Ground Floor, East View
Bryanston Place Office Park
199 Bryanston Drive, Bryanston
PO Box 67806, Bryanston, 2021

FABER GOËRTZ
ELLIS AUSTEN INC

Tel: +27 (0) 10 590 3378
Fax: 086 675 6808
E-mail: matthew@fgea.co.za
Website: www.fgea.co.za

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

Per Email: dboshoff@sars.gov.za
Per Email: handrew@sars.gov.za

Date: 26 February 2026

Our Reference: BOB2/0002

Your Reference: 3269131144

Dear Sir/Madam

TAXPAYER: DARREN BOBROFF
TAX REFERENCE: 3269131144
TAX TYPE: INCOME TAX
TAX PERIODS: 2010, 2013 - 2017

1. We act for the taxpayer.

2. We have considered SARS' letter of audit findings dated 18 September 2025 in respect of the 2010, 2013 to 2017 years of assessment. Failure to respond to any assertion made by SARS should not be construed as an admission by the taxpayer, but rather a denial.

3. Without derogating from what is stated hereunder, to the extent that SARS refer to background facts, the relevance of which has not been established by SARS[1], despite being requested to do so, the taxpayer reserves his right to respond to these allegations at a later date should the need arise.

FALSE NARRATIVE

4. SARS' letter of audit findings theorises a false narrative at paragraphs 8 – 21 of the letter of audit findings, suggesting that the proposed adjustments by SARS emanate from these events, which the taxpayer denies.

[1] See SARS' letter dated 02 February 2026

5. Whilst the relevance of these allegations is not evident, but also denied, it is apposite to mention certain pertinent facts, which SARS did not disclose in the opening of their letter of audit findings.

6. Ronald Bobroff and Partners Incorporated ("**RBP Incorporated**") was placed under curatorship on 24 March 2016. The *curator bonis* was Mr Johan van Staden, Head of Members Affairs at the Law Society of the Northern Provinces.

7. After eight months at the helm, the curator, who was involved in a comprehensive investigation into the practice, noted that:

   Paragraph 10.4

   "Detailed accurate reconciled records have been maintained and is available on request. On 10 October 2016 a month end and year ending September 2016 report was compiled and all the balances were in place. A system integrity check was also performed and all was found to be in order. Similarly a month end report was compiled for the end of October 2016 and all balances correlate"

   Paragraph 10.5

   "As at 4 November the firm has trust liabilities in the amount of R13, 130, 113-97 and trust assets in the amount of R13, 130, 064.94. The shortfall of the amount of R47.03 relates to VAT on bank charges which is being rectified"

   Paragraph 12.3

   "No claims have been lodged with the Attorneys Fidelity Fund (the Fidelity Fund is a fund created by the attorneys profession, to reimburse clients whose attorneys have stolen or misappropriated funds from them) and the Attorneys Fidelity Fund is being kept appraised of the attendances made by the Curator and his department and the status of the winding up of the practice of Ronald Bobroff & Partners Incorporated Attorneys" Click to view

8. The Legal Practitioners Fidelity Fund in its letters dated 28 August 2018 stated:

   "I refer to your enquiry as to the status of any claims having being submitted and paid by the Attorneys Fidelity Fund as a result of allege theft of trust moneys.

   I wish to confirm that the High Court of Pretoria appointed me as curator bonis of the practice Ronald Bobroff and Partners on 24 March 2016 in terms of which inter alia the

trust account(s) were placed under my control and to administer any claims of trust creditors

I wish to confirm that there are no legitimate claims of misappropriation which to date have been made against the Attorneys Fidelity Fund…" Click to view

9. The Attorneys Fidelity Fund stated in their letter dated 4 June 2019 that:

"I refer to your enquiry and wish to advise that there are no pending claims submitted to the Legal Practitioners Fidelity Fund nor any claims previously paid by them". Click here to view

10. The Attorneys Fidelity Fund Letter to attorney John Cameron dated 15 June 2020 stated:

"We confirm that we have no contingent claims registered against your clients". Click to view

11. The Attorneys Fidelity Fund letter to Mr Bobroff dated 15 March 2023 stated:

"We hereby confirm that there have been no legitimate claims lodged against the Legal Practitioners Fidelity Fund by any one of Bobroff & Partners Inc.'s former clients."

12. The executive director of the LSNP twice confirmed in his letter dated 1st February 2013 and 16th October 2018 that:

"I hereby wish to confirm that I have perused the disciplinary records of the Law Society and that the partners of the above Practice (Mr R Bobroff, Mr D R Bobroff, and Mr S D Bezuidenhout) have, since the practice was established on 1 October 1975, never been convicted on any charges of unprofessional conduct by a Disciplinary Committee of the Law Society" Click to view

Finally and with regards to the allegations that the Practice of Ronald Bobroff and Partners Inc. had overcharged any of its clients, or in any way acted unprofessionally, by in common with the thousands of other attorneys comprising 74% of the LSNP's 16 000 members, all of whom confirmed in response to a LSNP survey that they exclusively utilised LSNP complaint common law contingency fee agreements

Such agreements were similarly permitted and promoted, by the Black Lawyers Association, the Law Society of the Northern Provinces, the Free State Law Society and the Cape Law Society.

As the LSNP noted in its letter dated 12 October 2011 to the Gauteng High Court Deputy Judge President Willem van der Merwe that: "The Council has been of the view since 2002 and remains of the view that it will not be unprofessional conduct for attorneys to make use of common law contingency fee agreements outside the Act. Whilst the Council published suggested guidelines for such common law agreements, the guidelines were simply just that i.e. guidelines, and did not seek to prescribe what a common law agreement could or could not include.

For example, although no minimum or maximum percentage is prescribed and given that attorneys and their clients are free to negotiate a contract in the same way as any other contract between competent parties, we indicated to our members that should the 25% cap referred to in the Attorneys Act, be exceeded, it will have to be justified, having regard to the various aspects which will have to be considered. This will inter alia include the complexity of the matter, the overhead cost structure of the firm, the extent off the disbursements to be covered by the attorney, the anticipated period that the attorney would have to carry such disbursements and wait for payment of fees, as well as other criteria such as those referred to in Rule 80 of the Law Society's rules"

13. Insofar as SARS have suggested that the taxpayer, together with his wife, his children and his father, Mr R Bobroff, fled to avoid arrest, somehow implying that the taxpayer and his family are 'fugitives from justice', it is important to note that this was not the case. On the contrary the taxpayer, his wife, his kids and father fled under the following circumstances:

    13.1. On 15 March 2016, the day after the application for the taxpayer's suspension from practice was heard, his father, Mr R Bobroff, received a phone call at their office. The caller's voice was electronically altered. The caller informed his father that he felt "obliged" to inform him that a large Medical Aid had arranged for the taxpayer, his wife and him (Mr R Bobroff) to be imminently arrested, and that whilst in custody, for the taxpayer and his father to be murdered.

