

REPUBLIC OF SOUTH AFRICA



**IN THE TAX COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)**

Case No.: **2023/47**

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

9 December 2025
DATE

SIGNATURE

In the matter between:

TAXPAYER SX (PTY) LTD

APPLICANT

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] This is an application brought by Taxpayer SX (Pty) Ltd in terms of rule 52(3)(b) of the Tax Administration Act Rules¹ (“TAA Rules”) for an order staying the applicant (“Taxpayer SX”) appeal pending the final determination of a test case designated by SARS under section 106(6) of the Tax Administration Act² (“the TAA”). Taxpayer SX has, in turn, filed a conditional notice under rule 12(3) and seeks a right of participation in the test case.

[2] Taxpayer SX submits that the appeal involves distinct factual and legal issues not fully addressed in the test case, and that it would suffer prejudice if denied the opportunity to participate.

[3] SARS opposes the application on the basis that the test case does not only cover the aspects involving Taxpayer SX Transport, only some of the issues shall be dealt with in the test case. Participation by Taxpayer SX so late in the test case will only prolong the proceedings as not less than 400 hundred similar taxpayers are affected.

Background

[4] SARS designated the appeal under case number IT 46233 as a test case on 8 December 2022. The test case involves the interpretation and application of the Employment Tax Incentive Act³ (“ETI Act”) in relation to a scheme in which over 330 taxpayers, including Taxpayer SX, are alleged to have improperly claimed ETI credits.

[5] Taxpayer SX filed a notice under rule 12(3) on 30 March 2023, conditionally agreeing to the stay of its appeal on the basis that it be afforded a right of participation in the test case. SARS refused this request on 17 May 2023, leading to the present application

¹ New Dispute Resolution Rules, GN R3146 GG 48188, 10 March 2023.

² 28 of 2011.

³ 26 of 2013.

Legal Framework

[6] Section 106(6) of the TAA permits a senior SARS official to designate an objection or appeal as a test case and stay other similar objections or appeals if the determination of the test case is likely to be dispositive of all or a substantial number of the issues in those other matters. Section 106 provides:

“(6) If a senior SARS official considers that the determination of the objection or an appeal referred to in section 107, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections or appeals, the official may—

- a. Designate that objection or appeal as a test case; and
- b. Stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court, in the manner, under the terms, and within the periods prescribed in the ‘rules’.”

[7] Rule 12(3) of the TAA Rules provides a taxpayer with three options upon receipt of a rule 12(1) notice:

- a. oppose the designation of the test case;
- b. oppose the stay of its appeal; or
- c. request a right of participation in the test case.

[8] A taxpayer must elect one of these options and may not conditionally agree to a stay while simultaneously objecting to it.

[9] The ETI was enacted to encourage job creation and address the unemployment rate, and to promote labour market growth, especially for young job seekers. Tax allowances act as an incentive for employers to participate in the scheme under the ETI Act. If SARS’s grounds of assessment and grounds for opposing Taxpayer SX’s appeal are upheld, it would show that Taxpayer SX fraudulently claimed allowance in terms of the ETI to which it was not entitled. As a result of the ETI’s objectives and the nature of the Taxpayer SX’s grounds for opposing SARS’s appeal, it would be in the public interest for the matter to be fully ventilated and for the veracity and/or lawfulness of the ETI allowances claimed by Taxpayer SX to be determined.

[10] The need for certainty of the law was explained thus in *Patmar Explorations (Pty) Ltd and Others v Limpopo Development Tribunal and others*.⁴ “[t]he doctrine of stare decisis is one that is fundamental to the rule of law. The object of the doctrine is to avoid uncertainty and confusion, to protect vested rights and legitimate expectations as well as to uphold the dignity of the court. It serves to lend certainty to the law”.⁵ This accords with the Constitutional Court’s judgment in *Camps Bay Ratepayers’ and Residents’ Association and another v Harrison and another*,⁶ where the Court stated that: “[s]tare decisis is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos”.⁷

[11] In the matter of *Taxpayer N v Commissioner for the South African Revenue Service*⁸ it was held:

“[34] The ETI was enacted as a mechanism to encourage job creation and to address the unemployment rate and to encourage the growth of the labour market, especially in relation to young job seekers. The tax allowances act as an incentive for employers to participate in the scheme under the ETI Act.

[35] If the respondent’s grounds of assessment and grounds for opposing the appellant’s appeal are upheld, it would show that the appellant fraudulently claimed allowance in terms of the ETI to which it was not entitled.

...

[37] As a result of the ETI’s objectives and the nature of the respondent’s grounds for opposing the appellant’s appeal, it would be in the public interest for the matter to be fully ventilated and for the veracity and lawfulness of the ETI allowances claimed by the appellant to be determined.”

Submission

[12] SARS contends that Taxpayer SX’s appeal is materially similar to the test case and that the determination of the test case will resolve the core legal and factual issues in the appeal, including whether the purported employees were “employees” who “worked” for and were “remunerated” by Taxpayer SX as contemplated in the ETI Act. This issue is common to all the taxpayers who submitted similar claims for credits.

⁴ [2018] ZASCA 19; 2018 (4) SA 107 (SCA).

⁵ Id at para 4.

⁶ [2010] ZACC 19; 2011 (2) BCLR 121 (CC); 2011 (4) SA 42 (CC).

⁷ Id at para 28.

⁸ [2023] ZATC 8; 86 SACT 319.

[13] Taxpayer SX argues that its appeal involves unique factual circumstances, including the alleged issuance of multiple IRP5s for certain employees and the specific nature of the work performed, which are not addressed in the test case. It further contends that it will suffer severe prejudice if its appeal is stayed without its participation, given the substantial tax debt of over R20 million at stake.

Analysis

[14] The test case mechanism is designed to promote judicial economy and consistency. It is not necessary for the facts of each stayed appeal to be identical to those of the test case. What is required is that the legal and substantive factual issues are sufficiently similar such that the test case's outcome will be determinative of the stayed appeal/s. It is not necessary that all affected taxpayers, numbering approximately 400, participate in the test case.

[15] In this matter, the core issues - whether the Limited Duration Contracts of Employment created valid employment relationships and whether the training provided constituted "work" and "remuneration" under the ETI Act, are common to both the test case and Taxpayer SX's appeal.

[16] Taxpayer SX's conditional agreement to the stay, contingent on its participation, is not permitted under rule 12(3). The rule requires an unequivocal election. Taxpayer SX's attempt to impose a condition is inconsistent with the purpose of the test case procedure.

[17] Moreover, Taxpayer SX's concerns about prejudice are mitigated by rule 52(4), which allows a taxpayer to apply to court for an order that the test case judgment is not determinative of its appeal if it can show that its case involves distinct issues.

[18] Taxpayer SX has not demonstrated that its factual differences are material to the legal questions to be decided in the test case. The alleged uniqueness of its circumstances does not outweigh the efficiency and consistency that the test case procedure seeks to achieve.

Conclusion

[19] In the circumstances, I am satisfied that the test case is likely to be determinative of the substantial issues in Taxpayer SX's appeal. The application for a stay must be granted, and Taxpayer SX's request for participation in the test case is dismissed.

Order

[20] In the circumstances, I make the following order:

1. The applicants appeal is stayed pending the final determination of the test case under case number IT 46233.
2. The applicant application for a right of participation in the test case is dismissed.
3. The applicants is to pay the costs of this application.

**MS MAKAMU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**