DRAFT

South African Revenue Service

DRAFT INTERPRETATION NOTE

DATE:

ACT	**:**	**TAX ADMINISTRATION ACT 28 OF 2011**
SECTION	**:**	**SECTION 93(1)(*d*)**
SUBJECT	**:**	**REDUCED ASSESSMENTS: MEANING OF "READILY APPARENT UNDISPUTED ERROR"**

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Preamble

In this Note unless the context indicates otherwise –

- **"assessment"** means an assessment as defined in section 1, namely, the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS;
- **"Chapter 9"** means Chapter 9 of the TA Act, that deals with Dispute Resolution;
- **"PAJA"** means the Promotion of Administrative Justice Act 3 of 2000;

- **"return"** is defined in section 1 and means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment, is a basis on which an assessment is to be made by SARS or incorporates relevant material required under section 25, 26 or 27 or a provision under a tax Act requiring the submission of a return;
- **"section"** means a section of the TA Act;
- **"TA Act"** means the Tax Administration Act 28 of 2011;
- **"Tax Act"** means the TA Act or an Act, or portion of an Act referred to in section 4 of the SARS Act, excluding customs and excise legislation;
- **"taxpayer"** means a "taxpayer" as defined in section 151;
- **"the Act"** means the Income Tax Act 58 of 1962; and
- any other word or expression bears the meaning ascribed to it in the TA Act.

1. Purpose

This Note provides guidance on the interpretation and application of section 93(1)(*d*) with specific focus on the phrase "readily apparent undisputed error".

2. Background

A taxpayer who is aggrieved by an assessment or decision of SARS against that taxpayer has the right to dispute that assessment or decision.[1] If an original assessment has not been issued, SARS may request a taxpayer to submit an amended return to correct an undisputed error made in the prior return.[2]

In the case where an assessment has already been issued, Chapter 9 provides the legal framework to be followed by both, SARS and the taxpayer to resolve any disputes. Section 93(1)(*d*) provides an alternative to the dispute resolution process under Chapter 9 allowing taxpayers a less formal mechanism to request corrections to their assessments if certain requirements are met, without having to follow the objection process under Chapter 9.

Due to the misuse of the alternative mechanism, section 93(1)(*d*) was amended[3] to include the requirement that the error either in an assessment by SARS or in a return by a taxpayer must be "readily apparent" and not just "apparent". The Memorandum on the objects of Tax Administration Laws Amendment Bill, 2015,[4] explains the reason for the amendment as follows:

> "Section 93(1)*(d)* of the Tax Administration Act was inserted to allow taxpayers a less formal mechanism to request corrections to their returns and so reduced assessments, without having to follow the objection and appeal route to do so. However, taxpayers have attempted to use these requests for correction to raise **substantive issues** that would more properly be the subject of an objection under section 104, so as to bypass the timeframes and procedures for an objection. Furthermore, taxpayers and unregistered tax practitioners have also attempted to use the requests for correction to obtain fraudulent refunds for multiple years. For these reasons, the wording has been

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1 Section 104.

2 Section 25(5).

3 Amended by the Tax Administration Laws Amendment Act 23 of 2015 with effect from the date of promulgation of that Act, namely 8 January 2016.

4 At para 2.49.

> amended to provide that SARS must be satisfied that there is a "readily apparent" error to clarify the nature of the errors anticipated here."

(Emphasis added)

The determination of what constitutes a "readily apparent undisputed error" to the satisfaction of SARS is of importance for the following reasons:

- It determines whether the taxpayer is entitled to request a correction for a reduced assessment under section 93(1)(*d*) or whether the taxpayer must follow the objection and appeal route under section 104.
- It ensures consistency in the interpretation and application of section 93(1)(*d*) by both, SARS and taxpayers.

Section 93(1)(*d*) can only be applied if all the requirements are satisfied. It entails a factual enquiry and will be based on the specific facts of each request. It is important to note that section 93(1)(*d*) does not replace the dispute resolution process under Chapter 9 but offers a less formal mechanism and is also cost effective in resolving disputes of errors that are readily apparent. It is applied only in limited circumstances where all the requirements are met.

