



TAX INDABA

2018

WELCOME



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THE VALUE OF KNOWING

**RECENT JUDICIAL
DECISIONS
RELATING TO TAX
ADMINISTRATION**

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**AUDIT, INVESTIGATION &
ASSESSMENT**



AUDIT, INVESTIGATION & ASSESSMENT

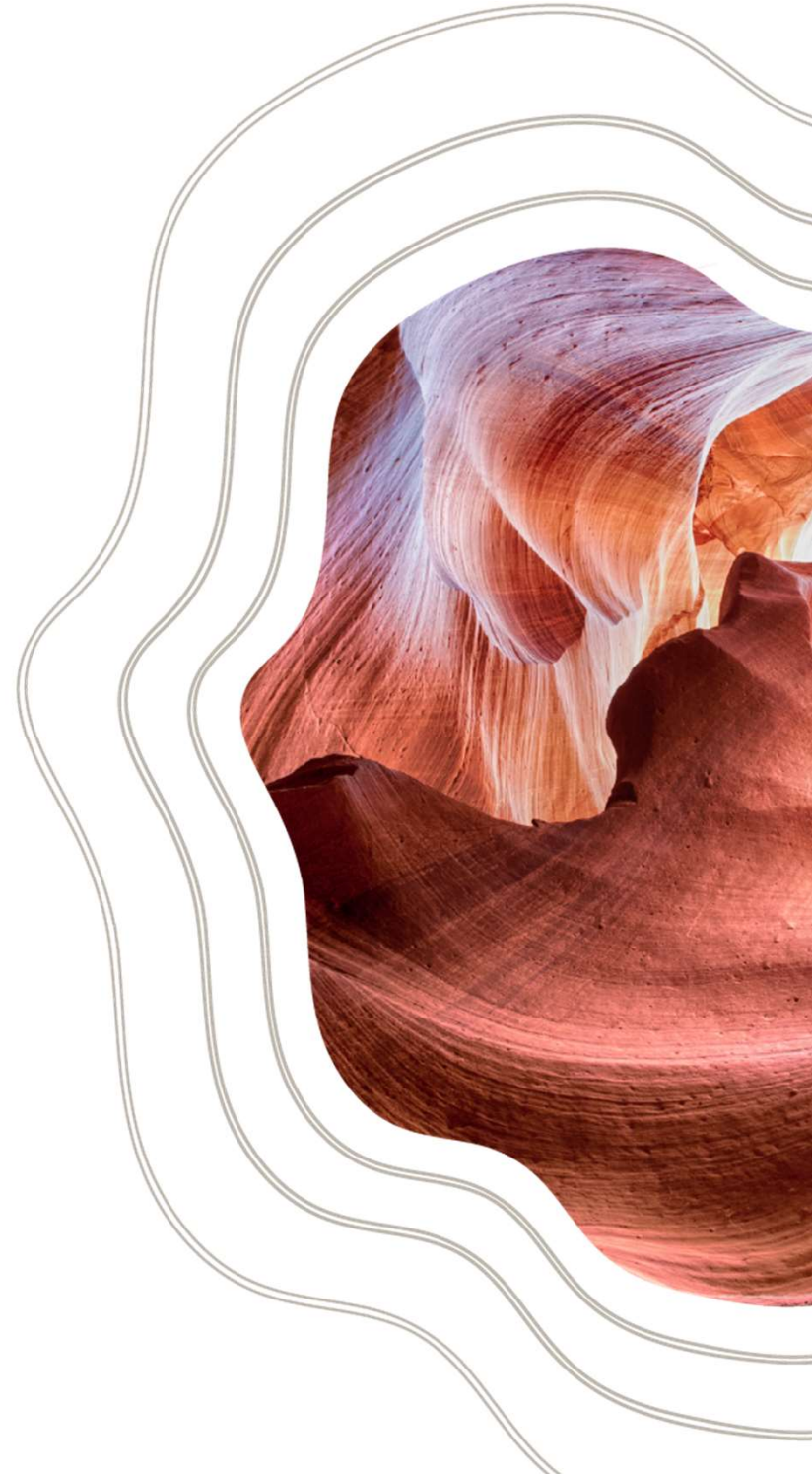
- **IT 13726 (PE Tax Court):** Validity of a tax audit process – Tax Court found an assessment to be invalid as SARS did not meet the requirements of sections 40 (selection for audit) and 42 (keeping taxpayer informed) of the TAA, offending both the Constitution and the principle of legality.
- **IT 13251 (Jhb Tax Court):** Estimated assessments:
 - Reasonableness of assessment – onus on SARS
 - SARS methodology
- **CSARS v Bravura Equity Services (High Court Gauteng Local Division):** SARS authorised to hold an inquiry into the tax affairs of the Respondents. Court considered *inter alia*:
 - SARS onus – “reasonable grounds to believe” v “satisfy”;
 - “Relevant material” issue; and
 - How the Court should exercise its discretion.
- **ITC 1911 (Jhb Tax Court):** Request for reasons for assessment – principles established in Phambili-matter
- **ITC 1901 (PE Tax Court):** Role of Court in instances where the Commissioner has to exercise his discretion (in this case i.r.o. value of trading stock) – Court is called upon to exercise its own original discretion.