    13.2. This message followed a number of overt threats to Darren by a certain employee of the Medical Aid Scheme in question on 16 June 2015, and sinister anonymous emails to Darren in February 2016. The taxpayer has no doubt that the emails emanated from the same Medical Aid Scheme employee who threatened him on 16 June 2015, and who also uttered the threats to the taxpayer's partner, Stephen Bezuidenhout.

    13.3. The taxpayer's father contacted Peter Mihalik SC, a leading criminal advocate who had deep connections in SAPS. Peter Mihalik SC called the taxpayer's father back after a few hours and told him that the threats were credible. He

said his sources informed him that a senior, but as yet unknown police officer had been recruited to arrest the taxpayer, Lisa and his father.

13.4. He (Peter Mihalik SC) said that his sources had informed him that this police officer would arrange that they (the taxpayer et al) met with some kind of "accident" while in custody. He advised that the taxpayer's father, the taxpayer and his wife, leave the country immediately for their safety and he would see what could be done in the meantime.

13.5. He said that he was fairly confident that his connections would be able to identify the police officer who had been 'captured' by the Medical Aid within a few days, and the danger which he posed to them would then be neutralised. He suggested that the taxpayer and his family should only absent themselves from South Africa for a week or so, and accordingly the taxpayer and his father booked return tickets for 23 March 2016.

13.6. The taxpayer and Lisa left on 16 March 2016. The taxpayer's father left on 19 March 2016. They all had return tickets.

13.7. It is common cause that the murder of whistle blowers in South Africa has become an almost daily event, and evidence in this regard was submitted to the Zondo Judicial Commission into State Capture and Corruption, as also the most recent the Madlanga Commission into corruption. The motive for the planned assassination was clear.

13.8. In the course of the taxpayer and his father defending practice clients against bullying and attempted extortion by employees of the Medical Aid Scheme and its administrator, they inadvertently exposed decades of institutionalized fraudulent non-disclosure of the schemes Rule 15.6, which excluded medical care arising from trauma generated injury which scheme employees deemed was due to the fault of another.

13.9. That exposure, which was shared by the LSNP with its 16000 members, swiftly resulted in the scheme no longer being able to duress the millions of rands – approximately R150 million in 2010 - in road accident medical cost recoveries from its injured and vulnerable members. The scheme in an aggressive letter sent to the LSNP in February 2011 complained that:

"Meanwhile we advise that XXXX[2] is suffering ongoing, mounting harm as a result of the Society's failure to date to either withdraw or to correct the LSSA notice circulated at the start of the month. We confirm that, since the LSSA notice, XXXX has recovered less than 25% of its usual recoveries of past medical expenses for a corresponding time period. XXXX knows of no other factor of significance that may account for this drop-off in recoveries and concludes that it is attributable to the LSSA notice. Indeed, many firms of attorneys – including Ronald Bobroff & Partners – have in recent weeks relied on the LSSA notice as the basis on which they or their clients are withholding amounts due to the scheme. XXXX right in regard to losses caused by the LSSA notice are reserved."

13.10. By 2016, it was estimated that the schemes under recovery occasioned by the taxpayer and his father initial and ongoing exposure of its fraud, amounted to not less than a billion Rand during the preceding five years.

13.11. Added to that was the major and ongoing reputational impact on the schemes administrators, high profile directors, who also headed up one of South Africa's major public companies, and the real risk that in the event of the authorities instituting criminal charges against directors of the schemes administrating company, who were also directors of a major South African public company, the companies' shares on all stock exchanges would be suspended ,with disastrous consequences for the company and its directors and shareholders.

13.12. It is an acknowledged fact that despite five years of relentless lawfare and media onslaught against them (the taxpayer and his family) by the scheme and its army of lawyers and 'brown envelope' reporters and editors, the taxpayer and his father refused to be cowed into silence, and the scheme administrators directors must have realised that there was only one way to forever silence them.

13.13. Pursuant to the departure of the taxpayer, the credibility of the threats described above became clear. On the second night in Sydney and at 03:50 in the morning, the taxpayer's father received a text message from a false number stating:

"Hawks are waiting to arrest wives at 07:30PM at Cassim's house"

[2] Intentionally redacted

13.14. Elaine, the taxpayer's mother, was arrested at Advocate Nazeer Cassim SC's house at 07:30 pm, as highlighted in the SMS, whereafter she was held for hours at the Rosebank and, later incarcerated overnight under the most horrific conditions at the Norwood Police Station, despite being 68 years of age, intensely claustrophobic and of poor health.

13.15. The following day, and just as had been threatened in the anonymous emails received by the taxpayer a few weeks prior, the NPA strenuously opposed bail, in circumstances where that was wholly unjustified.

13.16. During the proceedings, and under cross-examination by Advocate Dawie Joubert S.C, representing Elaine, the Hawks police officer who had arrested her admitted to having no charge sheet, no warrant and could not provide grounds for Elaine's arrest, other than that he had received a telephone call from an attorney who was representing the administrators of one the largest Medical Aid Schemes in South Africa, whose fraud, the taxpayer and Darren had exposed; in proceedings brought in the name of a puppet former RBP Incorporated client, seeking to have the taxpayer and Darren struck from the roll or suspended from practice, who had instructed him to arrest Elaine.

13.17. By way of background, the directors of the Medical Aid in question, had vowed that they (the company) would as revenge for the taxpayer and his father's exposure (in the course of defending practice clients against bullying and attempted extortion by the Medical Aid scheme concerned) of its decades of institutionalized defrauding of its members; "no matter what it takes, no matter what it costs, we will destroy you all".

13.18. RBP Incorporated's director, Stephen Bezuidenhout, deposed in an affidavit filed in court, to such a threat having been made to him by the Medical Aid's in-house road accident medical costs debt collector. Likewise Advocate Nazeer Cassim S.C. emailed the taxpayer's father to report that the individual in question had uttered the same threat to him, whilst he was representing RBP Incorporated, in a matter involving the Medical Aid in question, and which threat was intended to be conveyed to the taxpayer. A copy of Bezuidenhout's affidavit, and the emails exchanged between Advocate Cassim and the taxpayer's father are available if required.

13.19. The charges, which were never particularised, save for vague unsubstantiated allegations of money laundering, were withdrawn months later, and Elaine's bail refunded. To date, ten years after they were forced to flee South Africa for fear of their lives, they continue to receive anonymous emailed threats of harm to their wives and children.

13.20. Further, no extradition application or charges have ever been pursued against the taxpayer or his father despite the allegations levelled against them.

14. The relevance of SARS' reference to the events referred to in paragraphs 8 – 21 of the letters of audit findings is thus contested by the taxpayer. With respect, the reference to these events is, therefore, irrelevant to the proposed adjustments and have obviously been included for no reason other than to create a false narrative about the taxpayer's affairs.

