REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Case No.: **IT 46233**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.

14 October 2025 _____

DATE SIGNATURE

In the matter between:

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

and

TAXPAYER TAT **RESPONDENT**

and

TAXPAYER TAT **APPLICANT**

and

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

IN RE:

TAXPAYER TAT **APPELLANT**

and

THE COMMISSIONER FOR THE **RESPONDENT**

SOUTH AFRICAN REVENUE SERVICE

J U D G M E N T

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 14 October 2025

MALI J

Introduction

[1] This judgment concerns two interlocutory applications in the context of a pending appeal designated as a test case in terms of section 106(6)(*a*) of the Tax Administration Act.[1] The two applications are: (i) an application by the taxpayer, the appellant in the main appeal. The application is in terms of rule 30 of the Uniform Rules of Court, seeking to set aside the Respondent's step in the amendment process as irregular; and (ii) an application by the Respondent (SARS) in the main appeal seeking leave to amend its rule 31 statement in accordance with rule 35(2) of the Tax Court Rules.

[2] The appellant is a registered taxpayer and employer engaged in the manufacturing, distribution, and re-treading of rubber tyres. During the tax periods in dispute, it ran a skills development initiative in partnership with a training institution, which formed the basis of its Employment Tax Incentive[2] (ETI) claims.

---

1 28 of 2011 ("TAA").
2 Act 26 of 2013.

[3] With the appellant's consent, this appeal was designated a test case involving similar factual and legal issues arising in disputes between SARS and 408 other taxpayers.

[4] The questions of law raised in the appeal relate primarily to the interpretation and application of sections 1(1) and 6 of the ETI Act.

[5] The appeal was set down for hearing on 14 April 2025. The present judgment deals only with the preliminary applications, not the merits of the ETI claim.

Background

[6] The appellant entered an agreement styled "Limited Duration Contracts of Employment" with various employees for a period of 12 months. The terms of the agreements pertained the employees' specified work to be undertaken; and that the employees would be able to study and obtain certification and work experience during the contract period. One of the terms of the agreement was that eh employee must attend classes and complete assignments, write examinations for the course and proved services to gain work experience and skills.

[7] Tuition and training services were provided by College (Pty) Ltd under a separate tuition agreement, while the appellant directed the employees to also perform services for a third-party client, called iPeople. The services included market and survey related activities.

[8] The remuneration due to the employees under their contracts was paid directly to College to offset the employees' tuition obligations. According to the appellant the agreement satisfied its remuneration obligations under the employment contract, thus qualifying the appellant to claim ETI credits for tax deduction purposes.

[9] SARS disallowed the ETI claims on the basis that the individuals did not "work" for the appellant and not remunerated by the appellant as required by the ETI Act. In its original rule 31 statement, SARS submitted that the appellant failed to discharge the onus of proving that the individuals in question were "qualifying employees" as defined in the ETI Act.

[10] On 3 February 2025, SARS served the appellant with a notice of intention to amend its rule 31 statement, affording the appellant 10 days to object or consent. On 28 February 2025, having received no consent from the appellant, SARS filed a formal application to amend under rule 35(2), accompanied by a revised notice of amendment and a shorter period of 5 days for objection. The appellant did not immediately object but wrote to SARS on 4 March 2025 alleging that the shorter period constituted an irregular step. SARS responded on 6 March 2025 by voluntarily extending the period by another 5 days. The appellant filed its objection 15 days after the revised notice.

[11] SARS's application to amend rule 31 statement raises additional legal arguments and statutory provisions, including invoking the definition of "work" under the Occupational Health and Safety Act,[3] due to the absence of such a definition in the ETI and Labour Relations Acts.

[12] Despite SARS having indulged the appellant, the appellant then launched an application in terms of rule 30(2)(*b*) of the Uniform Rules, read with rule 42 of the Tax Court Rules, seeking to set aside the Respondent's amendment step as irregular on the basis that SARS failed to comply with rule 35(2) and rule 52(7) of the Tax Court Rules.

The Rule 30 Application

[13] Rule 30(2)(*b*) of the Uniform Rules permits a party to apply to court to set aside an irregular or improper step, provided it takes no further step and files the application timeously.

