REPUBLIC OF SOUTH AFRICA

IN THE TAX COURT OF SOUTH AFRICA

HELD AT WESTERN CAPE LOCAL DIVISION, CAPE TOWN

Case NO: IT 24790

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

……………………… ……………………

SIGNATURE DATE

In the matter between:

XYZ (PTY) LTD Appellant

and

COMMISSIONER FOR THE
SOUTH AFRICAN REVENUE SERVICE Respondent

J U D G M E N T

Savage J

Introduction

[1] This appeal concerns an additional assessment raised by the respondent, the Commissioner of the South African Revenue Service ("SARS"), against the appellant, XYZ (Pty) Ltd ("XYZ"), with interest under section 89*quat* of the Income Tax Act, Act 58 of 1962 ("the ITA"). This follows the decision of SARS to disallow income tax deductions in the appellant's 2015 year of assessment in respect of amounts which XYZ contends it incurred in relation to employee accrued leave, accrued bonus pay, notice pay and severance pay liabilities.

[2] In issue is the following:

1. whether, for income tax purposes, XYZ was entitled in its 2105 income tax return to deduct from gross income the amounts it contends it incurred pertaining to accrued leave and bonus pay (together R1 466 456,00), notice pay (R908 683,00) and severance pay (R749 725,00), and whether a deduction of the leave and bonus pay liabilities in 2015 is precluded by section 7B of the ITA;

2. if the amounts owing to employees in respect of leave pay and bonus pay in 2015 are not deductible under section 11(*a*) or section 7B, whether XYZ is entitled to an allowance under section 24C of the ITA in respect of such amounts on the basis that the portion of the income accruing to XYZ from its clients in the 2015 year, which represented the accrued leave and bonus liability for the year to date, was to be utilised to fund future expenditure in performing XYZ's obligations in terms of the staffing contract with its client, under which contract that income accrued; and

3. if some part of the assessment is upheld on appeal, whether the interest incurred was, in terms of section 89*quat*(3), as a result of "circumstances beyond XYZ's control" in which case XYZ should not be liable for the payment of interest.

Relevant facts

[3] The relevant facts are not in dispute. XYZ provides outsourced staffing services and payroll administration for clients predominantly operating in the construction and civil engineering sectors in South Africa. In doing so it enters into a staffing services contract with its client and a separate contract of employment with each of its employees. XYZ is obliged to pay employees in accordance with the provisions of the Labour Relations Act, Act 66 of 1995,

the Basic Conditions of Employment Act, Act 105 of 1997 and applicable sectoral wage determinations and bargaining council agreements, with industry-wide collective agreements forming part of the contract of employment. XYZ' charge out rate to clients, although not expressly stated, includes a component for accrued leave and bonus liabilities. The bonus is paid out at the December year-end industry shut-down period, with that portion of the bonus obligation which has accrued from 1 December to the end of February, and which has not been paid out, treated for accounting purposes as a liability at the end of February. For tax purposes, the same amount is claimed as a deduction. Employees receive *pro rata* payment of an annual bonus where their services are terminated through no fault of their own

[4] Leave days accrue to employees during the course of their employment, with leave is required to be taken during the December industry shut-down period, save for exceptional circumstances in which it may be taken earlier. Employees are paid accrued leave if their employment terminates without leave having been taken. As with bonus, XYZ calculates leave which has accrued for the period from 1 December to the end of February and treats this for accounting purposes as a liability at the end of February. As with the bonus, for tax purposes, the same amount is claimed as a deduction.

[5] Given the geographically-specific and project-based nature of clients' work, XYZ has a high employee turnover rate. Where no alternative employment is available at the end of a project, XYZ will dismiss an employee for operational reasons. Specific provision is made by XYZ for the payment of a cash amount in lieu of notice where the employee is unable to work in their notice period, such as where the project ends before a full notice period can be given and worked in by an employee. XYZ calculates the total amount in notice pay that would have to be paid if all employee contracts were terminated at the end of February 2015. Based on historical trends in the business, a 25% "risk factor" is applied recognising the possibility that 25% of employees may not be able to work in their notice period and would therefore need to be paid in lieu of notice. It is in respect of these employees that notice pay liability is determined and claimed as a deduction from income at the end of February.

