

October 2013

“Make crime pay. Become a Lawyer” – Will Rogers”

## **TAX LAW: ENSURING YOU HAVE A FIGHTING CHANCE WITH SARS**

SARS is now, more than ever, on a campaign to increase its revenue generation, targeting not only high net worth individuals, but also small and large companies. This is why Professor Daniel Erasmus says tax is becoming a significant risk area for all companies.

According to Erasmus, SARS has now adopted an aggressive attitude of investigating any slight areas of concern. One vital area of concern for companies is when SARS raises an assessment which has penalties tied to it. The penalties are immediately payable, and if this cannot be paid, SARS may freeze assets and bank accounts which will have disastrous consequences for the company and its affected parties.

It is therefore important that all companies equip themselves with appropriate legal and financial armour for protection against any such action by SARS. The first line of defence to be kept in mind is that, when negotiating with SARS regarding an assessment, such actions by them must always be lawful, fair and reasonable according to the Tax Amendment Act and the Constitution. Erasmus says SARS have to inform you that they are launching an assessment, which assessment a company is entitled to question, i.e. to enquire regarding the scope, extent and purpose of the assessment. As soon as SARS has responded to the enquiries, the company (or individual) have 21 days in which to respond to SARS' findings. It is during this time that targeted companies/individuals will be able to see whether their rights have been infringed.

A second, and perhaps more important action to such SARS claims, is to obtain legal and financial advice and preparing a defence and accounting arguments in the event that SARS launches an official audit. If proper action is taken timeously, it will ensure that the company/individual can engage such experts from the commencement of the investigation. In this instance, Erasmus points out that SARS frequently takes shortcuts in their internal procedures, which infringes on companies/individuals' constitutional and legal rights.

Companies and individuals are therefore advised to be pro-active and limit the damage, it may make the difference between winning and losing the tax battle.

*Law & Laughter*

Attorney: “What gear were you in at the moment of impact?”  
Witness: “Gucci sweats and Reeboks”

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# PRESCRIPTION OF CLAIMS: THE APPORTIONMENT OF DAMAGES ACT

When one can claim damages from another party and how the quantum of such damages may be apportioned between the relevant parties has always been a point of confusion for those finding themselves in a situation of wrong doing. A good example of where two parties could have such damages claims against each other and how the Apportionment of Damages Act (the "Act") will be applied to said claims is a motor vehicle collision.

For various reasons commonplace in every day life, a person who suffered damages as a result of a motor vehicle collision might delay the institution of an action to claim for the damages they suffered or overlook the statutory time limits during which such an action can be brought. This delay could subsequently result in a situation where section (1)(2) of the Act is triggered. This section states that a Plaintiff may not claim damages from a Defendant where the Defendant filed a counterclaim for damages caused by the Plaintiff and the Plaintiff then pleads and proves that the Defendant's counterclaim has prescribed.

This provision of the Act was considered by the High Court in *Vaal Maseru Busdiens (Pty) Ltd v Wascon Siviel*. In short, the Plaintiff's bus collided with the Defendant's truck and the Plaintiff subsequently instituted an action for damages. The Defendant's counterclaim was only filed almost 7 years after the incident and the Plaintiff thereafter filed a Special Plea of prescription against the Counterclaim as it was filed more than 3 years after the date of the collision.

The court found in favour of the Defendant's argument that section 1(2) was applicable stating: "The Apportionment of Damages Act was anchored in the consideration of fairness, equity and justice. Where a Plaintiff claims damages from a co-wrongdoer he cannot derive the benefits of the apportionment principle on one hand and at the same time prevent the co-wrongdoer from reaping the same benefits."

In light of the above interpretation of this section of the Act, a Plaintiff will need to make a decision:

1. He can either abandon his plea of prescription of the counterclaim and risk an order where the damages are apportioned; or
2. He can plead prescription of the counterclaim and through the workings of the Act also forfeit his own claim.

In any event the outcome seems to be a no-win situation for any Plaintiff whose claim falls within the ambit of the above mentioned provision.

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