3. The law

The relevant sections of the TA Act are quoted in the **Annexure**.

4. Interpretation and application of the law

4.1. Reduced assessments (section 93)

SARS may make a reduced assessment under section 93 in the following circumstances:

- A taxpayer that successfully disputes an assessment under dispute resolution process under Chapter 9.[5]
- It is necessary to give effect to a settlement under Part F of Chapter 9,[6] or is necessary to give effect to a judgement pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal.[7]
- SARS is satisfied that there is a "readily apparent undisputed error" in the assessment by SARS or the taxpayer in a return.[8]
- A senior SARS official is satisfied that an assessment was based on –
  - the failure to submit a return or submission of an incorrect return by a third party under section 26 or by an employer under a tax Act,[9]
  - the assessment was based on a processing error by SARS,[10] or
  - an assessment was based on a return fraudulently submitted by a person not authorised by the taxpayer;'[11] and

[5] Section 93(1)(*a*).
[6] Section 93(1)(*b*).
[7] Section 93(1)(*c*).
[8] Section 93(1)(*d*).
[9] Section 93(1)(*e*)(i).
[10] Section 93(1)(*e*)(ii).
[11] Section 93(1)(*e*)(iii).

- The taxpayer in respect of whom an estimated assessment has been issued under section 95 (1), requests SARS to issue a reduced assessment under section 95(6).[12]

Only the requirements of the third bullet above will be considered in this Note.

4.2 Remedy under section 93(1)(*d*)

A request to reduce an assessment under section 93(1)(*d*) will be considered only if –

- SARS is satisfied;
- there is a readily apparent undisputed error;
- in an assessment by SARS; or
- the taxpayer in a return.

There is no prescribed form that a taxpayer must use to submit a request under section 93(1)(*d*), however, the request must be in writing and supported by the necessary documentary evidence where applicable. SARS must consider a taxpayer's written request under section 93(1)(*d*), and may either –

- accept the request and accordingly make a reduced assessment; or
- reject the request on the basis that the requirements of section 93(1)(*d*) have not been met.

If SARS rejects the request, no reduced assessment will be made. Instead, the taxpayer will be advised by letter or notice of the decision taken not to make a reduced assessment under section 93(1)(*d*). A decision not to reduce an assessment under section 93(1)(*d*) does not constitute an assessment or a decision as envisaged under section 104(2). In this case, section 9(1) finds application and affords a taxpayer, an internal review remedy against an adverse decision under section 93(1)(*d*) (see **4.5**).

4.2.1 SARS "may" make a reduced assessment

The preamble to section 93(1) states that SARS "may" make a reduced assessment if the requirements of the section are met. The ordinary meaning of the words "may"[13] and "if,[14] are respectively defined in *Lexico Dictionaries* as –

> "expressing possibility"; and
>
> "(introducing a conditional clause) on the condition or supposition that; in the event that".

Section 93(1)(*d*) does not imply that SARS "must" reduce an assessment, as it may still be dependent on the taxpayer satisfying any other requirement contained in a Tax Act.

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[12] Section 93(1)(*f*).

[13] **www.lexico.com/definition/may** [Accessed 3 August 2021].

[14] **www.lexico.com/defenition/if** [Accessed 3 August 2021].

In *Rampersadh and Another v Commissioner: SARS and Others,*[15] Gorven J explained the word "may" to mean the following:

> "…the word 'may' does not necessarily give rise to a general discretion. Sometimes it denotes the grant of a power along with a corresponding duty to exercise that power. Van Rooyen approved the approach in line of cases beginning with Schwartz v Schwartz, which held:
>
> > 'A statutory enactment conferring a power in permissive language may nevertheless have to be construed as making it the duty of the person or authority in whom the power is reposed to exercise that power when the conditions prescribed as justifying its exercise have been satisfied. Whether an enactment should be so construed depends on, inter alia, the language in which it is couched, the context in which it appears, the general scope and object of the legislation, the nature of the thing empowered to be done and the person or persons for whose benefit the power is to be exercised.' "

In view of the above, it is apparent that SARS may reduce an assessment only if it is satisfied that the requirements of section 93(1)(*d*) have been fully met. The first step for the taxpayer to surmount is to prove to the satisfaction of SARS that the error or errors fall within the ambit of section 93(1)(*d*).