[6] The payment of severance pay applies on the termination of an employee's services on grounds of operational requirements, with the quantum of severance pay subject to the number of an employee's continuous completed years of service. XYZ assesses the total payment that would have to be made if all employees who have been employed for a year or more and remain on the books at the end of February were to be retrenched. An 80% "risk factor" is applied, based on historical trends observed in the business, since only employees who resign or are dismissed are not paid notice or severance pay. This amount then represents the total severance liability which is treated as an accrued liability and claimed as a deduction.

[7] In its 2015 income tax return, as it had done in previous years, XYZ declared an amount of R3 124 574.00 as "other current liabilities" which it claimed as deductible from its taxable income in terms of section 11(*a*) for notice pay, severance pay, accrued leave and accrued bonus liability, alternatively, in respect of the leave payment and bonus liability only, deductible in terms of section 24C. SARS disallowed the deduction on the basis that the leave and bonus payments are not deductible in terms of section 11(*a*) notice or section 7B since there is no unconditional obligation to pay these amounts and leave and notice are deductible when paid to employees and PAYE is deducted; and that leave pay and bonus expenses are only deductible in terms of section 7B at the time that the appellant makes payment of such amounts as remuneration to its employees. Furthermore, it was determined that notice and severance pay did not constitute expenditure incurred in the production of income as contemplated in terms of section 11(*a*).

[8] On 30 January 2018 an additional assessment was issued against XYZ in respect of the 2015 year of assessment. Interest was levied by SARS in terms of section 89*quat*(2) on the amount deducted on the basis that XYZ had underpaid its provisional tax and that this was not as a result of circumstances beyond its control.

[9] On 28 March 2018 the appellant lodged an objection against the additional assessment, which was disallowed on 27 June 2018. On 6 August 2018 XYZ noted its appeal.

Discussion

Leave pay and bonus

[10] Section 11(*a*) provides that for the purposes of determining taxable income a taxpayer may deduct from its income:

> "(*a*) expenditure and losses actually incurred in the production of income, provided such expenditure and losses are not of a capital nature."

[11] In *Edgars Stores Ltd v CIR*[1] expenditure "actually incurred" was held to represent expenditure in respect of which there is an unconditional liability to make payment, even if it is not paid. In *CIR v Edgars Stores Ltd*,[2] it was found not to be fatal to the deduction that the quantum of the payment "is subject to some uncertainty":

> "It is a general principal applicable to the deduction of expenditure, that a taxpayer is entitled to a deduction even though the amount he is entitled to deduct is subject to some uncertainty. In such cases, the court allows a deduction on a basis which is considered to be fair and reasonable in the circumstances."

[1] 1988 (3) SA 876 (A).
[2] 1986 (4) SA 312 (T).

[12] In *Nasionale Pers Bpk v KBI (Naspers)*[3] it was made clear that probable future expenditure is not deductible. In that matter deductions were disallowed for bonuses which had not been unconditionally incurred but which the employer predicted it would pay on a specified future date in the following year to employees on its bonus scheme.

[13] There is no dispute that in respect of the period from December 2014 to the end of February 2015 an unconditional obligation arose in terms of which XYZ became liable to pay the leave and bonus pay which had accrued to its employees in respect of the three-month period worked. Payment of these amounts was not discretionary since XYZ was legally obliged, by virtue of the applicable sectoral determinations and bargaining council agreements which had through collective agreement been incorporated into the terms of the employment contract, to pay both this portion of accrued annual bonus and leave pay to employees.

[14] However, section 7B(1) defines "variable remuneration" to mean:

> "(*a*) overtime pay, bonus or commission contemplated in the definition of "remuneration" in paragraph 1 of the Fourth Schedule;[4]
>
> …
>
> (*c*) any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year."