15. We submit that it is clear to any fair minded observer who has familiarized themselves with the facts, that the multi-billion Rand Medical Aid Scheme which vowed to destroy the taxpayer, Darren and their practice, has together with its attorneys – one of the largest law firms in Africa, been able to employ their combined and vast, political, and economic influence in bringing about the fulfilment of that threat, and the ongoing persecution of the taxpayer and his family.

16. We now turn to responding to the letter of audit findings hereunder.

PRESCRIPTION

17. It is trite that SARS are not entitled to reopen assessments unless certain jurisdictional facts have been proven by SARS. In this regard, SARS assert that the full amount chargeable to tax was not taxed due to (i) fraud, (ii) misrepresentation or (iii) non-disclosure of material facts.

18. SARS, however, do not pin their colours to the mast, per se, by asserting which ground upon which they intend to reopen the assessments on the 2013 – 2016 years of assessment. For the most part, the conclusions made by SARS at paragraphs 104 and 108 of the letters of audit findings hinge on whether the amounts allegedly received by the taxpayer (i) formed part of his gross income and (ii) whether they were exempt or not.

19. In our view, and what will become evident below, is that SARS, who bears this burden, have not discharged this onus in order to rely on the provisions of Section 99(2)(a) of the Tax Administration Act, 28 of 2011 ("**the Act**"). In this regard, SARS are referred to the decision in ITC 1821 (69 SATC 194).

20. Furthermore, in the judgment of Unterhalter J in the case of ITC 1929 (82 SATC 264) at paragraphs [17] – [21], the following is stated:

"[17] Section 99(2)(a) postulates the fact that the full amount of tax chargeable was not assessed. I shall call this the ultimate fact. If the ultimate fact is proven, then SARS may only make an additional assessment three years after its original assessment if the ultimate fact was due to fraud, misrepresentation or nondisclosure of material facts. I shall refer to this conduct as misconduct. In sum, the ultimate fact must be due to misconduct.

[18] In Secretary for Inland Revenue v Trow 1981 (4) SA 821 (A) at 825, Wessels JA, interpreting the precursor to the present legislation said the following:

> *'The additional assessment could only have been raised if the Commissioner were to have satisfied himself:*
>
> 1. *That these had been a nondisclosure of material facts by the taxpayer, and*
>
> 2. *The fact that the profit in question was not assessed to tax prior to the expiration of the relevant period of three years was due to such nondisclosure, i.e. that the non-assessment was causally related to the nondisclosure of material facts.'*

[19] Accordingly, the statutory provision that preceded section 99(2)(a) has been interpreted by the Appeal Court on the basis that the concept 'due to' means 'was casually related'.

[20] On this construction, the failure to assess the full amount of tax chargeable must be shown to be casually related to the misconduct, that is, in this case, to the material nondisclosure.

[21] Put in simple terms, what caused SARS in its original assessment and during the period of three years thereafter not to assess the full amount of tax chargeable? If this came about because of the material non-disclosure, then the additional assessment is competent. <u>If the ultimate fact came about for other reasons, such as neglect by SARS or some conduct of the taxpayer not amounting to misconduct, then the additional assessment is not competent and cannot be made</u>."

21. In other words, in the event that SARS fail to demonstrate that the taxpayer was not assessed correctly as a result of fraud, misrepresentation or non-disclosure of material facts, then SARS are precluded from raising the additional assessments outside of the 3-year period.

22. On this issue, it is important to highlight other considerations in the case of Pear Proprietary Limited v Commissioner for the South African Revenue Service (Case No: IT46080) ("**the Pear Case**"), wherein the Tax Court found the following:

22.1. SARS bears the onus of proving the qualifying conduct and a causal link between this conduct and the non-assessment. The focus is therefore not the original assessment, but why SARS did not assess during the 3-year window.

22.2. The requirement to establish a causal connection between the conduct and the non-assessment by SARS must be actually shown to exist, as opposed to SARS merely being satisfied of its purported existence.[3] At paragraph 69 - 70, the Court stated that:

"[69] An issue arises as to the point at which the causal link between a misrepresentation or non-disclosure and the non-assessment of the full amount must be tested. Given the SARS practice of "face value" assessments, every original assessment is the product of what is contained in the tax return (see Commissioner for Inland Revenue v Mutual Unit Trust Management Company Ltd 1990 (4) SA 529 (A) at 542C-F.) By definition, every error which is later identified in the return is therefore linked to the original non-assessment of the correct amount of tax. If that were enough to trigger section 99(2), it would mean that every taxpayer that objectively "got it wrong" in its return would be precluded from relying on prescription. Section 99(1), which aims to create finality in tax assessments, would be stripped of operative effect

[70] That is clearly not what the provision intends. The thinking behind the three-year period in section 99(1) (and its equivalent five-year period in the case of original assessments that are self-assessments) is that SARS will issue an original assessment and then have a sufficient period to conduct any audits or verifications and to issue additional assessments. Once that period expires, the taxpayer will in the ordinary course be entitled to assume that the original assessment for that year has become unassailable"

22.3. Where it can be shown that there is a misrepresentation or a non-disclosure of a particular item or amount, this would not presuppose 'a causal link' for SARS to then reopen the entire assessment. Therefore, if there are instances wherein the taxpayer cannot explain the origin or the nature of a receipt on a particular line item, this will not, in turn, establish a basis for SARS to reopen the entire assessment. In the Pear Case, the Court stated that:

[3] Pear Proprietary Limited v Commissioner for the South African Revenue Service (Case No: IT46080) polarograph 62 - 70

[94] Before evaluating the parties' respective arguments, I must address a contention made in oral argument on behalf of SARS. This is to the effect that as long as it can be shown that there was a misrepresentation or material non-disclosure that caused the full amount of tax not to be assessed in respect of one item, prescription in respect of the entire assessment is automatically overcome, and SARS is then permitted to revisit any aspect of the assessment

[95] I am not aware of any authority directly on point. However, in my view the sensible, businesslike and purposive interpretation of section 99(2) (the aim of which is to achieve finality of assessments – Commissioner, SARS v Brummeria Renaissance (Pty) Limited 2007 (6) SA 601 (SCA) in paragraph [26]) is that the causal link between the conduct complained of and the non-assessment of the "full amount of tax chargeable" must be determined on a "per item" basis. In other words, for SARS to be able to make a new determination through an additional assessment, it must show a causal link between the conduct and the non-assessment of a particular item or amount. It is of course possible for SARS to establish that one instance of misrepresentation or non-disclosure has led to the non-assessment of more than one item, but that does not mean that the establishment of one such causal link is automatically an "open sesame" to reconsider the entire assessment"

22.4. Whether there has been a non-disclosure of material facts, one would need to consider the materiality of the amount relative to the total amounts in dispute. Again, where the taxpayer is therefore not in a position to explain the origin or the nature of a receipt, the materiality of the amount must be considered against the amounts in question.[4] In this regard, the Court in the Pear Case stated that:

"[109] The question of materiality of non-disclosure of an amount received or accrued, for purposes of justifying the significant step of overcoming prescription, must in my view have regard to the relative amount involved"

23. SARS bear this onus of proof to establish the existence of these grounds, which in our opinion has not been established in the audit findings.

