REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

KWAZULU NATAL LOCAL DIVISION, DURBAN

CASE NO: 35448

(1) REPORTABLE: YES / NO

(2) OF INTEREST TO OTHER JUDGES: YES / NO

(3) REVISED.

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SIGNATURE DATE

In the matter between:

TAXPAYER Z Appellant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Respondent

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J U D G M E N T

LOPEZ J:

[1] The is a tax appeal concerning an additional income tax assessment issued by the respondent (SARS) on the 1st February 2016. The assessment was in respect of the 2014 tax period. There had been a long history of disputes between the parties, and assessments for the 2008-2012 tax years were resolved in this court, but the 2014 tax year remains in dispute.

[2] The appellant is Taxpayer Z, a close corporation which was finally placed in liquidation on the 26th February 2016. Historically, control of Taxpayer Z was handed over to M by her mother during the period between 2006 and 2007. The nature of the business was initially cleaning, construction and maintenance. The business was, however, developed to concentrate on the construction of low cost housing, including roads, bridges, and the necessary infrastructure at the sites where the construction of the houses took place. Taxpayer Z operated on the basis of contracts which were provided by various municipalities.

[3] There are four aspects of the 2014 assessment which are in dispute:

(a) Management fees claimed by Taxpayer Z in the sum of R16 666 666.66 (R16 million). This is made up of management fees claimed to have been provided to Taxpayer Z by two associated entities, RR in the sum of R12 280 701.75 (R12 million) and II in the sum of R4 485 964.91 (R4 million). Both these figures exclude Value Added Tax (VAT), and are expressed in the financial accounts of Taxpayer Z as “Management Fees”;

(b) Whether SARS was entitled to impose interest in terms of section 89*quat* of the Income Tax Act, 1962 (“the Act”), and whether SARS should have remitted that interest;

(c) Whether SARS was entitled to impose an understatement penalty of 125% in terms of the Tax Administration Act, 2011 (“the TAA”);

(d) Whether Taxpayer Z or SARS should pay the costs of the appeal.

[4] It is useful at the outset to set out the background of the matter, because it highlights certain aspects which are necessary to determine the issues above. Those facts include:

(a) Taxpayer Z submitted its income tax return for the 2014 tax year;

(b) on the 17th September 2014, SARS notified Taxpayer Z that their tax return had been selected for verification in terms of section 40 of the TAA. This was followed-up by a formal letter on the 25th September 2014, and SARS requested Taxpayer Z to provide certain relevant documents and information;

(c) some information was provided to SARS on the 9th October 2014;

(d) on the 9th October 2014, SARS notified Taxpayer Z that the general ledger provided to it, was not the general ledger of Taxpayer Z, but rather that of RR. The Taxpayer Z general ledger was requested;

(e) on the 25th March 2015, SARS requested a detailed list of documents and information from Taxpayer Z in terms of section 46 of the TAA;

(f) on the 24th May 2015, a Letter of Audit Findings was sent by SARS to Taxpayer Z, and documents were requested from RR and II as well, and some documents were sent by all three;

(g) on the 26th May 2015, Taxpayer Z submitted a number of documents and submissions to SARS;

(h) on the 9th July 2015 SARS again requested further documentation in terms of section 46(1) of the TAA;

(i) on the 31st July 2015, Taxpayer Z responded to that request, and approximately 700 pages of documents were provided to SARS;

(j) on the 22nd October 2015, a meeting was held between the parties, resulting in further documentation and submissions by Taxpayer Z;

(k) on the 1st February 2016, SARS issued a Notice of Assessment letter in respect of the 2014 tax year, disallowing expenses of some R90 million. More representations were made and the disallowed expenses were reduced to R30 677 104.74;

(l) on the 26th February 2016, SARS brought an application for the liquidation of Taxpayer Z;

(m) on the 14th March 2016, Taxpayer Z requested reasons for the SARS assessment. Those reasons were delivered on the 22nd April 2016;

(n) Taxpayer Z lodged an objection against the 2014 assessment on the 6th November 2018, and requested condonation for the late submission of the objection;

(o) on the 13th February 2020, SARS disallowed the objection in full;

(p) on the 20th March 2020, Taxpayer Z filed a Notice of Appeal in terms of rule 10 of the rules of the Tax Court.

