
INTERNATIONAL TAX
CASE SUMMARY

F TAXPAYER vs SARS

FEBRUARY 2022

ACADEMY OF TAX LAW

PUBLISHING SERVICES

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HEAD OF ACADEMICS



Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

PART 1

SUMMARY

JUDGEMENT SUMMARY

CASE OVERVIEW

Court:	Tax Court of South Africa
Case No:	IT 45842
Applicant:	F Taxpayer
Defendant:	The Commissioner for the South African Revenue Service
Judgment Date:	25 February 2022
Full Judgment:	https://academyoftaxlaw.com/document/f-taxpayer-vs-sars-judgment/
View Online:	https://academyoftaxlaw.com/tax-dispute-procedural-compliance-f-taxpayer-v-sars/

JUDGMENT SUMMARY

In the matter of F Taxpayer v SARS, the Tax Court of South Africa was tasked with evaluating the procedural compliance and statutory adherence of the South African Revenue Service (SARS) in the taxpayer's appeal concerning assessments for the 2016 to 2018 tax years. This case brought into focus SARS's failure to meet prescribed deadlines and its subsequent application for condonation to excuse these delays. The judgment by Justice J.I. Cloete ultimately underscored the critical importance of procedural compliance by public bodies, especially when dealing with taxpayers' rights to fair administrative action as guaranteed by the South African Constitution.

The case primarily involved two applications: the taxpayer's request for a final order against SARS for its failure to timely deliver its statement under rule 31, and SARS's counter-application for condonation of its procedural lapses. SARS had consistently missed multiple deadlines related to this matter, from the delivery of reasons for its assessments to delays in filing statements of defense. Notably, SARS failed to deliver the rule 31 statement within the prescribed period and sought multiple extensions without substantive reasons. SARS's repeated disregard for deadlines, coupled with insufficient explanations, highlighted a pattern of administrative inefficiency, which

the court found concerning.

The court evaluated whether SARS's delays were justified and concluded that they were not. Justice Cloete emphasised that the statutory obligations of SARS under the Tax Administration Act (TAA) and public administrative principles were clear and non-negotiable. SARS's numerous failures to meet procedural requirements and provide timely explanations violated the taxpayer's right to fair administrative action and transparency, as mandated under Section 195 of the South African Constitution.

The judgment denied SARS's condonation application, effectively upholding the taxpayer's appeals against SARS's additional assessments. Justice Cloete highlighted SARS's repeated administrative failures, particularly its attempts to misrepresent and circumvent deadlines without proper justification. This ruling not only provided relief to the taxpayer but also served as a strong message regarding the expected standards of public administration and the implications for SARS's compliance with statutory procedures. In addition to upholding the taxpayer's appeal, the court ordered SARS to cover the taxpayer's legal costs, reaffirming the judiciary's stance on protecting taxpayers' rights and ensuring accountability in tax administration.

KEY POINTS OF THE JUDGMENT

BACKGROUND

The case of F Taxpayer v SARS centres around a procedural dispute initiated after SARS issued additional tax assessments to F Taxpayer for the 2016 to 2018 tax years following an audit. SARS raised these assessments on 17 March 2020, claiming certain deductions related to insurance premiums were not valid. In response, the taxpayer formally requested reasons for these assessments within the 30-day period as per the rules under the Tax Administration Act (TAA), and SARS was obligated to provide these reasons by 10 June 2020. However, SARS missed this deadline and only informed the taxpayer of an extension on 3 July 2020, which was already 16 days past the original deadline. This failure set a precedent for SARS's repeated delays and procedural non-compliance throughout the case.

As the case progressed, SARS consistently

failed to meet additional deadlines, including those related to filing objections, providing decisions, and ultimately delivering a rule 31 statement—a key document outlining its basis for the disputed assessments. The taxpayer, growing frustrated with these delays and the absence of meaningful explanations, filed for a final order against SARS. SARS, in turn, filed a counter-application for condonation, seeking to excuse its procedural non-compliance and request further extensions.

The court was faced with determining whether SARS's delays were justified and whether condonation should be granted for its repeated lapses. At the core of the matter was SARS's ability to administer tax law in accordance with the Constitution and TAA, as well as the taxpayer's right to timely and fair administrative action.

KEY POINTS

OF THE JUDGMENT

CORE DISPUTE

The primary dispute in this case centred on the taxpayer's right to deduct insurance premiums paid to RMB Structured Insurance Limited, which SARS disallowed based on Section 23L(2) of the Income Tax Act. This provision restricts deductions on premiums for certain short-term insurance policies when the premiums are not recognised as an expense under International Financial Reporting Standards (IFRS). SARS contended that the taxpayer's premiums did not meet the necessary criteria, arguing that the premiums should be treated as an asset rather than an expense due to the nature of the policy's structure and risk transfer.