DELAYS IN FINALISING THE AUDIT

24. SARS informed the taxpayer of an audit on the 2010 and 2013 – 2017 years of assessment on 13 April 2018.

[4] Ibid paragraph 106 - 109

25. Whilst attempts were made by the taxpayer to respond to the request for documentation vis-à-vis its representatives at the time, it is common cause that the taxpayer and his family were not in the Republic of South Africa since 03 March 2016.

26. Furthermore, it is common cause that the Law Society of the Northern Provinces ("**LSNP**") placed RBP Incorporated under curatorship on 24 March 2016. The *curator bonis* was Mr Johan van Staden, Head of Members Affairs at LSNP.

27. The taxpayer has, therefore, since departing South Africa under a credible and articulated tipoff that arrangements had been made to have them murdered, have been subjected to a series of interrelated legal and administrative processes that have had the cumulative effect of materially constraining his ability to access documents, engage freely with advisors, and meaningfully participate in the audit process. These processes have tied up his financial and documentary resources in ongoing litigation and ancillary proceedings, while there has been a demonstrable reluctance on the part of the authorities to provide documents necessary for the formulation of a proper response to SARS. The result is a form of procedural strangulation through administrative obstruction, which has prejudiced the taxpayer's right to procedurally fair administrative action and has rendered effective engagement with the audit process practically impossible.

28. With that being said, SARS have sought to rely on third-party information, in particular SARS utilised (i) the information provided by Andrew Fischer & Associates dated 08 October 2018 and (ii) the bank statements set out in paragraph 55.

29. Notwithstanding the audit engagement commencing on 13 April 2018, SARS only issued their letter of audit findings on 18 September 2025, some 89 months later. To be specific, this is 7 years and 5 months after the initial audit engagement was issued by SARS.

30. On 26 January 2026, the writer's offices requested SARS to disclose the dates upon which SARS received the bank statements from the respective financial institutions. On 02 February 2026, SARS merely declined to provide the writer's offices with such information. However, this is an important consideration in responding to the letter of audit findings.

31. The reason for this is in case of Rappa Resources and another v CSARS [2020] ZAGPPHC (05 November 2020) paragraph [51], the Court confirmed that SARS are not entitled to verify/audit a taxpayer for an inordinate amount of time, but that this process must be completed within a reasonable time, unless there are extenuating circumstances. The reasons for this are apparent in this case.

32. We, therefore, submit that an audit that remains dormant for more than seven years before findings are issued cannot be reconciled with the requirements of procedural fairness, rationality, and reasonable administrative conduct. The delay in this matter is inordinate, unexplained, and prejudicial. It has eroded the taxpayer's practical ability to access documents, consult relevant third parties, and respond effectively to the issues now raised. The passage of time has also rendered the audit process stale, such that any assessment issued pursuant thereto would be tainted by the same unfairness and would be vulnerable to challenge on the basis that the administrative process giving rise to it was fundamentally defective and unfair.

33. In closing, we submit that there are no extenuating circumstances which could warrant the inordinate delay by SARS in finalising the audit approximately 7 years after the initial audit engagement. In the absence of any rational reasons, the delays undoubtedly undermine the fairness of the audit processes.

34. The taxpayer accordingly reserves his rights to address this in the appropriate forum at a later stage, should it become necessary.

35. We now turn to responding to the findings by SARS.

AUDIT FINDINGS

Introduction

36. SARS' letter of audit findings proposes adjustments under 7 sub-headings, namely, (i) employment income, (ii) under declaration of foreign interest and (iii) cash deposits, (iv) local rental income, (v) foreign rental income, (vi) other receipts and accruals and (vii) income received from L Bobroff. The amounts proposed are as follows:

Tax Year	**Description**	**Amount**
2013	Employment	R865 504.62
2014	Employment	R953 692.64
2015	Employment	R1 534 515.64
2016	Employment	R1 476 145.95
Total	**R4 829 858.85**	

Tax Year	Description	Amount
2013	Foreign Interest Income	R25 698.96
2014	Foreign Interest Income	R38 721.06
2015	Foreign Interest Income	R31 226.45
2016	Foreign Interest Income	R5 951.63
2017	Foreign Interest Income	R22 044.85
Total	**R123 642.95**	

Tax Year	Description	Amount
2013	Cash Deposits	R0.00
2014	Cash Deposits	R20 831.60
2015	Cash Deposits	R43 956.33
2016	Cash Deposits	R3 562.07
Total	**R68 350.00**	

Tax Year	Description	Amount
2013	Foreign Rental Income	R56 764.00
2014	Foreign Rental Income	R11 845.00
2015	Foreign Rental Income	R24 308.00
2016	Foreign Rental Income	R60 109.00
Total	**R153 026.00**	

Tax Year	Description	Amount
2013	Other Receipts	R4 394 623.06
2014	Other Receipts	R663 244.77
2015	Other Receipts	R5 314 038.62

2016	Other Receipts	R711 658.33
2017	Other Receipts	R248 141.66
Total	**R11 331 706.44**	

Tax Year	**Description**	**Amount**
2010	L Bobroff Receipts	R763 425.00
Total	**R763 425.00**	

Tax Year	**Description**	**Amount**
2017	Local Rental Income	R251 512.36
Total	**R251 513.36**	

37. We shall respond to the seven categories (i) – (vii) under separate sub-headings hereunder.

Employment Income

38. The taxpayer disclosed employment income for the 2013 – 2016 years of assessment as follows:

2013	**2014**	**2015**	**2016**	**Total**
R660 000.00	R660 000.00	R660 000.00	R605 000.00	R2 585 000.00

39. There are essentially two aspects on which SARS intend to adjust the salaried income of the taxpayer, namely (i) on the alleged discrepancy between the payroll at RBP Incorporated and the receipts by the taxpayer and (ii) additional amounts deemed to be remuneration.

40. The letter of audit findings is silent on the alleged discrepancy on the gross salary paid to the taxpayer and the PAYE deducted (item i) above. This information has seemingly been gleaned from RBP Incorporated's salaries and wages ledger, staff salaries file and the Sage VIP Program file; however, this cannot be confirmed.

41. The taxpayer does not have access to the salaries and wages reports of RBP Incorporated and, therefore, cannot admit or deny the allegations. However, what is clear is that the payroll of RBP Incorporated was administered by the payroll administrator utilising the Sage VIP Program.