4.2.2 SARS must be "satisfied"

The first requirement to the application of section 93(1)(*d*) is that SARS must be satisfied that there is a readily apparent undisputed error. The word "satisfied" must be interpreted according to the ordinary meaning as applied to the subject matter relating to which it is used[16] unless the ordinary meaning creates an absurdity or ambiguity. It is important when giving words and expressions their ordinary meaning, to consider the context in which such words or expressions are used.

In *National Union of Metal Workers of SA and others v Aveng Trident Steel and another*[17] Jafta J stated it is a well-established principle of our law that statutory interpretation involves nothing else but the exercise of giving meaning to each and every word used by the law-giver in the provision under construction. The allied principle is that the language chosen by the law-giver must be respected.

The word "satisfy"[18] is defined in *Lexico Dictionaries* as follows:

> **[1]** "Provide (someone) with adequate or convincing information or proof about something"
>
> **[2]** "Adequately meet or comply with (a condition, obligation, or demand)"

In *Wingate-Pearse v C:SARS and Others*[19] SARS issued additional estimated income tax assessments under section 79(1) of the Income Tax Act, before it was replaced by section 92 of the TA Act. Section 92 empowers SARS to make an additional assessment if it is "satisfied" that the assessment does not reflect the correct application of a tax Act to the prejudice of SARS. Meyer J held that although the words "is satisfied" used in a subjective discretion on SARS, the discretion is not unfettered,

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15 [2018] ZAKZPHC 36 at 25.

16 See EA Kellaway *Principles of Legal Interpretation of Statutes, Contracts and Wills* (1995) Butterworths Durban at 224 and *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA).

17 2020 ZACC 23.

18 **www.lexico.com/definition/satisfy** [Accessed 16 August 2021].

19 2019 (6) SA 196 (GJ).

and an objective approach must be adopted to that subjective discretion. SARS, therefore, must show that its subjective satisfaction was based on reasonable grounds.[20]

In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*[21] O' Regan J explained what will constitute a reasonable decision as follows:

> "What will constitute a reasonable decision will depend on the circumstances of each case, much as what will constitute a fair procedure will depend on the circumstances of each case. Factors relevant to determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected. Although the review functions of the Court now have a substantive as well as a procedural ingredient, the distinction between appeals and reviews continues to be significant. The Court should take care not to usurp the functions of administrative agencies. Its task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution."

4.2.3 Meaning of the phrase "readily apparent undisputed error"

The second requirement before a request under section 93(1)(*d*) may be considered is that there must be a readily apparent undisputed error, either in an assessment by SARS or in a return by the taxpayer. SARS will be limited to the processing of the assessment while the taxpayer will be limited to the information submitted in the return.

(a) "Readily apparent"

Section 93(1)(*d*) was amended to include the words "readily apparent" to the phrase "undisputed error".[22] The nature of the error therefore had to be "readily apparent" and not just an "undisputed error". The words "readily apparent" are not defined in the TA Act and must therefore be interpreted according to their ordinary meaning. The ordinary meaning of the words "readily"[23] and "apparent",[24] are respectively defined in *Lexico Dictionaries* as –

> "without hesitation or reluctance; willingly"; and
>
> "clearly visible or understood".

In applying the ordinary meaning of the words "readily apparent" it is established that the error must be clearly visible, must be identified without hesitation or difficulty and such error must be either in the return or the assessment. At the first glance at the request, SARS must be able to easily determine that there is an undisputed error. The presence of any doubt will disqualify the taxpayer's request for a reduced assessment under section 93(1)(*d*). Therefore, it may be said that the error must be an obvious mistake which is unquestionable. If SARS cannot make this determination from merely looking at the return or assessment, the error cannot be said to be readily apparent although there might well be an error.

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20 See paragraph 61.

21 2004 (4) SA 490 (CC) at 45.

