

REPUBLIC OF SOUTH AFRICA



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

Case No.: **VAT 12167**

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

12 March 2026
DATE

SIGNATURE

In the matter between:

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

APPLICANT

and

TAXPAYER 3C

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 12 March 2026.

MALI, J

[1] This is an application for condonation of the late filing of rule 31 of the rules issued in terms of section 103 of the Tax Administration Act 28 of 2011 (“the TAA”).

[2] The applicant is the Commissioner for the South African Revenue Service, (SARS) a government agent responsible for the collection and enforcement of tax laws within the Republic of South Africa.

[3] The respondent is Taxpayer 3C (Pty) Ltd.

[4] The parties are embroiled in litigation before the tax court. In the main tax appeal, the respondent is the appellant, and the applicant (SARS) is the respondent. The parties will be referred to as SARS and Taxpayer 3C respectively. In the appeal the issue concerns an additional VAT assessment issued by SARS against Taxpayer 3C for the 08/2015 to 03/2018 tax periods. Following a partial disallowance of the taxpayer's objection, the taxpayer noted an appeal, and the dispute was referred to Alternative Dispute Resolution (ADR).

[5] ADR was terminated by agreement during December 2020. SARS delivered its Rule 31 Statement of Grounds of Assessment and Opposing Appeal in December 2024. After SARS had filed its rule 31 statement, Taxpayer 3C delivered a rule 56(1) notice alleging late compliance and contending that condonation was required, given the four-year delay.

[6] Rule 56(1), of the Tax Court Rules pertains to the application for default judgment in the event of non-compliance with the rules. It provides as follows:

“Application for default judgment in the event of non-compliance with rules—(1) If a party has failed to comply with a period or obligation prescribed under these rules or an order by the tax court under this Part, the other party **may—**

- (a) deliver a notice to the defaulting party informing the party of the intention to apply to the tax court for a final order under section 129(2) of the Act in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice; and
- (b) if the defaulting party fails to remedy the default within the prescribed period, apply, on notice to the defaulting party, to the tax court for a final order under section 129(2).”

[7] It is not in dispute that on 3 December 2020 SARS ADR facilitator sent email correspondence to the Attorney of record of Taxpayer 3C recording that ADR proceedings had been terminated by agreement between the parties. On 4 December 2020 Mr Parak responded as follows:

“Dear Ms S

Your email below refers. Kindly take notice that the taxpayer persists with the appeal in this matter and calls upon SARS to file its statement of ground assessment within the period prescribed in terms of the rules. We trust the above is in order.

Kind regards

A Parak”

[8] On 10 December 2020, Mr JR of SARS, who is the deponent to the founding affidavit in this application wrote to Taxpayer 3C’s Public Officer as follows:

“The above-stated matter bears reference.

Kindly take note that the appeal of Taxpayer 3C (Pty) Ltd has been referred to the Tax Court Litigation unit, Dispute Resolution: SARS, for litigation to the Tax Court.”

[9] SARS filed its statement of grounds of assessment on 4 December 2024. On 15 January 2025, Taxpayer 3C delivered its Notice in terms of rule 56(1)(a) of the rules, calling on the applicant to remedy its default for the late filing of the statement of grounds of assessment within 15 days of delivery of the Rule 56(1)(a) Notice. Rule 56(1), of the Tax Court Rules pertains to the application for default judgment in the event of non-compliance with the rules. It provides as follows:

“Application for default judgment in the event of non-compliance with rules—(1) If a party has failed to comply with a period or obligation prescribed under these rules or an order by the tax court under this Part, the other party **may—**

- (a) deliver a notice to the defaulting party informing the party of the intention to apply to the tax court for a final order under section 129(2) of the Act in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice; and
- (b) if the defaulting party fails to remedy the default within the prescribed period, apply, on notice to the defaulting party, to the tax court for a final order under section 129(2).”

[10] Taxpayer 3C filed rule 30 (in terms of the Uniform Rules) application for the setting aside of SARS irregular step. SARS filed its rule 30 application as a counter application. Ultimately both parties withdrew both rule 30 applications.