[15] Importantly, section 7B(2) provides that:

> "(2) In determining the taxable income derived by any person during a year of assessment, any amount to which an employee becomes entitled from an employer in respect of variable remuneration is deemed to—
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> (*a*) accrue to the employee; and
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> (*b*) constitute expenditure incurred by the employer, on the date during the year of assessment on which the amount is paid to the employee by the employer.'

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3 *Nasionale Pers Bpk v KBI* 1986 (3) SA 549 (A).

4 Paragraph 1 of the Fourth Schedule defines "remuneration" as:

> "any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered".

[16] It was argued for XYZ that a purposive and contextual interpretation ought to be adopted to section 7B regarding leave pay, which must be limited to leave that the employee had been entitled to take in the year in question, but did not. Since employees were usually required to take leave during the building industry shut-down, employees would not have been able to take the leave accrued to them as at the end of February 2015, with the leave that had accrued only able to be taken the following year. In addition, XYZ submitted that the bonus paid to employees amounted to a contractual entitlement and was not the variable remuneration with which section 7B is concerned. For these reasons, XYZ took the view that the bonus and leave pay liability which accrued pertained to an absolute, non-variable amount, which constituted expenditure incurred in the production of income. This made the amount deductible under section 11(*a*), with no purpose served in deferring the deduction.

[17] SARS took issue with the deduction under section 11(*a*) of what it said were uncertain and future expenditure or losses, which had not been "actually incurred" and contended that since section 7B expressly pertained to bonus and leave pay liability, which was deemed to accrue to the employee when payment was actually made, these amounts were not deductible until paid to employees.

[18] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*[5] it was made clear that:

> "Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."[6]

(Footnotes omitted)

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5 [2012] JOL 28621 (SCA); [2012] ZASCA 13 (SCA); 2012 (4) SA 593 (SCA).

6 At para 18.

[19] In *Cool Ideas 1186 CC v Hubbard and Another*[7] it was reiterated that:

> "A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:
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> (a) that statutory provisions should always be interpreted purposively;
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> (b) the relevant statutory provision must be properly contextualised; and
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> (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a)."[8]

[20] The Court in *CSARS v Marshall NO*[9] recognised that it is settled law that in attributing meaning to a statutory provision, the factors to be considered, which are not mutually exclusive, include the language used, the context in which the provision is set, the material known to the drafters and the purpose which the provision is intended to serve. In undertaking this task the maxim *generalia specialibus non derogant*, that general provisions do not derogate from special provisions, is an interpretative tool firmly recognised in our law. In *R v Gwantshu,*[10] which concerned the interpretation of competing statutory provisions, it was stated that:

> "When the Legislature has given attention to a separate subject and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provision, unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms…"

[21] In issue in the current matter is the interpretation of both a general and a specific provision within the context of the ITA. Section 11(*a*), as a general provision, permits the deduction of expenditure and losses actually incurred in the production of income in determining taxable income. This provision is to be interpreted in its context and not in isolation from other provisions of the ITA, including section 7B as a specific provision directed at the treatment of variable remunerable.

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[7] [2014] ZACC 16; 2014 (8) BCLR 869 (CC); 2014 (4) SA 474 (CC).
[8] At para 28.
[9] [2016] ZASCA 158 at para 24.
[10] 1931 EDL 29 at 31.

[22] The purpose of section 7B was to match the timing between accrual and payment of various forms of variable remuneration[11] such as commission, bonuses and overtime pay. The legislative intent apparent from the wording of the provision is manifestly clear and unambiguous, namely that *inter alia* bonus and accrued leave pay are deductible in the tax year of assessment in which these amounts are paid to employees.