42. In the event that there is indeed a discrepancy, this would be attributable to the administrator and/or Sage VIP Program. This would also call into question the amounts paid to all staff of RBP Incorporated at the time, especially RBP director Stephen Bezhuidenhout, which oddly does not seem to be the case.

43. In any event, paragraph 2(1) of the Fourth Schedule to the ITA is clear in that RBP Incorporated, as the employer, is obliged to withhold any amount payable on remuneration and to pay over this amount to SARS. RBP Incorporated, as the withholding agent contemplated by Section 156 of the TAA, is responsible for this blunder, if indeed same did occur.

44. The taxpayer was firmly of the view that what he received in his bank account was net of any PAYE deducted from RBP Incorporated. In the event of a shortfall, this is for RBP Incorporated vis-à-vis the Curator to address.

45. Notably, RBP Incorporated was subject to an income tax and VAT audit in 2012. SARS did not discover any discrepancies in the salaries, payroll and PAYE paid by the practice during this period. The processing of the payroll utilising the Sage VIP Program was not altered and, therefore, there is no reason to doubt the accuracy of the PAYE deductions made. If there was, which we deny, this was clearly due to an error in sub made by deductions and/or calculations bookkeeper and Sage VIP payroll administrator which had nothing to do with the taxpayer.

46. The second aspect to these adjustments is the amounts which are deemed to be remuneration by SARS. In this regard, SARS have taken the view that there were monthly cash deposits in the taxpayer's FNB, Standard Bank and Nedbank current accounts as follows:[5]

2013	**2014**	**2015**	**2016**	**Total**
R61 000.00	R195 000.00	R780 000.00	R787 433.28	R1 823 433.28

[5] See SARS4

47. The aforesaid amounts are, however, not remuneration but rather amounts drawn down on the taxpayer's loan account with RBP Incorporated. In support of this submission, we have attached the loan account of the taxpayer with RBP Incorporated. The attachment is marked annexure **DB1**.

48. The assertion that the amounts are deemed to be remuneration by SARS is therefore refuted by the taxpayer. SARS have not proffered any evidence to demonstrate that the amounts are deemed to be remuneration and thus taxable in the hands of the taxpayer. The taxpayer, like all taxpayers, is entitled to structure his affairs in such a manner so that he pays the least amount of tax payable, provided it does not constitute tax evasion, which it doesn't.

49. In the case of IRC v Duke of Westminster 1936 A.C 1 (HL), the court stated that:

> *"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax"*

50. Again, in the case of CIR v King 1947 (2) SA 196 (A), Watermeyer CJ stated that:

> *"In a wide sense also the amount of a man's income tax can be reduced from what it was in previous years if he earns less income than in previous years, but here again it is absurd to suppose that the Legislature intended to impose a penalty upon a man who enters into a transaction which reduces the amount of his income from what it was in previous years merely because his purpose was to reduce the amount of his income and consequently of his tax. These two types of cases may be uncommon but there are many other ordinary and legitimate transactions and operations which, if a taxpayer carries them out, would have the effect of reducing the amount of his income to something less than it was in the past, or freeing himself from taxation of some part of his future income"*

51. Whilst the taxpayer's loan account with RBP Incorporated fluctuated, the taxpayer (and RBP Incorporated, an entity of which he was a shareholder and director) are entitled to transact with one another on terms they deem appropriate, which in fact, results in a 'tax neutral' position, wherein RBP Incorporated is not claiming a tax deduction and the taxpayer is not paying personal income tax on these funds.

52. Notably, SARS did not take issue with the fact that the loan accounts of the taxpayer, his father and their partner, Stephen Bezhuidenhout, held with RBP Incorporated during the 2012 audit accrued interest. Furthermore, SARS did not take issue with the

above during the 2012 lifestyle audits of the taxpayer, the taxpayer's father and partner, Stephen Bezuidenhout. The interest which accrued on these loans accounts was in fact taxed in the hands of RBP Incorporated.[6] Furthermore, SARS did not include the drawings on their loan accounts as being taxable income in their (the taxpayer and his father) hands. There is simply no basis for the departure from the decisions taken by SARS on previous occasions.

53. The taxpayer therefore refutes the adjustment that an amount of R1 823 433.28 must be included into his taxable income in the form of additional remuneration from RBP Incorporated.

Foreign Interest Income

54. SARS' letter of audit findings assert that the taxpayer earned foreign interest income in the 2013 – 2016 years of assessment as follows:

2013	2014	2015	2016	2017	Total
R25 698.96	R38 721.06	R31 226.45	R5 951.63	R22 044.85	R123 642.95

55. On 26 January 2026, the writer's offices requested a disclosure of the statements, certificates or documents pertaining to the foreign interest allegedly earned by the taxpayer.

56. On 02 February 2026, SARS responded to the request by declining to disclose this information to the taxpayer. In the absence of any documents to support SARS' contentions, the taxpayer denies earning such foreign interest income.

57. Alternatively, and in the event that there is foreign interest income, SARS have incorrectly taxed the full amount, and the taxpayer would be entitled to relief from double taxation.

58. In this regard, Article 11(1) and (2) of the Double Taxation Agreement between the Republic of South African and the State of Israel states that:

> *"1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.*

[6] See page 22 of SARS' letter dated 09 July 2015

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the tax so charged shall not exceed 25 per cent of the gross amount of the interest."

59. The right to tax any interest arising in Israel is, therefore, not exclusive to South Africa, although this is limited to 25% of the gross amount of interest. The Israel Tax Authority, as we understand it, would have imposed a 25% withholding tax on all interest earned during the periods in question.

60. To the extent that any relief was granted by the Israeli Tax Authority on interest earned, Article 23(1)(b) of the Double Taxation Agreement provides that the credit shall be deemed to be an amount imposed by Israel, despite any tax not being imposed. In simple terms, this means that, notwithstanding the relief granted by the Israeli Tax Authority, the taxpayer, in South Africa, would be entitled to the relief as if the tax was imposed.

61. Article 23(1)(b) of the Double Taxation Agreement states that:

"23(1)(b) If Israeli tax on dividends or interest has been wholly or partly relieved for a period of time under provisions of Israeli tax law which are certified by the competent authority of Israel to be for the encouragement of the Israeli economy, the amount to be allowed as a credit against the South African tax on such income shall be an amount of tax which would have been imposed by Israel if no such relief or reduction had been granted, and, where the taxpayer is a company, the said amount shall, for the purposes of the undistributed profits tax levied by South Africa, be deemed to be a tax on income payable by the company"

62. Accordingly, and in the event that SARS were to deem the foreign interest income to have been received by the taxpayer, he would be entitled to relief from any double taxation in the form of a rebate in terms Section 6*quat* of the Income Tax Act, 58 of 1962 ("**the ITA**").