[11] Following from the above the question is when SARS was required to file rule 31 statement. The question needs to be answered by determining as to when did the 45 days prescribed in the rules commenced running. Rule 31(1) provides:

“**Statement of grounds of assessment and opposing appeal**—(1) SARS must deliver to the appellant a statement of the grounds of assessment and opposing the appeal within 45 days after delivery of—”

[12] It is common cause that SARS is required to file rule 31 within 45 days, subsequent to the filing of the notice of appeal by the taxpayer.

[13] Argument proffered on behalf of SARS is that the letter of 4 December 2020 which was forwarded to Mr VS did not constitute notice as contemplated in rule 25(3)(b). Rule 25(3)(b) provides that:

“If alternative dispute resolution proceedings are terminated under this rule, the appellant must within 20 days of the date of the termination—

(b) if the appeal is to be dealt with by the tax court, give notice to SARS that the appellant wishes to proceed with the appeal.”

[14] SARS’s further argument is that despite not having received Taxpayer 3C’s rule 25(3)(b) notice, SARS statement of grounds of assessment filed on 4 December 2024, was not prompted by the notice from Taxpayer 3C. Hence the application for condonation is just out of caution because Taxpayer 3C never made the “intention” to proceed with appeal. Although the Tax Court Rules require the taxpayer, following termination of ADR, to notify SARS whether it intends to proceed with the appeal, SARS has no record of a proper notice having been delivered in the prescribed manner. SARS argument. **[own emphasis]**

[15] Further submission made on behalf of SARS is that there was no substantial compliance on the part of Taxpayer 3C. In this regard it is argued that substance cannot exist in the absence of the notice.

[16] The case advanced on behalf of Taxpayer 3C is that SARS filed rule 31 statement after a period of almost 4 years, without having applied for condonation, in accordance with rule 56(2), which provides that:

- “(2) The tax court may, on hearing the application—
- (a) in the absence of good cause shown by the defaulting party for the default in issue make an order under section 129(2); or
 - (b) make an order compelling the defaulting party to comply with the relevant requirement within such time as the court considers appropriate and, if the defaulting party fails to abide by the court’s order by the due date, make an order under section 129(2) without further notice to the defaulting party.”

[17] Taxpayer 3C’s argument is that the letter of 4 December 2020 constituted a notice. I fully agree with Taxpayer 3C’s contention. Its meaning is clear SARS was in the know that Taxpayer 3C was proceeding with the appeal. Also, Taxpayer 3C’s letter was emphatic about its position. The relevant wording is quoted again: *Kindly take notice that the **taxpayer persists with the appeal in this matter and calls upon SARS to file its statement of grounds of assessment within the period prescribed in terms of the rules.***

[18] Considering both correspondences there is no room for doubt that Taxpayer 3C had informed SARS that it was proceeding with the appeal. SARS’s argument that there was no clear intention has no legal basis. On each turn of interpretation there is nothing in law that suggests that the taxpayer must establish intention or do something more than is required to prove that it has intention to proceed with the appeal. Substantive compliance is not about intention. There was substantive compliance with the service address requirement.

[19] *Government Gazette* No 295 required notice to be given to SARS at taxcourtlitigation@sars.gov.za. Although the notice was not served at the gazetted address, it is trite that that a taxpayer's effective knowledge of notice or document issued by SARS is sufficient notice. Taxpayer 3C argues that the same should apply to SARS. In *SIP Project Managers (Pty) Ltd v Commissioner for the South African Revenue Service*,¹ the following is held:

“Once it is established that a legislative provision is peremptory and the question arises whether exact compliance therewith is required, the answer is sought in the purpose of the statutory requirement which is to be found ascertained from its language read in the context of the statute as a whole.”

¹ (11521/2020) [2020] ZAGPPHC 206; 82 SATC 306 (29 April 2020) para 25.

