Changing course during a tax dispute

In *Baseline Civil Contractors (Pty) Ltd v CSARS,* the court considered whether a taxpayer could amend its grounds of appeal at the appeal stage of the dispute. The case should remind to taxpayers to be meticulous in identifying and articulating all relevant issues early in the dispute as some grounds may not be raised later.

Taxpayers often refine their grounds and arguments as tax disputes progress. The Western Cape Division of the High Court recently considered such a change in *Baseline Civil Contractors (Pty) Ltd v CSARS*. This article briefly reviews the case and what other taxpayers can take from it.

Grounds of appeal

Rule 32 of the dispute resolution rules published in terms of section 103 of the Tax Administration Act ('the Rules') requires an appellant in an appeal (taxpayer) to deliver a statement of grounds of appeal to SARS. Specifically, Rule 32(3) deals with new grounds of appeal by taxpayers. The rule states that taxpayers may introduce new grounds of appeal in their Rule 32 statement. These new grounds may, however, not constitute a fresh objection against a part or amount of the disputed assessment not previously objected to under Rule 7.

Facts and dispute

Baseline Civil Contractors (Pty) Ltd ('BCC') sought to deduct an amount of approximately R11 million. It claimed this was a distribution of profits paid to Baseline Group Limited Liability Partnership (BECP). SARS disallowed the deduction because it was an expense incurred after earning income. BCC lodged an objection based solely on the premise that the amount was a deductible expense under section 11*(a)* of the Income Tax Act ('the ITA').

When SARS partially disallowed the objection, BCC appealed to the Tax Court. At this stage, BCC introduced a new argument that the amount in question should not have been included in its gross income, as it was neither received by nor accrued to it, but rather to the BECP. It did not raise this argument in the original objection.

Judgment

The court had to determine whether BCC could introduce this new argument under Rule 32(3). It emphasised that the Rules aim to fully air and resolve disputes as early as possible. Rule 32(3) prevents introducing entirely new disputes at the appeal stage, ensuring that all relevant issues are identified and addressed at the earliest possible stage of the dispute process.

The court found that this new argument differed fundamentally from the original objection. The initial objection dealt with whether the amount was a deductible expense, while the new ground challenged the inclusion of the amount in the appellant's gross income. It held that Rule 32(3) did not permit such a significant shift in the grounds of appeal. This would effectively amount to a new objection not raised before. Allowing this new ground would undermine the purpose of Rule 32(3).

Take-Home Message

Rule 32(3) provides some flexibility to introduce new arguments at the appeal stage of a dispute. However, this flexibility is limited and does not allow for introducing entirely new objections at the appeal stage. This case highlights that taxpayers must be meticulous in identifying and articulating all relevant issues during the objection phase to avoid being barred from raising critical points later in the process. In many cases, this requires obtaining proper advice and guidance from the onset of a dispute. Some mistakes cannot be corrected later on.

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