

## The Pitfalls Of Disputing Tax Assessments

When disputing a tax assessment it is important to follow the correct procedures prescribed by law. In a recent Supreme Court of Appeal case, *Medox Limited v The Commissioner for the South African Revenue Service*, the Court had to consider an application to declare income tax assessments to be null and void in circumstances where no objection to the assessments had ever been filed.

Medox submitted a return for the 1996 tax year and the SARS assessment showed an assessed loss of R46 million. However, Medox did not submit a tax return for the 1997 tax year, but thereafter submitted returns for 1998 up to 2010. In respect of each of these returns Medox did not carry forward the assessed loss incurred in 1996, which it ordinarily would have been entitled to set off against the profits earned during the subsequent tax years. SARS then assessed Medox in respect of the subsequent tax years without reflecting the assessed loss.

No objection was made by Medox against the assessments. It was only in 2009 that Medox realised it had not submitted its return for the 1997 tax year and therefore failed to set off its loss of R46 million in subsequent tax years. Medox took the view that the income tax assessments from 1998 were void as SARS had acted *ultra vires* by issuing the assessments with disregard to section 20(1)(a) of the Income Tax Act, 1962 (the Act), which requires assessed losses incurred in the previous year to be set off against income derived by the taxpayer in subsequent years. SARS denied this allegation, whereupon Medox applied to Court for declaratory relief.

It was common cause that Medox did not object to any of the assessments issued in respect of the 1998 and subsequent tax years. In dismissing the appeal, the Court referred to section 81(5) of the Act which provides that where no objection is made to an assessment, such assessment shall be final and conclusive. More than 3 years had lapsed since the date of each assessment which meant that SARS was precluded from reopening the assessments. Finally, the Court held that the grounds for the application were fatally flawed as SARS was not under a duty to take steps to have the assessed loss set off against profits earned in subsequent years, this duty lay with the taxpayer.

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