

We were recently involved in a Tax Court case involving a penalty levied by SARS against the late payment of PAYE¹. Paragraph 2 of the Fourth Schedule to the Income Tax Act² requires a taxpayer to make payment of PAYE within seven days of the end of the month. The Tax Court found in SARS's favour on the non-remission of the penalty and we are consulting with the taxpayer whether to appeal the matter to the full bench of the High Court.

The Taxpayer relied on sections 209(b) and 217(3) of the Tax Administration Act³ to argue that a significant portion of the full 10% penalty levied on late payment of PAYE should be remitted on the basis that it was not proportional to the seriousness and duration of the non-compliance and that reasonable grounds existed for the late payment in question. This on the basis that the Taxpayer experienced sudden and unforeseen cash flow constraints and that payment was due in relation to the "slow" administrative month of December. The Taxpayer was also only R5,924 short in meeting its pre-authorized payment obligation in relation to December 2017 of R10,648,341, due (according to SARS) on the Friday, 5 January 2018. The payment was eventually made on the Monday morning of 8 January 2018 when additional funds were raised; effectively some two hours late.

An interesting legal question which was considered was how the deadline for payment of the December PAYE was to be calculated. Was payment not perhaps due only on Monday, 8 January (and therefore not late)?

How the word "days" should be interpreted in this context was central to the matter. The Court found that the word "days" as used in the Fourth Schedule needs to be afforded its ordinary meaning in accordance with the so-called "golden rule" of statutory interpretation and therefore not with reference to how the reckoning of days is prescribed by section 4 of the Interpretation Act⁴. Even if this is not the case, the Court found that, in terms of section 244(1) of the Tax Administration Act, the reckoning of days is more specifically prescribed in that act and in conflict with how the reckoning of days is determined in terms of the Interpretation Act, the latter being the less specific of the two Acts.

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¹ CASE NUMBER IT24819 DELIVERED ON 19 DECEMBER 2019.

² ACT 58 OF 1962.

³ ACT 28 OF 2011.

⁴ ACT 33 OF 1957.



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The Court agreed that the Interpretation Act, if applied, would determine that seven days after the end of the month would fall on 8 January. This since seven days after 31 December 2017 would fall on a Sunday (7 January 2018) and an action prescribed by legislation will in those circumstances then be required to take place on the following day, which in this case would have been Monday the 8th January. The Tax Administration Act in section 244(1) however determines that, if the last day of a period within which an action must be taken (such as a payment to be made) falls on a Saturday, Sunday or public holiday, the payment in question must be made not later than the business day before that Saturday, Sunday or public holiday. The Tax Court accordingly determined that day, in the present instance, to fall on Friday 5 January.

The Taxpayer's argument was that there is no conflict between the two Acts and that therefore the Interpretation Act should apply to determine the period within which payment was to be made. That argument relied thereon that section 244 does not deal with how a period within which an action should be carried out (such as payment for PAYE) should be determined, but merely sets the deadline at which the action is to be taken once that period has been determined in accordance with the Interpretation Act's provisions.

The Tax Court's contrary view was that a conflict clearly exists as no period calculated in days will, in accordance with the Interpretation Act's provisions, ever fall on a public holiday, Saturday or Sunday. This however, in our view, is not the case as a period prescribed by a tax act is not necessarily determined with reference to days, but may also be determined in months or years, many examples of which exist in the tax administration context.

It would be interesting to see whether an appeal court may come to a different conclusion on the matter and whether indeed the deadlines determined (whether in days, months or years) in section 244 of the Tax Administration Act should be determined notwithstanding section 4 of the Interpretation Act.



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