[20] Further argument on behalf of SARS is that now that it has complied it is not obligated to apply for condonation. In support of this argument SARS refers to *Commissioner for SARS v Virgin Mobile*² (*Virgin Mobile*). In *Virgin Mobile* it is held that that a party curing a procedural default (like late filing) within the 15-day Rule 56(1) notice period does not require separate condonation.

[21] The SCA's decision in *Virgin Mobile* does not exempt SARS from its obligation to adhere to procedural timelines, nor does it grant SARS an indefinite period to comply without consequence. On the contrary, the judgment affirms that all litigants, including the SARS, are equal before the law and must comply accordingly.

[22] In conclusion the question has been answered in the affirmative, SARS was required to apply for condonation.

Condonation

[23] SARS's explanation is that the SARS official, Mr VS who was responsible for the appeal and submission of rule 31 fell seriously ill. He was hospitalised for the longest time. Mr JR the deponent to the affidavit of this application who was Mr VS's Manager and or Supervisor was the only person to take over his duties. He explained that a combination of excessive workload and resource constraints prevented him from recognizing the need to file rule 31 until December 2024. Upon becoming aware of the requirement, he filed it on 4 December 2024.

[24] The only opposition mounted by Taxpayer 3C is that SARS did not provide proper explanation.

[25] The court in exercising a discretion whether to grant condonation must consider the (i) the extent of the delay; (ii) the explanation for the delay; (iii) the prospects of success; (iv) the importance of the case; and (v) the prejudice to the parties.

[26] It is trite that condonation should be granted in the interests of justice. The court exercises a judicial discretion, having regard to the facts. The court must also consider whether granting condonation would be in the interests of justice. In *Colyn v Tiger Food Industries Ltd t/a Meadow Feed Mills (Cape)* 16,³ the SCA held that where an explanation for default is weak or unsatisfactory, the court must still consider the prospects of success and the broader interests of justice. In *Chetty v Law Society Transvaal*,⁴ the court held that where the sufficiency of an

² [2025] ZASCA 77 (4 June 2025).

³ [2003] ZASCA 36; [2003] 10A.

⁴ 1985 (2) SA 756 A-B.

explanation is finely balanced, strong prospects of success may tip the scale in favour of condonation.

[27] SARS's explanation for the delay is proper and satisfactory, albeit the delay has been too long. The length of time to finalise the dispute is undoubtedly prejudicial to Taxpayer 3C. Nevertheless, Mr JR acted with speed in responding to Taxpayer 3C informing it that the matter was referred to Tax Litigation. It appears as if Mr VS did not fall ill, rule 31 would have been filed on time.

[28] Regarding the prospects of success, Taxpayer 3C itself admitted to claiming the refund for irrecoverable debts without filing the necessary supporting documents. The importance of proper tax collection and administration cannot be overstated, as these processes directly involve public funds. Consequently, it serves the interests of justice to have these matters properly examined on appeal.

[29] Accordingly, SARS's application for condonation is granted.

Costs

[30] Costs are granted in the discretion of the court the well-established principle is that a successful party must be awarded costs. The court is also clothed with discretion to order the successful party to pay costs if the discretion is exercised judicially.

[31] Taxpayer 3C argued that SARS should be ordered to pay costs even if the condonation is granted because SARS did not give the proper explanation of the delay. I have already found that there is proper explanation for the delay, however insistence by SARS that it did not receive the notice; thus, not obligated to file for condonation is misguided. The finding has already been made above that rule 31 notice was triggered from 10 December 2020.

[32] Moreover, in *Virgin Mobile* it is held that the inconvenience may be cured by the costs order. If SARS had filed its rule 31 statement on time, there would have been no need for this litigation. The delay caused by SARS has brought about Taxpayer 3C having to participate in this application. Indeed, SARS defaulted in filing rule 31 without applying for condonation, thus deserves to be punished with costs.

Order

1. The application for condonation is granted.
2. SARS is ordered to pay costs of this application.
3. Each party is ordered to pay costs for its Rule 30 Application.

NP MALI
JUDGE OF THE HIGH COURT