no longer in effect, the views of the SCA are relevant in other instances where low-interest loans have tax implications.

The Tax Administration Act (TAA) makes provision for prescription of tax assessments. This provides taxpayers with finality in relation to assessments after a period of time. The SCA considered in *CSARS v Char-Trade* whether an assessment had prescribed by the time that SARS raised an assessment for STC. This article provides an overview of the provisions of the legislation in this regard, the judgment in that case and some views on its broader relevance.

Prescription framework

Section 99 of the TAA contains the provisions that govern prescription of tax assessments. Without going into all detail in this article, it is necessary to briefly consider some of the broad principles in relation to prescription.

An assessment generally prescribes after a period of time has expired from the date of the original assessment. In the case of a tax assessed by SARS this period is 3 years, while self-assessed taxes prescribe after 5 years. An assessment may also prescribe on the basis that it has been raised by SARS in accordance with practice generally prevailing or that a matter has been resolved through the dispute resolution process.

If the full amount of tax was not assessed as a result of fraud, misrepresentation or non-disclosure, this could cause the assessment not to prescribe.

Char-Trade case

The taxpayer, Char-Trade 117 CC, made various loans to related companies and CCs. During an audit SARS found a number of these loans that did not bear interest at the official rate and subjected it to STC. The taxpayer initially objected to the imposition of STC on the grounds that the deemed dividend provisions did not apply. The taxpayer did not submit any STC returns as it believed at the time that the loans did not result in any deemed dividends. During the course of the dispute the taxpayer, however, conceded the argument that the loans did not trigger deemed dividends.

The additional assessments related to, amongst others, the 2007 year of assessment. Despite having conceded the argument that the loans did not give rise to deemed dividends, the taxpayer argued that the STC assessment for the 2007 year of assessment had prescribed as more than 5 years had lapsed by the time that SARS raised it (November 2012).

The taxpayer's dividend cycle for 2007 ended on the last day of February. The STC return and payment was due by the end of March 2007. The Tax Court ruled that the assessment was raised more than 5 years from the date that the return and payment was due, and that the assessment had therefore prescribed.

The SCA however found that a return was required in respect of the self-assessed STC. Char-Trade did not submit this return. As no return was submitted by the taxpayer, no original assessment was made. As there had not yet been an original assessment, prescription did not commence and SARS was entitled to raise the assessment for the 2007 year.

Broader relevance

Although STC has been replaced with dividends tax, there are a number of self-assessed taxes where prescription will not commence until a return is submitted by the taxpayer. In the context of loans which may bear interest at a rate lower than the official rate, this includes deemed dividends (section 64E(4)) or deemed donations (section 7C) arising from such loans.

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