22 Amended by the Tax Administration Laws Amendment Act 23 of 2015 with effect from the date of promulgation of that Act, namely 8 January 2016.

23 **www.lexico.com/definition/readily** [Accessed 16 August 2021].

24 **www.lexico.com/definition/apparent** [Accessed 16 August 2021].

Example 1 – Readily apparent

Facts:

A visits a SARS branch office for assistance to complete the annual income tax return on eFiling. A provides SARS with all relevant documentation required for completion of the return, such return being completed and submitted by a SARS official. A receives the notice of assessment and discovers an inconsistency between the notice of assessment and the supporting medical tax certificate for out-of-pocket medical expenses. The inconsistency being that the notice of assessment reflects out-of-pocket medical expenses of R5 000 whereas the amount on the supporting medical tax certificate is R50 000. A being of the opinion that a clerical error had occurred which is readily apparent and submits a written request under section 93(1)(*d*) to SARS, requesting a reduced assessment.

Result:

One of the requirements under section 93(1)(*d*) is that the undisputed error must be "readily apparent" in the return by the taxpayer or the assessment by SARS. In the present scenario, the error occurred in the completion of the return. The undisputed error must be "readily apparent" and in this case it is clearly so from the said return. As the undisputed error can be confirmed without hesitation as it is clearly visible from the supporting documentation without requiring any further verification, it can be concluded that the undisputed error satisfies the requirement of being readily apparent.

(b) "Undisputed"

It is not sufficient that there is an error but the error must also be undisputed. The word "undisputed" is not defined in the TA Act and therefore the ordinary meaning must be applied. The *Lexico Dictionar*ies defines "undisputed" as –[25]

> "not disputed or called in question, accepted".

The error must, therefore, not be questioned or disputed and must be accepted by SARS. An error may be undisputed if the facts submitted by the taxpayer are proved to be correct, but may also be at the same time not be "readily apparent" since to prove the error may involve a process of a high degree of verifying the error or may even require a desk or field audit. The confirmation of the error should require no more than a simple verification and not be of an interpretational nature, for example, interpreting a statutory provision of a Tax Act, a contract or a tax treaty. A factual dispute of the error will disqualify the request under section 93(1)(*d*).

Factual undisputed errors are by their nature objective and if readily apparent, it may fall within the ambit of section 93(1)(*d*).

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[25] **www.lexico.com/definition/undisputed.** [Accessed 16 August 2021].

Example 2 – An "undisputed" error by the taxpayer in a return

Facts:

A, as a sole proprietor sells vintage cars. In the annual income tax return submitted, A included a capital gain arising from the disposal of a vintage car, which was used for private purposes, thus not forming part of trading stock. A was unaware that the vintage car is regarded as a personal use asset since it was used for a purpose other than carrying on of a trade. Capital gains arising under these circumstances should have been disregarded.[26] This error was discovered three months after the assessment was issued, leading to A submitting a written request for a reduced assessment under section 93(1)(*d*). A did not submit any confirmation that the vintage car was a personal use asset and not a business asset.

Result:

Section 93(1)(*d*) requires that the error must not only be readily apparent but must also be "undisputed" either, in the return by the taxpayer or the assessment by SARS. In the section 93(1)(*d*) request, A provided reasons why the vintage car is a personal use asset but did not provide any documentary proof to substantiate the claim. In the absence of the necessary documentary proof to substantiate the claim, the request under section 93(1)(*d*) is in dispute, and therefore does not satisfy the requirement of being "undisputed". Accordingly, the request under section 93(1)(*d*) must be rejected and the taxpayer notified of the decision.

(c) "Error"

Section 93(1)(*d*) has a very limited application in that it only applies to "errors" in an assessment by SARS or in a return by a taxpayer. It is imperative to understand what constitutes an "error" before a written request for a reduced assessment may be submitted. The word "error" is not defined in the TA Act and must therefore be given its ordinary meaning. The word "error" is defined in the *Lexico Dictionaries* as –[27]

> "a mistake, the state or condition of being wrong in conduct or judgement".

This means that if a "*bona fide*" mistake is made by a taxpayer in a return or by SARS in an assessment and this mistake is readily apparent and undisputed, a taxpayer may request for a reduced assessment.

