



Tax dispute resolution:

Failure to discharge onus of proof

The most tax disputes are decided by courts on the basis of whether taxpayer has discharged the onus of proving that something is exempt or otherwise not taxable or that an amount is tax deductible. The standard of proof in the case of a dispute between South African Revenue Service (SARS) and the taxpayer is that of balance of probabilities.

In IT 35476, the court was called upon to decide on whether, taxpayer has satisfactorily discharged in terms of section 102 of the TAA, the onus of proving that the taxpayer's credit loan account in Company A does not represent undeclared income, thus not taxable.

The facts of this case are briefly as follows:

The Taxpayer is a successful businessman who owns several companies. The taxpayer had credit loan account in one of his companies, Company A, in the relevant years of assessment -2014 to 2017, which SARS assessed as undeclared income as well as the interest accrued thereon. SARS questioned the source of the funds that was advanced to Company A as loan but was not provided with any proof to confirm the source of funds. The income declared by the Taxpayer on his returns for the periods in question was low and the inference was drawn that the Taxpayer received additional income in order to advance funds to Company A and has omitted the said income from his tax returns.

Legal issue

The key issue in this case is whether the taxpayer's credit loan account in Company A in the relevant years of assessment – 2014 to 2017 – represented undeclared income.

Taxpayer's argument

The main argument of the Taxpayer was that the quantum of his loan as reflected in the Company A accounts represented capital, not undeclared income.

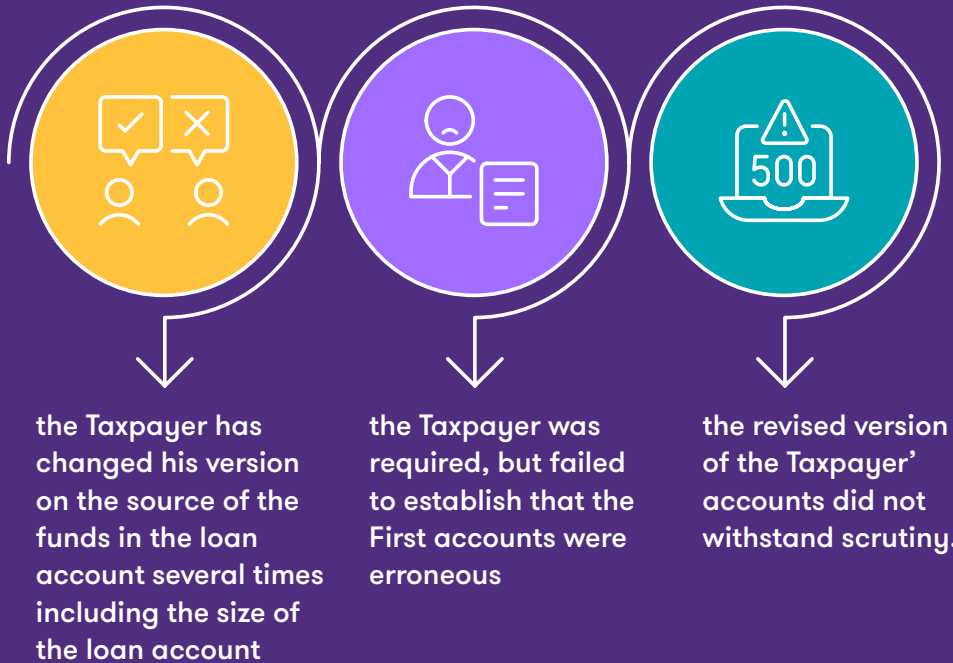
SARS' argument

SARS contention was that the Taxpayer gave inconsistent explanations for the source of the quantum of the loan accounts, as reflected in the First accounts, and then when reliance on these was revoked, the Taxpayer presented a new set of accounts which SARS contends, are wholly unreliable.

SARS has not put up its own version of what the loan accounts should be. SARS relied on the provisions of section 102(1) of the TAA which state that a taxpayer bears the burden of proving that an amount is exempt or not taxable.

Court decision

In terms of section 102(1) of the TAA, the onus is on the taxpayer to prove that an amount is not taxable. The court held that the Taxpayer failed to discharge the onus of proving that the amounts subject to dispute were not taxable and gave the following reasons for its decisions:



In conclusion,

- In terms of section 102(1) of the TAA, the onus is on the taxpayer to prove that an amount is not taxable.
- Standard of proof is that of balance of probabilities.
- SARS can raise assessment based on the taxpayer's failure to discharge the onus of proof in terms of section 102(1) of the TAA.
- Consequently, onus of proof is of vital importance in tax disputes.

Have you received a letter of request for information, notice of audit or verification, letter of audit findings, or final letter of assessment?

Please contact us for any assistance relating to tax dispute resolution:



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