REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Case No.: **IT 25180**

(1) REPORTABLE: YES / NO

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

(3) REVISED.

9 December 2025
DATE

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SIGNATURE

In the matter between:

TAXPAYER EV **APPLICANT/APPELLANT**

and

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

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 09 December 2025.

MAKAMU, J

Introduction

[1] The parties shall be addressed as applicant and respondent as part A is an application and Part B is an appeal, so for ease of reference.

PART A.

[2] This is an application by Taxpayer EV (Pty) Ltd ("Taxpayer EV") for condonation for the late filing of its notice to call an expert witness and the corresponding expert summary, in terms of rule 37 of the Rules for the Conduct of Proceedings in the Tax Court ("the Rules").

[3] The application is opposed by the Commissioner for the South African Revenue Service ("SARS"). The respondent also raises a substantive challenge to the admissibility of the proffered expert evidence.

Background

[4] The main tax appeal concerns the year in which a significant debt reduction, arising from a settlement agreement with Standard Bank Plc, should be recognised for the purposes of section 19 of the Income Tax Act.[1]

Procedural History

[5] The appeal was previously postponed, partly to allow Taxpayer EV an opportunity to procure and file expert evidence properly.

[6] Taxpayer EV instructed its accounting expert, Ms Kabelo, in March 2022. She produced an expert report on 8 June 2022 ("the KB Report").

[7] Despite having this report, Taxpayer EV did not file a rule 37 notice or summary at that time, citing "constrained legal budget."

[8] On 22 September 2025, SARS timeously filed its notice to call an expert witness, Mr OM.

[9] On 23 September 2025, Taxpayer EV filed its notice to call Ms Kabelo as an expert witness. SARS filed its expert summary on 7 October 2025. Taxpayer EV filed the KB Report as its expert summary on 8 October 2025.

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[1] 58 of 1962.

[10] SARS contends that Taxpayer EV's filings were out of time. The rules require an expert notice to be filed not less than 30 court days before the hearing (rule 37(*a*)) and an expert summary not less than 20 court days before the hearing (rule 37(*b*)). SARS calculates the deadlines as 22 September and 7 October 2025, respectively. Taxpayer EV filed on 23 September and 8 October, thus filing one day late in each instance.

[11] After an exchange of correspondence in which SARS insisted that condonation was required and Taxpayer EV denied it, Taxpayer EV brought this application.

The legal principles

[12] The grant of condonation is not a mere formality.[2] An applicant must show good cause, which requires:

a. A full, reasonable, and acceptable explanation for the delay.

b. That the application is made bona fide; and

c. That the applicant has a prima facie case or a reasonable prospect of success on the merits.

[13] The explanation must cover the entire period of the delay. The Court has discretion, which must be exercised judicially, considering the interests of justice, including potential prejudice to both parties and the need for the expeditious resolution of litigation.

Evaluation: Explanation for the delay

[14] Taxpayer EV's explanation for the initial, lengthy delay from June 2022 to September 2025 is a constrained legal budget. This explanation is perfunctory and unsatisfactory. A report was commissioned and paid for. Filing a rule 37 notice, which merely signals an intention to call a witness, involves minimal cost. The decision not to file for over three (3) years suggests a tactical choice to withhold evidence rather than an inability to comply with the rules due to financial constraints.

[15] The explanation for the specific one-day lateness of the filings in September and October 2025 is an alleged miscalculation of the peremptory time periods in the rules. Taxpayer EV contends it believed the deadlines were 23 September and 8 October.

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2 *Uitenhage Transitional Local Council v. South African Revenue Service* 2004 (1) SA 292 (SCA).

[16] SARS's calculation, based on the principle of ex die (excluding the first day and including the last), is the correct application of the rules. However, even on Taxpayer EV's own, less stringent calculation, it filed the expert summary on the very last possible day, demonstrating a lack of diligence.

[17] Crucially, the most compelling inference from the chronology is that Taxpayer EV only sprang into action after receiving SARS's expert notice on 22 September. It then waited to see SARS's expert summary on 7 October before filing its unchanged 2022 report on 8 October. This conduct indicates that Taxpayer EV's litigation strategy was reactive rather than proactive, and its delay was tactical. A party cannot justify a delay by stating it was waiting to see the other party's hand.

[18] The subsequent correspondence, where Taxpayer EV initially and vehemently denied any lateness, only to bring this application later, further detracts from the candour required in a condonation application.

