REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD AT WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: **52/2023**

(1) REPORTABLE: YES / NO

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

(3) REVISED.

2 December 2024
DATE SIGNATURE

In the matter between:

DR X **Appellant**

DR X INC **Second Appellant**

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE **Respondent**

J U D G M E N T

Magardie AJ

[1] Section 104(1) of the Tax Administration Act 28 of 2001 ("TAA") allows a taxpayer aggrieved by an assessment made by the South African Revenue Service ("SARS"), to object to such an assessment. Rule 7(2) of the rules promulgated under section 103 of the TAA ("the rules") sets out the requirements for the lodging of such an objection.[1] SARS may in terms of rule 7(4) treat as invalid an objection which does not comply with these requirements. In such circumstances, the taxpayer has a remedy in rule 52(2)(*b*), which entitles a taxpayer to apply to a tax court for an order that an objection treated by SARS as invalid under rule 7, is valid. This is such an application.

[2] The first applicant ("Dr X") is a specialist neurologist. Dr X renders services to the second applicant ("Dr X Inc" or "the company") and is the company's public officer. The taxpayers seek a declaratory order that an objection which they filed with SARS on 14 August 2023 ("the Second Objection") and which was invalidated by SARS due to non-compliance with rule 7(2)(*b*), is valid. The taxpayers contend that the Second Objection meets requirements of rule 7(2)(*b*). They argue that in invalidating the Second Objection, SARS wrongly conflated the test for a valid objection with the test for whether an otherwise valid objection should be disallowed or not.

[3] It is necessary to set out the facts in some detail.

The facts

[4] The applicants' tax affairs were placed in audit by SARS in April and July 2021.

[5] On 30 April 2021 SARS directed a notification of audit letter to Dr X stating that the scope of audit was gross income and capital gains tax for the 2016, 2017 and 2019 tax years, but may be extended. The audit notification set out details of the information that Dr X was required to provide to SARS for the audit. This included a detailed description of all income streams, lists of bank accounts and bank statements, statement of assets and liabilities, investment portfolio statements and details of capital gains tax calculations. Dr X was required to provide the information within 21 days.

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[1] Rule 7(2): "A taxpayer who lodges an objection to an assessment must—
(*a*) complete the prescribed form in full;
(*b*) set out the grounds of the objection in detail including—
(i) specifying the part or specific amount of the disputed assessment objected to;
(ii) specifying which2 December 2024 of the grounds of assessment are disputed; and
(iii) submitting the documents require2 December 2024d to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment."

[6] Dr X appointed SDK to represent him in the audit. SDK provided SARS with details of Dr X's bank and share investment accounts. SARS then obtained Dr X's bank statements and share investment account statements in terms of section 46 of the TAA.[2] The bank statements were converted into SARS audit software which enables SARS auditors to export bank statements into Excel for analysis. SARS states that this analysis entailed an inspection of 2631 lines of the taxpayer's bank and investment statements.

[7] On 8 and 9 July 2021 SARS directed audit notifications to Dr X Inc. The notifications stated that the scope of the audit related to the company's VAT returns for the period April 2016 to February 2020 and corporate income tax for the 2019 and 2020 tax years but may be extended.

[8] The audit notifications also recorded the relevant material such as financial and accounting records which the company was required to provide to SARS and the dates for submission thereof. The information required by SARS was electronic accounting records such as general ledgers, trial balances, VAT tax type reports and debtors and creditors ledgers for the periods under audit. The audit notification specifically recorded that SARS required these electronic accounting records to be made available by the taxpayer to the SARS Electronic Forensic Services Department ("EFS") in electronic format and that the EFS Department would contact the taxpayer to obtain the electronic accounting records. SARS stated that this was necessary for Computer Assisted Audit Techniques ("CAAT") to be performed in the audit process. The company was further informed that should the information sought not be provided, SARS would be entitled to raise estimated assessments based on information available to it. In addition, the audit notifications stated that it is a criminal offence to willfully and without just cause fail to provide the relevant material requested.

[9] SDK was also appointed to represent the company in its income tax and VAT audits. On 10 August 2021 SDK directed correspondence to SARS providing some of the information requested in the notification of audit letters. SDK informed SARS that the information technology systems used by the taxpayers were the Xero Accounting software package and the Healthbridge Electronic Medical Records System ("the Healthbridge system).

[10] According to SDK, they used the Xero Accounting software to do the monthly accounting. The company used the Healthbridge system to document all patients, services provided to patients and to keep track of an update debtors. The two IT programs were not integrated. SDK advised SARS that in order to ensure all transactions were accounted for,

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[2] Section 46(1) of the TAA: "SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer o another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires."

monthly debtors reports were extracted from the Healthbridge system and provided to SDK to include in the Xero system with the monthly accounting.

[11] On 16 August 2021 Ms S, the SARS auditor responsible for the audit telephoned Mr F of SDK to discuss the provision of the electronic accounting records. She informed Mr F that SARS needed to obtain all accounting records such as trial balances and general ledgers in electronic format to facilitate the audit. Mr F was informed that Mr C from the SARS EFS Department would contact him to obtain the electronic Xero accounting software records. Mr F was informed that it was necessary for SARS to obtain these accounting records personally from SDK to ensure their authenticity and veracity.

[12] Mr F informed SARS that the taxpayer's bank statement entries were also captured in the Healthbridge system. He confirmed that not all the bank statement entries were sent to SDK for review and that they only received the last bank statement for each financial year to perform a bank reconciliation. Mr F informed SARS that the Healthbridge system itself was kept at Dr X's premises, that data capturing was done from there and that SDK did not have access to the Healthbridge system. SARS informed SDK that SARS needed to obtain this information directly from source i.e. the company. SDK agreed to enquire as to the availability of the person in the company's office who could be contacted for access to the Healthbridge system.

[13] This telephone discussion was confirmed in a letter sent by SARS to SDK on 16 August 2021. The letter recorded that Dr X Inc was required to provide its Xero electronic accounting records for the 2017 financial year. SARS specifically informed SDK that in terms of SARS protocol, any electronic accounting records would have to be personally collected by officials of the SARS EFS Department. The letter stated that SARS required the taxpayer's Healthbridge electronic records for the periods 1 May 2016 to 30 April 2020. In addition, SARS made a further request to SDK for bank statements in respect of the company's money market call account for the 2016/06 VAT period to 30 April 2020. This information was sought by SARS in terms of section 46 of the TAA[3] and required from the taxpayers by 20 August and 27 August 2021 respectively.

[14] The information requested from the taxpayer was not provided to SARS by these deadlines.

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[3] Section 46(1) of the TAA: "SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires."

[15] On 10 September 2021 SARS sent an email to Dr X, copied to SDK, advising that the electronic accounting records requested by SARS had been outstanding for 23 days. SARS warned the taxpayers that it was already in possession of the company's bank statements, had completed an analysis thereof and was in position to raise estimated assessments without regard to the outstanding electronic accounting records. A final extension was granted to 14 September 2021 for the company to provide the accounting records.

[16] On 12 September 2021 SDK informed SARS that it would have to henceforth contact Dr X directly for further information regarding both his personal and the company's SARS audits.

[17] According to SARS, a notification of extension of audit letter was sent to Dr X on 16 September 2021 informing him that the company's income tax audit was extended to include the 2017 and 2018 tax years. SARS states that this letter requested details of the person from whom access to the Healthbridge system was to be obtained.

[18] On 20 September 2021 SDK clarified the extent of the taxpayers' information which it had available at its office. This included Xero and Pastel electronic accounting records for the financial years under audit. SDK again informed SARS that the electronic debtors system was held at Dr X's premises and that SDK only received PDF summaries from the taxpayer when information was required and when balances had to be confirmed. SDK stated that they did not have the taxpayers debtors program / system and any records or electronic access thereto.

[19] On 1 October 2021 SARS sent a notification of extension of audit scope letter to Dr X informing him that his income tax audit had been extended to include expenses.

[20] On 4 October 2021 SARS issued a section 46 notice to Dr X in his capacity as public officer of the company. The notice listed the information which had previously been requested from the taxpayers and had still not been provided to SARS. This included the electronic Healthbridge system records, copies of short-term insurance contracts, the electronic debtors ledgers and the taxpayers list of bad debts. The notice stated that Dr X Inc was required to make available additional information relating to the 2017 to 2020 tax years and was afforded a final extension until 7 October 2021 to do so. SARS recorded in the notice that the taxpayers were in breach of section 46 of the TAA which obliges a taxpayer to provide relevant material to SARS.[4] The attention of the taxpayers was also drawn in this notice to the criminal penalties provided for in section 234(2) of the TAA for wilful obstruction or hindering of a SARS official in the discharge of their official duties.

