

TAX

Tax Court or the High Court? The SCA weighs in

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The SCA recently handed down two judgments dealing with certain procedural aspects of dispute resolutions as provided for in the TAA. The key takeaway in both the *United Manganese of Kalahari Proprietary Limited v Commissioner for the South African Revenue Service* case and *Commissioner for the South African Revenue Service v Rappa Resources Proprietary Limited* case is that, should a taxpayer wish to have the court review a decision by SARS, the court of first instance will be the Tax Court, unless the taxpayer demonstrates exceptional circumstances exist such that a High Court orders that a dispute will be heard by it.

By way of background, it has long been accepted by the courts in South Africa that a taxpayer, aggrieved by an assessment issued by SARS, is not obliged to go the route of lodging an objection and then an appeal to the Tax Court. Rather the route of a review by the High Court is an acceptable alternative, as long as there are no disputes of fact and only a legal dispute. The advantage of a review over a conventional tax appeal is that one gets to court much quicker.

The Supreme Court of Appeal (SCA) recently handed down judgments in two very similar cases.

Albeit with different facts, both cases involved consideration by the SCA of a taxpayer's ability to dispute an assessment raised by SARS by way of review by the High Court, as a court of first instance. In this regard, section 105(1) of the Tax Administration Act 28 of 2011 (TAA), as it currently stands, provides that "*a taxpayer may only dispute an assessment or 'decision' as described in section 104 in proceedings under this Chapter, unless a High Court otherwise directs*".

In the *United Manganese* case, SARS raised an additional assessments of R 351 million in January 2020. In February 2020 the taxpayer informed SARS that it would be instituting legal proceedings against SARS in the High Court. In terms of its application, the taxpayer requested that, *inter alia*, the additional assessments raised by SARS be reviewed and set aside. The High Court therefore needed to consider whether it had the requisite jurisdiction to hear a review.

SARS contended that, in light of the reading of section 105(1) of the TAA, the only forum in which assessments, including additional assessments, may be challenged is in the Tax Court, unless a High Court directed otherwise, which, per SARS's argument would only be the situation if a litigant made out a case for why a High Court must deviate from the normal course of adjudicating the matter in the Tax Court. The taxpayer denied that section 105 contained any form requirement in terms of which a person would have to prove exceptional circumstances for its matter to be heard on review in a High Court. However, the High Court found in favour of SARS and held that the taxpayer had not made a case for deviation from the ordinary course under section 105(1) and, as such, the Court lacked the necessary jurisdiction to hear a review regarding the merits of the additional assessment.

The High Court left open to interpretation whether, had the taxpayer pleaded a case for the tax relief sought, the Court would have granted such relief.

Similarly, the *Rappa Resources* case was taken on appeal to the SCA by SARS, after the court *a quo* found in favour of the taxpayer and allowed the assessments raised by SARS to be reviewed and set aside. SARS's contentions in *Rappa Resources* in respect of the jurisdiction of the High Court echoed those set out in the *United Manganese* case. The taxpayer contended, however, that it could circumvent the appeal procedure under the TAA and take the assessment on review to the High Court as it was challenging the legality of the assessments and not simply the merits thereof (as in *United Manganese*). In this regard, it

was held that a tax appeal is an appeal in the widest sense and can be regarded as being more akin to a revision than an appeal in the ordinary sense. This means that the Tax Court equally has the power to determine the legality of an assessment.

In delivering the SCA's judgments, Ponnann ADP stated that the default rule, as provided in section 105, is that a taxpayer "*may only dispute an assessment by the objection and appeal procedure under the TAA and may not resort to the high court unless permitted to do so by order of that court*". The Court further stated that the High Court will only permit such a deviation in "*exceptional circumstances*" and that tax cases are "*generally reserved for the exclusive jurisdiction of the Tax Court in the first instance*." This view is reinforced by the objective set out in the explanatory memorandum which accompanied the amendments to section 105 of the TAA. The explanatory memorandum provided that the predecessor of the current section 105(1) created an impression that a dispute arising in Chapter 9 (being the chapter which governs dispute resolutions) may either be heard by the tax court or a High Court for review, whereas the purpose of the provision was rather to ensure that internal remedies, such as the objection and appeal process, be exhausted before a higher court is approached and that the tax court deal with the dispute in the first instance.

The key takeaway is that, should a taxpayer wish to review a decision by SARS, the court of first instance will be the Tax Court, unless the taxpayer demonstrates exceptional circumstances exist such that a High Court orders that a dispute will be heard by it. Unlike with the previous section 105, the taxpayer cannot choose which Court to institute proceedings. Rather, in the absence of exceptional circumstances, the Court of first instance will be the Tax Court.

That, of course, does not mean that the route of a review to the High Court has forever been blocked if a Tax Court appeal is an alternative. If, for example, there are relevant grounds for review under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) a High Court review would still be a possibility.



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