63. In such event, the taxable amount on any foreign interest earned thus becomes negligible and does not amount to a material non-disclosure. The writer's offices are unfortunately not in a position to determine this amount in the absence of any disclosures by SARS.

64. Insofar as the materiality of this consideration is concerned, the alleged under declaration of foreign interest income amounts to R123 642.95. In the context of the findings, this amounts to 0.008% of the total amount SARS intends to assess the taxpayer on, which is grossly immaterial.

65. Insofar as foreign interest income has allegedly been received by the taxpayer in the 2017 year of assessment in the sum of R22 044.85, it is common cause that the taxpayer left South Africa on 16 March 2016. The taxpayer has not returned to South Africa since departing some 10 years ago.

66. Accordingly, the taxpayer ceased to be a resident for tax purposes in terms of the ITA as he is no longer 'ordinarily resident' in South Africa, alternatively, has been physically absent from the Republic for a period in excess of continuous period of 330 days.

67. The taxpayer, from the date upon which he departed South Africa, is no longer required to disclose his income on a worldwide basis, but only income from a South African source.

68. Accordingly, the taxpayer was not obliged to disclose the interest income (if it is correct) for the 2017 year of assessment.

Other Income

69. In SARS' letter of audit findings, it is alleged that the taxpayer underdeclared other income (table 8 in the letter of audit findings or SARS6 in the annexures). The amounts allegedly received by the taxpayer are as follows:

2013	R4 394 623.06
2014	R663 244.77
2015	R5 314 038.62
2016	R711 658.33
2017	R248 141.66
Total	**R11 331 706.44**

70. The aforesaid amounts are made up from various deposits identified by SARS in annexure "SARS6". Once again, we set out hereunder the legal position upon which we have considered the receipts and why they do not form part of the taxpayer's gross income.

71. Firstly, Section 1 of the ITA defines "gross income" as follows –

"gross income", in relation to any year or period of assessment, means—

(i) in the case of any resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such resident; or

(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within the Republic,

during such year or period of assessment, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—

72. Secondly, loans, which are capital in nature, are thus excluded from the definition of a 'gross income' in terms of Section 1 of the ITA. In the seminal case of Commissioner for Inland Revenue v Genn and Co (Pty) Ltd 1955 (3) SA 293 (A) at 301, Shreiner JA stated that:

"it certainly is not every obtaining of physical control over money or money's worth that constitutes a receipt for the purposes of these provisions. If, for instance, money is obtained and banked by someone as agent or trustee for another, the former has not received it as his income'

73. Likewise, where a taxpayer received an amount, but there is a corresponding obligation to repay that amount, i.e., a loan, the amount is not received by or accrued" by him for purposes of the definition of 'gross income' (see *Commissioner for Inland Revenue v Genn and Co (Pty) Ltd 1955 (3) SA 293 (A) at 299B-G and SIR v Smant 1973 (1)(SA) 754 (A) at 764 B-C)*. Accordingly, it is trite that loan amounts received by a taxpayer do not form part of their gross income.

74. Whilst the definition of 'gross income' includes an amount received by way of a dividend from a company in South Africa, this amount is exempt from any normal tax in terms of Section 10(1)(k) of the ITA.

75. Third, the definition of 'remuneration' in the Fourth Schedule to the ITA includes a *proviso* whereby any amount paid or payable to an employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment is excluded from his gross income.

76. Lastly, is it important to point out that the taxpayer and SARS are *ad idem* on the view that transfers between his bank accounts do not form part of the 'gross income' of the taxpayer as this would be 'after taxed' funds.[7] As a clear example, transfers between a bond account to another account of the taxpayer would not constitute a receipt of an amount which would be subject to normal tax.

77. We now turn to discussing the alleged receipts in light of these considerations.

78. For ease of reference, we have attached hereto a schedule with a line-by-line response to the said amounts. This has been prepared on SARS6 in excel format for ease of reference.

79. In this regard, we wish to submit the following notes:

    79.1. In respect of the amount of **R4 000 000.00** received on 13 March 2012, this amount was received from Andre van der Merwe's trust account from funds held for RBP Incorporated. This amount should have been reflected in the loan account of the taxpayer with RBP Incorporated; however, due to the payment being made directly from Andre van der Merwe, the practices bookkeeper, namely, Natasha, did not record the entry into the loan account. In any event, the taxpayer was mindful of this amount owing to RBP Incorporated and therefore received a lesser dividend. The explanation to this, will also explain the origin of the amount of **R4 352 014.00** identified by SARS.

    79.2. On 27 May 2014, RBP Incorporated declared a dividend of R33 235 000.00, which amount was to be paid its three shareholders, including the taxpayer. The taxpayer was a 25% shareholder of RBP Incorporated and was therefore entitled to receive an amount of R8 237 055.00. As opposed to receiving the full amount, the taxpayer waived his right to receive an amount equal to the R4 000 000.00 as this had already been received by virtue of a loan. The therefore only taxpayer received a dividend payment of **R4 352 014.00**.

    79.3. The payment of the dividend from the trust account of Andre van der Merwe is confirmed in a written response to SARS' queries on the dividends paid in the 2013 and 2024 years of assessment. This response was prepared by Andrew Fischer, the erstwhile representative of the taxpayer, to a query by Mr Eben Schoeman, a criminal investigator at SARS. A copy of the response is attached marked annexure **C**. Notably, the payment of these dividends and the transfer of funds to the taxpayer is recorded by Mr Eben Schoeman in an affidavit deposed by him on 20 March 2019. An extract of the affidavit is attached marked annexure **C1**. SARS are referred to paragraph 2.4. SARS also

[7] See letter of audit findings at paragraph 64

confirmed its position when it decided to pursue personal liability against the taxpayer for outstanding dividends tax which had allegedly not been paid by Andre van der Merwe, despite receiving the funds from RBP Incorporated.

79.4. It is unclear why SARS have therefore taken the view in the taxpayer's audit how this amount now seemingly forms part of his gross income in circumstances wherein SARS, under oath, confirms the factual position to demonstrate the contrary. In our view, the approbating and reprobating on the factual position taken by SARS, which we also highlighted in Ronald's response, undermines the reasonableness of the proposed adjustments.

79.5. The taxpayer also received reimbursements for accommodation, travel or expenses incurred for an on behalf of RBP Incorporated clients. These amounts do not constitute the gross income of the taxpayer. The amounts total approximately **R60 534.64** of the total alleged receipts by the taxpayer.[8]

79.6. The taxpayer also drew down on his loan account with RBP Incorporated, which amounts do not constitute the gross income of the taxpayer. These amounts are highlighted on his loan account with RBP Incorporated which is attached at **RB1**. The amounts total approximately **R205 768.65**,[9] which the taxpayer drew down on his loan account. These amounts do not constitute the gross income of the taxpayer but rather receipts on loan from RBP Incorporated.