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PRESCRIPTION



PRESCRIPTION

- **CSARS v KWJ Investment Service (SCA):** Section 79 of the ITA – ‘practice generally prevailing’ – common cause that the respondent bore the responsibility, on a preponderance of probability.
- **CSARS v Char-Trade 117 CC t/a Ace Packaging (SCA):** STC i.r.o. 2007 to 2011 STC cycles, only year in dispute – 2007. Parties seem to accept that section 99 of the TAA applied. Court held that prescription never commenced to run, as Char-Trade failed to file a STC return.
- **ITC 1903 (WC Tax Court):** STC i.r.o. Feb 2011 ‘dividend cycle’ – does section 79 of the ITA (read with section 269(5) of the TAA apply), or section 99 of the TAA? NB difference between the two: Section 79(1) proviso that STC assessment may not be issued more than 3 years after date of income tax assessment i.r.o. dividend declared during that year – unless fraud etc. Legitimate expectation that STC assessment would not and could not be issued more than 3 years from date of IT assessment.



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LITIGATION PROCESS



COURT PROCESS

- **United Manganese of Kalahari v CSARS (High Court Gauteng division):** Declaratory order – NB only i.r.o. dispute of law, not facts. Court also dealt with issue of jurisdiction.
- **A Way to Explore v CSARS (High Court Gauteng division):** Order in terms of section of the Promotion of Administrative Justice Act to set aside VAT assessments while objection procedure underway – Refused.
- **Lion Match Company v CSARS (SCA):** Dismissal of application by taxpayer to set aside the SARS Rule 31 Statement – not appealable.
- **IT 13251 (Jhb Tax Court):** Various points *in limine* –
 - Changes in assessment v Concession in appeal;
 - Data used by SARS
- **IT 14294 (Jhb Tax Court):** Exception that Statement of Grounds of Appeal lacks averments sufficient to sustain the appeal (Court also dealt with jurisdiction). } same matter
- **ITC 1912 (Jhb Tax Court):** SARS interlocutory application as Rule 32-statement contained new grounds of appeal.
- **ITC 1904 (WC Tax Court):** Default judgment against SARS – late filing of Rule 31 statement. (Court also considered jurisdiction – Western Cape v Gauteng).



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PENALTIES & INTEREST



PENALTIES & INTEREST

UNDERSTATEMENT PENALTIES

- **ITC 13725/7 & VAT 1426/1096:** Failure to submit income tax and VAT returns - SARS imposed 150% USP, Court reduced to 100% - what is gross negligence? Detailed analysis of different components for imposition of USP.
- **ITC 1910 (Jhb Tax Court):** Substance over form attack – Controlled Foreign Company structure – Court confirmed 100% USP to be appropriate.
- **ITC 1908 (Tax Court – Megawatt Park):** Failure to submit income tax and VAT returns – SARS reduced USP to 25% (income tax) and 50% (VAT), taxpayer objected, Court increased both the income tax and VAT USP to 100%.
- **ITC 1907 (Jhb Tax Court):** Taxpayer wanted 10% USP (for substantial understatement) waived – Court declined as taxpayer did not have tax opinion before returns were submitted.
- **ITC 1906 (Durban Tax Court):** Deduction for 'donation' disallowed – various versions of the objection. SARS imposed 100% penalties, Court held that this was a case of '*misguided reliance by a [member of a close corporation] on incorrect professional advice*' – not gross negligence, USP reduced to 50%.

PENALTIES & INTEREST (continued)

ADDITIONAL TAX – SECTION 76 OF THE ITA

- **IT 13251 (Jhb Tax Court):** "... system was obviously planned and calculated and regularly and continuously implemented." Section 76: no extenuating circumstances: Court confirmed 200% additional tax.

INTEREST

- **ITC 1907 (Jhb Tax Court):** Section 89quat(3): Commissioner may direct that interest shall not be paid if satisfied that taxpayer has on reasonable grounds contended that such deduction should have been allowed. Court dismissed the appeal, as the taxpayer did not have an expert opinion at the time (also see USP on previous slide)
- **ITC 1909 (Case No 13671 – loss incurred for breach of contract):** Taxpayer also relied on section 89quat(3) as it argued that it had reasonable grounds for claiming the deduction. Taxpayer has not adduced concrete evidence in support of its contention that it had reasonable grounds for contending that it was entitled to the deduction, interest imposed by the Commissioner under s 89quat is confirmed.
- **ITC 1910 (Jhb Tax Court):** Substance over form attack – Controlled Foreign Company structure – Court confirmed 100% USP to be appropriate.

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THANK YOU