[14] The appellant's primary complaint is that SARS afforded it only 5 days (instead of 10) to respond to the second notice of amendment and did not seek an order to shorten the period, as allegedly required under rule 52(1) of the Tax Court Rules.

[15] SARS argued in response that: (i) the 10-day period under rule 35(2) had already run from the initial notice of 3 February 2025; (ii) the second notice was not a fresh invocation of rule 35(2), but a continuation of the same amendment process with clarificatory changes.

[16] Furthermore, SARS voluntarily extended the period upon receiving the appellant's complaint. The appellant objected outside the 10-day period. SARS made an application in terms of rule 35 and, upon refusal of consent, applied under rule 52(7) for an order to amend, as required.

Interpretation of the Rules

[17] Rule 35(2) permits a party to apply to amend its rule 31 statement if consent is not forthcoming. Thereafter, rule 52(7) enables the court to consider such an application and make an appropriate order. The appellant misconstrues rule 52(1), by stating that SARS must apply for leave to shorten any period not agreed upon. Rule 52(1) applies where a party fails to obtain an extension and seeks condonation, not where a party offers a shorter period in the context of amendment pleadings and voluntarily extends the period after objection.

[18] The correct subrule governing the amendment process is rule 52(7), which SARS followed. There was no need for an application under rule 52(1), as there was no extension required, warranting condonation.

---

3 85 of 1993 ("OHSA").

[19] The appellant's construction of the rules is unduly formalistic. There is no requirement in rule 35 or rule 52 that a party must re-issue a full 10-day period upon updating or correcting its amendment notice, especially where the process is ongoing and no prejudice results.

[20] Moreover, the appellant acted upon the shorter period (by objecting and engaging), accepted an indulgence of a further 5 days, and filed an objection outside the total 10-day period. This undermines the contention that any step by SARS was irregular or prejudicial.

No Prejudice Shown

[21] The appellant contends that the shortened period caused prejudice because the appeal could not be ripe for hearing by 14 April 2025. This argument is unpersuasive. First, the appellant failed to act within the initial 10 days. Second, when afforded an additional 5 days by SARS (without legal obligation), the appellant failed to utilise that time efficiently. Third, the appellant thereafter extended its own time by another 5 days. Any resulting delay or inconvenience was self-inflicted. The Court is satisfied that no procedural unfairness or prejudice arose from SARS's conduct.

[22] In conclusion it is found that SARS did not take an irregular step; it complied with rule 35 and correctly proceeded under rule 52(7). There is no procedural unfairness, or prejudice occurred to the appellant. In the result the appellant's rule 30 application is without merit and must not succeed.

The Amendment application

[23] The proposed amendment seeks to emphasise that the individuals did not "work" for the appellant, as contemplated in the applicable statutes, thus SARS's argument is that the term "work" must be interpreted by reference to legislation not previously relied upon in the grounds of assessment. SARS further introduces a legal contention that payment of tuition to College does not amount to "remuneration" under the ETI Act.

[24] SARS asserts that the amendment introduces only further points of law and will not result in any new factual disputes. It further contends that rule 31(3) of the Tax Court Rules permits the amendment and that it does not amount to a novation of its case.

[25] The appellant opposes the amendment, asserting that it introduces a new case not previously pleaded in the assessment or the original rule 31 statement. The appellant further argues that the introduction of new statutory provisions and legal grounds without notice to the other 408 appellants (whose matters have been stayed pending the outcome of this "test case") prejudices those taxpayers and undermines the fairness of proceedings.

Issues for Determination

[26] The core issues are:

(i) whether the proposed amendment amounts to a new case.

(ii) whether the amendment is permissible under rule 31(3)

(iii) whether the granting of the amendment would prejudice the appellant and/or the other 408 taxpayers who elected not to participate based on the pleadings as they stood and finally whether it is appropriate for the Court to allow the amendment in light of the designation of this matter as a "test case".

Applicable Legal Principles

[27] Rule 31 of the dispute resolution rules promulgated under section 103 of the TAA ("the rule 31 statement") deals with the filing of statement of grounds of assessment and opposing appeal. The taxpayer files a statement of grounds of appeal in terms of rule 32 ("the rule 32 statement"); and SARS may file a statement of reply in terms of rule 33. Rule 34 provides that the issues in an appeal to the Tax Court are those contained in the rule 31, rule 32 and rule 33 statements. Rule 31(3) limits what SARS may include in a rule 31 statement. It provides:

> "SARS may include in the statement a new ground of assessment or basis for the partial allowance or disallowance of the objection unless it constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment".

