When is SARS out of time to raise an assessment?

The prescription rules of the Tax Administration Act provide taxpayers with finality of assessments after a prescribed period of time. These periods are however not absolute. The Supreme Court of Appeal recently considered the application of the exceptions that preclude the prescription periods from applying. The judgment in *C:SARS v Spur Group (Pty) Ltd* (Case no 320/20) [2021] ZASCA 145 (15 October 2021) is a reminder to taxpayers of the importance of completing tax returns accurately and implementing proper controls in this regard.

Tax assessments must reach finality. For taxpayers this happens when SARS can no longer issue additional assessments for the specific tax period. Section 99 of the Tax Administration Act limits the periods for issuance of assessments by SARS. This article considers key aspects of the rules and their recent application by the SCA.

Limitation of periods to issue assessments

The basic prescription rule is that SARS may not make further assessments after 3 years from the date of an original assessment by SARS or 5 years from the date of an original self-assessment by a taxpayer. SARS may also not raise further assessments where the correct tax was not assessed due to practice generally prevailing when the initial assessment was made or where disputes were resolved in terms of the dispute resolution process.

The limitations are not absolute. Sections 99(3) and (4) cater for specific circumstances where SARS can these extend periods with prior notice. Section 99(2) is broader. In the case of an assessment by SARS, the limitations do not apply if the correct tax was not assessed due to fraud, misrepresentation or non-disclosure of material facts. In the case of self-assessments, the misrepresentation or non-disclosure may be intentional or negligent.

Spur case

In *C:SARS v Spur Group (Pty) Ltd* (Case no 320/20) [2021] ZASCA 145 (15 October 2021) the taxpayer deducted an amount contributed to an employee share incentive scheme over the period from 2005 to 2012. Following an audit, SARS disallowed the deductions on the basis that the contribution was not sufficiently linked to the production of Spur's income. SARS issued additional assessments for 2005 to 2009 in July 2015.

The SCA considered the overall design and terms of this specific incentive scheme and agreed with SARS. This necessitated it to consider whether SARS was allowed to raise the assessments within the timeframe that it did.

The taxpayer answered a number of questions on the tax returns incorrectly for the relevant periods. It claimed the deductions for the contribution in the line item 'Other deductible items', rather than 'Prepaid expenditure (as limited by s 23H)'. Counsel for the taxpayer argued that:

(a) these representations and non-disclosures were negligently and inadvertently made, and

(b) SARS failed to establish a nexus between the inadvertent and incorrect disclosures and the tax assessed by SARS since no person at SARS applied their minds to the supporting documents filed and no audit was performed within three years from the dates that the assessments were raised.

The SCA concluded that the assertion that the wrong entries on the tax return were negligent and inadvertent was plainly false if one considers that the questions were pertinently raised in the tax return. They required specific attention and honest answers from the taxpayer who was intimately involved in the establishment of the structure.

On the second contention, the SCA agreed that the integrity of the SARS process through which assessments are raised and SARS' ability to conduct audits depend on the correctness of the information provided in the return. This forms the basis for triggers for further actions. The incorrect information caused SARS to not assess the taxpayer correctly within the 3 year period.

In conclusion

Taxpayers and advisors often forget to consider prescription when dealing with disputes. This may be a strong ground to dispute assessments raised long after returns were submitted. The judgment in the Spur case however highlights the importance of completing tax returns properly and accurately to enjoy the benefit of finality offered by the prescription rules. The Spur case should prompt taxpayers to critically review their own controls that relate to the completion of tax returns.

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