

TAX

A landmark case dealing with the revocation of tax compliance status

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Reviewed by Ernest Mazansky, Head of Tax Practice

A recent judgment handed down in the Pretoria High Court last month highlights SARS's intransigence when applying certain aspects of the [Tax Administration Act, 28 of 2011](#) ("the TAA").

The applicant in the matter sought urgent interdictory relief for reinstatement of its tax compliance status, which was revoked by SARS without prior notice to the applicant.

The applicant based its application on the fact that SARS failed to comply with the procedural requirements as prescribed in section 256(6) of the TAA. Aside from the TAA, the applicant also relied on the *audi alteram partem* principle ("the *audi* principle") – i.e. hear the other side – integral to the Constitution and the procedural aspect of the rule of law, and the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").

Section 256(6) of the TAA provides that SARS may alter the taxpayer's tax compliance status to non-compliant if the original issue of the compliance status (a) was issued in error; or (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts. If this is the case, SARS must first give the taxpayer prior notice and an opportunity to respond to the allegations of at least 14 days prior to the alteration.

It was common cause between the parties that SARS did not provide the applicant with notice of its intention to revoke the applicant's tax compliance status, but SARS contended that it did not need to provide such notice to the applicant because it denied that it did revoke the applicant's tax compliance status, alleging instead that the applicant's tax compliance status lapsed by operation of law.

SARS contended that the applicant only obtained tax compliance status because the applicant had entered into a payment deferral agreement with SARS, and that when the agreement came to an end, because the applicant still had an outstanding tax liability (this outstanding liability being in dispute), so too did the tax compliance status of the applicant come to an end, and therefore that SARS did not need to give the applicant any further notice.

It was found to be common cause that the *audi* principle was not adhered to, with SARS contending that it did not need to abide by the *audi* principle as the provisions of section 256(6) have limited application only to the circumstances referred to therein. But the court took a different view and stated that it appears that SARS may not fully appreciate its obligations with regard to procedural fairness, as provided for in PAJA.

In its consideration of the various requirements for the granting of interim interdictory relief, the court had to give due regard to the prejudice that may be suffered by the applicant and by SARS, in not granting the relief, or in granting the relief, respectively.

To this end, the court ordered that –

- SARS was directed to restore the applicant's tax compliance status; and
- the granting to the applicant of its tax compliance status did not prohibit SARS from exercising any of its statutory rights and duties in relation to the applicant's future tax compliance status, subject to compliance with section 256(6) of the TAA.

While the outcome of the application was welcomed by the applicant, what was not entirely clear from the judgment is that it is not just the *audi* principle and PAJA that apply, but section 256(6) of the TAA too. SARS seems to have taken the view that other than in the circumstances

referred to in section 256(6) of the TAA, SARS is not required to give notice to a taxpayer of its decision to revoke the taxpayer's tax compliance status. However, on a reading of section 256(6), the compliance status of a taxpayer may only be altered in very specific circumstances, i.e. either in the case of (a) error, or (b) where fraud, misrepresentation or non-disclosure of material facts were involved, and then only after SARS has given the taxpayer at least 14 business days to respond to the allegation. The meaning is clear that SARS cannot alter at all a taxpayer's tax compliance status absent such error, fraud etc.



Ernest Mazansky

Director, Werksmans Tax (Proprietary) Limited

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