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[4] Section 46(4) of the TAA: "A person or taxpayer receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place, in the format (which must be reasonably accessible to the person or taxpayer)…"

[21] In addition, the taxpayers were informed that SARS may impose understatement penalties and that one of the factors that may be taken into account in this regard is whether the taxpayer his co-operated with SARS or has been obstructive in the exercise of SARS's duties. SARS appealed to Dr X to co-operate by making the requested records available and by contacting SARS on or before 7 October 2021 to arrange for access to the requested records by the SARS EFS department.

[22] According to SARS, on 7 October 2021 various telephone discussions took place between Dr X and the SARS EFS official Mr C, regarding an appointment for SARS to access to the Healthbridge system. The upshot of these discussions, according to SARS, was that Dr X refused to grant the access to the system and instead stated that he was going to appoint an IT company to extract the accounting records which he would then provide to SARS. This offer was refused by SARS on the basis that its audit protocols required an official from the SARS EFS Department to be in personal attendance during the process of obtaining electronic records for audit assessment. In addition, SARS states that it again informed Dr X that the EFS Department must obtain a taxpayer's electronic accounting systems directly from the source in order to ensure the authenticity and veracity of the data.

[23] SARS alleges that Dr X then informed Ms S of SARS that he was not going to give SARS access to the Healthbridge system. According to SARS, Dr X was asked whether SARS could do a field audit at the company's premises to inspect invoices, statements and other relevant documents. Dr X allegedly refused and informed Ms S that no further information would be made available by the taxpayers to SARS.

[24] At this stage, SARS was in possession of the taxpayers' Xero accounting system records, which had been converted into SARS standard audit software. SARS states that it could not however rely on these records as the data did not contain information and records from the Healthbridge system and consisted only of the monthly summaries which Dr X had provided to SDK. SARS was however in possession of the company's bank statements, which it had obtained from the taxpayers' bankers in terms of section 46 of the TAA.

[25] According to SARS, its analysis of the company's bank statements established that the taxpayers had failed to disclose large amounts of income in their financial statements and income tax returns. In addition, SARS states that it had ascertained that large amounts of money had been extracted from the company by Dr X, which had not been declared in either taxpayer's tax returns. SARS further stated its analysis of the company's financial statements revealed that the company was not subject to an external audit by an independent firm of registered auditors. The financial statements had been prepared by SDK which had confirmed in its compilation report that "…since a compilation report is not an assurance engagement,

we are not required to verify the accuracy or completeness of the information you provided us to compile these financial statements."

[26] On 27 October 2021 SARS issued an audit findings letter in respect of the company's corporate income tax audit. The audit was according to SARS based an analysis of 2631 lines of the company's bank statements. SARS states that in performing its analysis, all deposits, excluding inter-account transfers, and less VAT on the remaining deposits were treated by SARS as "gross income" for income tax purposes.

[27] In relation to expenses, SARS analysed withdrawals and granted income deductions for amounts which SARS could establish, from the descriptions in the bank statements, could reasonably be related to the business. These included amounts paid to Dr X and treated as salaries, telephone, internet, accounting fees and the like.

[28] According to SARS, its analysis of the company's bank statements revealed that Dr X had netted off his salaries against the company's income and declared only the net amount as the company's income in its tax returns. The audit findings were that amounts of R4 297 010 were paid to Dr X as salaries for the 2017 tax year, R8 862 045 in 2018, R9 807 342 in 2019 and R3 066 748 in the 2020 tax year. SARS states that the amounts declared by Dr X as salaries in his personal income tax returns for these years, was nil.

[29] The amounts paid to Dr X were referred to in annexures to the audit letter, which the audit letter states contained a full list of the relevant amounts. SARS treated these amounts as taxable remuneration received by Dr X for services rendered. The audit findings letter recorded an amount of R488 820.00 due to SARS by the company in respect of corporate income tax. The letter further recorded that SARS intended to propose the imposition of an understatement penalty ("USP") of 200% due to intentional tax evasion and because the taxpayer's behaviour in the audit process was classified as obstructive. Dr X Inc was afforded until 26 November 2021 to respond to the audit findings.

[30] On 2 November 2021 SARS issued Dr X Inc with its VAT audit findings letter for the tax periods 201604 to 202004. According to SARS, the VAT audit findings letter was based on an analysis of 5695 lines of bank statement entries. The VAT audit findings letter recorded a significant shortfall in output tax in the amount of R3 282 165 over the audit period and that deposits in the amount of R25 163 267 were not subject to output tax.

[31] According to SARS, it was clear that Dr X had netted off his salary against the deposits to calculate the output tax declared to SARS. Since salaries do not qualify as input tax deductions, SARS states that Dr X effectively claimed input tax on his salaries.

[32] The VAT audit findings letter recorded that the output tax calculated by SARS to be due was compared to the output tax reflected in the taxpayer's VAT returns and differences between the two figures were noted. These were recorded in an annexure to the letter. The VAT audit findings letter set out a proposed adjustment amount of R2 330 907.00 due to SARS in respect of VAT. In addition, Dr X Inc was informed of the proposed imposition of a 200% USP due to intentional tax evasion and obstructive behaviour by the taxpayer.

[33] SARS issued an audit findings letter on 7 February 2022 in respect of Dr X's personal income tax audit. The audit findings letter stated that the only income disclosed by Dr X in his income tax returns were annuities, retirement lumpsums, pension payments, income from the Health Professions Council of South Africa, interest, foreign dividends, REIT distributions, distributions from a trust, rental income and capital gains. SARS states that the audit had reviewed Dr X's bank and broker statements to determine his taxable gross income. This was done by analysing the deposits reflected on the statements and deducting certain amounts. The amounts deducted by SARS were inter-account transfers, amounts already declared to SARS, amounts received from the company, interest, foreign dividends and REIT distributions. SARS treated the remaining balance after these deductions as the taxpayer's "gross income".

[34] The personal income tax audit findings letter records that Dr X's bank account statements for the audit period 2016 to 2019, revealed significant deposits from sources which SARS states that it was unable to identify.

[35] In respect of 2016, these deposits amounted to R29.52 million. For 2017, they amounted to R7.09 million. The deposits were all from sources other than those reflected in the taxpayer's returns. SARS concluded that these amounts were undeclared gross income.

[36] The audit findings letter stated that SARS therefore intended to issue an additional assessment in terms of section 92 of the TAA due to understatement of gross income.[5] In addition, SARS intended to issue estimated assessments for all the unexplained deposits in terms of section 95(1) of the TAA, as the taxpayer failed to prove that his returns were correct and accurate.[6] Additional findings were made in Dr X's income tax audit findings letter regarding understatement of foreign dividends, understatement of REIT dividends, proceeds from sale of shares, purchase of shares and donations to the taxpayer's son. SARS stated

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5 Section 92 of the TAA: "If at any time SARS is satisfied that an assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the *fiscus*, SARS must make an additional assessment to correct the prejudice."

6 Section 95(1) of the TAA: "SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer— (*b*) submits a return or relevant material that is incorrect or inadequate."

that the taxpayer had not met the burden under section 102(1)(*a*) of the TAA[7] of proving that these amounts were not taxable and in addition, he had refused to co-operate with the SARS auditor.

[37] The audit findings letter acknowledged the three-year prescription period provided for in section 99(1)(*a*) of the TAA in respect of the taxpayer's 2016 and 2017 assessments.[8]

[38] SARS concluded however that the full amount of tax chargeable had not been assessed due to fraud, misrepresentation and non-disclosure of material facts. Consequently, according to SARS, the 3-year prescription period applicable to the assessments for the 2016, 2017 and 2019 tax years, did not apply by virtue of section 99(2)(*a*)(i) and section 99(2)(*a*)(ii) of the TAA.[9]

[39] On 7 March 2022 Dr X responded in writing to the income tax and VAT audit findings letters. His response set out the business model of his medical practice in respect of taxation. This model in essence, according to Dr X, was that income tax and VAT was paid to SARS 'upfront' when services were rendered by his medical practice to attorneys in medico-legal contingency matters. According to Dr X, in these contingency litigation matters the actual funds and payments from attorneys for the services were only received by Dr X Inc at a much latter stage when the litigation was resolved, which was in many instances years later. Further explanations were provided regarding the taxpayers share portfolios, which Dr X claimed had not been used as trading accounts. Dr X further stated that dividends had been used to pay for living expenses and study fees of his dependent children and that these payments were not donations.

[40] SARS issued Dr X Inc with a finalisation of audit letter on 25 March 2022 in respect of corporate income tax. A VAT audit assessment letter was also issued on 25 March 2022. The VAT audit assessment letter stated that SARS would be imposing a 200% USP due to intentional tax evasion in the form of overstatement of VAT deductible expenses and obstructive behaviour. Both letters set out the detailed findings, basis and reasoning of SARS in relation to the estimated assessment and adjustments.

[41] The assessment amounts raised by SARS in respect of the taxpayers are common cause.