79.7. Whilst SARS and the taxpayer are *ad idem* on the view that inter-account transactions are not taxable, it is noted that SARS failed and/or refused to consider the home loan bond account the taxpayer held with Standard-Bank. The writer's offices have called on SARS to clarify their position insofar as it relates to this account, however, a response has not been forthcoming. SARS' failure to consider the bond accounts of the taxpayer cannot be underestimated in SARS' analysis and consequent audit findings.

79.8. SARS informed the taxpayer that it intends raising an additional assessment in terms of Section 95(1)(b), (c) and (2) of the TAA. Section 95 of the TAA enables SARS to issue an original, reduced or additional assessment in whole or in part on an estimate on the information readily available to it. Section 102(2) of the TAA then places the burden of proving that the estimate is reasonable on SARS.

[8] SARS can filter the entries in column H to determine these amounts
[9] ibid

79.9. In the event that SARS had considered the Standard Bank bond account of the taxpayer, it would have noted that an amount of approximately **R1 769 000.00**[10] was received from his bond account as an inter-account transfer. Whilst we do not have the bank statements for the entire period concerned, we have extracts which the taxpayer could uncover, notwithstanding the effluxion of time. These statements evidently reflect some of the amounts upon which SARS incorrectly propose assessing the taxpayer on. The extracts from the taxpayer's Standard-Bank bond account are attached marked annexure **DB2**.

79.10. The taxpayer and the writer hereof have attempted to obtain copies of the home loan bond accounts; however, this has been in vain. On the contrary, SARS had the legislative ability to call for these statements, however, this was conspicuously not done. SARS' failure and/or refusal to do so undermines the accuracy and the reasonableness of the proposed assessments (should they be issued).

79.11. The taxpayer accordingly refutes the view that these amounts should form part of the taxable income of the taxpayer. These can be identified by filtering the search to view "Intra-Account Transfer – Bond Account".

79.12. Likewise, there were additional inter-account transfers which total an amount of **R572 388.26** which do not form part of the taxable income of the taxpayer for reasons already stated. These can be identified by filtering the search to view "Inter-Account Transfer".

79.13. The taxpayer received refunds from his medical aid, namely PPS in the sum of **R3 949.23**. These can be identified by filtering the search to view "Refund from Medical Aid (PPS) for medical expenses".

79.14. The taxpayer also received payments from his neighbours in respect of maintenance costs. These were received from Dr H Vanmali and Shery Triebwasser. The total receipts amount to **R2 651.00**. These can be identified by filtering the search to view "Refund for personal expense by neighbour".

79.15. The taxpayer also received payments from his insurance company. These can be simply identified by the transaction description being MUA, which is also a reference to Motor Underwriting Agency. The total receipts are an amount of **R45 338.14**. These can be identified by filtering the search to view "Insurance Payment for MUA (Motor Underwriting Agency)".

[10] ibid

79.16. The taxpayer then also received further trivial amounts which can be attributed to a refund from the City of Johannesburg, refund from the Road Accident Fund in respect of an undertaking and refunds from client's for disbursements incurred by the taxpayer.

80. To the extent that the taxpayer cannot recall the nature of the receipt, these amounts are negligible, amounting to R99 131.11 or 0.008% of the total claims by SARS which are allegedly underdeclared. This cannot, however, be attributed to fraud by the taxpayer in any manner whatsoever. It is not possible, or reasonable, for a taxpayer to recall every amount in the circumstances.

Lisa Bobroff

Tax Year	**Description**	**Amount**
2010	L Bobroff Receipts	R763 425.00
Total	**R763 425.00**	

81. SARS have propositioned that an amount of R763 425.00 shall be deemed to be income in the hands of the taxpayer.[11] SARS states that:

"SARS intends including in the taxpayer's income in the 2010 year of assessment the two cheques deposited in Ms LB Bobroff's FNB Smart Account in respect of "referral fees" charged by RBP to the two clients, PG McKenzie and JE de la Guerre"

82. The taxpayer denies that these amounts form part of his gross income or that they were received by him. On the contrary, SARS have tried to tax this amount twice, firstly in RBP Incorporated and now in the taxpayer's hands.

83. The taxpayer denies that these amounts form part of his gross income or that they were received by him. In the finalisation of audit letter for RBP Incorporated, SARS acknowledge that these amounts were debited to the loan account of the taxpayer with RBP Incorporated, thus removing the deductible expense for the practice. SARS, again, acknowledge this treatment in the finalisation of audit letter for his wife, although still assert that the amount will form part of the 'gross income' of the taxpayer.[12]

[11] See paragraphs 66 – 69.
[12] Paragraph 75

84. In the finalisation of audit letter for RBP Incorporated dated 09 July 2015, specifically paragraph 1.3.4.2.8, SARS raised estimated assessments on the 2010 to 2012 years. In terms of SARS' letter and annexure B2, SARS refer to "Income not declared (Leakage)". In this schedule, the amount for McKenzie in the sum of R376 912.20 and De La Guerre in the sum of R386 513.80 are included into the taxable income of RBP Incorporated.

85. At paragraph 68 of the letter of audit findings for this taxpayer, SARS, however, confirm that:

> *"68. The two cheques referred to above were debited to the taxpayer's loan account in the books of RBP. SARS intends including the above-mentioned amounts in the taxpayer's income in the 2010 year of assessment for the following reasons*
>
> *68.1 the two amounts referred to above were charged to the clients, PG McKenzie and JE de la Guerre, on their statements of account as referral fees but not accounted for in the general ledger of RBP, except to debit the taxpayer's loan account, i.e., as company drawings. By charging these two payments to the clients as "referral fees", when no referral had taken place, resulted in the client's eventual award received from the Road Accident Fund being unlawfully reduced."*

86. In essence, SARS have therefore sought to include these amounts into the gross income of the taxpayer, in circumstances wherein (i) it was already taxed in the hands of RBP Incorporated and (ii) the amount was admittedly debited to the taxpayer's loan account. This amounts to double taxation, which is unconscionable.

87. The juxtaposition by SARS in the finalisation of audit letter for RBP Incorporated and his wife, against the current letter of audit findings is puzzling. Either the amount is not a deductible expense for RBP Incorporated and thus allocated to the loan account of the taxpayer, alternatively, the amount constitutes the income of the taxpayer (which we obviously deny) and RBP Incorporated should have been given the benefit of the deduction.

88. SARS, however, took a different view and taxed the amount in the hands of RBP Incorporated directly, thereby ruling out the view that the amounts were also taxable in the hands of the taxpayer. This is clear from annexure B2 to the finalisation of audit letter for RBP Incorporated.

89. In any event, SARS do not formulate the legal or factual basis upon which they now intend to recharacterize the nature of the receipts to form part of his 'gross income' as opposed to being drawings from his loan account. The taxpayer reserves his rights in this regard.