Complicating the matter was the absence of a specific IFRS standard governing the treatment of insurance policies for policyholders (in contrast to insurance providers, which are guided by IFRS 4). The taxpayer obtained expert advice from accounting professionals, who asserted that the premiums could

reasonably be categorised as expenses under the Conceptual Framework for Financial Reporting (CFFR). SARS, however, disagreed, claiming that the taxpayer's insurance policy did not meet the standards required for expense recognition under IFRS 4, despite having previously conceded that IFRS 4 did not apply to policyholders.

This misalignment between the taxpayer's and SARS's interpretations of applicable accounting standards formed the technical basis of the dispute. More broadly, the case raised significant questions about SARS's procedural obligations and administrative handling, as SARS's repeated delays left the taxpayer in a prolonged state of legal and financial uncertainty. The court's judgment would ultimately weigh not only on the technical accounting treatment but also on SARS's accountability to fair and efficient tax administration.

KEY POINTS

OF THE JUDGMENT

COURT FINDINGS

The court found that SARS's procedural failings were extensive and unjustified, breaching both statutory obligations under the TAA and public administrative principles enshrined in the Constitution. Justice Cloete highlighted that SARS's repeated delays and insufficient explanations violated the taxpayer's right to fair administrative action. SARS's conduct was inconsistent with Section 195 of the South African Constitution, which mandates transparency, accountability, and ethical standards in public administration.

The court specifically noted that SARS failed to communicate effectively, neglected deadlines, and provided misleading information to the taxpayer. SARS's assertion that delays were due to COVID-19 and internal capacity issues was deemed inadequate, given the numerous extensions sought without substantive reasoning. Further, SARS's failure to meet procedural deadlines for responding to objections and appeals added to the taxpayer's operational and financial burdens,

as the taxpayer's compliance status was jeopardised.

In its assessment of whether SARS's delays could be excused by condonation, the court emphasised that the interests of justice required considering the cumulative impact of SARS's non-compliance. Justice Cloete observed that the repeated procedural lapses created severe prejudice for the taxpayer, including jeopardising regulatory and credit compliance, which was vital for the taxpayer's business continuity.

Ultimately, the court denied SARS's condonation application, citing that SARS did not demonstrate sufficient cause or provide a compelling justification for the delays. This decision upheld the taxpayer's right to fair administrative procedures and reflected the judiciary's intolerance for disregard of procedural compliance in public administration.

KEY POINTS

OF THE JUDGMENT

OUTCOME

The court ruled decisively in favour of the taxpayer, granting a final order against SARS and upholding the taxpayer's appeal for the 2016 to 2018 tax assessments. Justice Cloete's ruling not only rejected SARS's counter-application for condonation but also imposed costs on SARS, ordering the agency to cover the taxpayer's expenses in both the main and counter-application proceedings. This judgment underscored the importance of procedural diligence and accountability in tax administration.

The judgment revealed that SARS's procedural missteps were more than isolated instances, reflecting a pattern of disregard for the rules governing taxpayer appeals. The court found that SARS's explanations for delays, such as the COVID-19 backlog and internal staffing issues, were inadequate to justify the extensive non-compliance observed over the course of the appeal process. Justice Cloete noted that

SARS's persistent delays constituted a breach of the taxpayer's right to fair administrative action, which is protected under the South African Constitution.

By denying condonation, the court affirmed that public bodies, including SARS, must adhere to high standards of procedural compliance, especially when taxpayer rights are at stake. This decision is significant, as it highlights that procedural fairness and statutory deadlines are integral to tax administration and that failures in these areas can have serious financial and reputational consequences for the revenue authority.

In addition to upholding the appeal, the judgment has set a precedent for other taxpayers facing similar issues with procedural delays from SARS, reinforcing the principle that taxpayers are entitled to timely responses and transparency from tax authorities.

PART 2

SIGNIFICANCE

MAJOR ISSUES

AREAS OF CONTENTION

The F Taxpayer v SARS case raised several critical issues that highlighted significant areas of contention between the taxpayer and SARS, particularly around procedural compliance and statutory interpretation. First and foremost, SARS's persistent delays and procedural non-compliance were central to the court's findings. The taxpayer faced extensive delays due to SARS's repeated failure to meet statutory deadlines and procedural obligations under the Tax Administration Act (TAA), which governs taxpayer rights in appeals and administrative matters. This issue was compounded by SARS's lack of meaningful communication with the taxpayer and its failure to provide valid reasons for the delays, thus infringing on the taxpayer's right to fair administrative action.