It is important to note that an error by a taxpayer is limited to an error in a return and not in the accounting or tax records that are used to complete the return. An error in the accounting or tax records would require more than just a simple verification to confirm the error, therefore would not qualify under section 93(1)(*d*) as the error cannot be said to be readily apparent.

A distinction must be drawn between an "error" and an "omission". The word "omission" means the action of excluding or leaving out someone or something, either deliberately or accidentally.[28] It is clear from the dictionary meaning that an omission of information by a taxpayer in a return, does not fall within the ambit of an "error" for purposes of section 93(1)(*d*). For an "error" to occur in a return a declaration in respect of income or deduction must be made. It is against this declaration whereby it must be determined

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[26] Paragraph 53(2) of the Eighth Schedule to the Act.

[27] **www.lexico.com/definition/error** [Accessed 16 August 2021].

[28] **www.lexico.com/definition/omission**. [Accessed 16 August 2021].

whether an "error" or "omission" has taken place with regard to the completion of the return. The specific facts of a request will have to be considered to determine if an "error" or "omission" had occurred in a return. If it is determined that it is an "omission", the taxpayer would have to follow the dispute resolution process provided for under section 104 to request a reduced assessment.[29]

Example 3 – Whether an "error" or "omission" occurred in a return

Facts:

Company B is registered with SARS as an eFiler, that is, to submit its tax returns electronically. In completing the ITR14 income tax return wizard Company B did not request the line item for expenditure incurred relating to international travel. After reviewing the original income tax assessment for the relevant tax period Company B realised that a deduction for international travel was not claimed. Company B submitted a written request for a reduced assessment under section 93(1)(*d*) and its request is accompanied by the necessary documentation to substantiate the deduction.

Result:

One of the requirements of section 93(1)(*d*) is that there must be an "error" in the assessment by SARS or the taxpayer in a return. For an "error" to have occurred in the ITR14 tax return a declaration in respect of the deduction must have been made in the return. When customizing its ITR14 tax return Company B did not request the line item for a deduction for international expenditure incurred. As Company B did not initially request a deduction in respect of international travel it had omitted the deduction in total. An omission according to its ordinary meaning does not qualify as an "error" for purposes of section 93(1)(*d*). Accordingly, the request under section 93(1)(*d*) must be rejected and Company B notified of the decision. Company B must follow the normal dispute resolution process provided for under section 104.

While section 93(1)(*d*) enables SARS to make a reduced assessment when a taxpayer has submitted a return containing an error, this provision is not applicable to retrospectively adjust returns for previous tax periods where, for example, a contract is cancelled in a future tax period. The cancellation of a contract in a future tax period does not constitute an error and consequently will not trigger section 93(1)(*d*) for such returns relating to previous tax periods.

[29] Chapter 9, Part B.

Example 4 – A "readily apparent undisputed error"

Facts:

B submitted an income tax return and claimed a deduction under section 18A of the Act in respect of donations made to an approved public benefit organisation (PBO) for the amount of R500, based on the receipt that was issued by the PBO.[30] It later transpired that the PBO issued an incorrect receipt reflecting R500 when instead it should have been R5 000. The receipt was corrected by the PBO and reissued to correctly reflect the amount of R5 000. B submits a request for a reduced assessment under section 93(1)(*d*) and the request is accompanied with the reissued receipt reflecting the correct amount of R5 000.

Result:

Section 93(1)(*d*) requires that a readily apparent undisputed "error" was made by the taxpayer in a return or by SARS in an assessment. Although the reissued receipt provided by B may be indicative that the income tax return reflected the incorrect amount, B completed the return correctly based on the information at hand. Therefore, B did not err at the time of completion of the return. Rather, the error was in the original receipt issued by the PBO and not in the income tax return. As a result, a request for a reduced assessment under section 93(1)(*d*) will be rejected and B will be notified of the decision. B must follow the normal dispute resolution process provided for under section 104.

The terms "readily apparent" and "undisputed error" cannot be separated. If it is not readily apparent that there is an undisputed error, SARS cannot make a reduced assessment. It is not enough that the error is undisputed.

