Pieter van der Zwan
& Associates
Technical Advisory Services
Tax · IFRS

Tax update

Practical perspectives on objecting to assessments

Taxpayers are often faced with assessments issued by SARS that they do not agree with. This is particularly likely to happen after the conclusion of an inspection of documents by SARS or the completion of an audit.

Section 104 of the Tax Administration Act (TAA) deals with the process to follow when objecting to an assessment by which a taxpayer is aggrieved. Some of the common issues that arise when dealing with objections have been the subject of cases recently considered by the courts. The purpose of this newsletter is to highlight and provide a practical perspective on two aspects of the objection process to be aware of.

Timing of objection

Section 104(3) states that the period for objection must be determined with reference to the 'rules', which at this stage still refers to the rules promulgated under section 107A of the Income Tax Act. Rule 4*(e)* provides that a taxpayer must object to the Commissioner **within 30 days**[1] from the date of the assessment, unless reasons for the assessment were requested in which case the objection must be submitted within 30 days from the Commissioner's response to the request.[2]

The effect of the various dates on an assessment, especially the due date and second date, and the impact of these dates on the period within which an objection should be submitted often cause concern. In the recent case of *MTN International v CSARS* (275/2013) [2014] ZASCA 8 (14 March 2014) the taxpayer raised concern that an incorrect due date (in its view) negatively impacted on the period that it had to raise objection to the assessment. In this regard Ponnan JA held: "It goes without saying that the Commissioner cannot 'rob' a taxpayer of a right afforded it by the Act. But, that plainly did not occur here. It is important to note that it is not the notice assessment that allows or disallows MTN the 30 days within which to object. Its right to do so derives from the Act as read with the rules promulgated under s 107A. Thus where, as here, the due date was unworkable, the 30 days fell, in terms of the Act, to be computed from the date of assessment, being 31 March 2011". The date by which objection must be made is therefore based on the date of assessment, rather than to be determined with reference to due dates and second dates.

Grounds on which the objection is based

Rule 4*(b)* requires that a taxpayer must specify the grounds for its objection in detail in the objection. Rule 6(3)*(a)* requires an appealing taxpayer to indicate on which of the grounds in its objection it wishes to appeal. If a taxpayer did not raise a ground for objection, it cannot appeal on that basis.

The dangers of omitting grounds from an objection are illustrated in VAT Case Nr 759. In appealing against an assessment, the taxpayer objected to the imposition of penalties, interest and additional taxes, but not against an assessment itself. In the judgment Pretorius J referred to the judgment in the case of *Matla Coal Ltd v Commissioner for Inland Revenue* 1987 (1) SA 108 (A) where Corbett JA held: "And in terms of s 83(7)(b) the appellant in an appeal against the disallowance of his objection is limited to the grounds stated in his notice of objection. This limitation is for the benefit of the Commissioner and may be waived by him". Based on this principle, the taxpayer in VAT Case Nr 759 was not allowed to dispute matters or on grounds not raised in the ADR1. This case highlights the importance of ensuring that grounds of objection are complete and correct right from the beginning of the process, as another opportunity may not necessarily arise to correct incompleteness.

Concluding thoughts

The brief discussion in this newsletter highlights the fact that despite pressure that may arise from deadlines to submit objection within the prescribed period, hasty and incomplete objections may be detrimental to taxpayers who have a valid grounds of objection. If you require assistance in identifying and drafting grounds of objection do not hesitate to contact me in this regard.

[1] The term 'days' in the rules refers to days as contemplated in section 83(23) of the Income Tax Act. That section defined days to exclude Saturdays, Sundays and public holidays, as well as days between 16 December to 15 January.
[2] This response could be that sufficient reasons have already been provided or the furnishing of the requested reasons.

If you require technical tax or IFRS assistance or an inhouse seminar please feel free to contact Pieter van der Zwan at **083 417 5904** or **pieter@pvdz.co.za** or to visit **www.pvdz.co.za** and submit a request on the relevant page.