Another key issue was SARS's alleged misrepresentation of its internal status updates, which led the taxpayer to believe that necessary actions were being taken when, in reality, they were not. The taxpayer argued that SARS misled them by implying that key statements and documents, such as the rule 31 statement, were either being prepared or had been assigned when they had not. This lack of transparency not only undermined the taxpayer's ability to respond effectively but also created significant operational and financial risks.

A further area of contention involved SARS's interpretation of Section 23L of the Income Tax Act and its misapplication of IFRS standards. The dispute centred on the accounting treatment of insurance premiums, with SARS's position based on an incorrect application of IFRS 4, a standard applicable only to policy issuers rather than policyholders. This misinterpretation led to a protracted dispute over the deductibility of the premiums in question. The lack of alignment between the parties on statutory and accounting standards contributed to the broader issues of procedural and administrative inefficiencies that ultimately influenced the court's decision.

EXPECTED OR CONTROVERSIAL?

The decision in *F Taxpayer v SARS* was largely anticipated, given SARS's extensive procedural delays and the court's focus on upholding administrative fairness and transparency. Justice Cloete's ruling, which denied SARS's request for condonation and upheld the taxpayer's appeal, was consistent with established principles of procedural justice. It reflected the judiciary's commitment to holding public bodies accountable for meeting statutory and constitutional standards. SARS's repeated procedural lapses, coupled with its insufficient explanations, made it unlikely that the court would grant leniency.

However, the ruling could be viewed as controversial within the context of SARS's position as the national revenue authority. The court's clear stance against SARS's procedural conduct highlighted the agency's administrative shortcomings and set a robust precedent that prioritises taxpayer rights over administrative convenience. This decision may raise questions regarding SARS's internal

practices, especially in handling taxpayer appeals and meeting procedural obligations under the TAA.

The court's emphasis on the taxpayer's constitutional right to fair administrative action reinforces the judiciary's protective stance toward taxpayers, particularly when procedural delays and misrepresentations by SARS adversely affect business operations. For some, the decision underscores the importance of strict adherence to statutory timelines and transparency by revenue authorities. However, others may view it as a potential constraint on SARS's operational flexibility, especially in periods of resource strain, such as during the COVID-19 pandemic.

Overall, while the decision itself may not be surprising, its implications for SARS's procedural practices and the emphasis on taxpayer rights mark it as a significant ruling with potential ramifications for future tax litigation and revenue authority conduct.

SIGNIFICANCE FOR MULTINATIONALS

The *F Taxpayer v SARS* judgment holds critical significance for multinational enterprises (MNEs), particularly those operating within or engaging in business with jurisdictions where tax authorities enforce strict procedural compliance. For multinationals, this case reinforces the need to maintain diligent compliance records and emphasises the importance of transparency and timeliness in tax dispute resolution processes. Given the scale of operations and potential tax liabilities MNEs face, extended procedural delays, such as those exhibited by SARS, can lead to substantial financial uncertainty, regulatory complications, and operational risks.

The judgment also highlights the importance of maintaining good tax governance and robust documentation practices within multinational structures. By maintaining detailed records and understanding local tax regulations, MNEs can ensure they are

better prepared to respond to disputes and demonstrate compliance should procedural delays arise. This case underscores that MNEs must also be vigilant in managing tax risks and should closely monitor the actions and deadlines of revenue authorities, especially when facing large assessments or complex tax issues.

Moreover, the ruling emphasises the need for MNEs to engage actively with revenue authorities and challenge procedural lapses that may infringe on their rights. By understanding the protections afforded under local and constitutional law, MNEs can more effectively assert their rights to fair administrative action. The precedent set in this case assures MNEs that courts may take a taxpayer-favourable stance when procedural non-compliance by tax authorities is evident, thereby offering a layer of protection for their interests in complex tax environments.

SIGNIFICANCE

FOR REVENUE SERVICES

The *F Taxpayer v SARS* decision carries substantial implications for revenue services, particularly regarding procedural compliance, taxpayer rights, and the operational standards expected of tax authorities. The judgment highlights the judiciary's demand for rigorous adherence to statutory deadlines and transparency, underscoring the expectation that revenue authorities, such as SARS, conduct their operations efficiently and ethically, in line with public administrative principles set out in the Constitution.

This ruling serves as a reminder that revenue services are accountable to higher standards of administrative duty, especially when exercising powers that impact taxpayers' legal and financial standing. In this case, SARS's repeated delays and lack of effective communication were found to infringe upon the taxpayer's right to fair administrative action. The court's refusal to grant condonation signals that courts may not readily excuse revenue authorities' procedural lapses, particularly

when these lapses create significant business and operational challenges for taxpayers.

For SARS and other revenue services, this case emphasizes the importance of having robust internal systems in place to handle appeals and assessments promptly. It also points to the necessity of transparent communication with taxpayers, providing timely updates and valid reasons for any procedural delays. The ruling effectively encourages revenue authorities to review their practices, ensuring that operational constraints, such as resource shortages, do not hinder their compliance with statutory obligations.