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7 Section 102(1)(*a*) of the TAA: "A taxpayer bears the burden of proving— (*a*) that an amount, transaction, event or item is exempt or otherwise not taxable."

8 Section 99(1)(*a*) of the TAA: "An assessment may not be made in terms of this Chapter— three years after the date of assessment of an original assessment by SARS."

9 Section 99(2)(*a*) of the TAA: "Subsection (1) does not apply to the extent that— (*a*) in the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to: (i) fraud; (ii) misrepresentation; or iii) non-disclosure of material facts."

[42] A total amount of R9 789 343 was assessed by SARS as due by Dr X Inc in respect of VAT. This comprises of a capital amount of R3 240 622 and understatement penalties of R6 548 721. In respect of Dr X's personal income tax for the period 2016 to 2019, SARS assessed an amount of R77 309 738 comprising of a capital sum of R26 419 613 and understatement penalties of R50 890 125. An additional assessed amount of R177 104 was raised by SARS for donations tax and an understatement penalty imposed.

[43] The total assessment raised by SARS for personal income tax, VAT, donations tax, understatement penalties and interest in respect of both taxpayers, amounts to the sum of R87 376 185.00.

[44] Following the issuing of the assessment letters, the taxpayers appointed MJA to represent them in objecting the assessments which had been raised by SARS. MJA requested reasons for the assessments on 6 June 2022, which reasons were provided by SARS on 31 August 2022.

[45] On 25 October 2022 MJA lodged an objection against the taxpayers' income tax and VAT assessments ("the First Objection"). In response thereto and on 29 November 2022, SARS issued a notice invalidating the taxpayers' objections and setting out its reasons for this decision ("the First Notice of Invalid Objections").

[46] The taxpayers thereafter filed an application in the Tax Court on 15 December 2022 for orders declaring the First Objection as valid ("the first application"). SARS opposed the first application and filed its answering affidavit on 15 February 2023.

[47] After the taxpayers filed their replying affidavit on 18 March 2023, the matter was set down for hearing on 21 August 2023. The first application was subsequently withdrawn by agreement between the parties.

[48] On 14 August 2023 the taxpayers lodged an objection to the assessments raised by SARS ('the Second Objection") for income tax, VAT and donations tax for the tax periods falling within the 2016 to 2020 years of assessment.

[49] The objections consist of a 17-page covering letter from MJA setting out the taxpayers' objection and the prescribed SARS ADR1 Notice of Objection form completed in respect of the taxpayers. The Second Objection was accompanied by annexures described as Dr X's loan account for the period 2016 to 2020, Dr X Inc's age analysis report of debtors for the period 2016 to 2020 and Dr X Inc's VAT payments for the 1994/08 to 2022/02 periods. The list of annexures to the 14 August 2023 objection state "electronic access" in respect of the Healthbridge system records for 2016 to 2020. The annexures to the Second Objection amount to 837 pages.

[50] The Second Objection raises a prescription point in relation to SARS's assessment of Dr X's income tax for the 2016, 2017 and 2018 years of assessment and VAT for the 2016/04, 2016/06, 2016/08, 2016/10 and 2016/12 VAT periods. The objection is that SARS wrongly raised assessments for these prescribed periods contrary to section 99(1) of the TAA. The taxpayers dispute in the Second Objection that SARS had the necessary evidence to demonstrate fraud and misrepresentation by the taxpayers and its conclusion that the limitation period in section 99(1)(*a*) of did not apply to these assessments. A further objection is made in relation to SARS having made an estimated assessment in terms of section 95(1) of the TAA.

[51] The taxpayers contend that given the explanations by the taxpayers, SARS had failed to discharge the burden imposed on SARS by section 102(2) of the TAA to prove of proving that in the case of an estimated assessment, the estimates are reasonable.[10]

[52] The Second Objection deals with the conclusion by SARS that there were unidentified deposits recorded in the taxpayers' bank statements and broker statements and disputes that these deposits constitute gross income not declared by Dr X in his returns. The explanation given in the Second Objection is that these amounts were overdue fees due to Dr X Inc for medico-legal work, which fees were collected on its behalf. The taxpayers state that as and when these overdue fees for medico-legal work were collected, they were initially applied to settle previously unpaid dividends declared by the company to Dr X and thereafter held as owing to Dr X in terms of a loan account between the taxpayers. On this basis, the Second Objection contends that these amounts were previously declared, did not constitute income and were in any event not income of Dr X himself as the amounts were received in his bank account on behalf of Dr X Inc. The objection goes on to dispute the conclusions reached by SARS in relation to the understatement of foreign and REIT dividends, capital gains, remuneration received by Dr X from Dr X Inc, donations tax, understatement of VAT output tax, understatement penalties, interest and late payment penalties.

[53] Between 14 August 2023 and 22 September 2023, a lengthy series of back and forth discussions and exchanges of correspondence then took place between the parties regarding the ongoing dispute relating to access by SARS to the taxpayers Healthbridge electronic records system.

[54] On 25 August 2023 SARS sent an email to MJA confirming the tender of access to the Healthbridge system and requesting whether the taxpayer could grant SARS access to the system on 31 August 2023. The taxpayers agreed to allow the SARS EFS team access to the

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[10] Section 102(2) of the TAA: "The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS."

Healthbridge system. It was indicated that the EFS team would be allowed to extract the data on Thursday 31 August 2023.

[55] On 30 August 2023, the day before the agreed date for SARS to access the Healthbridge system, the taxpayers advised SARS that they were no longer available on that day and suggested that the SARS EFS team visit their offices on Friday 1 September 2023 at 14h00. According to SARS this was not only short notice but the time afforded would not have provided the team with sufficient time to complete their work.

[56] On Thursday 31 August 2023, SARS informed MJA by email that its EFS specialists were only available from Thursday 7 September 2023 due to prior commitments. SARS explained in response that the EFS team required at least a whole day to extract and convert the data and that if they were satisfied with the extracted data, it may take another 10 business days for the process of converting the data to SARS audit software to be completed. In the same email, SARS requested in terms of rule 4(1) an extension of the 30-day time period in rule 7(4) for SARS to decide on the validity of the objections.

[57] In response to this email and on Thursday 31 August 2023, MJA indicated that they would advise the taxpayers to take an accommodating stance. SARS was however requested to provide a written and properly motivated request for an extension, setting out the time periods involved for the internal SARS processes to be completed.

[58] In response and at 14h05 on Friday 1 September 2023, SARS sent a letter to MJA by email setting out in detail the reasons why SARS required an extension to the rule 7(4) period.[11] The reasons provided by the extension sought included reference to the previous refusal of Dr X to provide SARS access to the Healthbridge system throughout the period of the audit. In addition, SARS set out in detail the processes to be followed by the SARS EFS team in extracting the data and copying the taxpayers' electronic system and the various CAAT tests that would need to be performed by the SARS team to establish the integrity of the data. In its letter dated 1 September 2023, SARS recorded that under normal circumstances where a taxpayer co-operates with SARS, the taxpayer would grant the SARS EFS specialists access to the system as many times as are necessary for them to establish the integrity of the data. This process, according to SARS, would include interactions with the taxpayer to ask questions and obtain assistance where required and the SARS specialists may also have to contact the developers of the taxpayer's IT system to obtain assistance.

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[11] Rule 7(4): "(4) Where a taxpayer delivers an objection that does not comply with the requirements of subrule (2), SARS may regard the objection as invalid and must notify the taxpayer accordingly and state the ground for invalidity in the notice within 30 days of delivery of the invalid objection."

[59] The letter furthermore pointed out that when the taxpayers were informed of the upcoming audit, the notification of audit letter had stated that the taxpayers would be contacted by the SARS EFS division to make arrangements to obtain electronic copies of accounting records and any other electronic information used in the validation of the accounting process. SARS proposed that by agreement, the period from 31 August 2023 to the date on which the SARS specialists provide the auditor with the converted data, be excluded from the 30-day period referred to in rule 7(4) for SARS to decide upon a taxpayer's objection.

[60] SARS went on to inform the taxpayers that the EFS specialists would undertake to prioritise the matter above their other work commitments and would endeavour to complete the data conversion process as soon as possible after the data passes electronic testing. MJA responded shortly thereafter stating that the taxpayers would be available to provide systems related access to SARS on a specified list of dates and times.

[61] These dates were stated by MJA to be Saturday 2 September 2023 and Sunday 2 September 2023 at 07h00 and Wednesday 6 September 2023 to Friday 8 September 2023, in each case at 14h00.

[62] It will be recalled that in relation to an earlier proposed date and time of 14h00 on Friday 1 September 2023, SARS had already informed MJA that this proposed time i.e. 11h00 would not have provided the SARS EFS team with sufficient time to complete their work. In addition, and in its correspondence to MJA on 31 August 2023, SARS had explained to MJA that the SARS EFS team would require at least a whole day to extract and convert the data from the Healthbridge system.