4.3 Period of limitations for issuance of assessments under section 93(1)(*d*)

The period of limitations for the issuance of assessments is dealt with in section 99. Section 99(2)(*d*)(iii) provides specifically that the period of limitations in section 99(1) do not apply to an assessment referred to in section 93(1)(*d*) if **SARS becomes aware of the error before** the expiry of the respective assessment as provided for in section 99(1). It is thus a factual enquiry to determine the exact date on which SARS became aware of the readily apparent undisputed error.

A request for a reduced assessment will only be considered if SARS became aware of the readily apparent undisputed error before the expiry date of the assessment.[31] A taxpayer will still have to satisfy all the requirements of section 93(1)(*d*) before a reduced assessment may be made.

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[30] Section 18A of the Act.

[31] Section 99(2)(*d*)(iii).

Example 5 – Section 93(1)(*d*) request for a reduced assessment received before the period of limitations for issuance of assessment applies

Facts:

The annual income tax return of Z for the 2016 tax period was assessed on 30 March 2017 and a notice of assessment was issued and received on the same date. Z discovered on 29 March 2020 that an amount of R30 000 was incorrectly reflected in the income tax return as taxable income instead of being declared as exempt income. On the same day Z submitted a written request to SARS for a reduced assessment under section 93(1)(*d*) with the relevant supporting documentation, to substantiate that the income is not taxable, thus leading to a readily apparent undisputed error. SARS acknowledged receipt of the request on that same day.

Result:

The assessment made by SARS for the 2016 tax period is an original assessment. Under section 99(1)(*a*) an assessment may not be made three years after the date of an original assessment made by SARS (and the requirements under section 99(2) are not applicable). Accordingly, the assessment for the 2016 tax period prescribes at midnight on 29 March 2020. The request for a reduced assessment under section 93(1)(*d*) is received by SARS before the assessment exceeds the limitation periods. Therefore, SARS must consider A's request for a reduced assessment, based on the merits thereof. If the request is considered and the decision is to accede thereto, a reduced assessment must be made by SARS as section 99(2)(*d*)(iii) allows for the processing of a reduced assessment even though the original assessment falls within the periods under section 99(1).

4.4 Burden of proof [section 102(1)]

Save for two instances under section 102(2),[32] the burden of proof under section 102(1) rests with a taxpayer in view of the fact that the assessment is essentially based on the facts as submitted by the taxpayer in the return.

The requirements under section 93(1)(*d)* imply that where a taxpayer submits a request for a reduced assessment, the burden of proof will rest with the taxpayer to substantiate such request. To meet all the requirements of a section 93(1)(*d*) request, the taxpayer needs to satisfy SARS, based on supporting documentary proof that such requirements are fully met. These principles must be applied to the facts of each case to determine whether such requirements have been met or not.

In the case of *Rampersadh and Another v C:SARS and Others*,[33] that dealt with section 93(1)(*d*) in its present form Gorven J explained the legal position as follows:[34]

> "Only if SARS is satisfied that there is a readily apparent undisputed error may it reduce the assessment. The first hurdle for the applicants to surmount is to show that the claimed errors were in fact readily apparent and undisputed. Only then can it be contended that SARS should have been so satisfied."

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32 "The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS."

33 [2018] ZAKZPHC 36.

34 At 26.

Gorven J held that a taxpayer bears the onus to show that there is a readily apparent undisputed error. Based on the facts of the case he held as follows:[35]

> "It cannot by any stretch of the imagination be held that the applicants showed that the claimed errors were in fact errors. They certainly did not show that the claimed errors were not disputed on reasonable grounds. None of the claimed errors was specifically identified in the third request. None were even clearly pointed to in this application. The 'errors' contended for by the applicants were disputed to be errors by SARS in the answering affidavit. The basis of the disputes was not challenged in reply."

This judgment emphasises that the taxpayer has to discharge the burden of proof when a request for a reduced assessment is lodged with SARS.

Under the trite constitutional requirements relating to fair administrative justice, SARS will be required to provide a taxpayer with reasons for the refusal of such request under section 93(1)(*d*).

