REPUBLIC OF SOUTH AFRICA

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

Case numbers: **IT 46515 and VAT 22578**

(1)	REPORTABLE: ~~YES~~ / **NO**
(2)	OF INTEREST TO OTHER JUDGES: ~~**YES**~~ / **NO**
(3)	REVISED.
4 August 2026	
DATE	SIGNATURE

In the matter between:

TAXPAYER KG (PTY) LTD **Applicant/Appellant**

and

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

J U D G M E N T

This Judgment is handed down electronically by circulation to the Applicant's Legal Representatives and the Respondents by email, publication on CaseLines. The date for the handing down is deemed to be 4 August 2026 at 10 am.

MUDAU, J:

Introduction

[1] This is an interlocutory application brought by the appellant, Taxpayer KG (Pty) Ltd ("the taxpayer"), for leave to amend its statement of grounds of appeal filed in terms of rule 32 of the Tax Court Rules ("the rule 32 statement"). The amendment seeks to introduce new factual allegations concerning the purposes for which the taxpayer acquired the property that forms the subject matter of the disputed VAT assessment. The respondent, the Commissioner for the South African Revenue Service ("SARS"), opposes the amendment. The application was heard on 29 July 2026.

[2] The central question for determination is whether the taxpayer should be permitted, at the appeal stage, to introduce a factual basis for its claim to an input tax deduction that was not disclosed during the audit, objection and appeal processes established by the Tax Administration Act[1] ("the TAA").

Factual Background

[3] The factual background to this application is largely common cause. In 2016, the taxpayer purchased Portion 7 of the Farm Rietfontein 150, known as the Taxpayer Township ("the property"), from Investec Bank for R54 150 000. The purchase price included VAT of R6 650 000. The property comprises commercial and residential units and contains four dumps of fly-ash, estimated at approximately 25 million tons, as well as existing electricity reticulation infrastructure from a former Eskom power plant.

[4] In its VAT 201 return for the 2017/03 tax period, the taxpayer claimed an input tax deduction of R6 650 000 on the acquisition. SARS processed the return and refunded the full amount in October 2017 following a verification process.

[5] On 11 April 2019, SARS commenced a VAT audit. During the audit, the taxpayer described its business as a township comprising commercial and residential properties and stated that its main source of income was rental income. In its response dated 29 June 2020 to SARS's request for relevant material, the taxpayer described its business in those terms. On 25 August 2021, SARS conducted a section 47 inquiry with the taxpayer's former accountant, who explained that the objective of the acquisition was "to rent it out".

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[1] 28 of 2011.

[6] On 30 September 2021, SARS issued a letter of audit findings, proposing to apportion the input tax under section 17(1) of the Value Added Tax Act.[2] SARS allowed the taxpayer to provide any relevant material not previously submitted. The taxpayer responded on 12 November 2021, defining its enterprise as follows:

> "The taxpayer is a developer and acquired the immovable property for the purpose of constructing, renovating, extending and improving the development, including the individual commercial and residential units, and the ultimate disposal thereof."

[7] The taxpayer did not mention any intention to exploit fly-ash commercially or to develop a solar project. On 9 December 2021, SARS issued additional VAT assessments disallowing the full input tax deduction.

[8] On 1 March 2022, the taxpayer objected, maintaining its property-development case. It did not mention fly-ash or solar intentions. SARS disallowed the objection on 22 June 2022. The taxpayer appealed on 2 August 2022. On 11 September 2024, SARS delivered its rule 31 statement. On 13 November 2024, the taxpayer delivered its rule 32 statement, pleading the property-development case. The appeals were set down for hearing on 27-30 July 2026.

[9] On 28 May 2026, the taxpayer delivered a notice of amendment seeking to introduce allegations that the property was acquired for three purposes: (a) development and disposal of the township; (b) commercial exploitation of the fly-ash dumps; and (c) development of a solar electricity project. The taxpayer explains that the proposed amendment arose after its present attorneys were appointed in November 2025 and "appreciated the significance" of the fly-ash and solar project. The taxpayer accepts that these are "new factual allegations".

Legal Framework

General principles governing amendments

[10] The principles governing applications to amend pleadings have been settled for decades. In *Moolman v Estate Moolman and Another,*[3] the court stated the practical rule:

> "[A]mendments will always be allowed unless the application to amend is *mala fide* or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed."[4]

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[2] 89 of 1991 (VAT Act).
[3] 1927 CPD 27 ("*Moolman*").
[4] Id at 29.