[19] Consequently, Taxpayer EV has failed to provide a complete, reasonable, and acceptable explanation for the delay, particularly for the prolonged period from 2022 to 2025.

Bona Fides

[20] The lack of transparency regarding the tactical nature of the delay and the initial denial of any non-compliance negatively impacts the Court's assessment of Taxpayer EV's bona fides in this application.

Prospects of success/Value of the evidence

[21] This is the most significant factor in this application. The Court must assess whether the evidence Taxpayer EV seeks to introduce has sufficient value to justify condoning the delay.

[22] An expert's function is to assist the Court on specialised matters of science, art, or trade that fall outside the ordinary knowledge and experience of the judicial officer. An expert cannot usurp the function of the Court by providing opinions on the interpretation of contracts or the application of the law.[3]

[23] A glance of the KB Report reveals that its core function is precisely to interpret the Settlement Agreement between Taxpayer EV and Standard Bank. This is evident from its own

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3 *Road Accident Fund v Kerridge* 2019 (2) SA 233 (SCA) para 50B.

terms, for instance, paragraph 2.1, which states that it is based on the expert's interpretation of the Settlement Agreement.

[24] The central issue in the main appeal is a legal one: when was the debt reduced for section 19 of the Income Tax Act? This requires an interpretation of the Settlement Agreement, informed by established legal principles. Ms Kabelo, a chartered accountant, is not qualified to provide a legal opinion on this matter. Her report ventures into the Court's domain.

[25] To the extent the report opines on accounting standards (IFRS), that opinion is fundamentally predicated on her legal interpretation of the agreement. If the Court, applying the law, arrives at a different interpretation of the contract, the accounting opinion is rendered irrelevant.

[26] Therefore, the KB Report is, in large part, inadmissible. It does not provide the Court with independent, specialised accounting evidence that would assist it; instead, it offers a layperson's legal interpretation disguised as an expert accounting opinion. Allowing this evidence would not help the Court and would be prejudicial to the proper conduct of the proceedings.

[27] As the proffered evidence is of little to no probative value and is inadmissible mainly, Taxpayer EV has failed to demonstrate that it has a reasonable prospect of success on the merits by virtue of this evidence.

Prejudice

[28] SARS has been prejudiced by the history of delay in this matter, including a previous postponement. While the specific prejudice from this one-day filing might be minor, the cumulative prejudice from Taxpayer EV's reactive and tactical litigation conduct is not. Granting condonation for the filing of evidence of such dubious value would only serve to unnecessarily prolong the proceedings.

Conclusion

[29] Taxpayer EV has failed to meet the requirements for condonation. The explanation for the delay is unsatisfactory, the lack of candour impacts its bona fides, and most decisively, the evidence it seeks to introduce is largely inadmissible and of no material assistance to the Court.

[30] In the interests of the expeditious and proper administration of justice, the application for condonation must be refused.

Order

[31] In the result, the following order is made:

1. The application for condonation for the late filing of the Applicant's Rule 37(*a*) Notice and Rule 37(*b*) Expert Summary is dismissed.

2. The issue of costs shall be dealt with at the end of the main judgment

PART B

[32] This is an appeal by Taxpayer EV (Pty) Ltd ("Taxpayer EV") against an additional assessment raised by the Commissioner for the South African Revenue Service ("SARS") for the 2014 year of assessment. The assessment included a deemed recoupment of R72,562,523.00 in Taxpayer EV's taxable income, arising from the application of section 19 of the Income Tax Act to a reduction of a debt owed by Taxpayer EV to Standard Bank Plc.

[33] The appeal initially encompassed two grounds. The first, which is the sole remaining issue, concerns the timing of the debt reduction – specifically, whether it occurred in 2014 or 2015. The second ground, which alleged that the settlement constituted a donation, was abandoned by Taxpayer EV in September 2024.

[34] The Court has had the benefit of comprehensive written Heads of Argument from both parties, as well as a review of the relevant pleadings, the oral submissions, the rule 31 and rule 32 statements, and key documentary evidence, including the Settlement Agreement and Taxpayer EV's annual financial statements.

The issues for determination

[35] The crisp legal issue before this Court is whether the reduction of Taxpayer EV's debt to Standard Bank Plc, for the purposes of section 19 of the Act, occurred during Taxpayer EV's 2014 year of assessment (which ended on 28 February 2014) or its 2015 year of assessment (which ended on 28 February 2015).

[36] The following facts are common cause or not seriously in dispute:

(1) On 23 May 2008, Standard Bank and Taxpayer EV entered into a Convertible Loan Agreement for a facility ultimately totalling R120 million.