In *C:SARS v Sprigg Investment 117 CC t/a Global Investment*[36] the Supreme Court of Appeal considered what proper or adequate reasons mean. Maya JA stated the following:

> "Reference was then made to the judgment of this Court in *Minister of Environmental Affairs & Tourism & others v Phambili Fisheries* (*Pty*) *Ltd & another* which endorsed the standard for what constitutes 'adequate reasons' laid down by the Federal Court of Australia in *Ansett Transport Industries* (*Operations*) *Pty Ltd & another v Wraith & others* as follows:
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> > '[T]he decision-maker [must] explain his decision in a way which will enable a person aggrieved to say, in effect:
> >
> > > "Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision has involved an unwarranted finding of fact, or an error of law, which is worth challenging.' "
>
> This requires that the decision-maker should set out his understanding of the relevant law, any findings of fact on which his conclusions depend (especially if those facts have been in dispute), and the reasoning processes which led him to those conclusions. He should do so in clear and unambiguous language, not in vague generalities or the formal language of legislation. The appropriate length of the statement covering such matters will depend upon considerations such as the nature and importance of the decision, its complexity and the time available to formulate the statement. Often those factors may suggest a brief statement of one or two pages only."

4.5 Remedy under section 9(1)

A decision by SARS to not reduce an assessment under section 93(1)(*d*) is not an assessment or a decision as envisaged under section 104(2). Section 104(2)(*c*) states that a taxpayer may object to any decision that may be objected to or appealed against under a tax Act, other than the decisions not to extend the period for lodging an objection or appeal under section 104(2)(*a*) and 104(2)(*b*). The decision to not accede to a request under section 93(1)(*d*) will, therefore, not fall within the ambit of section 104(2)(*c*).

A taxpayer is, therefore, precluded from objecting to or appealing against the decision by SARS to not reduce an assessment under section 93(1)(*d*). However, a taxpayer may, by way of a remedy provided for under section 9(1), request a "review" of the

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[35] At 31.

[36] [2010] (73 SATC 126) at 12.

decision made by SARS not to allow a request for a reduced assessment under section 93(1)(*d*).

The purpose of section 9(1) is therefore to assist both taxpayers and SARS in resolving matters without having to take the dispute to court. It provides a specific escalation procedure that a taxpayer may follow in order to resolve a matter that is not able to be resolved via the objection and appeal route.

In order for section 9(1) to apply, the following requirements must be satisfied:[37]

- A taxpayer must submit a request or the SARS officials referred to in section 9(1) must decide to withdraw or amend the decision of their own accord.
- There must be a decision by a SARS official and a notice issued to the taxpayer.
- The decision must not be one given effect to in an assessment or a notice of assessment.

Accordingly, if a taxpayer is not afforded the internal review remedy under section 9(1), such taxpayer would in fact have no remedy at all against an adverse section 93(1)(*d*) decision, other than to take the matter to the High Court for a review of the decision by SARS. Section 9(2) must be noted with regard as to when SARS may not withdraw or amend with retrospective effect a written notice of a decision; or the date of assessment of the notice of assessment giving effect to the decision, from the later thereof if after three years.

Example 6 – After the remedy under section 9(1) is exhausted

Facts:

Company A realised a few days before its 2015 original assessment prescribed, that it failed to claim the correct amount of wear and tear under section 11(*e*) of the Act on certain qualifying machinery. Company A's request to SARS for a reduced assessment under section 93(1)(*d*) is submitted before the assessment prescribed. SARS, after perusing the request and supporting documentation, notified Company A of the decision not to accede to its request to have the assessment reduced under section 93(1)(*d*), as SARS was of the opinion that the request did not qualify for a reduced assessment under the said section. Company A subsequently requested under section 9(1) that SARS review its earlier decision not to accede to its request. A senior SARS official after having reviewed the section 9(1) request notified Company A that the earlier decision by SARS is confirmed.

Result:

A decision by SARS under either section 93(1)(d) or section 9(1) is not subject to objection and appeal under section 104. Company A may request a reconsideration of the decision taken under section 9(1) to not revise the assessment or it may bring a review application under PAJA and take the matter to the High Court.

