

Potential pitfall to avoid in tax appeals: new ground of appeal impermissible in appeal proceedings.

Where an objection against an assessment or decision by SARS was disallowed, fully or partially, a taxpayer has a right to appeal against such assessment or decision to the tax board or tax court. The appeal process involves complex legal and administrative requirements which, if not properly complied with, may result in taxpayers suffering undesirable outcomes, i.e. tax liability including interest and penalties. To succeed in tax appeals, there are numerous pitfalls that must be avoided, one of which deals with the introduction of impermissible new ground of appeal. This article tackles question on which new ground of appeal is permissible or impermissible during tax appeal.

The South African Revenue Service (SARS) is empowered to raise an original, additional, reduced or jeopardy assessments. A taxpayer who is aggrieved by an assessment made in their respect, may object to the assessment in terms of section 104(1) of the TAA¹. Prior to lodging the objection, the taxpayer is, as part of the tax dispute resolution process, entitled to request reasons for assessment (Rule 6²). The reasons for assessment enable the taxpayer to understand the basis of the assessment and to formulate its objection against the assessment. Where an objection is lodged by the taxpayer and disallowed by SARS (in full or in part), the taxpayer may appeal against the assessment or decision (if decision is subject to objection and appeal) in terms of section 107 of the TAA. The discussion below deals with new ground of appeal, which is not permissible during tax appeal proceedings.

As aforementioned, a taxpayer who is aggrieved by an assessment made by SARS may object against the assessment and if the objection is disallowed, may appeal against the assessment or decision which is subject to objection and appeal. To successfully challenge the additional assessment raised by SARS, about which the taxpayer is aggrieved, the taxpayer must formulate grounds of appeal which are within the boundaries set out in the Rules³. In terms of Rule 32, the appellant (reference now made to the taxpayer during appeal proceedings) is required to deliver the statement of grounds of

appeal which complies with the following requirements:

- ✓ be clear and concise
- ✓ include the grounds upon which the appellant appeals
- ✓ which of the facts or the legal grounds are admitted (in the statement of grounds of assessment and opposing appeal by SARS) and which of those facts or legal grounds are opposed
- ✓ include material facts and the legal grounds upon which the appellant relies for the appeal.

In terms of Rule 32(3), the appellant is allowed to include in the statement of ground of appeal a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to. The appellant is entitled to introduce new ground, but the new ground must fall within the boundaries set out in Rule 32(3).

¹ Tax Administration Act No.28 of 2011

² Rule 6 of the Rules promulgated in terms of 103 of the TAA

³ Rules made under section 103 of the TAA

A 'new ground' which constitutes new objection against a part or amount of the disputed assessment not previously objected to is not permissible. In other words, taxpayer or appellant may not introduce new ground which dispute a part of the assessment which was never part of the disallowed objection.

For example, a taxpayer who disputed a disallowance of the deduction of professional fees under section 11(a)⁴ is not allowed to introduce grounds which dispute an income item included in gross income. Knowing which new ground of appeal to include or which new ground not to include is crucially important for one to successfully dispute an assessment or decision by SARS.

In *Baseline Civil Contractors (Pty) Ltd v The Commissioner for the South African Revenue Service*⁵ ('the Baseline case'), the Supreme Court of Appeal (SCA) was called to decide whether on the correct interpretation of Rule 32(3), Baseline (the appellant) was permitted to introduce new ground of appeal in its Rule 32 statement (statement of ground of appeal). The facts of the Baseline case are briefly as follows:

Baseline conducted business in the civil construction industry. It entered into an en commandite partnership with an entity known as Baseline Group Limited Partnership (BCEP). Baseline submitted its income tax return for the 2018 tax year to SARS. In determining the taxable income (declared in its return), Baseline claimed as a deduction in terms of section 11(a) read with 23(g), an amount of R11m representing distribution of profits to BCEP in terms of the partnership agreement. Baseline contended that the payment to BCEP was actually incurred in the production of its income for the purposes of trade, thus it is entitled to deduct this payment.

Following an audit by SARS, additional assessment was issued by SARS in which the distribution of profits to BCEP was disallowed as a deduction. SARS contended that the amount was paid over to BCEP on voluntary basis and if it had not been paid it would not have affected the production of past or future income. Baseline objected to the additional assessment, objection of which was disallowed by SARS. Baseline, as it is entitled, appealed against the disallowance of its objection, repeating the same grounds of objection.

In its Rule 32, Baseline introduced a new ground which deals with receipt or accruals. Baseline contended, as alternative ground, that the disputed amount does not constitute gross income as it was received by it, not on its own behalf or for its own benefit, but on behalf of or for the benefit of BCEP. Baseline contended that it was entitled to introduce new ground of appeal in terms of Rule 32(3). SARS argued in its Rule 33 statement that new ground of appeal does not fall within ambit of Rule 32(2) on basis that Baseline had neither objected nor appealed against the inclusion of the amount of R11m its gross income for the 2018 tax year.

At issue was whether Baseline is entitled to place reliance on the new ground of appeal in terms of Rule 32(3), that is, the new ground is not a new ground of objection against a part or an amount of disputed assessment not objected to.

After considering the arguments from both sides, the SCA held that Baseline was not pleading an alternative new ground that is complementary to its ground of objections, but a new ground that contradicts those put forward in its objections. Consequently, new ground was found not to be permissible in terms of Rule 32(3).

The lesson from the Baseline case is that taxpayers aggrieved by additional assessments by SARS must first request reasons for assessment from SARS to obtain full understanding of the basis of the assessments. Reasons for assessment will enable taxpayers to formulate strong enough grounds that (at later stages of dispute resolution process) are capable of being supplemented at appeal stage in terms of Rule 32(3). Prior to lodging an objection, taxpayers must seek tax advice from the tax expert who will advise on which ground to include or which ground to exclude. This will assist taxpayers from falling into a trap or pitfall of placing reliance on the new ground of appeal which is not permissible in terms of Rule 32(2).

⁴Section 11(a) of the Income Tax Act No. 58 of 1962
⁵(893/2024) [2026] ZASCA 20 (24 February 2026)



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