[5] There was only one witness for Taxpayer Z, Ms E. In summary, her evidence was:

(a) she had no accounting qualifications, and the business of Taxpayer Z had been given to her by her mother in the period between 2006-2007;

(b) during the 2014 tax year, the business was involved in the completion of contracts for the construction of low-cost housing, including all the accompanying necessary infrastructure. To do so, the business needed construction vehicles and machinery, such as moving tipper trucks, trailers, rollers, excavators, tractor-loader backhoes, bob-cats and front-end loaders. The sites were not “green-field” sites, and required demolition work to be carried out to clear the sites preparatory to building work starting. The work was carried out over 16 Wards in XX, and the number of houses to be erected on each site differed;

(c) it was necessary to hire labourers, and this required negotiations with those representing local labour. The process of building the low-cost houses then began. Foundations were dug, slabs prepared, concrete was poured, etc. To this end one or more site-camps would be set-up, which would receive all the materials for building, for onward transportation to the actual building sites. Similarly, labour would congregate at the site-camps, and then be transported to the building sites. This latter task required the use of bakkies to transport labourers, and cars (VW Polo sedan vehicles) for foremen, and other management personnel;

(d) construction vehicles and those used for the transportation of personnel would be continually moving between the camp-sites and the various building sites as needed;

(e) the many different trucks and vehicles were maintained and repaired by RR, which had a “fully fledged” workshop for repairs and panel beating. Taxpayer Z owned a few motor vehicles, but not enough for the XX Township contracts, which involved the construction of 6 000 units;

(f) Taxpayer Z, RR and II were all managed and controlled by Ms E. The fleet of motor vehicles were owned by II, who provided drivers together with the vehicles. All maintenance and repair work was carried out by RR. Up to the end of the 2014 tax year, it had been agreed between the three entities that RR and II would invoice Taxpayer Z annually for the services they rendered. Towards the end of the 2013 tax year Taxpayer Z was advised by their new accountants, JR, that Taxpayer Z could no longer continue reflecting its accounts as it had previously done. From the

end of the 2014 tax year, the general ledger of Taxpayer Z more accurately reflected these expenses;

(g) RR employed some 30 to 40 employees, with II employing 60 to 65 employees. Ms E was unable to attend to everything in the operation of the three entities, and spent most of her time on-site, dealing with deliveries and managing the building operations;

(h) in the initial tax return submitted by Taxpayer Z, the R16 million had been claimed under the heading "Income Statement" under both "Admin., secretarial, rentals guarantee fees and other services – Non-connected". On the next page the same amount was claimed under the heading "Management fees – Non-connected". SARS queried this and were told the amount was for "Other expenses" – SARS did not suggest that this was a double deduction. R11,9 million was claimed for donations. Ms E contended that both of these expenses were part of Taxpayer Z's operating expenses;

(i) documents in respect of both these items were requested by SARS, but by the 30th April 2015, had not been provided. By the 1st February 2016, no proper documentation had been received by SARS, and a comprehensive letter was sent to Taxpayer Z explaining the problems regarding, inter alia, the claims for management fees and donations;

(j) initially, Ms E conceded that Taxpayer Z had only submitted two documents to justify the deductions for management fees – they were the invoices from RR and II – no supporting documentation was provided. Later, Ms C who appeared for SARS, conceded that there was a third document referring to the management fees charged by related parties. The document was prepared by one Ms M on the 18th August 2014. It listed the two invoices sent to Taxpayer Z, and the amounts on those invoices. This document does not advance the case of Taxpayer Z in any way, as it is merely an audit working sheet;

(k) although Ms E told the court that RR did all the mechanical work on the machinery and vehicles, and that II only provided drivers for the motor vehicles, this was not what was conveyed to SARS in 2015, and was never corrected;

(l) Ms E also conceded that the response by Taxpayer Z to SARS to their request for more details of the figures for management fees, does not enable SARS properly to establish the nature of the services, or that the services were rendered during the 2014 tax year;

(m) with regard to the deductions made by Taxpayer Z for charitable donations, Ms E conceded that amounts totalling R11 million had been deducted in circumstances where there was no compliance by Taxpayer Z with section 18A of the Act. Her only explanation was she was unaware of what the Act required, and only understood this when it was all explained to her by the representatives of Russel James. In addition, the donations submitted from the J Foundation were made via the SABC, and she assumed, that because the SABC was a reputable organisation, they would have informed her of any legal requirements. The certificates which were issued to Taxpayer Z by the J Foundation contained no registration number of the donor company, the donation was not correctly recorded, and there was no reference to a donation in terms of section 18A of the Act. With regard to those certificates, Ms E accepted that they were non-compliant. Payments in this regard were made directly to the recipients, and not to any registered Public Benefit Organisation;

