



Responding to SARS requests for information

A recent high court case deals with a request by SARS for information from a taxpayer about its dealings with clients and suppliers. The taxpayer redacted the information provided. The court ruled in favour of SARS and ordered to taxpayer to fully provide the information requested.

SARS' investigative process includes requesting information from taxpayers. In February 2024, the Western Cape High Court delivered judgment in *CSARS v J Company*. This case deals with requests for relevant material. This article considers the requirements of section 46, the case, and what other taxpayers can take from it.

Request for relevant material

Section 46 of the Tax Administration Act ('the TAA') empowers SARS to request "relevant material" it considers necessary to administrate the tax laws. The power to request information under section 46 stretches beyond the taxpayer's direct tax affairs. The section broadly defines "relevant material," allowing SARS to determine what information it considers foreseeably relevant. The power to request information under section 46 is not limited to the taxpayer's direct tax affairs.

Facts and dispute

J Company ('the taxpayer') described itself as:

"a private company incorporated in South Africa which procures and provides advice and project management services to clients undertaking various corporate and commercial transactions. It charges a fee to clients for its services, and typically recharges to the client any amounts paid by it to specialist's advisors, including attorneys, engaged on behalf of the client"

SARS issued multiple section 46 notices to the taxpayer, requesting detailed financial documents and invoices for the tax years 2017 and 2018. The taxpayer complied by providing the requested documents. However, many were heavily redacted. This concealed key details like the identities of clients and suppliers and the nature of services rendered. SARS applied to the court seeking an order to compel the taxpayer to comply fully with its requests.

The taxpayer argued that the redacted information was irrelevant to its tax affairs. It suggested SARS embarked on a "fishing expedition" to ascertain who its clients were and what transactions the taxpayer advised on, without any basis for SARS to consider that there had been potential non-compliance by such clients.

Judgment

The court ruled in favour of SARS, ordering J Company to provide the unredacted documents within 21 days. The court emphasised that SARS, not the taxpayer, determines what is foreseeably relevant and, therefore, relevant material. It agreed with SARS' position that the parties with whom the taxpayer conducted business were a matter by its very nature relevant to the company's tax affairs. The court also confirmed that there is no pre-requisite on SARS to determine whether a person's tax affairs are in order before making requests. The court identified various reasons why SARS would need to consider information on counterparties, resulting in the information being foreseeably relevant and the request not unreasonable. Importantly, the court highlighted that the taxpayer did not rely on legal privilege to protect this information.

Lessons for other taxpayers

SARS has broad information collection powers under the TAA. This case highlights the risks taxpayers may face if they determine that information is irrelevant or can be withheld. The decision of what is foreseeably relevant ultimately lies with SARS. It illustrates that redacting information when providing it to SARS may well result in further complexities and disputes. Taxpayers who question information that SARS requests should obtain specialist advice in this regard.