[63] It was therefore unsurprising that SARS responded to MJA by email on 1 September 2023 stating that SARS was not available over weekends, that it had previously explained that at least 6 continuous hours per day over two days was required and that "…two hours here and there will not work at all." SARS in its email stated that the taxpayers continued obstruction of SARS officials in the discharge of their statutory responsibilities amounted to a criminal offence and that as matters stood, the taxpayers had not provided the documents to substantiate their objections.

[64] Ms S's manager, Mr K, also directed an email to MJA on 1 September 2023 requesting that in order ensure continuity of work, the taxpayers accommodate SARS during normal business hours and not at the end of the day as they suggested.

[65] Mr K stated that it was SARS's preference was to always start its work in the morning on a business day and make maximum use of time at its disposal to perform its procedures unhindered.

[66] On 5 September 2023 MJA enquired whether 7 or 8 September 2023 at 11h00 would be suitable for the SARS team. SARS responded the following day in a letter stating that the amount of time offered by MJA i.e. one day and only from 11h00, was not acceptable as SARS has previously explained that the EFS specialists need at least 12 hours (6 hours one day and 6 hours the following day) to complete their work. SARS reiterated that to avoid the invalidation of the objections, the taxpayers were required to grant the SARS EFS team 2 full uninterrupted days access to the Healthbridge system on agreed dates and further access should this be insufficient to conclude on the validity, accuracy and completeness of the Healthbridge system. In addition, the taxpayers were required to agree to SARS's request for an extension of the rule 7(4) period.

[67] On 7 September 2023 at 06h00 MJA sent an email to SARS stating that Dr X was not amenable to having SARS make copies of the Healthbridge system at his offices or accessing it from there. MJA stated that all the data was on a hard drive which was available at Dr X's office and could simply be handed over to a SARS official on arrival. It was further stated by MJA that the taxpayers would agree to SARS attending at the taxpayers on 6 September 2023 and 7 September 2023 at 11h00 on each day and that SARS had not taken up this invitation to date.

[68] SARS sent a letter in response on 7 September 2023 setting out the history of the requests by SARS and responses by the taxpayers regarding access to the Healthbridge system. The letter stated yet again that SARS required that the EFS specialists themselves be granted access to the Healthbridge system and that SARS cannot accept copies made by the taxpayer. SARS stated that accepting copies of electronic accounting data handed over by taxpayers was not acceptable because neither the EFS specialists or the auditor could in these circumstances verify the completeness, accuracy and veracity of the data. SARS recorded that it was not open to the taxpayers to choose the way and format in which the accounting records would be provided. The letter concluded by stating that the taxpayers were required by 8 September 2023 to agree provide SARS with 2 days physical access to the system and 6 consecutive hours on each day failing which the objections would be invalidated due to non-compliance with rule 7(3).

[69] On 11 September 2023 MJA corresponded with SARS by email stating that the insistence by SARS on the EFS team personally attending at Dr X's offices was causing unnecessary delay and SARS could simply pick up the hardware that houses the Healthbridge system. SARS was requested to explain why the officials were required to personally attend on the procedures at the taxpayer's office. SARS replied by email and communicated to MJA that the EFS team follows a specific technical methodology which they would explain at a proposed meeting with MJA that week. MJA was informed that SARS never picks up

downloads made by taxpayers and that all taxpayers were required to provide SARS with direct access to their IT systems.

[70] After this lengthy to and fro regarding access to the Healthbridge system, MJA advised SARS on the afternoon of Monday 11 September 2023 that the taxpayers had agreed to provide the EFS team access to the system on any weekday at 10h00 and requested that the EFS team attend their offices the following day, Tuesday 12 September 2024.

[71] MJA advised that if 12 September 2023 was not possible, SARS was requested to advise when the taxpayers may expect the visit at their premises. SARS responded stating that the EFS specialists were available the following week Tuesday 19 September 2023 and Wednesday 20 September 2023.

[72] On 13 September 2023 SARS reminded MJA of the previous request for an extension of the rule 7(4) 30-day period. MJA responded on 15 September 2023 suggesting that SARS issue the request again after attending at Dr X's offices and accessing the Healthbridge system.

[73] On 18 September 2023 SARS enquired again regarding the rule 7(4) extension request and attached a draft agreement to this effect for signature by the taxpayers. SARS advised that should the agreement not be signed by 19 September 2023, SARS would either invalidate the objections or approach the court for an extension. In response, MJA advised that the taxpayers were reluctant to agree to an extension request on the basis proposed by SARS. MJA proposed that the parties agree to provide for a 10-day extension as opposed to what they considered to be an open-ended extension which was being proposed by SARS.

[74] The parties had at this stage agreed that the EFS team would be provided access to the Healthbridge system at 10h00 on 19 September 2023. They differ however in their version of events regarding exactly what transpired at Dr X's offices on 19 September 2023.

[75] According to the taxpayers, when the EFS team arrived at Dr X's offices on 19 September 2023, Dr X was informed for the first time by SARS that he and his personnel had to be personally present and available for two days to talk the EFS specialists through the system and how it operates. This requirement, according to the taxpayers, had not been communicated to them before. According to Dr X, he informed the SARS team that he and his staff could not simply abandon his medical practice for two full days to talk them through the system.

[76] SARS on the other hand states that upon their arrival at Dr X's premises on 19 September 2023, Dr X's staff members left the premises. Dr X then pointed out a computer which he alleged contained the Healthbridge system and instructed the EFS team to access

it, without providing guidance on how the system functioned, how it operated and where the data and reports are contained on the system. SARS alleges that the EFS team informed Dr X that they were not allowed to access the computer on their own and unsupervised by the taxpayer due to risks of data loss, system crashes etc and potential civil liability of SARS in that event.

[77] Dr X, according to SARS, then insisted that the SARS team must work through his legal representatives and direct queries regarding the system to his legal representative who would respond thereto on behalf of the taxpayers. The impasse could clearly not be resolved. The SARS EFS team then left the premises. SARS's version of events regarding what transpired on 19 September 2023 was recorded in writing in a letter sent to MJA later that day.

[78] On 21 September 2023 Dr X enquired when SARS intended to access the system so that he could arrange to make himself and his staff members available as requested. SARS responded and stated that that day 30 of the deadline for SARS to decide the objections was the following day i.e. 22 September 2023 and that there was no time left to conduct any EFS and data conversion work to assess whether the taxpayer has discharged the burden of proof in section 102(1) of the TAA read with rule 7(2).

[79] A further email was sent by SARS to MJA the same day stating that the 30-day period was due to expire on a public holiday and that SARS would prefer to supply the SARS decision on the objections by close of business the following day.

[80] On 22 September 2023 SARS issued its notices informing the taxpayers that their 14 August 2023 objections were invalid due to non-compliance with rule 7(2)(*b*) ("the Second Notice of Invalid Objections"). This decision was conveyed to the taxpayers in a 20-page document setting out the reasons why the taxpayers' objections were considered by SARS to be invalid. The notice concluded by proposing to have a meeting with the taxpayers to explain what would be required to file valid objections.

[81] It is common cause that in the Second Notice of Invalid Objections, SARS invalidated the taxpayers' objection ostensibly due to non-compliance by the taxpayers with rule 7(2)(*b*). The reasons provided by SARS in this regard were inter-alia the following:

81.1 the taxpayers failed to provide the documents to substantiate the grounds of objection or reliable documents in that regard;

81.2 the taxpayers failed to provide evidence to prove in which period they rendered services; and

81.3 the taxpayers' grounds of objection are contradictory and misleading.

[82] Following the issuing of the Second Notice of Invalid Objections, further communications ensued between the parties regarding the proposed meeting between SARS and the taxpayers regarding what was required of them by SARS for the filing of valid objections. SARS advised MJA on 20 October 2023 that Dr X was required to personally attend such a meeting as the EFS specialists needed to discuss the Healthbridge system with him.

[83] Further correspondence followed on 23 October 2023 to arrange such a meeting however the parties were unable to agree on mutually convenient and available dates.

[84] On 24 October 2023 the taxpayers launched the current application.

The requirements for a valid objection

[85] The requirements of rule 7(2) for a valid objection and the purpose which these requirements seek to achieve, must firstly be considered in the context of section 106 of the TAA.

[86] Section 106 of the TAA deals with decisions by SARS on objections against assessments. Section 106(1) states that SARS "…must consider a valid objection in the manner and within the period prescribed under this Act and the 'rules'." In terms of section 106(2) of the TAA, SARS "…may disallow the objection or allow it either in whole or in part." Section 106(3) provides that where SARS allows an objection against on assessment, either in whole or in part, the assessment must be altered accordingly.