(2) Taxpayer EV defaulted on interest payments, leading Standard Bank to issue a Breach Notice on 18 March 2013 and an Acceleration Notice on 8 May 2013, declaring the full debt of approximately R125 million immediately due and payable.

(3) On 3 July 2013, the parties concluded a Settlement Agreement. In terms of this agreement, Taxpayer EV's total indebtedness was compromised to a settlement amount of R11.3 million, payable in instalments.

(4) Taxpayer EV paid the final instalment of R3 million to Standard Bank on 16 February 2015.

(5) Clause 3.2 of the Settlement Agreement stipulated that upon receipt of the full R11.3 million, Taxpayer EV's indebtedness would be "automatically cancelled, waived, abandoned, terminated and/or extinguished in all respects."

(6) Clause 6 of the Settlement Agreement, headed "RESERVATION OF RIGHTS", stated: "Until the fulfilment of Taxpayer EV Energy's obligations as set out in clauses 3.1 and 3.4 above, the Bank's rights in respect of the Funding Agreements and/or the Notices shall remain in full force and effect."

(7) Taxpayer EV, in its audited annual financial statements for the 2014 year of assessment, reflected a "Gain on debt reduction" of R114,096,670.00. The R120 million Standard Bank loan was written off the balance sheet, and the remaining obligation under the Settlement Agreement (R3.9 million) was reflected as a current liability.

[37] Mr Nosipho, the then Chairman of Taxpayer EV's board, testified under oath that the 2014 financial statements were accurate, and that SARS would rely on them. He conceded that the debt reduction was factually claimed and benefited from in the 2014 financial year, transforming Taxpayer EV's balance sheet from insolvent to solvent.

Submissions and argument

[38] Taxpayer EV argues that the debt was only "reduced" for the purposes of section 19 on 16 February 2015, the date it made the final payment, and thus "fulfilled its obligations" under clause 3.1 of the Settlement Agreement. It contends that until that date, by virtue of clause 6, Standard Bank's original rights remained in full force and effect. Taxpayer EV submits that the Court must interpret the Settlement Agreement in isolation, governed by English law principles of

contractual interpretation, and exclude extrinsic evidence, such as its own financial statements and Mr Nosipho's testimony, under the Parol evidence rule.

[39] SARS submitted that the debt was reduced on 3 July 2013, the date the Settlement Agreement was concluded, as the liability was immediately reduced from R120 million to R11.3 million. SARS argues that clause 6 was a contractual mechanism to secure payment of the new, reduced debt, not a provision that suspended the reduction itself. SARS relies heavily on Taxpayer EV's conduct, particularly its audited financial statements and the sworn testimony of Mr Nosipho, as objective and compelling evidence of when the reduction was, in fact, recognised and benefited from. SARS argues that Taxpayer EV cannot approbate and reprobate by representing one set of facts to its auditors, directors, and SARS, and then advancing a contrary legal argument.

Evaluation

[40] The onus rests on Taxpayer EV, as the taxpayer, to show that the assessment is incorrect (section 102 of the Tax Administration Act 28 of 2011). This onus must be discharged on a balance of probabilities.

The interpretation of the settlement agreement

[41] While the Settlement Agreement is governed by English law, the principles of contractual interpretation in South Africa, as set out in *Natal Joint Municipal Pension Fund v Endumeni Municipality*,[4] are materially similar in their modern, unitary, contextual approach. The process is one of attributing meaning to the words used in the context of the document as a whole and the circumstances attendant upon its coming into existence.

[42] A sensible, businesslike meaning is to be preferred. The interpretation must not lead to insensible or unbusinesslike results or undermine the apparent purpose of the document.

[43] The purpose of the Settlement Agreement was clear: to compromise a debt that Taxpayer EV could not pay. The agreement instantly created a new, primary obligation to pay R11.3 million, replacing the original obligation of R120 million. The old debt was not merely suspended; a new agreement substituted it.

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4 *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13, [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012). para 18.

[44] Clause 6 must be read in this context. Its purpose was not to negate the compromise but to provide Standard Bank with security. It reserved Standard Bank's rights under the *original* agreements as a lever to ensure performance under the new Settlement Agreement. It did not mean that the new, reduced liability of R11.3 million was not the operative debt from 3 July 2013 onwards. The "fulfilment" referred to in clause 6 was the fulfilment of the obligations under the new agreement (clause 3.1), not the revival of the old debt as the primary obligation.

