

Enforcement

National Projects

Office

Riverwalk

Enquiries

Dean Boshoff
Menzi Mthembu

Telephone

(012) 340-3376
(012) 433-3015

E-mail

dboshoff@sars.gov.za

Facsimile

Room

First Floor, Block A

Reference

9545/187/14/9

Date

29/07/2015



South African Revenue Service

The Public Officer

Ronald Bobroff & Partners Inc.

PO Box 1170

Parklands

2121

Attention: Johan van der Walt

Per e-mail: johanvdwalt.tax@kpmg.co.zaBlock A, Riverwalk Office Park,
c/o Matroosberg and Garsfontein Roads,
Ashlea Gardens, 0081

GPS: S 25 47 02; E 28 16 13

Tel: 012 340 3000

Website: www.sars.gov.za

Dear Sir,

FINALISATION OF AUDIT: RONALD BOBOFF AND PARTNERS INC.

The South African Revenue Service (SARS) has completed the audit into the tax affairs of Ronald Bobroff & Partners Inc. (the "taxpayer"), for the tax type and tax periods listed below.

Tax type	Taxpayer reference number	Tax periods
Income Tax	9545/187/14/9	2008 - 2012

Please note that this letter constitutes an "assessment" as contemplated in the Tax Administration Act No. 28 of 2011 (the "TA Act"). It is an additional assessment in respect 2008 and 2009 based on section 92 of the TA Act read with section 5(1)(d) of the Income Tax Act No. 58 of 1962 (the "IT Act"). In respect of the 2010 - 2012 years of assessment, it is an original assessment based on an estimate in terms of section 91(4) read with section 95 of the TA Act and section 5(1)(d) of the IT Act and section 95 of the TA Act.

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as the "NCR judgment") and the Northern Cape High Court matter of Moodaley and Others v King (800/2008) [2009] ZANHC 52 (hereinafter referred to as the "Moodaley judgment").

- 1.1.30.3 The taxpayer's representative essentially submitted that the figures submitted to SARS would have to be amended. The taxpayer's representative submitted that only the fees to which the taxpayer is entitled should be included in its income, i.e. 25% of the award made to the client. This submission was based on the above-mentioned cases.
- 1.1.30.4 The SARS representatives responded by stating that these judgments would be considered and that SARS would revert back to the taxpayer's representative in due course.
- 1.1.30.5 Other matters were also raised at this meeting by SARS. In respect of the income tax audit SARS requested copies of the tax calculations for the 2010 and 2011 financial years and a printout of the payroll over the relevant period. SARS also requested copies of bank statements and supporting documents of investment accounts held by the taxpayer with Standard Bank, Investec Bank and Bidvest Bank for the 2008 to 2011 financial years.
- 1.1.31 On 27 February 2013 SARS responded to the taxpayer's representative telephonically and subsequently confirmed by email that the audit was to proceed on the same basis as previously. This decision was primarily based on the Supreme Court of Appeal judgment in the matter of MP Finance Group CC (In Liquidation) v The Commissioner for the South African Revenue Service [2007] SCA 71 (RSA) (hereinafter referred to as the "Kron judgment").
- 1.1.32 The taxpayer's representative expressed his dissatisfaction with this approach during the above-mentioned telephone conversation stating that it was likely that a dispute would arise.
- 1.1.33 The requested bank statements of the Standard Bank and Investec Bank investment accounts were provided to SARS on 4 March 2013. However, no information was provided in respect of the Bidvest Bank investment accounts held by the taxpayer. The taxpayer's auditor also provided detailed descriptions for the adjusting journal entries for the 2011 financial year, as the SARS auditors were struggling to fully understand the descriptions for the adjusting journal entries.

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- 1.3.4.2.2 The taxpayer provided the SARS auditors with a schedule of all of the instances from August 2008 where this occurred. During meetings between the SARS auditors and the taxpayer's representatives this was referred to as the VAT leakage (Income leakage).
- 1.3.4.2.3 These amounts are deemed in terms of the definition of gross income in the IT Act to be the income of the taxpayer on the date when they became available to be paid to clients.
- 1.3.4.1.4 SARS is therefore assessing the taxpayer on fees transferred from the taxpayers trust account to the business account. Although the taxpayer may not have been entitled to these fees, they were received by the taxpayer for its benefit once they were transferred to the taxpayer's business account. Refer in this regard to the Krión judgment.
- 1.3.4.2.5 SARS therefore assess all amounts received by the taxpayer for its benefit during each of the applicable periods or years of assessment.
- 1.3.4.2.6 The SARS auditors have accepted the representations made to them in respect of the income leakage in the absence of any evidence to the contrary.
- 1.3.4.2.7 Additional assessments are to be raised in terms of section 92 of the TA Act and section 5(1)(d) of the IT Act for the 2008 and 2009 periods or years of assessment in respect of all of the amounts identified by the taxpayer in its representations to the SARS auditors (please refer to annexure "B1" and "B2" for detailed calculations).

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- 1.1.34 On 10 April 2013 the requested payroll reports were provided to SARS by the taxpayer's representatives.
- 1.1.35 On 14 November 2013, SARS requested the taxpayer's auditor to provide signed financial statements for the year ended 30 September 2012 and the resolutions authorising the payment of dividends to the directors for the 2009 to 2012 financial years in order to finalise the income tax audit. The resolutions were provided to SARS on 22 November 2013. The taxpayer was however unable to provide the 2012 financial statements as the audit had not yet been completed. The taxpayer's auditor advised that the audit would only be conducted in January 2014. SARS then requested the pre-audit trial balance of the taxpayer as this would be utilised to finalise the audit.
- 1.1.36 On 19 March 2014 the financial statements for the year ended 30 September 2012 were provided to SARS by the taxpayer's representative.
- 1.1.37 On the same day SARS requested the final trial balance and adjusting journal entries for the year ended 30 September 2012. These were provided to SARS on 27 March 2014.
- 1.1.38 Subsequently SARS proceeded to quantify and finalise its findings that are discussed hereunder.
- 1.1.39 SARS issued its Letter of Audit Findings to the taxpayer on 26 February 2015.
- 1.1.40 A series of interactions followed between SARS, the taxpayer's representative and the taxpayer's auditor with regard to bringing this matter to finality, the most significant of which follow:
- 1.1.40.1 On 20 March 2015, the taxpayer's representative requested an extension of time to submit its response to SARS' Letter of Audit Findings due in part to his unavailability and the taxpayer's auditor's involvement in a motor accident resulting in him not being able to finalise his review of the proposed assessment figures.
- 1.1.40.2 On the same day, an e-mail was forwarded by SARS to the taxpayer's representative setting out the income tax liability of the taxpayer on SARS' version as well as the taxpayer's version prior to the findings being issued. The purpose of this e-mail was for the taxpayer to make provision for the payment of the assessments when due.
- 1.1.40.3 Extension was granted for the taxpayer to respond to SARS' Letter of Audit Findings until 15 April 2015.

Dividend
Resolutions

"B5" hereto for detailed workings in this regard).

Amounts not accounted for (leakage)

- 1.3.4.2.1 The preliminary findings of the SARS auditors was confirmed by the taxpayer, namely that certain fees charged to clients on the client statements found their way into the hands of third parties over a period of time.

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