[11] These principles were summarised more fully in *Commercial Union Assurance Co Ltd v Waymark NO*,[5] where the court distilled the following nine principles:

> "1. The Court has a discretion whether to grant or refuse an amendment.
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> 2. An amendment cannot be granted for the mere asking; some explanation must be offered therefor.
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> 3. The applicant must show that prima facie the amendment 'has something deserving of consideration, a triable issue'.
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> 4. The modern tendency lies in favour of an amendment if such 'facilitates the proper ventilation of the dispute between the parties'.
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> 5. The party seeking the amendment must not be *mala fide*.
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> 6. It must not "cause an injustice to the other side which cannot be compensated by costs".
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> 7. The amendment should not be refused simply to punish the applicant for neglect.
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> 8. A mere loss of time is no reason, in itself, to refuse the application.
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> 9. If the amendment is not sought timeously, some reason must be given for the delay."[6]

[12] The court in *Commercial Union* also confirmed that the stage of *litis contestatio* (the close of pleadings) is relevant to the question of prejudice and whether a party has acquiesced. However, in the present case, the application was brought before the hearing of the main appeal, and the trial has since been postponed. No *litis contestatio* issue arises that would bar the amendment.

[13] The principles from *Moolman* and *Commercial Union* are the starting point. They establish that the court's discretion must be exercised judicially, with a bias towards allowing amendments that facilitate the proper ventilation of genuine disputes, provided the prejudice to the other party can be cured by costs.

The specific framework of rule 32(3)

[14] Rule 32(3) of the Tax Court Rules provides:

> "The appellant may include in the statement a new ground of appeal unless it constitutes a ground of objection against a part or amount of the disputed assessment not objected to under rule 7."

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5 1995 (2) SA 73 (TK) ("*Commercial Union*").

6 Id at 77F-I.

[15] The Supreme Court of Appeal in *Baseline Civil Contractors (Pty) Ltd v The Commissioner for the South African Revenue Service*[7] provided definitive guidance on the limits of rule 32(3). The court held that the subrule contains both a permission and a limitation:

a. If a taxpayer raises a new ground of appeal that has a new factual or legal basis that targets a different part or amount of the disputed assessment that was never objected to in the rule 7 notice, that is prohibited by rule 32(3).

b. If a taxpayer advances a new argument or different legal approach to attack the same part or amount that was already objected to, that is permitted as long as the new argument does not change the substance of the original objection.

[16] The SCA further held that rule 32(3) exists to prevent surprise and "trial by ambush", promote finality and efficiency in Tax Court proceedings, and preserve the integrity of the structured dispute process. The court disagreed with the broader interpretation of rule 32(3) found in ITC 1912 80 SATC 417.

[17] However, a recent Full Court decision of the Gauteng Division of the High Court -*TALT v Commissioner for the South African Revenue Service*[8] applied *Baseline* and clarified its operation in a case with facts closely analogous to the present matter.

[18] In *TALT*, the taxpayer had objected to an additional assessment for its 2012 year of assessment only on the ground of prescription (i.e., that SARS was time-barred from issuing the additional assessment). In its rule 32 statement, the taxpayer sought to raise new grounds of appeal relating to the "merits" of the assessment, namely, that the taxable capital gain should not have been included in its taxable income because of the "conduit-pipe principle". SARS objected, arguing that the taxpayer had not objected to the "merits" in its rule 7 objection.

[19] The court held at paragraphs [22] to [27]:

> "[22] I agree with these submissions. The determination objected to was the inclusion in the taxpayer's taxable income of the amount of a 'taxable capital gain' of R47 329 834 and the tax liability arising therefrom. It was therefore the determination of this amount of a tax liability to which the taxpayer objected. The simple point is that the part of the disputed 2012 assessment objected to under Rule 7 – as contemplated in Rule 32(3) – was the determination in terms of which the disputed 'taxable capital gain' of R47 329 834 was included in the taxpayer's taxable income along with the resulting tax liability, and the basis for the objection, or the ground of objection, was prescription.
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> ...

7 [2026] 2 All SA 12 (SCA) ("*Baseline*").
8 87 SATC 222.