[28] The exercise involves identifying the factual and legal basis of the disputed (i.e. actual) assessment and asking whether the proposed amendment departs materially from those bases. Rule 31(3) permits the amendment of the rule 31 statement, provided the amendment does not amount to a wholesale substitution of the factual or legal basis of the assessment.

[29] In *Fisher v Ramahlele*,[4] the SCA confirmed that the exercise of the court's discretion to grant an amendment involves balancing the need to do justice between the parties, prevent surprise, and avoid unnecessary delays.

[30] While SARS attempts to characterise the amendment as merely raising additional legal points, in substance, it introduces a materially new dimension to the case: it seeks to recast the meaning of "work" by importing statutory definitions not previously relied upon and challenges the nature of the employment relationship by reference to new legal criteria.

---

4 2014 (4) SA 614 (SCA).

[31] The appellant's contention that this is a novation is not without merit. SARS is not simply elaborating on existing arguments; SARS is shifting the interpretive framework of key statutory terms which go to the heart of whether the ETI claims were validly made. Such amendments should have been included in the assessment or at least in the initial rule 31 statement.

[32] Importantly, the present appeal is a "test case," designated under section 106(6) of the Tax Administration Act and rule 12 of the Tax Court Rules. The other 408 taxpayers agreed to be bound by the outcome based on the originally pleaded case. They have not been given notice of the new issues and statutory provisions raised in this amendment.

[33] It would be fundamentally unfair; not in the interest of administration of justice and potentially unconstitutional to bind those taxpayers to an outcome based on grounds they were not afforded an opportunity to address. SARS cannot circumvent this by arguing that the appellant has assumed responsibility for those taxpayers. Consent was given based on a known case, not one materially changed at a later stage. Furthermore, if SARS is now of the view that different or additional grounds should be advanced, it retains the option to issue revised assessments.

Conclusion

[34] The amendment sought by SARS, though framed as a refinement of its legal case, in effect introduces a materially new case, with reliance on new statutory provisions, a different interpretive approach to "work" and "remuneration", and a shift in the factual matrix relevant to the ETI claims. This is exactly the mischief sought to be prohibited in rule 31(3).

[35] Furthermore, granting the amendment in the current context without notice to the other affected taxpayers and without reopening their right to participate—would amount to an unfair process and would offend the principles of administration of justice.

Costs

[36] The hearing of the tax appeal was set down in August 2024 for a period of eight days being 14 – 25 April 2025. The appellant submitted that it warned SARS that the interlocutory applications would not be ripe for hearing due to the late stage at which the interlocutory applications were launched. SARS insisted on setting down the main appeal together with interlocutory applications.

[37] SARS's argument was that the Court should hear the interlocutory applications and grant orders instantly and proceed to the main appeal. The Court fully agrees with the appellant, SARS displayed its unreadiness even in the manner the applications and their annexures were filed on caselines. SARS did not exercise any care in filing and or uploading

all the interlocutory applications. As a *dominis litis* in the amendment application SARS also took it upon itself to upload the rule 30(*b*) documents. The filing was all over the place, difficult to follow for the preparation for the hearing. Despite the Court standing down the proceeding to allow SARS opportunity to address the misfiling problems, SARS failed to rise to the occasion. A lot of time was lost due to SARS's tardiness. In showing displeasure in the conduct of SARS which led to the postponement of the main appeal, SARS must bear costs for postponement and the dismissal of the application for amendment.

Order

1. The application in terms of rule 30 of the Uniform Rules of the High Court ("the rule 30 application") is dismissed.

2. The appellant is ordered to pay the costs occasioned by the employment of three counsel.

3. The application for leave to amend is dismissed.

4. The Respondent is ordered to pay the costs of three counsel on scale C, B and A respectively, inclusive of the costs occasioned by the postponement on the 14th of April 2025, which costs were reserved.

NP MALI
JUDGE OF THE HIGH COURT