[23] The fact that "bonus" is not defined for purposes of section 7B does not support the contention that the term is limited only to the payment of a variable bonus or where payment of a bonus is discretionary and does not arise from an express contractual entitlement. Such an interpretation is not borne out by the language and wording of the provision, more so since even where the contract provides for payment of a bonus, the bonus amount paid to an employee may be variable depending on the duration of the contract or the period worked. In addition, the proposition that leave pay liability may not not fall within the definition of variable remuneration is not supported by language and wording of the provision, which expressly references leave pay, and when the amount of leave pay is by its nature variable in the sense that it is directly related to the number of days worked by an employee. It follows that it would constitute an unduly strained interpretation of the provision to interpret it in such a manner as to omit leave pay and bonus from its ambit. What is clear is that section 7B expressly provides for the manner in which these liabilities are to be treated and there is therefore no reason to justify a finding that the bonus and leave pay liabilities claimed by XYZ should not be deferred for deduction in accordance with the express terms of such provision.

[24] Although XYZ suggested that a purposive and contextual interpretation to be given to section 7B, from a plain reading of the provision, its context within the ITA as a whole, as well as the purpose to which it is clearly directed, there can be little doubt that the provision is aimed at governing the treatment of accrued bonus and leave pay liabilities under what the statute terms "variable remuneration". The plain language and wording of the provision permits no contrary interpretation when the amounts paid may differ depending on the period of employment or, in respect of leave, the number of leave days taken. It follows that since the amounts in question were not actually incurred in the sense of being paid to employees in the tax year in question, their deduction is disqualified by section 7B.

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[11] Explanatory Memorandum: Taxation Laws Amendment Bill (2012) at page 10.

[25] Even if the accrued bonus and leave pay amounts may be considered to be "actually incurred" in the sense that there existed an unconditional liability to make payment of such expenditure as contemplated by section 11(*a*) as a general provision, the specific provision, being section 7B, expressly provides for the manner in which both amounts are to be treated for purposes of the statute. It follows that in terms of section 7B(1)(2), the amounts accrued in respect of bonus and leave pay constituted expenditure which could only be incurred by the employer when such amounts are paid to the employee.

Section 24C

[26] In the event that accrued amounts in respect of the leave pay and bonus categories do not qualify for deduction under section 11(*a*) read with section 7B of the ITA, XYZ sought in the alternative that the deduction of the leave pay and bonus amounts be permitted in terms of section 24C.

[27] Section 24C provides:

> "(1) For the purposes of this section, "future expenditure" in relation to any year of assessment means an amount of expenditure which will be incurred after the end of such year—
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> (*a*) in such manner that such amount will be allowed as a deduction from income in a subsequent year of assessment; or
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> (*b*) in respect of the acquisition of any asset in respect of which any deduction will be admissible under the provisions of this Act.
>
> (2) If the income of any taxpayer in any year of assessment includes or consists of an amount received by or accrued to him in terms of any contract and such amount will be utilised in whole or in part to finance future expenditure which will be incurred by the taxpayer in the performance of the taxpayer's obligations under such contract, there shall be deducted in the determination of the taxpayer's taxable income for such year such allowance (not exceeding the said amount) in respect of so much of such future expenditure as relates to the said amount.
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> (3) The amount of any allowance deducted under subsection (2) in any year of assessment shall be deemed to be income received by or accrued to the taxpayer in the following year of assessment."

[28] Section 24C creates an exception to the general rule in the ITA that expenditure is only deductible in the year of assessment in which the expenditure is actually incurred. The purpose of the provision is to address the anomaly that arises when income is received under a contract in one year and the expenditure is incurred to perform under that contract in a subsequent year of assessment. Section 24C(2) has three requirements: there must be income received or accrued in terms of an income-producing contract; an obligation on the taxpayer under a contract that requires future expenditure, which will be financed by this

income; and contractual sameness. In *Big G Restaurants (Pty) Limited v Commissioner for the South African Revenue Service (Big G),* [12] with regards to the issue of contractual sameness, it was found that:

> "…it is a requirement of the section [24C] that the contract in terms of which the income that is to finance future expenditure is received or accrues must be the *same* contract under which the expenditure is incurred. So, there is a requirement of "sameness". But I do not read the sameness requirement to connote that there must, for example, in the case of a written contract, be one piece of paper stipulating for the earning of income and the imposition of future expenditure. Two or more contracts may be so inextricably linked that they may satisfy this requirement."[13]

