**When does prescription start to run against SARS?**

There are periods of limitations for issuing assessments which are set out in section 99 of the Tax Administration Act 28 of 2011 (“TAA”). Generally, SARS may not make an assessment three years after the date of an original assessment, or five years in the case where there has been a self-assessment. These limitations will not, however, apply if there has been fraud, misrepresentation or non-disclosure of material facts by the taxpayer.

In *CSARS v Char-Trade 117 CC t/a Ace Packaging*, the Supreme Court of Appeal had to decide when the five year prescription period commenced running in the case of a self-assessment. Between 2007 and 2011 the taxpayer made various loans to group companies, and following an audit, an assessment was issued by SARS for Secondary Tax on Companies (“STC”), on the basis that they were deemed dividends.

The taxpayer submitted that, if there had been an obligation on it to render a return and pay STC, then payment accompanied by the return should have been made to SARS by 31 March 2007. The assessment issued by SARS was on 9 November 2012, more than five years after the deemed dividend cycle, and had accordingly prescribed.

The Court considered section 99 of the TAA, read with the definition of ‘date of assessment’ and concluded that prescription cannot commence to run against SARS until such time as a return has been submitted by a taxpayer. By submitting the return, the taxpayer informs SARS about a dividend or deemed dividend and the STC payable thereon. It followed that prescription for the 2007 dividend cycle could only commence when the taxpayer filed a return for STC.

The taxpayer conceded the merits of the assessment and only pursued the issue of prescription, and thus acknowledged that it was liable for STC and obligated to file returns. The returns would have constituted the original assessment, but because the taxpayer had failed to submit an STC return for 2007, there was no original assessment from which assessment date the five year period could have run. The Court held that prescription never commenced to run against SARS, it could only have done so if the taxpayer had filed a return, which it failed to do. SARS therefore succeeded with its appeal.

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**NOTE: This information should not be regarded as legal advice and is merely provided for information purposes on various aspects of tax law.**