Additionally, the judgment highlights the risk of reputational damage that tax authorities may face due to administrative inefficiency. Revenue services are thus encouraged to foster a culture of professionalism, accountability, and adherence to timelines, as these elements are crucial in upholding taxpayer confidence and the integrity of tax administration.

RELEVANT CASES

CANADA TRUSTCO VS CANADA

The relevance of *Canada Trustco* to *F Taxpayer v SARS* lies in the court's emphasis on the need for tax authorities to act within clearly defined boundaries and to ensure procedural and substantive fairness. In *F Taxpayer v SARS*, the court similarly stressed the importance of SARS adhering to procedural standards, as its failure to meet deadlines and communicate effectively infringed upon the taxpayer's rights. Both cases highlight that tax authorities must balance the enforcement of tax laws with an obligation to uphold procedural integrity, ensuring that taxpayers are not subject to arbitrary or inconsistent administrative actions.

BP AUSTRALIA LTD. VS AUSTRALIA

F Taxpayer v SARS similarly involved the interpretation of expenditure deductibility—in this case, whether insurance premiums paid by the taxpayer could be deducted under Section 23L(2) of the South African Income Tax Act. SARS argued that the premiums represented an asset rather than an expense, using an accounting perspective that aligned with a capital-like treatment. The *BP Australia* case is relevant here as it underscores the challenge tax authorities face in appropriately classifying expenditures for tax purposes. Both cases highlight the importance of rigorous and transparent reasoning from revenue authorities to ensure consistency and prevent unfair tax treatment due to ambiguous classifications.

INDOPCO, INC. V.S USA

In *F Taxpayer v SARS*, the tax authority's interpretation of the taxpayer's insurance premiums as an asset rather than an expense parallels the reasoning in *Indopco* about differentiating business expenses from capital investments. Both cases emphasize the significance of applying precise definitions to determine deductibility, a responsibility that falls to revenue authorities to enforce in a manner consistent with tax statutes and taxpayer rights. *F Taxpayer v SARS* adds to this discussion by illustrating how procedural mismanagement by tax authorities can further complicate these determinations, impacting a taxpayer's right to clear, timely resolutions.

PART 3

PREVENTION

Engaging with tax lawyers is crucial for multinational enterprises (MNEs) to navigate the complex landscape of international tax compliance and minimize exposure to risks. Tax laws and regulations vary significantly across jurisdictions, and tax authorities are increasingly collaborating globally to enforce compliance. Tax lawyers provide MNEs with strategic guidance tailored to specific jurisdictions, ensuring that transactions and tax structures align with both local and international tax laws.

One of the primary advantages of consulting tax lawyers is their expertise in safeguarding sensitive information under legal professional privilege, especially in cross-border contexts. This confidentiality is essential for MNEs, as it allows open communication with legal counsel, protecting strategic tax planning discussions from disclosure to tax authorities. Tax lawyers are also well-versed in complex anti-avoidance laws, transfer pricing

regulations, and disclosure obligations, which vary across jurisdictions but significantly impact MNEs.

Moreover, tax lawyers play a vital role in risk management, advising MNEs on compliance strategies and helping establish robust tax governance frameworks. With proactive legal advice, MNEs can adopt preventative measures—such as setting up a tax steering committee or implementing a tax risk management process—that help in identifying, managing, and mitigating tax risks before they escalate into costly disputes or reputational issues.

In an environment where global tax regulations are continually evolving, engaging tax lawyers allows MNEs to stay compliant and responsive to regulatory changes, reducing potential risks while upholding best practices in tax transparency and governance.

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX RISK MANAGEMENT PROCESS

- Implementing a comprehensive tax risk management process is essential to identify, assess, and mitigate tax risks associated with cross-border transactions. This process should involve:
- Regular reviews of intra-group transactions to ensure they have genuine economic substance.
 - Proactive engagement with tax authorities to seek clarity on the application of anti-abuse rules.
 - Thorough documentation of the business rationale for each transaction to support

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TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies” by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

<https://support.academyoftaxlaw.com/product/tax-intelligence-by-prof-dr-daniel-n-erasmus/>

PREVENTATIVE

MEASURES TO AVOID SIMILAR CASES

TAX STEERING COMMITTEE

- Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:
- Review all significant cross-border transactions before they are executed.
 - Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
 - Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like the X BV case.

DOWNLOAD FREE E-BOOK

DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE

The eBook “Driving Tax Compliance: The Essential Role of a Tax Steering Committee” by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

<https://support.academyoftaxlaw.com/product/essential-role-of-the-tax-steering-committee/>

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