(n) Ms E also accepted that the purchase price for the sale to her husband of the "the club" should not have been claimed as a donation. It was also evident that portions of her salary were allocated as payments to the club;

(o) with regard to the understatement penalty, Ms E accepted that she knew that the payments claimed as charitable deductions related to the purchase price of the club, and that no sports facilities were built, as indicated. She also accepted that deductions (including two amounts of R300 000, one on the 2nd May 2014, and the other on the 30th May 2014) were recorded as donations, when they were part of her salary. An item for R100 359.50 was recorded as a donation to Freelance Events, when, in fact, it was a deduction from her salary. These items were not taxed in the personal tax returns of Ms E. In effect, the salaries account was reduced, and the donations account increased, in circumstances where the items reflected were not legitimate section 18A deductions. In addition, no supporting documents were provided to show that articles reflected as donations were ever actually donated (HIV food parcels, etc). Curiously, in cross-examination, and after admitting that many of the items claimed were simply false, she persisted in maintaining that she did not know that the deductions were not in compliance with the Act;

(p) although Ms E had told the court that all the mechanical work was done by RR, and II provided cars and drivers, correspondence at the direction of Ms E stated otherwise. Ms E attributed this to errors in the correspondence (as late as July 2015). Ms E accepted that the information provided by Taxpayer Z did not enable SARS to consider the nature of the services provided by RR and II, or to identify that the services were rendered in 2014;

(q) in its rule 32 Grounds of Appeal lodged with SARS in September 2020, Taxpayer Z stated that RR and II were the owners of motor vehicles leased to Taxpayer Z, and both RR and II managed and maintained the fleet of vehicles used by Taxpayer Z during the 2014 tax year. Ms E admitted that this contradicted her statement that II did not perform maintenance on the vehicles, but only provided drivers and vehicles.

[6] SARS led only one witness, Mr B, a manager in the Illicit Economy Unit. During 2014 he had been a special investigator in the Centralized Project Unit. He had conducted the audit of Taxpayer Z, together with his colleagues. SARS only received the invoices to justify the "management fees" claimed after the Letter of Audit Findings. The invoices were initially presented as "arms-length" transactions, and the team later realised that they were dealing with connected parties. The fact that the amounts were rounded figures also raised suspicions. Conflicting information and insufficient documentation were provided. The so-called donations certificates also raised suspicions because they contained donations prior to the 2014 tax year.

[7] Mr B stated that there was no change in the approach of Taxpayer Z, even after the tax assessment. SARS then considered Taxpayer Z to have behaved in a grossly negligent or reckless manner because of its failure to provide proper documentation in respect of the management fees and its disregard of the requirements for claiming donations. Taxpayer Z was also considered a "repeat case" because of their engagements on previous audits. SARS was also perturbed by the fact that Taxpayer Z claimed R12 million as repairs and maintenance on motor vehicles with a carrying value of R3,9 million. Had so much work been required to be done on the vehicles, new assets would have been purchased and reflected.

[8] Mr SC, who appeared for Taxpayer Z, cross-examined Mr B on the following issues:

(a) the fact that the first Letter of Audit Findings, dated the 24th May 2015, contained no understatement penalty. Mr B pointed out that the letter invited Taxpayer Z to make representations in this regard, having highlighted the audit findings which

demonstrated the basis for an understatement penalty, and that Taxpayer Z had not replied to this letter;

(b) that Taxpayer Z had co-operated to the extent that the initial assessment of a R90 million disallowance had been reduced to a R30 million disallowance – this suggested that Taxpayer Z was indeed co-operating. Mr B pointed to the letter from Taxpayer Z dated the 23rd July 2015, persisting in the claim for donations. In addition there were no documents evincing the agreements between RR, II and Taxpayer Z, and no time sheets setting out dates had been provided. In addition, the explanation as to who performed the mechanical work relating to the heavy machinery had changed from II to RR, with Taxpayer Z stating that from the beginning of the 2014 tax year, all the mechanical work had been performed by RR;

(c) that the globular amounts reflected in the two "management fees" invoices were sufficient information for SARS to prove the expenditure, and the details pertained to RR and II. Mr B replied that such invoices between related parties were insufficient – details were needed to prove that the work was done, containing the identification of the vehicles involved, and when the work on those vehicles was done;

