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UNICUS TAX UPDATE



11 August 2026

Taxpayer A v CSARS

VAT apportionment ruling appeal

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HELLO & **WELCOME!**

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PROOF IS NOT THE SAME AS PERSUASION

- Taxpayer A v CSARS: VAT apportionment ruling appeal
- Part 1: the case and the proof problem
- Part 2: SARS draft BGR on financial year-end changes

PART 1:
BACKGROUND TO THE VAT CASE

- The taxpayer was a registered bank and VAT vendor
- It made both exempt and taxable supplies
- Input tax on mixed expenses had to be apportioned
- The dispute concerned the appropriate apportionment method

THE TAXPAYER'S REQUESTED METHOD

- The taxpayer asked SARS to approve a transaction-count method
- The request was for the whole enterprise
- The logic was that the business generated many taxable fee transactions
- The taxpayer said transaction count better reflected input use than turnover

SARS'S RESPONSE

- SARS did not approve the transaction-count method for the whole enterprise
- SARS approved a dual method instead
- Varied turnover-based method for general mixed expenses
- Transaction-count method retained for IT infrastructure

WHAT THE APPEAL WAS REALLY ABOUT

- The taxpayer objected to SARS's refusal
- The taxpayer then appealed
- But the court did not have to decide whether SARS's dual method was perfect
- The legal question was whether SARS was wrong to refuse the taxpayer's method

THE ONUS POINT

- The taxpayer bore the onus under section 102(1)(f)
- It had to prove that SARS's decision was incorrect
- It had to prove that the transaction-count method was appropriate
- It could not win merely by attacking SARS's alternative method

THE TAXPAYER'S LOGICAL PROPOSITION

- Taxable transactional banking generated many transactions
- Turnover may overstate exempt use in a lending business
- Counting transactions may better reflect the activity of the business
- That argument is not irrational in principle

THE MISSING EVIDENTIAL BRIDGE

- The court wanted proof that transaction volume drove input consumption
- The taxpayer needed to link shared costs to transaction count
- Shared costs included staff, systems, branches, call centres, compliance, treasury and risk
- The taxpayer did not provide the required evidential foundation

WHAT EVIDENCE WAS MISSING

- No empirical cost analysis
- No resource-allocation study
- No auditable data linking transaction volumes to shared costs
- No proper factual basis showing that transaction count was the best proxy

WHY THE CONCESSIONS MATTERED

- The taxpayer accepted that not all banking transactions are economically equivalent
- A small debit order and a major financing transaction each counted as one transaction
- The method ignored value, complexity and resource intensity
- Those weaknesses had to be answered with evidence

WHAT THE COURT DID NOT DECIDE

- The court did not hold that transaction count can never be used
- It did not reject the principle that input use is activity-based
- It did not say turnover is always better
- It held that this taxpayer did not prove its preferred method on these facts

THE COURT'S CONCLUSION

- The taxpayer failed to discharge the onus
- Its explanation remained a theory rather than proved fact
- The appeal was dismissed
- The practical failure was evidential, not merely technical

MAIN LESSON FOR TAXPAYERS

- There is a difference between saying something is true and proving it
- There is a difference between a logical conclusion and admissible evidence
- There is a difference between internal business knowledge and court-proof facts
- The objection theory must be built with the eventual trial in mind

COMMON PRACTITIONER MISTAKE

- The client says how the business works
- The adviser turns that explanation into a legal argument
- Everyone assumes the commercial logic is obvious
- At trial, the court asks: where is the evidence?

PRACTICAL DISCIPLINE

- Start with the legal proposition that must be proved
- Identify every factual building block required for that proposition
- Identify who can prove each fact
- Identify which documents, data or expert evidence will support each fact

EVIDENCE PLANNING QUESTIONS

- What factual premise does SARS deny or not accept?
- What facts are merely assumed in the objection?
- Which facts require expert evidence?
- Can the evidence be audited, tested and explained in court?

PART 2:
SARS DRAFT BGR ON YEAR-END CHANGES

- Draft BGR: filing dates where a company changes financial year and year of assessment
- Published for comment by SARS in 2026
- The ruling deals with return periods and payment dates after year-end changes
- Affected areas: income tax, provisional tax, mineral royalties and VAT

SARS'S STARTING POINT

- The Companies Act change comes first
- The Commissioner may then approve the corresponding change for income tax
- For a company, the year of assessment is its financial year
- That financial year may be shorter or longer than 12 months

INCOME TAX RETURN POINT

- Section 66(13)(b) requires a company return for the whole financial year comprising the year of assessment
- SARS says its system does not permit two returns for one year of assessment
- If two accounting periods fall into one year of assessment, SARS says they must be combined
- The result may be a shortened or extended year of assessment

SHORTENED YEAR OF ASSESSMENT

- A shortened year typically arises when the company brings the year-end forward
- Example: 31 December changed to 30 June
- The transition year may be only six months
- A return is submitted for that shortened period

EXTENDED YEAR OF ASSESSMENT

- An extended year typically arises when the company defers the year-end
- Example: 31 March changed to 31 May
- SARS's example combines the periods into one 14-month 2025 return
- The practical point is: do not assume there will be a separate short-period return

PROVISIONAL TAX POINT

- The provisional tax cycle realigns with the revised year of assessment
- First payment: six months from the start of the revised year
- Second payment: last day of the revised year
- If the year is six months or less, no first provisional return is required

SARS'S PRACTICAL MESSAGE

- Do not rely on the old year-end after SARS approves the change
- Recalculate return and payment dates from the revised year of assessment
- Check whether the transition year is shortened or extended
- Check provisional tax, mineral royalties and Category E VAT separately

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