> [25] In sum, the fact that the taxpayer objected to the inclusion of the said amount in its taxable income on the ground of 'prescription' does not mean that it did not object to the inclusion of the said sum in its taxable income. That is precisely what it objected to, albeit on the grounds of 'prescription'. I therefore conclude that the new ground of appeal does not constitute a ground of objection against an amount of the disputed assessment not objected to under Rule 7, as contemplated in Rule 32(3).
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> ...
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> [27] Rule 32(3) makes it perfectly clear that a taxpayer may rely on a new ground unless such ground constitutes a ground of objection against a part or amount of the disputed assessment not objected to under Rule 7. In my view, it cannot be said with any conviction that the new ground of objection... constitutes a ground of objection against a part or an amount not objected to under Rule 7. The simple point is that the new ground relied on by the taxpayer relates to the same part (the capital gain) and the same amount (R47 329 834) of the disputed assessment objected to. The new ground is nothing more than an additional ground in support of the same part and the same amount of the disputed assessment objected to under Rule 7."

[20] This Court in *TALT* also endorsed the principle from *Commissioner for the South African Revenue Service v Free State Development Corporation*[9] that the amendment should be allowed if it facilitates the ventilation of the real issue between the parties and prevents SARS from collecting tax not properly due.

Application to the Present Case

The nature of the objection under rule 7

[21] The taxpayer's objection under rule 7 concerned the disallowance of the full R6 650 000 input tax deduction claimed on the acquisition of the property. The taxpayer has always disputed the disallowance of this deduction. The proposed amendment does not seek to dispute any new part or amount of the assessment. It merely provides additional factual grounds – the alleged intentions to exploit fly-ash commercially and develop a solar project, in support of the same deduction.

[22] This is precisely the situation contemplated in *TALT*. In that case, the taxpayer had objected to the inclusion of the capital amount in its taxable income on the ground of prescription. When it later sought to raise merits-based grounds (the *conduit*-pipe principle) in its rule 32 statement, the court held that this was permissible because it related to the same part and amount of the assessment. The court emphasised that the fact that the taxpayer had

9 [2023] ZASCA 84; 2024 (2) SA 282 (SCA).

relied on a different ground (prescription) did not mean that it had not objected to the amount itself.

[23] Applying *TALT* to the present case, the taxpayer's rule 7 objection was to the inclusion of the R6 650 000 input tax deduction as disallowed. The fact that the taxpayer originally relied on the property-development case (temporary letting and ultimate disposal) does not mean that it did not object to the disallowance of the deduction. The new grounds (fly-ash exploitation and solar project) are merely additional factual bases supporting the challenge to the same deduction.

Distinction from Baseline

[24] The present case is materially distinguishable from *Baseline*. In *Baseline*, the taxpayer's original objection (the “deduction ground”) accepted the gross income figure and sought to reduce taxable income by claiming a deduction. The new ground (the “receipt/accrual ground”) attacked the gross income figure itself – a portion of the assessment the taxpayer had never disputed in its original rule 7 objection. The SCA held that these two arguments were fundamentally incompatible and that the new ground targeted a different part of the assessment.

[25] In the present case, the taxpayer's original objection and the proposed amendment are not incompatible. The taxpayer has always claimed the full R6 650 000 input tax deduction. The new factual allegations are merely additional reasons why the full deduction should be allowed. They do not target a different component of the assessment. They attack the same part and amount that was objected to under rule 7.

The residential premises point

[26] SARS argues that the presence of residential leased premises means that the taxpayer cannot claim the property was acquired wholly or 95% for taxable supplies. This argument goes to the merits of the taxpayer's case, not to the admissibility of the amendment.

[27] Importantly, the residential premises are part of the undisputed portion of the assessment (output tax on the residential rentals). The taxpayer has never objected to the taxation of the residential rental income. The taxpayer's amendment is directed solely at the disallowed input deduction – the same “part or amount” that was placed in dispute in the rule 7 objection. The taxpayer is not using the amendment to launch a new objection against the residential output tax.

[28] The taxpayer acknowledges the residential units exist but will argue that the residential letting was temporary pending disposal (classifying it as taxable or ancillary), and/or that the scale of the fly-ash and solar projects means the overall intended taxable use exceeds 95%.

This is a new argument attacking the same quantum of the disputed assessment. As held in *Baseline*, such an approach is permissible if it does not change the substance of the original objection. The substance here – challenging the disallowance of the R6 650 000 deduction remains unchanged.

