28 July 2025

Good news for vendors who apply for alternative apportionment rulings

Vendors are, in terms of proviso (iii) of section 17(1) of the VAT Act, required to apply for a ruling to SARS to use an alternative method of apportionment if the standard turnover-based method does not yield equitable results. Equally, if an approved alternative method no longer yields equitable results, the vendor has to apply for a ruling to use an alternative method, or apply for approval to use a variation of the approved alternative method. If SARS refuses to issue an alternative method of apportionment, section 32(1)(a)(iv) of the VAT Act, read with section 104(2)(c) of the TAA, provides that a vendor may object against such decision.

It has been the experience of many vendors over many years, that SARS generally does not outright refuse to issue alternative apportionment rulings, but rather approves another method which they believe will yield equitable results. This approach left such vendors somewhat stranded, since they are not eligible to object once a ruling has in fact been issued. In a recent case "The Commissioner for South African Revenue Service vs African Bank Limited (242/2024)[2025] ZASCA 101 (8 July 2025), the Supreme Court of Appeal (SCA), was tasked to consider whether a vendor does have the right to object in the said circumstances.

In this case, SARS argued that since it did issue a ruling, albeit that the one approved was not the method for which African Bank applied. It therefore did not refuse to issue a ruling as argued by the taxpayer. The SCA considered the interpretative approach established in Natal Joint Municipal Pension Fund vs Edumeni Municipality, which was reaffirmed in Capitec v Coral Lagoon Investments 194 (Pty) Ltd. The wording of section 32(1)(a)(iv), if literally interpreted, only applies if SARS outright refuses to approve a method, with the result that where SARS does issue a ruling, albeit not for the method requested, the vendor is prevented from being able to object. The SCA held however, that such an interpretation will only be correct if one ignores the context of the purpose of the said section, read with section 17(1) of the VAT Act. The court stated that it is clear that such an interpretation is not correct since it will impermissibly undermine the ruling request mechanism provided for in section 17(1). The purpose of the section is to provide remedies to the vendor who is aggrieved by SARS' decision not to issue a ruling in respect of the method requested.

The SCA ruled that the section must be interpreted purposively and further held that SARS' literal interpretation will encourage piecemeal adjudication of disputes which would prolong litigation and lead to wasteful use of the judicial resources.

Since this case is the first of its kind in South Africa, and given SARS' longstanding approach, it can be foreseen that more and more vendors will object to decisions where SARS does not approve the apportionment method applied for. It will however be interesting to see what the developments will be regarding any disagreements between SARS and vendors regarding the equitability of a method applied for.

For more information and assistance, please contact:

Andre Meyburgh
Director, Tax Services
Andre.meyburgh@kpmg.co.za
M: +27 +27 82 851 6587

Erina Cooper
Director, Tax Services
Erina.cooper@kpmg.co.za
M: +27 82 719 5758

Martin Delport
Associate Director,
Tax Services
Martin.delport@kpmg.co.za
M: +27 82 719 1948

Kind Regards
KPMG Tax and Legal