(d) Mr SC then suggested, if that was the yardstick, why were the invoices in the hands of RR and II accepted? Mr B's retort was that RR and II were not audited by SARS, and they benefitted by the reduction of the loan accounts they held in Taxpayer Z. He also referred to section 11(*a*) of the Act which provides that expenses and losses actually occurred in the production of income are allowed as deductions. The onus of establishing that the items deducted are valid, rests with the taxpayer. For proper record-keeping, details should have been available. They were requested from Taxpayer Z and not provided;

(e) that the evidence of Ms E was sufficient to establish that the work was done by both RR and II. Mr B replied that the evidence of Ms E was not corroborated by any reliable documentary evidence which would satisfy SARS. An acceptance that the debts owed to RR and II could be used to offset their loan accounts, did not entail an acceptance that the work was actually done, as claimed. No audit of either RR or II was conducted.

(f) that SARS should have accepted the concession by Taxpayer Z that the charitable donations were inapplicable. Mr B agreed that the concession by Taxpayer Z had been made four years' later.

[9] In argument, Mr SC submitted that:

(a) a single contradiction in the documents of Taxpayer Z – that maintenance and repairs were conducted by II – was insufficient to destroy the evidence of Ms E;

(b) RJ was hired to reconstruct the books of Taxpayer Z. They informed Ms E that each legal entity was required to reflect only its own income and expenditure. This was part of the reconstruction process. A globular reflection of individual items is a common commercial practice – the same as when a flight ticket is purchased – this demonstrated that the failure to provide supporting documentation could not be held against Taxpayer Z;

(c) the evidence of Ms E as to the management fees, should be accepted, because no basis had been laid by SARS to suggest that it was irrational to rely on two invoices and the controlling mind of Taxpayer Z;

(d) that the calculation of "normal tax" in section 89*quat* of the Act, includes any additional amounts payable in terms of section 76 and paragraph 20, and the then 20(*a*) of the Fourth Schedule. SARS imposed no additional amounts in terms of section 76. The understatement penalty was imposed in terms of the provisions of the TAA. Accordingly, nothing falls to be added to the "normal tax" defined in section 1 read with section 5(1) of the Act. The tax payable on the increased amount for 2014 was R21 751 481.57. The tax credits for that year were R27 252 734.0, and accordingly no section 89*quat* interest is payable;

(e) the understatement penalty of 125% was based upon gross negligence and the fact that Taxpayer Z was a repeat case. The facts show that Ms E accepted that organisations, to whom Taxpayer Z made charitable contributions, had to be registered to qualify for income tax deductions. Mr SC referred to ITC 1908, where it was held that an acceptance of incorrect professional advice given by an accountant does not support a conclusion of gross negligence. Here, Ms E had relied upon the staff of RJ and the staff of SABC. In the circumstances, a lower understatement penalty of 50% would be appropriate. If the "management fees" claims were allowed, the understatement penalty would fall away, which it should do anyway because incorrect advice was taken;

(f) the costs of the hearing are regulated by section 130 of the TAA. As to the disallowance of the "management fees" and the excessive understatement penalty, SARS were unreasonable in opposing the appeal. The section 18A deductions which were conceded should not form any part of this court's decision;

(g) with regard to the preparation of the papers, that was done entirely by SARS, as Taxpayer Z had no documents to contribute. Any excess in this regard was the fault of SARS, because the papers were complete.

[10] Ms C made the following submissions in argument:

(a) with regard to the deduction of "management fees", the onus is on Taxpayer Z to prove that an expense deducted was one which was actually incurred, and the evidence presented in that regard falls to be evaluated, and includes the history of the negotiations between Taxpayer Z and SARS. In this regard, in *Low and others v Consortium Consolidated Corporation (Pty) Ltd* 1999 (1) SA 445 (SCA) at 450E-451B, the court emphasized the approach to be adopted where evidence is within the knowledge of only the party giving that evidence, and that such evidence cannot "escape the cautious scrutiny which should be applied to evidence which the other party to the suit is not in a position to answer";

(b) it is significant that Ms E initially submitted the "management fees" under two headings, "Administration fees" and "Management fees". Ms E was the controlling mind of all three entities, and must have realised that the initial indication to SARS was that the three parties were not connected parties. Only after the Letter of Audit Findings was sent by SARS on the 26th May 2015, and notwithstanding a demand for specific expenses to be provided, the two invoices were produced. No explanation was given for the incorrect description of the "management fees", or why they were claimed on that basis;