[45] This interpretation is consistent with commercial sense. It is inconceivable that the parties intended that Taxpayer EV would remain liable for R120 million until 16 February 2015, while simultaneously representing to the world, its auditors, and potential lenders that the debt had been extinguished. Its solvency was restored in the 2014 financial year.

The relevance of subsequent conduct and extrinsic evidence

[46] Even if there were ambiguity in the contract, which this Court finds there is not, South African law explicitly permits regard to be had to the parties' subsequent conduct to ascertain their intention, particularly where a third party, like SARS, seeks to interpret the agreement. This was confirmed in *Rane Investments Trust v Commissioner for the South African Revenue Service*[5] and more recently in *Taxpayer MIR v CSARS*.[6]

[47] Taxpayer EV's conduct following the conclusion of the Settlement Agreement is unequivocal and compelling. Its audited financial statements for 2014, approved by its board and auditors, explicitly and correctly recorded the R120 million loan as written off and recognised a gain on debt reduction of over R114 million. This was not a provisional or contingent entry; it was a definitive accounting treatment that fundamentally altered Taxpayer EV's financial position and allowed it to continue trading as a solvent entity.

[48] Mr Nosipho's testimony powerfully corroborates this. He repeatedly and frankly conceded that the debt reduction was taken in 2014, that the financial statements were accurate, and that SARS was entitled to rely on them. This evidence is not inadmissible under the Parol evidence rule in this context. This is not a dispute between the contracting parties about the terms of their agreement; it is a tax dispute in which SARS, as a third party, is entitled to examine the objective reality of how the taxpayer implemented and accounted for the agreement.

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5 *Rane Investments Trust v Commissioner for the South African Revenue Service* 2003 (6) SA 332 (SCA).

6 *Taxpayer MIR v CSARS* (IT 45781) [2024] ZATC 10 (8 July 2024].

[49] Taxpayer EV's attempt to disavow its own representations made in formal statutory documents at this late stage is disingenuous. It undermines the integrity of the self-assessment system, which relies on the veracity of information provided by taxpayers, as emphasised in *GB Mining and Exploration SA (Pty) Ltd v Commissioner* for the South African Revenue Service.[7]

Application of section 19 of the Act

[50] Section 19(2) applies where a debt "is reduced by any amount". The word "reduced" must be given its ordinary meaning within the context of the provision.

[51] On 3 July 2013, Taxpayer EV's debt was reduced, both factually and legally, from approximately R125 million to R11.3 million. The quantum of the liability was instantly and irrevocably altered, subject only to a condition subsequent (non-payment) that would revive the old debt. The reduction occurred upon the conclusion of the binding Settlement Agreement.

[52] The definition of "reduction amount" requires deducting "any amount applied by that person as consideration for that reduction". The consideration was the promise to pay R11.3 million, which was "applied" at the time the agreement was concluded, thereby creating the new obligation. The subsequent payments were merely the discharge of that new, reduced obligation.

[53] Consequently, the year of assessment in which the debt is reduced (per section 19(5)) was the year in which the Settlement Agreement was concluded – the 2014 year of assessment.

Conclusion

[54] Taxpayer EV has failed to discharge the onus of proving that the assessment for the 2014 year of assessment was incorrect. To the contrary, the evidence overwhelmingly demonstrates that the debt reduction was effected in, and correctly assessed in, the 2014 year of assessment.

[55] Taxpayer EV's case, based on an artificially narrow and commercially insensible interpretation of the Settlement Agreement, divorced from the objective facts of its own conduct and representations, is without merit. The appeal must fail.

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[7] *GB Mining and Exploration SA (Pty) Ltd v Commissioner for the South African Revenue Service* 2015 SA 605 (SCA).

Costs

[56] SARS has sought a punitive costs order, arguing that Taxpayer EV's grounds of appeal are unreasonable and vexatious. While the Court agrees that Taxpayer EV's persistence with its primary donation argument for years was ill-advised, and its current timing argument is contradicted by its own evidence, the Court is not persuaded that the case warrants a departure from the ordinary principle that costs should follow the result. The timing issue, while ultimately unmeritorious, was a legitimate point of contractual interpretation to be adjudicated.

Order

[57] In a result, the following order is made:

1. The appeal is dismissed.

2. The appellant is to pay the respondent's costs of the application for condonation and of the appeal, such costs to include the costs of two counsel.

MS MAKAMU
JUDGE OF THE TAX COURT
JOHANNESBURG