

TAX

Court orders un-redacted documents be provided to SARS

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Section 46 of the Tax Administration Act, 2011 (TAA) allows SARS to request 'relevant material' in relation to a taxpayer for the purposes of administering a tax Act. In the recent case of CSARS v J Company 14944/19 the High Court had to evaluate the oft-debated issue of what material is considered relevant. The taxpayer was a South African company which procured and provided advice and project management services to clients undertaking various corporate and commercial transactions. The taxpayer charges a fee to clients for its services and recharges to the client any amounts it pays to specialist advisors engaged on behalf of the client.

SARS issued the taxpayer with a request in terms of section 46 of the TAA to provide copies of specified relevant material, including an explanation of the nature of each amount comprising the sales and other expenses reflected in the ITR14 together with supporting documentation and relevant invoices. The taxpayer provided SARS with schedules reflecting each item of income and expenditure but omitted the identity of the supplier or recipient of the service. Supporting invoices relating to the income statement analysis were also provided, but some were redacted to conceal the identities of the counterparties and the nature of the services rendered. The redacted invoices specifically related to advisory fees and expenses incurred by the taxpayer for instructing attorneys and procuring a consulting service.

SARS contended that the taxpayer was non-compliant with section 46 and approached the High Court for an order forcing the taxpayer to provide un-redacted documents. The taxpayer's primary submission was that the request for relevant material was only in respect of the taxpayer and the redacted information on the invoices related to the identity of the taxpayer's clients and suppliers, in other words, parties other than the taxpayer, and thus was not 'relevant material'.

Section 1 of the TAA defines 'relevant material' as any information, document or thing that "in the opinion of SARS is foreseeably relevant for the administration of a tax Act". The taxpayer contended that SARS had failed to demonstrate why the redacted information was 'foreseeably relevant' for the administration of a tax Act.

The court's response to this was that in most cases, SARS is not aware of what information or documentation is available in order for it to fully discharge its function of assessing a taxpayer's liability and that it is not for the taxpayer to say that SARS has failed to include the reasons to prove that the documents may be "foreseeably relevant" when the taxpayer obstructs the very production of the material in order for the decision-maker to make a decision.

The court confirmed that section 46 is clear in that when determining what material is 'relevant' it is the opinion of SARS that matters and not the opinion of the taxpayer.

It is accepted that information is the lifeblood of a revenue authority's taxpayer audit function and the rationale of taxation would break down if a revenue authority had no effective powers to obtain confidential information about taxpayers who may be negligent or dishonest, resulting in the whole burden of taxation falling on diligent and honest taxpayers.

The court held that SARS has a duty to ensure that income is not derived from illegal sources or from illegal activities. The clients whose information was contained in the invoices would have a reciprocal duty or obligation to declare their income or expenses vis-a-vis the taxpayer in their financial statements and there is an obligation on SARS in the administration of a tax Act to be able to see a reciprocal entry in the receiving person's bank account.

The court agreed with SARS that the nature of the taxpayer's business and the parties with whom it conducts business in order to generate taxable income and claim allowable deductions is a matter by its very nature relevant to the tax affairs of the company. The court therefore ordered that the un-redacted invoices be provided to SARS.

Interestingly, in relation to the invoices concerning services provided by attorneys, the taxpayer did not claim legal privilege as the basis for its refusal to provide unredacted versions (although the court noted that the information which had been redacted "could hardly amount to privilege", had that argument been put forward).



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