(c) the description of the claims varied from "management fees" to "mechanical work" to "a lease of motor vehicles" and then "salaries and drivers". An exact description of the "management fees" was never given by Taxpayer Z. RR referred to leased motor vehicles and that monthly invoices were rendered for which they were paid, and II referred to security services rendered with monthly invoices rendered and paid;

(d) if services were rendered, the details should have included the invoices/claims for parts, and details as to when the repairs, etc were done. This was never provided;

(e) the explanation for carrying out mechanical work, the value of which was far in excess of the carrying value of the vehicles involved, was that the vehicles were old. This was allegedly not only for Taxpayer Z vehicles, and not only for repairs, but for leases as well. No lease documents, and no invoices for parts purchased were tendered;

(f) the payments for the "management fees" were allegedly made by offsetting the invoice amounts against amounts credited to the loan accounts of RR and II in the books of Taxpayer Z. The debits previously raised, consisted of loans and advances to RR and II, to enable them to operate. Numerous requests for details were made by SARS, but no details were ever provided. Nor was there any indication in the 2008-2010 and 2012-2013 tax documents of drivers, or leases of motor vehicles. Machinery was also referred to by Ms J (representing Taxpayer Z), but no documents/details were provided. It is clear that the management fees were not of a capital nature;

(g) RJsubmitted the 2012 tax returns. By 2014 Taxpayer Z must have known what was required, and the books should have been written up on a daily basis. No evidence was given by the employees of RJ– only notes that were in the audit file were provided;

(h) with regard to the section 18A deductions claimed, the certificates were post-dated; the payments were not made to Public Benefit Organisations, but to the recipients directly; the SARS request dated the 9th July 2014 was not responded to, save for suggestions of a verbal agreement;

(i) the understatement penalty takes into account that management fees of R16 million were claimed without supporting documentation, and the accounting records demonstrated a complete departure from the normal and reasonable standards. The submission of claims of this nature without supporting documents is grossly negligent. The duties of a managing partner and controlling mind were acknowledged by Ms E, with regard to the responsibility for signing annual financial statements, and the keeping of adequate and proper accounting records;

(j) even if Ms E relied upon her auditors for preparing the tax returns of Taxpayer Z, she was reckless in not ensuring that queries were not dealt with by them adequately. That conduct was persisted with in regard to the "management fees", and her conduct constituted recklessness. Even after receiving advice regarding the charitable deductions, she persisted in seeking to claim them until September

2020, well after she was advised on the proper procedure. Accordingly the 125% penalty is appropriate;

(k) with regard to the levying of section 89*quat* interest, section 270(6D) of the TAA falls to be interpreted to include interest on additional tax levied in terms of section 89*quat*, which provides that where the normal tax payable by a company in any tax year exceeds the credit amount in relation to such year, interest shall be payable by the taxpayer on the amount which exceeds the tax credit, and from the effective date of the tax period until the date of assessment of such tax;

(l) with regard to costs, the appeal by Taxpayer Z was unreasonable because of the conduct of the representatives of Taxpayer Z, the proffering of different versions in response to queries raised by SARS, and the conduct of the operating mind of Taxpayer Z with regard to the section 18A deductions.

[11] In my view, Ms E was not a helpful witness with regard to establishing the true state of affairs at Taxpayer Z, and in explaining what was really done with all the money representing the items claimed as deductions. It would be fair to point out that Ms E emphasized that she was constantly engaged in ensuring that the building operations were being carried out smoothly, and the accounts were left to others. But that excuse can only be justifiable for short periods of time. Eventually every person who is the controlling mind of a large entity will want to know what the accounting records are demonstrating. In my view it would have been reckless for her not to have done so. When difficult questions were posed to her about the representation of expenses to SARS, she would deflect the blame: stating she could not recall the facts; or by saying that she did not know; or “I see that”; or “if you say so”; or “I assume so”. She admitted having signed the annual financial statements of Taxpayer Z.

[12] Ms E maintained that parts used by RR were paid directly to the suppliers, and debited to the loan account of RR. However, she had no explanation for why there were no records of small payments for parts. She could not explain where the globular amounts claimed had come from. She conceded that the globular figures had not been paid to RR. Ms E was questioned on why she had said that parts and tyres were reflected in the loan account of RR, yet claimed for in the general ledger. She responded that the tyres were purchased, but never fitted.

