

Tax assessment appeal: Can it be amended?

By [Graeme Palmer](#)

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When appealing against an assessment, a taxpayer is required to file a statement of grounds of appeal, which is referred to as a Rule 32 Statement. In *CSARS v Free State Development Corporation*, the Supreme Court of Appeal (SCA) had to decide whether the taxpayer could withdraw its original Rule 32 Statement and file an amended statement against additional assessments.



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Tax Court Rule 10(3) states that a taxpayer may not appeal on a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to. It follows that a taxpayer cannot amend its Rule 32 Statement to introduce a new objection contrary to Rule 10(3). If this was allowed, Sars could be prejudiced by the taxpayer shifting the grounds of its objection.

Sars found that the taxpayer had erroneously claimed its supplies were zero rated, thus understating output VAT and resulting in additional assessments of R39m being levied. In its original Rule 32, the taxpayer relied upon incorrect legal advice and upon getting a second opinion, sought to amend its Rule 32. Sars was of the view that the amendment constituted a new ground not previously raised and therefore was not allowed.

What constitutes a 'new objection' has frequently vexed both Sars and taxpayers alike. In the present case, the SCA pointed out that Rules 10(3) and 32(3) when read together do not preclude a taxpayer from raising a new ground in an amendment to a Rule 32 Statement "when the grounds were, in substance, the same as those stated in the initial objection".



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Graeme Palmer 18 Jul 2023



The SCA held that amendments seeking to retract incorrectly admitted legal consequences are normally granted by courts. Further, if an issue has been foreshadowed in the objection, but not expressly stated, there is no real prejudice to the other party and the amendment should be granted. Initially the taxpayer was advised by its erstwhile attorney that the VAT supplies were “zero rated”, but the second opinion that prompted the amendment said that there was neither a “supply” nor a “deemed supply” for VAT purposes. Behind both grounds, the court held, was the same question as to whether a vatiable transaction occurred when the taxpayer performed in terms of an agreement.

In conclusion, the SCA held that granting the amendment would allow the true legal issues between the parties to be ventilated and accordingly Sars's appeal failed.

ABOUT GRAEME PALMER

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