The explanation for the omission

[29] The taxpayer's explanation for the omission is admittedly weak. The facts on which it now relies were known to it from the outset, and the change of attorneys does not, by itself, explain why those facts were not disclosed during the audit. However, the principles from *Moolman* and *Commercial Union* make clear that the mere fact of delay is not fatal. What matters is whether the amendment is *mala fide* and whether the prejudice can be cured by costs. The taxpayer has provided a reason for the late introduction (the change of attorneys and their subsequent appreciation of the facts), even if not entirely satisfactory.

[30] Moreover, the *TALT* judgment confirms that the primary inquiry under rule 32(3) is not whether the new ground was "foreshadowed" in the objection, but whether it relates to the same part or amount of the assessment. On this question, the taxpayer's position is clear: it has always disputed the disallowance of the full R6 650 000 input tax deduction.

The triable issue requirement

[31] The taxpayer has identified evidence: the bidder's pack referring to the fly-ash dumps and existing electrical infrastructure, that can support its alleged intentions. While this evidence is limited, it is sufficient to establish a *prima facie* case that the property had features that could support the alleged intended uses. The taxpayer should be permitted to present its case on the merits.

[32] As the court held in *Commercial Union*, the applicant must show that *prima facie,* the amendment "has something deserving of consideration, a triable issue". I am satisfied that the taxpayer has met this threshold. The question of whether the property was acquired for multiple commercial purposes, and whether those purposes render the taxable use at least 95%, is a genuine issue worthy of ventilation.

Prejudice to SARS

[33] SARS contends that it would suffer prejudice if the amendment were allowed because it would have to investigate a new factual case that should have been disclosed during the audit. However, as this Court in *TALT* held, the taxpayer's new grounds relate to the same amount already in dispute. The prejudice is therefore one of inconvenience rather than a fundamental undermining of the statutory process.

[34] In *Moolman*, the court held that an amendment should be refused only if it "would cause an injustice to the other side which cannot be compensated by costs". Here, any prejudice to SARS can be compensated by costs. The trial has been postponed, and SARS will have an opportunity to investigate the new allegations. SARS can also deliver a supplementary rule 33 statement in response to the amended rule 32 statement.

[35] I am not persuaded that this is the type of "institutional prejudice" that precludes an amendment under *Baseline*. In *Baseline*, the prejudice was that SARS would have to reassess a completely new component of income (gross income) that was never previously challenged. Here, SARS is merely required to investigate additional factual grounds relating to the same deduction that has always been in dispute.

[36] Furthermore, the court in *TALT* emphasised the corollary of SARS's duty under section 143(1) of the TAA: SARS must not levy taxes which are not payable in terms of the law. If the taxpayer's amendment is refused, there is a risk that SARS may collect tax that is not due. This militates strongly in favour of granting the amendment.

Conclusion

[37] Applying the binding principles from *Baseline* and the persuasive reasoning in *TALT*, I conclude as follows:

a. The taxpayer's proposed amendment does not target a different part or amount of the disputed assessment from that objected to under rule 7. The taxpayer has always disputed the disallowance of the R6 650 000 input tax deduction.

b. The taxpayer's new factual allegations are new arguments attacking the same part or amount that was already objected to.

c. The new arguments do not change the substance of the original objection – the taxpayer has always claimed the full R6 650 000 input tax deduction.

d. The amendment is therefore permissible under rule 32(3) as interpreted in *Baseline*.

[38] The general principles from *Moolman* and *Commercial Union* also favour granting the amendment. The application is not *mala fide*. The proposed amendment raises a genuine triable issue. The prejudice to SARS can be compensated by costs and a postponement. The modern tendency is to allow amendments that facilitate the proper ventilation of disputes.

[39] The application for amendment is accordingly granted.

Costs

[40] The taxpayer seeks an indulgence and should bear the costs of the application. However, given that SARS opposed the application on grounds that are not entirely sustainable considering *TALT* and the proper application of *Baseline*, it is appropriate that the costs be costs in the appeal.

Order

[41] I make the following order:

1. The taxpayer is granted leave to amend its rule 32 statement in terms of its notice of amendment dated 28 May 2026.
2. The taxpayer must deliver its amended rule 32 statement within 14 days of this order.
3. SARS is granted leave to deliver a supplementary rule 33 statement within 30 days of receipt of the amended rule 32 statement.
4. The costs of this application are costs in the appeal.

MUDAU J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of Hearing: 29 July 2026

Date of Judgment: 4 August 2026