[87] Two aspects are clear from these provisions of the TAA. Firstly, the decision on whether a taxpayer's objection to an assessment is valid, is a discretionary decision vested with SARS. Secondly, a decision by SARS that an objection is valid, is a necessary pre-condition for the disallowance of an objection or its allowance in whole or in part in terms of section 106(1) of the TAA read with rule 9(1).[12]

[88] An objection by a taxpayer which has not been determined by SARS to be 'valid' does not reach the stage of allowance or disallowance on its merits in terms of rule 9(1). It is only when such an objection has been determined by SARS to be valid and then allowed or disallowed, either in whole or part, that the appeal process to the tax court may subsequently be engaged. In *CM v Commissioner for the South African Revenue Service*, Rogers J

[12] Rule 9(1): "SARS must notify the taxpayer of the allowance or disallowance of the objection and the basis thereof under section 106(2) of the Act within…"

explained the import of an invalid objection and the related purpose of rule 52(2)(*b*) as follows:[13]

> "The rules, read with the Act, make a determination on the merits of an objection (by way of disallowance or partial or complete allowance) a jurisdictional prerequisite for lodging a notice of appeal. If SARS declines to rule on the merits of an objection because it regards the objection as invalid, the stage of allowance or disallowance cannot be reached without resolving the disputed validity of the objection. Rule 52(2)(*b*) is the means by which this should be done."

[89] Turning to the provisions of the rules relating to objections against assessments, rule 7(2)(*b*) in essence establishes three discrete requirements for the validity of such an objection. These requirements all relate to the grounds of objection, which the objection must be set out in detail. Rule 7(2)(*b*)(i) in the first place requires a taxpayer to specify the part or specific amount of the disputed assessment objected to. Secondly, in terms of rule 7(2)(*b*)(ii) the objection must specify which of the grounds of assessment are disputed. Thirdly and in terms of rule 7(*2*)(b)(iii), the taxpayer must submit the documents required to substantiate the grounds of objection, that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment.

[90] In terms of rule 7(4), where a taxpayer delivers an objection that does not comply with the requirements of rule 7(2), SARS may regard the objection as invalid. SARS is required in these circumstances to notify the taxpayer accordingly and to state the ground for invalidity in the notice within 30 days of delivery of the invalid objection.

[91] The overarching requirement of "detail" in the taxpayers' grounds of objection and the requirement that the taxpayer must "specify… [and] in detail" the part or specific amount of the assessment objected to, in my view makes it clear that a globular, vague or unspecific objection does not pass muster as a valid objection in terms of rule 7(2)(*b*). The taxpayers' objection is required to be specific and precise in its identification of the grounds of objection and which parts, amounts and grounds of the disputed assessment are disputed and objected to. The specificity requirements of rule 7(2)(*b*)(i) and (ii) are given further force by rule 7(2)(*b*)(iii), which requires the taxpayer to submit all documentation required to substantiates the objection, but which was not previously submitted to SARS.

[92] In my view, all of these requirements i.e. specificity in the formulation of the grounds of objection and submission of documents required to substantiate the objection, are directed at ensuring that SARS is placed in a position where it is able to properly determine the merits of the objection itself and whether to allow or disallow the objection in whole or partially. An

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[13] *CM v Commissioner for the South African Revenue Service* (35/2019) [2019] ZATC 20; 83 SATC 504 (11 September 2019) at para 52, upheld on appeal to the Supreme Court of Appeal in *Commissioner for the South African Revenue Service v Candice-Jean Van der Merwe* (211/2021) [2022] ZASCA 106; 85 SATC 10 (30 June 2022) ("*Van der Merwe*").

objection which is valid as a consequence of meeting the specificity requirements of rule 7(2)(*b*) can be rationally determined on its substantive merits. An objection which is vague, imprecise, lacks detail and does not submit the documents required to substantiate the grounds of objection which it advances, cannot.

[93] SARS contended that a taxpayer must in his objection specify in detail the specific amount of the disputed assessment objected to and address each and every unexplained deposit, receipt or accrual raised and dealt with in a disputed assessment. Reliance in this regard was placed on the judgment of the Full Court in *Commissioner For the South African Revenue Services v M*, where Adams J said the following:[14]

> "…in this matter, an assessment was raised by SARS, as per his finalisation of audit letter of 15 May 2015, in respect of each and every unexplained deposit, receipt and accrual into the Investec and Nedbank accounts for each of the 2007 – 2010 years of assessment. *The point is simply that the taxpayer is required to address every single receipt and accrual, as detailed in the finalisation of audit letter.* The question is whether that was indeed done by the taxpayer. It is so that, in terms of rule 7 of the Rules of the Tax Court, a taxpayer, in his objection must specify in detail 'the specific amount of the disputed assessment objected to'. Moreover, in terms of s 102(1)(*a*) of the TAA, '[a] taxpayer bears the burden of proving – (a) that an amount, transaction, event or item exempt or otherwise not taxable'."

(Emphasis added)

[94] I agree with these observations. The requirements of specificity in a taxpayers objection are consistent with the overall purpose of the TAA. That purpose is plain from the preamble to the legislation. It states that the purpose of the Act is to inter-alia provide for the effective and efficient collection of tax. Audit processes conducted by SARS involve the use of public funds and resources in the public interest. These audit processes are required to demonstrate detail and precision in the assessment of tax liabilities imposed on a taxpayer. It is entirely consistent with the purposes of an effective tax administration system, to expect concomitant detail and precision from a taxpayer when the grounds of such an assessment are disputed.

[95] A taxpayer is in my view not entitled to play possum in an objection to a tax assessment. Were it otherwise, it would be all too easy for vague and generalized objections to pass the hurdle established by rule 7(2)(*b*). This would defeat the purposes of an effective

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[14] *Commissioner For the South African Revenue Services v M* (A5036/2022) [2023] ZAGPJHC 789 (6 July 2023) at para 30 ("*CSARS v M*").

tax dispute resolution system and with it, the efficient collection of taxes due to the *fiscus* by taxpayers following an assessment by SARS.

The requirements of rule 7(2)(*b*)(iii)

[96] It would be convenient at this juncture to address the main submissions advanced by the taxpayers in relation to SARS's interpretation of rule 7(2)(*b*)(iii). The taxpayers submit that SARS has erred in both its interpretation of rule 7(2)(*b*)(iii) and its application to the objections lodged by the taxpayers.

[97] Counsel for the taxpayers, Dr Austin, submitted that for an objection to comply with rule 7(2)(*b*)(iii), all that is required is for the taxpayer to submit those documents that *it* considers necessary to substantiate its grounds of objection. Dr Austin argued that SARS cannot prescribe the documents a taxpayer should rely on to substantiate an objection. Where such documents are absent, so the argument went, SARS's remedy would be to request those documents in terms of rule 8.[15] Dr Austin submitted that to test whether the taxpayers have submitted valid objections, SARS is merely required to determine whether the taxpayers have submitted those documents that the taxpayers relied upon in the objections, not whether SARS is satisfied that those documents do, in fact, substantiate the allowance of the objection.

[98] A further and related argument was advanced by the taxpayers. It was that that in circumstances where a taxpayer has not provided the documents required to substantiate its dispute, SARS should exercise its discretion in rule 7(4) in favour of the taxpayer and disallow the objection as opposed to treating it as invalid.

[99] Ms Diamond SC, who appeared on behalf of SARS together with Mr Laund, submitted that the taxpayers interpretation of rule 7(2)(*b*)(iii) would lead to absurd results and is inconsistent with the ordinary grammatical meaning of the rule. It was submitted by SARS that the taxpayers interpretation is also inconsistent with the purpose of rule 7(2)(*b*)(iii), which is to require the taxpayer who is objecting to an assessment to submit information which would be of assistance to SARS in its determination as to whether there is a prima facie case for the objection.

[100] In my view, rule 7(2)(*b*)(iii) does not contemplate a wholly subjective choice being afforded to taxpayers to submit only those documents which they consider necessary to substantiate their grounds of objections.

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[15] Rule 8(1): "Within 30 days after delivery of an objection, SARS may require a taxpayer to produce the additional substantiating documents necessary to decide the objection."

[101] Rule 7(2)(*b*) plainly requires the taxpayer to not only specify its grounds of objection in detail, including the part or the amount objected to, but to submit all documentation *required* for the substantiation of the objection, which was not previously presented to the Commissioner.[16] I agree with the submission by SARS that had the intention of the drafters of rule 7(2)(*b*)(iii) been to permit a taxpayer to subjectively decide what documents it considers are "required" to substantiate its grounds of objection, the rule would instead provide that the taxpayer may submit documents that the taxpayer 'deems necessary' to substantiate its objections. Rule 7(2)(*b*)(iii) does not however so provide, neither expressly nor impliedly.

[102] I consider that there are at least three further difficulties with the argument that for the purposes of assessing the validity of an objection, SARS is limited to only determining whether the taxpayer has submitted the documents that it relies upon in its objection.