[13] The evidence of Ms E was also led in an unhelpful manner – simply trolling through documents of which she either had no recollection or any real knowledge. Her continued resort to blaming others for not replying to queries timeously, or at all, indicated that she either had no knowledge of the preparation of the accounting systems for which she was responsible, or simply

did not care whether they were properly kept or not. Her responses with regard to the charitable donations did her no credit. Firstly, she knew that deductions were made, which were fraudulently represented as being something other than what they were (the purchase price of the club, the deductions in respect of her wages). Secondly when her accounting advisors notified her of the problem, she chose to ignore the advice, and certainly did not reverse the entries. Thirdly, she persisted with the claims until 2020.

[14] The submission by Mr SC that because SARS did not challenge the invoices for management fees in the returns of RR and II, SARS could not do so in the case of Taxpayer Z, is not, in my view, sustainable. Mr B pointed out that SARS had not audited RR and II – this is not a question of equity or fairness – it is simply what happened. If Taxpayer Z had wished to have the items disallowed in the deductions of the two entities, it could have requested SARS to have done so at the time. The fact that SARS must have known (at least, later) that the three entities were run as one, does not make any difference.

[15] Mr SC also submitted that no s89*quat* interest was payable by Taxpayer Z because the reduced tax payable by it, in the event that the "management fees" were not allowed, would be in the sum of R21 million, whereas the tax credits for the 2014 tax year were R28,2 million. Accordingly, no interest was payable. Ms C submitted that the "normal tax" figure was R27,1 million, and the additional taxes took that figure to R32,4 million. The provisional tax credits were in the sum of R28,2 million, and the shortfall was thus R4,2 million. Ms E conceded that no grounds had been advanced by Taxpayer Z that the underpayment of the 2014 taxes was beyond its control.

[16] With regard to the understatement penalty, Ms E could easily have been assessed as falling into the "Intentional tax evasion' category. Her conduct in the matter of the club, and the "management fees" seemed to be arguably designed to evade the taxes payable. She admitted that she knew that the purchase price of the club was reflected as a charitable donation when she submitted the tax returns. Her evidence in regard to the charitable donations was vague, argumentative, and her continued denials were simply not believable.

[17] Ms E also admitted that SARS had previously imposed understatement penalties for the period between 2008 and 2012 (excluding 2010) in February 2015. Ms C pointed out in cross-examination that no detailed grounds of objection had been advanced to SARS with regard to the underpayment penalty. Ms E agreed.

[18] As far as the question of costs is concerned, I am satisfied that it was unreasonable of Taxpayer Z to persist in this appeal, which, with regard to the first three of the four issues raised, had no prospects of success. This is more particularly so given the evidence of Ms E as to her method of running the company, her statement that money was spent as they wished, and her apparent lack of interest in engaging with SARS personnel in order to ascertain the true financial position.

[19] There is an aspect, however, where SARS does not deserve to have its costs covered. On the day but one, prior to the hearing starting, some 16 lever arch files were delivered to me. The files contained 6 413 pages, excluding the dossier of 380 pages. These files were duplicated for each of my assessors. The total number of documents delivered were thus 19 239 (excluding dossiers). I raised this matter with counsel, and directed that after the hearing, but before argument, a bundle of the actual documents referred to during the trial was to be compiled.

[20] That was done, and the documents then totalled 515 (× 3 = 1 545). This meant that 17 694 documents were unnecessarily copied and provided. It is not difficult for the cynical mind to wonder why this might have been done. Whatever the reason, it is unacceptable. Mr SC pointed out that 411 (× 3 = 1 233) pages were dedicated to the bundle of notices for the parties. That reduced the unnecessary bundles to16 461. In addition, the vast majority of letters which were exchanged between the parties were each preceded in the bundles by a covering letter/email. If there was no dispute regarding the sending and receiving of the documents (and I cannot recall one such dispute), why were all these covering documents necessary. Indeed, they were an irritation in working with the documents, because every time I thought they I had found the document being referred to, it was only the covering note. No litigant should have to shoulder the burden of this excess, because had the matter been properly prepared, each side would have identified the documents they wished to produce in evidence, which would greatly have reduced the burden of the documentation. A “shot-gun” approach in adducing documentary evidence is simply unacceptable.

[21] In all the circumstances, I make the following order:

(a) the appeal is dismissed, and the 2014 assessment by The South African Revenue Service is confirmed;

(b) the appellant is to pay the costs of the application, including the costs of senior counsel and two counsel, where employed;

(c) the order for costs shall not include the costs of photocopying and preparing the 16 461 pages which were unnecessarily prepared. Neither party may be charged for those costs.

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Lopes J

I agree:

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K Rom

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E Bhero