[29] The Court found that the contracts in terms of which Big G earns an income could not be placed within the ambit of section 24C, in that there was a lack of correlation between the income-earning contracts and obligation-imposing contracts making section 24C inapplicable.[14] And, in *Clicks Retailers (Pty) Ltd v Commissioner for the South African Revenue Service (Clicks)*[15] it was similarly found that:

> "The two contracts relied on to found Clicks' claim for a section 24C allowance function in tandem to give effect to the loyalty programme. This functional relationship manifests in a number of factual and legal links between the two contracts, but these links do not render either contract dependent on the other for its existence, nor is their effect that income can only accrue to Clicks if both contracts are in place. The contract under which income accrues (the contract of sale) and the contract under which the obligation to finance future expenditure arises (the ClubCard contract) are simply too independent of each other to meet the requirement of contractual sameness. Whilst they may operate together within the context of the loyalty programme, and in that sense are inextricably linked or connected, this link is not sufficient to render the contracts the same for the purposes of section 24C. The contracts therefore fall short of the sameness that is required by section 24C."[16]

[30] The facts of the current matter are distinguishable from both *Big G* and *Clicks*. It was argued for XYZ that there is a clear relationship between the income-producing contract it entered into with its clients and the obligation-imposing contract it entered into with its employees, with employee bonus and leave costs included in the applicable price calculator and the income received by XYZ from its clients. It contended that there would therefore be no useful purpose served in deferring the deduction of the liabilities claimed to the year in which actual payment will be made, because such liabilities are not uncertain.

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12 [2020] ZACC 16; 2020 (6) SA 1 (CC); 2020 (11) BCLR 1297 (CC).
13 At para 18.
14 At para 29.
15 2021 (4) SA 390 (CC).
16 At para 49.

[31] SARS took the view that XYZ' contract with its client does not create an obligation to incur future expenditure, making section 24C inapplicable. This is apparent from the fact that no specific provision created an obligation to incur future expenditure in relation to bonus and leave pay, with the contract recording only in clause 7.2 that XYZ would provide staffing services in accordance with the provisions of the applicable law and best practice and the obligation to incur such expense arising from the contract with employees.

[32] Whilst XYZ seeks to place reliance on section 24C, the fact remains that the treatment of both bonus and leave pay liabilities are expressly included within the ambit of section 7B, in terms of which it is provided that such expenses are deductible in the year that they are paid. With such express provision as to the manner of treatment of accrued leave and bonus liabilities existing in section 7B, it cannot have been intended by the legislature that such liabilities are capable of constituting "future expenditure" for purposes of section 24C when such an interpretation does not accord with a patently distinct provision in the statute, namely section 7B, when considered in context. It follows that accrued bonus and leave pay liabilities did not constitute future expenditure for purposes of section 24C, which provision did not apply to such amounts.

Notice and severance pay

[33] In relation to severance pay and notice pay, it was argued for XYZ that for purposes of section 11(*a*) the liability incurred in respect of notice and severance pay constituted expenditure actually incurred in the production of income insofar as there existed a sufficient degree of certainty that an obligation to pay severance and notice pay had arisen, with payment being "inevitable" on the termination of employment, subject to a reasonable risk factor based on past experience applied. This risk factor of 25% applied in respect of notice was based on the anticipation, arrived at from historical experience, that notice would be paid to one in every four employees whose employment was terminated, with the majority of employees receiving timeous notice of the termination of their employment and working in their notice periods as opposed to receiving payment of notice pay. In respect of severance pay, the risk factor applied indicated that it was anticipated that, given the project-based nature of the work, 80% of employees would be retrenched and paid severance pay.