[103] Firstly, the purpose of rule 7(2) is to place SARS in a position to properly consider the merits of an objection to an assessment and to decide whether to allow or disallow the objection, in whole or in part, in terms of rule 9. It is difficult to see how else this could be done other than by SARS determining whether the taxpayer has submitted the documents which are "required" to substantiate its pleaded grounds of objection.

[104] The taxpayers' argument in relation to rule 7(2)(*b*)(iii) conflates procedure with merit. The procedural requirements for submission of a valid objection in terms of rule 7(2)(*b*) are conceptually different to the determination of the merits of an objection in terms of rule 9. As stated earlier, it is only an objection which has been determined by SARS in the first place to be valid, in other words compliant with rule 7(2) and its requirements, that may be the subject of a determination by SARS to allow or disallow the objection in terms of rule 9. Secondly and on the argument advanced by the taxpayers, a taxpayer can choose not to submit any documents required to substantiate its grounds of objection. SARS would in these circumstances be precluded from invalidating the objection in terms of rule 7(2)(*b*)(iii) as the taxpayer has chosen not to substantiate its objection with documentary evidence. The taxpayer's objection would then simply move further to the objection decision stage in terms of rule 9 and a determination of its merits. In that case, the only option open to SARS would be to allow or disallow the objection on its merits.

[105] The taxpayers' argument on this score is without merit. It would render purposeless the mandatory requirements of rule 7(2)(*b*)(iii) which serve the objective of placing SARS in a position to consider the merits of an objection to an assessment. The argument is also inconsistent with the purpose of rule 9, which presupposes that only a valid objection which

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[16] *Fast (Pty) Ltd v Commissioner for the South African Revenue Service* (IT 14305) [2023] ZATC 13 (24 August 2023) at para 23.

complies with rule 7(2) may be considered by SARS and either allowed or disallowed on its substantive merits.

[106] There is an additional problematic consequence of the taxpayers' submissions regarding rule 7(2)(*b*)(iii) that warrants emphasis. It is this – if the taxpayers are correct that SARS may only disallow and not invalidate an objection which it considers to be non-compliant with rule 7(2)(*b*)(iii), such a decision would notionally trigger a taxpayer's right to appeal to the tax board or the tax court. The right of a taxpayer to appeal to the tax board or the tax court is however subject to a jurisdictional requirement prescribed in the statute itself.

[107] The SCA made it clear in *Van der Merwe* that the right of appeal to the tax board or tax court is a right which in terms of section 106(1) read with section 107(1)[17] of the TAA, is dependent on whether a *valid* objection was filed and decided upon by SARS in terms of section 106 of the TAA.[18] And that power to determine whether an objection is "valid" is one that is undisputably vested with SARS by section 106(1) of the TAA read with the requirements for a valid objection set out in rule 7(2).

[108] Rule 7(2) acts as a procedural filter. It is aimed at ensuring that only objections which SARS has determined to comply with the validity and specificity requirements of this rule, may proceed to a determination on their merits in terms of rule 9 and consequent thereto, the appeal process pursuant to section 107(1) of the TAA.

[109] This is also why the rules afford different remedies to taxpayers in relation to disallowance of an objection on its merits as opposed to its invalidation. If an objection is disallowed wholly or in part, the taxpayer may appeal to the tax board or tax court against the disallowance or partial disallowance of the objection. Where however the objection is invalidated by SARS in terms of rule 7(4), the rules do not contemplate such a decision being appealed to the tax court. The remedy provided in such a case is that of rule 52(2)(*b*), which permits the taxpayer to approach a tax court for an order declaring the invalidated objection, to be valid.

[110] The taxpayers' interpretation of rule 7(2)(*b*)(iii), if accepted, would conceivably result in procedural decisions by SARS on the validity of an objection as opposed to its disallowance on the substantive merits, becoming the subject of appeals to the tax board or tax court. This

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[17] Section 107(1) of the TAA: "After delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'."

[18] *Van der Merwe* at para 36.

in my view would upend and be inconsistent with the carefully delineated objection process prescribed in the statutory scheme.

[111] The third difficulty I have with the taxpayers' argument relating to rule 7(2)(*b*)(iii), is that the argument does not consider that it is *the taxpayer* who chooses its grounds of objection to an assessment. The taxpayer may elect to advance certain grounds of objection and not others, it may decide to challenge certain parts or amounts in the assessment and leave others undisputed. Such an election, however, carries consequences. The main consequence is that rule 7(2)(*b*)(iii) then obliges the taxpayer to *submit* the documents which are *required* to substantiate those grounds of objection. It is submission of such documents by the taxpayer which is obligatory, not merely specifying what the documents are.

[112] As SARS correctly submitted, under the previous rules, the taxpayer was only required to specify the documents required to substantiate its grounds of objection.[19] When it objects to an assessment, a taxpayer ties its proverbial colours to the mast of the specific grounds of objection that it elects to advance. It is hardly then open to the taxpayer to contend that it may subjectively choose what documents it considers are required to substantiate its grounds of objection and that SARS may not invalidate its objection when such documents are not submitted.

[113] Two other arguments were advanced by the taxpayers which briefly warrant consideration. The first is that SARS erroneously relied on the burden of proof in rejecting the taxpayers objections and wrongly conflated the test for validity of an objection to that which applies when determining whether an otherwise valid objection should be disallowed or not. The second argument relates to the implications of SARS invalidation of the taxpayers' objections on their rights of access to courts under section 34 of the Constitution.

The taxpayers' submissions regarding the burden of proof and access to courts

[114] The taxpayers submit that SARS's main concern was that the taxpayers had not discharged the burden of proof in terms of section 102(1)(*a*) of the TAA. It was submitted that in doing so, SARS erred and applied the incorrect test in determining whether the objections comply with rule 7(2)(*b*)(iii). The consequence of this, so the argument went, was that SARS wrongly conflated the test in determining whether an objection is valid with that to be applied in determining whether an otherwise valid objection should be disallowed or not.

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[19] Rule 7(2)(*b*)(iii) prior to its amendment read as follows: "A taxpayer who lodges an objection to an assessment must specify the grounds of the objection in detail, including the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment."

[115] The argument is unavailing. It is clear from that Second Notice of Invalid Objections that while SARS did make reference to the section 102(1)(*a*) burden of proof, this was by no means the sole and exclusive basis on which SARS concluded that the taxpayers Second Objection was invalid. The main reasons for the invalidation of the taxpayers objections, as set out in the Second Notice of Invalid Objection, related to non-compliance by the taxpayer with the document submission requirements of rule 7(2)(*b*)(iii).

[116] Two examples illustrate this. In relation to the amounts assessed by SARS as "gross income", SARS concluded that the "loan account" provided by the taxpayers was not a loan account but a one page document recording closing balances of each year.

[117] SARS on this basis concluded that the taxpayers had failed to submit documentation required to substantiate their objection that these amounts did not constitute taxable gross income. In respect of understatement of VAT output tax, the taxpayers objection was that they had already accounted for output tax on the supplies when the attorneys were notified to make payment for the services rendered. In purported support of this objection, the taxpayers submitted a debtors age analysis for 2016 to 2020 and VAT schedules for 199904 to 202202 ("the VAT payments summary"). The taxpayers stated that "..in addition, the Taxpayer agrees to grant the Commissioner access to the Healthbridge Electronic Medical Records system for 2016 to 2020".

[118] SARS concluded in its Second Notice of Invalid Objections that the VAT payments summary provided by the taxpayers, contained aggregated amounts and did not demonstrate any link or match between the amounts it reflected as being "total payable" and the output tax identified by SARS.

[119] As to the debtors age analysis provided by the taxpayers, these being many pages of print outs from the Healthbridge system, SARS concluded that this document had no evidentiary value. This was because, according to SARS, the debtors age analysis document only contained aggregated amounts and did not even have a column for output tax. SARS states that in addition, the debtors age analysis did not contain any dates on which the attorneys were notified by Dr X to make payment, as he stated in the objection. SARS concluded that both documents did not comply with rule 7(2)(*b*)(iii) and that the taxpayer had not submitted documents required to substantiate its objection. These conclusions were not meaningfully addressed or disputed by the taxpayers either in the Second Objection or in their founding papers in the present application. In relation to the Healthbridge system, it is undisputed that the taxpayers had not given SARS access to the system at the time when SARS took its decision to invalidate the Second Objection.

[120] I am not persuaded that this is a case where SARS determined the objections on the basis of an error of law and asked itself the wrong question. In my view SARS applied the correct legal test. That test was to assess the objections against the requirements for their validity set out in rule 7(2)(*b*). In any event, whether or not SARS was right or wrong in considering that the burden of proof contemplated by section 102(1) of the TAA was relevant, has nothing to do with the factual question of whether the taxpayers' objections are valid and comply with the requirements of rule 7(2)(*b*).