[37] Section 9(1).

5. Conclusion

Section 93(1)(*d*) provides a taxpayer the opportunity to request SARS to reduce an assessment without having to follow the normal objection and appeal process under section 104. Section 93(1)(*d*) must not be regarded as an alternative for formal disputes where a taxpayer has exceeded the prescribed period for objections and appeals as provided for under section 99. SARS will consider this request under very limited circumstances.

A taxpayer requesting a reduced assessment under section 93(1)(*d*) must satisfy SARS that –

- an error was made in an assessment by SARS or a taxpayer in a return;
- the error must be readily apparent; and
- the error must be an undisputed error.

It is a factual enquiry whether the requirements of section 93(1)(*d*) are applicable on the facts of a specific case and is therefore not possible to provide a definite all-embracing test to apply. The burden of proof lies with the taxpayer to satisfy SARS that a readily apparent undisputed error was made by SARS in an assessment or a taxpayer in a return.[38] The omission of information in a return by a taxpayer does not fall within the ambit of section 93(1)(*d*).

A decision by SARS not to allow a request for a reduced assessment under section 93(1)(*d*) is not subject to objection or appeal under section 104. A taxpayer may, however, request SARS to "review" its earlier decision under section 9(1) provided such request complies with section 9(2).

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[38] Section 102(1).

Annexure – The law

Section 9 – Decision or notice by SARS

(1) A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act, excluding a decision given effect to an assessment or a notice of assessment that is subject to objection and appeal, may in the discretion of a SARS official described in paragraph (*a*), (*b*) or (*c*) or at the request of the relevant person, be withdrawn or amended by—

(*a*) the SARS official;

(*b*) a SARS official to whom the SARS official reports; or

(*c*) a senior SARS official.

(2) If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to in subsection (1) may not be withdrawn or amended with retrospect effect after three years from the later date of the—

(*a*) date of the written notice of that decision; or

(*b*) date of assessment of the notice of assessment giving effect to the decision (if applicable).

Section 93(1)(*d*) – Reduced assessments

(1) SARS may make a reduced assessment if—

(*d*) SARS is satisfied that there is a readily apparent undisputed error in the assessment by—

(i) SARS; or

(ii) the taxpayer in a return; or…

Section 99(2)(*d*)(iii) – Period of limitations for issuance of assessments

(2) Subsection (1) does not apply to the extent that—

(*d*) it is necessary to give effect to—

(iii) an assessment referred to in section 93(1)(*d*) if SARS becomes aware of the error referred to in that subsection before the expiry of the period for the assessment under subsection (1);

(e) SARS receives a request for a reduced assessment under section 93(1)(*e*).

Section 102 – Burden of proof

(1) A taxpayer bears the burden of proving—

(*a*) that an amount, transaction, event or item is exempt or otherwise not taxable;

(*b*) that an amount or item is deductible or may be set off;

(*c*) the rate of tax applicable to a transaction, event, item or class of taxpayer;

(*d*) that an amount qualifies as a reduction of tax payable;

(*e*) that a valuation is correct; or

(*f*) whether a ‘decision’ that is subject to objection and appeal under a tax Act, is correct.

Section 104 – Objection against assessment or decision

(1) A taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment.

(2) The following decisions may be objected to and appealed against in the same manner as an assessment—

(*a*) a decision under subsection (4) not to extend the period for lodging an objection;

(*b*) a decision under section 107(2) not to extend the period for lodging an appeal; and

(c) any other decision that may be objected to or appeal against under a tax Act.

(3) A taxpayer entitled to object to an assessment or 'decision' must lodge an objection in the manner, under the terms, and within the period prescribed in the 'rules'.

(4) A senior SARS official may extend the period prescribed in the 'rules' within which objections must be made if satisfied that reasonable grounds exist for the delay in lodging the objection.

(5) The period for objection must not be so extended—

(*a*) for a period exceeding 30 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which give rise to the delay in lodging the objection;

(*b*) if more than three years have lapsed from the date of assessment or the 'decision'; or

(*c*) if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment of the 'decision'.