[34] In issue is whether these amounts were "actually incurred" in the sense that an unconditional liability to make payment existed, even if it had not been paid. SARS contended that section 11(*a*) bars the deduction of provisions for expenditure or losses that are uncertain or may arise in the future or that are no more than impending or expected; and that section 23(*e*) prohibits a deduction of income carried to any reserve fund or capitalised in any way. It was argued for SARS that as long as a liability remains contingent it does not constitute

expenditure actually incurred[17] and that notice and severance pay were not actually incurred in the production of income as they were not absolute and unqualified. This, it was submitted was so in that an employee may be offered alternative employment or unreasonably refuse alternative employment, in which case the entitlement to payment may fall away. XYZ persisted that the payments were unconditional and that the deductions should properly be allowed, with SARS not having placed the risk factor applied in dispute.

[35] The fact that a risk factor was applied to the amounts claimed in respect of notice and severance pay indicates that these amounts constitute probable future expenditure, but that the amount of such payments remained uncertain in the sense that it could not factually be determined with sufficient certainty what would constitute a fair and reasonable determination of the amount to paid in due course. The risk factor applied does not remedy this difficulty when the liability claimed is not unconditional, with employees entitled to resign from their employment, accept further employment or refuse to accept reasonable alternatives offered. It follows in such circumstances that reliance cannot be placed on section 11(*a*) to permit the deduction of such amounts as expenditure from income received.

[36] It follows for all of these reasons that the appeal must fail and the additional assessments raised by SARS against XYZ must stand.

Interest

[37] XYZ was held liable for interest as a result of the additional assessments raised arising from the findings that it had underpaid provisional tax in terms of section 89*quat*(2)(*b*).[18] SARS' discretion to waive interest is circumscribed by the provisions of section 89*quat*(3) of the ITA, which provides that:

> "(3) Where the Commissioner having regard to the circumstances of the case is satisfied that the interest payable in terms of subsection (2) is a result of circumstances beyond the

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[17] With reference to *Pyott Ltd v CIR* 1945 AD 128, 13 SATC 121. See also *CIR v Edgars Stores Ltd* 1986 (4) SA 312 (T), 48 SATC 89 at 94 (on appeal as *Edgars Stores Ltd v CIR* 1988 (3) SA 876 (A), 50 SATC 81).

[18] Section 89*quat*(2) reads:

> "(2) If the taxable income of any provisional taxpayer as finally determined for any year of assessment exceeds—
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> (*a*) R20 000 in the case of a company; or
>
> (*b*) R50 000 in the case of any person other than a company, and the normal tax payable by him in respect of such taxable income exceeds the credit amount in relation to such year, interest shall, subject to the provisions of subsection (3), be payable by the taxpayer at the prescribed rate on the amount by which such normal tax exceeds the credit amount, such interest being calculated from the effective date in relation to the said year until the date of assessment of such normal tax."

control of the taxpayer, the Commissioner may direct that interest shall not be paid in whole or in part by the taxpayer."

[38] There was no dispute that XYZ had for many years calculated its deductions in the manner which SARS adversely assessed in the 2015 tax year of assessment. SARS had in previous years accepted XYZ' tax return and had not disputed the deduction method adopted. XYZ relied on the advice of its auditors, Mr. M, who signed off on its annual tax returns. Since XYZ had been given no indication that the method of deduction adopted was defective, it could not reasonably have been expected to have taken steps to remedy the situation. It follows that in terms of section 89*quat*(3) circumstances beyond the control of XYZ appear to have existed on the facts of the matter. Interest imposed in respect of the additional assessments raised against the taxpayer should therefore be remitted to SARS for reconsideration.

[39] For these reasons the appeal against the additional assessments raised by SARS against XYZ falls to be dismissed and the assessments confirmed. The appeal against interest imposed must succeed, with the issue of interest remitted to SARS for reconsideration. Costs were not sought and no order as to costs is made.

Order

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

1. The appeal against the additional assessments raised against the taxpayer is dismissed and the assessments are confirmed.

2. The interest imposed on the additional assessments raised is remitted to the Commissioner of the South African Revenue Service under section 89*quat*(3) of the Income Tax Act, Act 58 of 1962 for reconsideration.

K M SAVAGE
Judge of the High Court

Assessors: Mr B Nduna and Mr Q Joseph

Date of hearing : 13 and 14 September 2021

Date of judgment : 15 October 2021