[121] Turning to the taxpayers argument relating to access to courts, Dr Austin argued that SARS's approach would have the effect of a taxpayer's objection only being invalidated or allowed but never be disallowed. This would result in the taxpayer becoming trapped in a never-ending cycle of having to re-submit objections which SARS would habitually treat as invalid on account of a taxpayer not submitting the documents SARS believes are required.

[122] This would result, so it was argued, in the taxpayer being stripped of the ability to access the Tax Court in breach of the taxpayers' rights under section 34 of the Constitution.[20]

[123] The argument is unpersuasive. Firstly, there is no factual basis to conclude that SARS has adopted an inviolable rule or fixed position that the taxpayers' objection will never be disallowed on its merits or that SARS will never be satisfied with any documents which may be submitted by the taxpayers to substantiate their grounds of objection. The argument is at this level speculative at best.

[124] Secondly, a decision by SARS to invalidate a taxpayers' objections in terms of rule 7(4) in no way excludes the right of access to courts. Indeed, such a decision by SARS engages the tailor-made mechanism in rule 52(2)(*b*) in terms of which the taxpayer may approach the tax court for an order declaring its objections to be valid.

[125] The right of access to courts under section 34 of the Constitution does not afford a taxpayer who has objected to an assessment, an unrestricted right of appeal to the tax court. As I have pointed out earlier, section 106(1) and section 107(1) of the TAA make it clear that the right of appeal to the tax court is dependent on SARS having decided upon a valid objection. Until such an objection by a taxpayer has been determined to be valid and either allowed or disallowed by by SARS on its merits, the jurisdictional pre-condition for access to the tax court will remain absent. This is a consequence of the statutory scheme itself. It does not amount to an unlawful restriction of the right of access to courts.

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[20] Section 34 of the Constitution: "Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

Evaluation of the validity of the taxpayers objections

[126] The relief sought by the taxpayers seeks an order declaring the Second Objection to be valid in its entirety. Ms Diamond therefore submitted that were the court to find in favour of SARS in respect of non-compliance of any one of the objections with rule 7(2)(*b*), the application would fall to be dismissed on that basis alone.

[127] The submission in principle seems correct. I nonetheless consider it in the interests of justice to address the other main objections advanced by the taxpayers, rather than dismissing the application only because one of the objections does not comply with rule 7(2)(*b*).

The objection relating to understatement of donations tax

[128] It is common cause that SARS assessed and imposed an amount of R177 704.00 as donations tax liability following the completion of Dr X's personal income tax audit. This amount comprises of capital in the amount of R59 035.00 and understatement penalties of R118 069.00.

[129] In its 22 February 2022 audit findings letter directed to Dr X following the completion of his personal income tax audit, SARS noted that Dr X's bank statements revealed that Dr X had transferred to his son an amount of R955 868.00 on 7 November 2016 and an amount of R1 000 000.00 on 18 January 2017. SARS concluded that these amounts were donations in respect of which donations tax had to be levied in terms of section 64 read with section 66(2)(*a*) and section 64(1)(*a*)(i) of the TAA. In the First Objection, the taxpayers disputed the imposition of donations tax on the amounts paid by Dr X to his son. According to SARS, their objection was that "…these amounts paid by the taxpayer relate to living expenses, study fees etc."

[130] In response to this objection and in its First Notice of Invalid Objections, SARS stated that "…the Taxpayer has not provided any evidence to substantiate this ground of objection." SARS therefore concluded that this ground of objection was invalid as the taxpayer had not complied with rule 7(2)(*b*)(iii) because he had not provided documents to substantiate this ground of objection. In the Second Objection, the taxpayers persisted with an objection to the levying of donations tax. The Second Objection stated at paragraph 26 that "…these amounts paid by the taxpayer relate entirely to the maintenance of his son in the form of living and study expenses. The taxpayer's son was a full time…..student in…….at …….University in…… from 2011 to 2016 during which period he had no independent source of income."

[131] The taxpayer on this basis contended these amounts would be exempt under section 56(2)(*c*) of the Income Tax Act 58 of 1962 ("ITA"), as they were amounts representing bona fide contributions made by the taxpayer towards the maintenance of his son.[21]

[132] In response and in the Second Notice of Invalid Objections, SARS stated "…you have not provided any proof that Dr X's son was a full-time student in…Accordingly your objection is invalid in terms of rule 7(2)(*b*)(iii) as you have failed to provide the documents required to substantiate this objection."

[133] Dr X would have been aware, from as early March 2022 when SARS completed his personal income tax audit and assessment, that SARS considered the amount of R1 955 868.00 transferred to his son, to be subject to donations tax. There can be no basis to suggest that the taxpayer would thus not have been aware that he was required to submit documentary evidence substantiating an objection that the amounts paid to his son, did not attract donations tax. The taxpayer's failure to submit in either the First Objection or the Second Objection, at the very least, documentation relating to the amount of the University study fees and proof of his son's registration at that University, is unexplained. It has not even been addressed in the founding affidavit in the present application.

[134] In respect of the Second Objection, the lack of specificity and absence of supporting documentation relating to what was alleged to be bona fide maintenance payments to the taxpayers son, is perplexing. It would be reasonable to expect that in the taxpayer's proverbial second bite at the cherry in the Second Objection, he would provide more detail and substantiate by way of documentary evidence, the objection that these amounts were paid by him in respect of his son's living and study expenses. No proof of the taxpayer's son's University registration was however provided by the taxpayer. No tuition fee statement in relation to study expenses was provided. It is important to note that in the Second Objection, express reliance is placed on section 56(2)(*c*) of the ITA. This provision would require the taxpayer, not SARS, to establish that these amounts paid by the taxpayer were bona fide contributions towards the maintenance of his son and consequently did not attract donations tax.

[135] There is no dispute that Dr X did not submit any documents to substantiate the Second Objection insofar as it relates to the donations tax levied by SARS. The objection in this regard does not comply with the requirements of rule 7(2)(*b*)(iii).

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[21] Section 58(2)(*c*) of the ITA: "Donations tax shall not be payable in respect of—…so much of any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable."

[136] I interpose at this juncture to deal with a submission advanced by the taxpayers that it was incumbent upon SARS to have requested outstanding documentation in terms of rule 8, instead of invalidating the objections.

[137] The submission is without merit. It is difficult to appreciate how SARS could be expected to request documentation which it had not sight of and whose nature, contents and existence would lie peculiarly within the knowledge of the taxpayer. Furthermore, it was the duty of the taxpayers to have provided relevant information during the audit itself, not months after its completion at which stage the assessments had already been raised by SARS.

Objections relating to SARS treatment of deposits from unknown sources

[138] As set out earlier, the income tax audit findings letter issued to Dr X by SARS on 7 February 2022 recorded that there were significant amounts paid to Dr X from unknown sources during the audit period 2016 to 2019. According to SARS, these deposits were all from sources other than those reflected in the taxpayer's returns and they were consequently treated as undeclared gross income. The taxpayers objected to these findings in their First Objection. In response thereto, SARS found that there were numerous instances where taxpayer's ground of objections to the income tax assessment, was lacking in detail. This included lack of detail and absence of supporting documentation regarding services rendered by the taxpayer, debt recovery from attorneys and absence of invoices issued to attorneys for medico-legal services rendered by the taxpayer.

[139] In relation to the deposits from unknown sources, SARS stated the following in its First Notice of Invalid Objections:

> "You are not explaining what the other deposits in the taxpayers bank statements relate to. You are not indicating which deposits in the taxpayer's bank statements form part of the "many deposits" and which amounts do not form part of the "many deposits"
>
> You have not specified the grounds of objection in respect of the deposits that do not form part of the "many deposits". Accordingly, your objection is invalid as it does not comply with the requirements of rule 7(2)(a)."

[140] These findings by SARS ought to have alerted the taxpayer to the need for detail, specifics and supporting documentation in any future objection to the assessments raised by SARS. SARS had also specifically raised the problem of lack of detail and supporting documentation by the taxpayers in their explanations for large deposits in their bank accounts of some R36 million. SARS considered these amounts to be paid from unknown sources and the amounts had furthermore not been declared in the taxpayers returns. The assessments raised by SARS were in respect of the total amount of the individual unexplained deposits from unknown sources for the audit period 2016 to 2019.

[141] In order to comply with the requirements of rule 7(2)(*b*), the taxpayers were required to deal in detail in their objection with each and every one of the unexplained deposits and accruals into their bank accounts for each year of the audit period. It does not suffice for the taxpayers to adopt a globular approach to the disputed assessment and object solely on a broad principle as they seek to do. As the court explained in *CSARS v M*:

> "The point is simply that *the taxpayer is required to address every single receipt and accrual, as detailed in the finalisation of audit letter*. The question is whether that was indeed done by the taxpayer. It is so that, in terms of rule 7 of the Rules of the Tax Court, a taxpayer, in his objection must specify in detail 'the specific amount of the disputed assessment objected to.
>
> In sum, the taxpayer, instead of dealing with each assessed amount, contends that the Tax Court only had to consider the 'principle' whether payments from FX Africa and other parties constitute repayment of loans. It is submitted by SARS that this approach is incorrect as the taxpayer is required to prove in respect of each amount assessed by SARS that such amount should not form part of his gross income. I find myself in agreement with this contention. *The point is simply that this matter cannot and should not be decided on the basis of a broad principle instead of considering the specific amounts that were taxed by SARS*.
>
> There should be evidence of exactly what amounts constitute these repayments of loans. In the absence of such, the reasonable inference to be drawn is that such sums should be treated and regarded as income in the hands of the taxpayer."[22]

(Emphasis added)

[142] The taxpayers state in the Second Objection that they dispute that the amounts received from the unknown sources and Dr X Inc were gross income. The objection states that these amounts were collections of unpaid contingency fees due to the taxpayer which were received in the taxpayer's bank account in the 2016/04 to 2020/04 tax periods. The objection states that "…these amounts, therefore did not constitute income of Dr X Inc, as they were previously declared." The high-water mark of the taxpayer's objection is a generalised statement that "…the taxpayer did not receive any remuneration from Dr X Inc. Rather the taxpayer made the payments that it had in settlement of the unpaid dividend amounts it owed the taxpayer and on the loan account."

[143] In its answering affidavit, SARS pleaded that the Second Objection did not identify or refer to a single amount related to a receipt or accrual as detailed in the finalisation of audit letter issued by SARS. The failure to refer to any amounts identified in the finalisation of audit letter was notwithstanding the taxpayers submitting some 837 pages of documents together

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[22] *CSARS v M* at paras 30 & 46.

with their objection. The taxpayers were challenged by SARS to prove otherwise. This assertion by SARS was hardly answered by the taxpayers in reply, save for a bald denial.

[144] In relation specifically to the ground of objection that the amounts reflected as deposits in the taxpayer's bank account were "previously declared" to SARS, the Second Notice of Invalid Objections stated that the taxpayer had failed to provide any evidence to prove this. This finding was not addressed let alone disputed by the taxpayers in their founding affidavit, in which they seek to have their objection declared valid in its entirety.

[145] It has furthermore not been disputed by the taxpayers that they did not submit any evidence or explanations to corroborate why the allegations in their Second Objection did not correlate with documents such as income tax returns, VAT returns and financial statements, which had previously been submitted to SARS.

[146] Rule 7(2)(*b*) required the taxpayer's objection to address each and every deposit in his bank account from unknown sources during the audit period, as detailed in the February 2022 finalisation of audit letter. There is no factual basis establishing that the taxpayer has done so regarding the assessment raised by SARS for personal income tax during the audit period 2016 to 2019. I am unable to conclude that the taxpayer's objection in this regard meets the validity requirements of rule 7(2)(*b*).

Objection relating to understatement of VAT output tax

[147] SARS has raised an assessment of R9 789 343.00 in respect of VAT due by the taxpayer inclusive of understatement penalties. The VAT assessment letter issued to the taxpayers states the understatement of output tax liability related to the 2016/04 to 2020/04 VAT periods. The taxpayer's ground of objection to the VAT assessment is in essence that the deposits received in the taxpayer's bank account in these VAT periods related to outstanding fees due to the taxpayer being settled and that output tax had already been paid on these amounts when the taxpayer "notified the attorneys of their payment obligation".

[148] The taxpayers accordingly argue in their Second Objection that the subsequent collection of the amounts did not trigger any VAT obligation. The documentation submitted by the taxpayers purporting to substantiate their objection to the VAT assessment raised by SARS were the VAT payments summary and debtors age analysis documents I have referred to earlier.

[149] The taxpayers have in my view failed to deal with the criticisms of SARS in relation to these documents as set out in SARS's Second Notice of Invalid Objections. These criticisms were that the documents provided by the taxpayers only contained aggregated amounts, did not demonstrate any link between the amounts reflected therein as being "total payable" and

the output tax identified by SARS and furthermore did not contain any dates on which the attorneys were allegedly notified by Dr X to make payment, as stated in the Second Objection. SARS concluded that the taxpayer had not supplied any documentary evidence that the output tax that formed the subject of the revised VAT assessment, was declared by the taxpayers in prior periods or in which such prior period the output tax was declared and paid.

[150] It is a notable feature of the taxpayers Second Objection that there is no detail of the specific amounts of the VAT assessment which are objected to and the grounds and supporting documentation required to support such an objection. There is no dispute either in the Second Objection or in the founding affidavit that the taxpayer did not provide SARS with any source documents relating to its VAT objection such as invoices to attorneys which had been subject to output tax.

[151] I am unable to conclude that the taxpayers' objection relating to the VAT assessment raised by SARS, meets the requirements of rule 7(2)(*b*)(i) or rule 7(2)(*b*)(iii).

The objection relating to access to the Healthbridge system

[152] The taxpayers submit that whether SARS accessed the Healthbridge system after it was tendered by the taxpayers, is not relevant in deciding the validity of their objections. Of course it is relevant.

[153] It is not disputed that the taxpayers used the Healthbridge system to document all patients, services provided to patients and to keep track of and update debtors. It is not disputed that the taxpayers' bank statement entries were captured on the Healthbridge system and that the monthly debtors reports provided to the company's accountants, SDK, were only PDF summaries which had been "extracted" from the Healthbridge system.

[154] It is not in dispute that the Healthbridge system was not integrated with the Xero accounting software package used by SDK, that SDK had no access to the Healthbridge system itself and that SDK was only supplied by the taxpayers with the last bank statement for each year in order to perform a basic bank reconciliation. It is not in dispute that the company's financial statements were not subject to external audit by an independent firm of auditors. Nor is it disputed that SDK in its compilation report on the financial statements, made it clear that it was not in a position to verify the accuracy or completeness of the information provided to it by the taxpayers to compile the financial statements.

[155] In these circumstances, I am of the view that it was entirely rational for SARS to conclude that it was unable to rely on the veracity of the company's financial statements or the Xero accounting records provided by SDK. I agree with the contention by SARS that access to the accounting records on the Healthbridge system was integral to the performance

of the audit process and required for the purposes of substantiating the taxpayers' grounds of objection in the Second Objection.

[156] I reject as without merit the contention by the taxpayers that SARS would not require access to the Healthbridge system in order to determine whether the Second Objection by the taxpayers was valid and compliant with rule 7(2)(*b*).

[157] A contention was advanced in the taxpayers founding affidavit that the Second Notice of Invalid Objections was issued prematurely and notwithstanding the taxpayers "continued offers of access" to the Healthbridge system. The taxpayers did not persist with this contention in their written or oral argument, in my view, wisely. The contention is untenable.

[158] I have previously set out in some detail the factual chronology relating to the interactions between the parties regarding access to the Healthbridge system. That chronology records the repeated letters, emails, telephone calls, requests, reminders, pleas and entreaties by SARS to secure co-operation from the taxpayers and access to the Healthbridge system from as early as July 2021. It was only on 19 September 2023, some two years later, that the taxpayer finally agreed to allow the SARS EFS team physical access to the Healthbridge system at the taxpayer's offices. And even, no access to the system was obtained by SARS as the taxpayer refused to co-operate, seeing fit to merely point out a computer which he stated contained the Healthbridge system.

Conclusion

[159] For these reasons, I am of the view that the main objections by the taxpayers in their Second Objection to the income tax, donations tax and VAT assessments raised by SARS, do not comply with the validity requirements of rule 7(2)(*b*).

[160] The taxpayers were under a duty to co-operate with and not to obstruct SARS during the performance of the audit process. Their conduct as set out above does not demonstrate such co-operation.

[161] The approach of the taxpayers in the Second Objection, was also in large measure the same as that in their First Objection, which SARS had previously invalidated with detailed reasons. It cannot be said to have been reasonable of the taxpayers to have persisted with not submitting documents required to substantiate their Second Objection, in the light of the detailed reasons set out by SARS in its First Notice of Invalid Objections and in its finalization of audit letters. Instead, the taxpayers now seek court's imprimatur of their Second Objection as a whole, without addressing in detail the precise reasons why SARS erred in raising the specific amounts comprising the assessments in the first place, when such detail is the very requirement of rule 7(2)(*b*).

[162] The application fails on each of the grounds on which it has been advanced.

Order

[163] I make the following order:

1. The application in terms of rule 52(2)(*b*) is dismissed.

2. The applicants' are to pay the respondent's costs including the costs of two counsel where so employed.

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S G Magardie

Acting Judge of the High Court

Date of hearing: 20 May 2024

Date of judgment: 2 December 2024

Revised: 2 December 2024