90. The taxpayer accordingly disputes that the inclusion of this amount into his gross income.

Foreign Rental Income

91. SARS have proposed including an amount of R11 845.00 in the 2014 year of assessment in relation to foreign rental income.

92. The Double Taxation Agreement between South Africa and Australia, Article 6(1) provides that:

> *(1) Income from real property may be taxed in the Contracting State in which the real property is situated.*
>
> *…*
>
> *(3) The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property.*

93. SARS, therefore, do not have the right to tax any profits on rental income from properties situated outside of the Republic. The right to tax any amounts is for the contracting state in which the property is situated.

94. Further, and if SARS has the right to tax this amount, which is denied, the taxpayer submits that the amount was not (i) intentionally underdeclared as the taxpayer's submissions were prepared by his erstwhile accountant who he reasonably believed at the time to possess the necessary skill and knowledge to submit accurate returns and (ii) does not amount to a misrepresentation or material non-disclosure.

95. The taxpayer accordingly refutes SARS' attempts to include this amount into his taxable income.

Local Rental Income

96. SARS propose including local rental income into the gross income of the taxpayer in the sum of R251 512.36. This was in respect of the rental income received from August 2016 from the letting of his primary residence situated at 13A Pentrich Road, Victory Park, Parklands.

97. Whilst the taxpayer accepts that he accrued rental, he likewise incurred expenses which are to be deducted from the rental in terms of Section 11(a), read with Section 23(g) of the ITA.

98. Further, it is to be noted that the amount of R20 500.00 detailed as Investec PBC Jaches is a reference to an amount deposited into the taxpayer's account from his sister and is therefore excluded. Furthermore, the taxpayer disposed of certain movable items to the tenant, including a pool table and other miscellaneous items. This amount is reflected at R12 471.00. These are personal use items and do not form part of the gross income of the taxpayer (or capital gains).[13]

99. Save for what is stated below, the taxpayer may have 'received' the net rental in the sum of R33 295.69. These amounts have been determined by taking into account the expenses relating to the rates and taxes paid to the City of Johannesburg, maintenance costs, agents commission and insurance.

100. Furthermore, the taxpayer incurred interest expenses on his bond repayments which averaged approximately R12 000.00. In the absence of these bank statements, it is reasonable to assume this expense on servicing the bond repayments. We have attached as annexure **DB3** a schedule with supporting vouchers for the expenses.

101. However, it is apposite that we point out that the taxpayer was sequestrated by the Gauteng Local Division on 07 March 2017. The effect of this was that, not only was the trustee appointed to wind up his estate responsible for the submission of the taxpayer's 2017 income tax return, but also the settlement of any resultant liability.[14]

102. Accordingly, the taxpayer never received a cent from the rental income as these amounts were subsequently utilised in the sequestration proceedings, which the trustee must account for in terms of the ITA. The taxpayer was also not obliged to disclose this rental income, but rather this was for the trustee to account for this income.

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[13] See paragraph 53 of the Eighth Schedule to the ITA
[14] See section 66(13) of the ITA, read with Chapter 10 of the TAA

103. Any allegation of underdeclared income on local rental can therefore not be attributed to the taxpayer. Likewise, this does not amount to a misrepresentation or material non-disclosure in consideration to the amounts upon which SARS intend to assess the taxpayer.

104. The taxpayer accordingly refutes the inclusion of this amount into his gross income.

Cash Deposits

105. SARS propose the certain cash deposits be included into the gross income of the taxpayer. These amounts are as follows[15]:

Tax Year	**Description**	**Amount**
2013	Cash Deposits	R0.00
2014	Cash Deposits	R20 831.60
2015	Cash Deposits	R43 956.33
2016	Cash Deposits	R3 562.07
Total	**R68 350.00**	

106. The taxpayer does not recall receiving cash deposits into his bank accounts and accordingly denies these allegations. If they taxpayer received deposits, this would have been in the form of either a cheque or EFT.

107. Notably, the description of 'cash deposits' by SARS in their findings is misleading and would suggest that the 'payer' physically attended to depositing the said amounts, which would have included the cents. One would imagine that a cash deposit would have referred to a round amount, and not to cents. This is a remarkable assertion to be made by SARS.

108. Whilst the taxpayer cannot recall the nature of each of these receipts, the amounts are insignificant and may have arisen from innocuous receipts from family members or reimbursements from RBP Incorporated.

109. The taxpayer accordingly submits that (i) the amounts do not form part of his gross income, (ii) he has not intentionally or wilfully failed to disclose these amounts or (iii)

[15] See annexure SARS5

that these amounts constitute a material non-disclosure or misrepresentation, allowing SARS to reopen the assessments.

Understatement Penalty

110. The discretion to impose an understatement penalty lies at the feet of the Commissioner and is dependent on the taxpayer's behaviour insofar as it relates to the understatement of taxes.
111. In terms of the *Memorandum on the Objects of the Tax Administration Bill, 2011*, an understatement penalty is also described as a 'penalty' rather than a tax that is triggered by an "understatement" as defined in Section 221 of the Act.

112. In the decision of ***SARS v Pretoria East Motors (Pty) Ltd (291/12) [2014 ZASCA 91 (12 June 2014)*** the Court stated:

> *'... The raising of an additional assessment must be based on proper grounds for believing that, in the case of VAT, there has been an under declaration of supplies and hence the output tax, or an unjustified deduction of input tax. In the case of income tax, it must be based on proper grounds for believing that there is undeclared income or a claim for a deduction or allowance that is unjustified. It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as it is obliged to. It is also the only basis upon which it can, as it must, provide grounds for raising the assessment to which the taxpayer must respond by demonstrating that the assessment is wrong.'*
>
> *The SCA went on further to state the following regarding the burden of proof placed on the taxpayer and SARS in terms of Section 102 of the Act:*
>
> *'That, however, is not to suggest that SARS was free to simply adopt a supine attitude. It was bound before the appeal to set out the grounds for the disputed assessments and the taxpayer was obliged to respond with the grounds of appeal and these delineate the disputes between the parties.'*

113. The recent decision, *supra*, therefore places a duty on SARS to ensure that their assessments are substantiated from the facts of the matter before them. This has been confirmed in the Tax Court decision by Judge Olsen dated 8 February 2018 **[TCIT 13725 TCVAT 1426 TCIT13727 TCVAT1096 DBN 08 February 2018]**.

114. At paragraph 20 of the aforesaid judgment, the following is stated:

> *'The onus is on SARS to prove the conduct in question. Having done that, SARS must classify it, for purposes of Chapter 16, selecting the appropriate description of behaviour from the options provided in Section 223 of the Tax Administration Act.'*

115. SARS therefore needs to prove the actual conduct of the taxpayer before they can classify the particular behaviour, which we submit SARS failed to do. In light of this response, we are therefore of the opinion that SARS have not discharged their own burden of proof in terms of Section 102(2) of the Act.

116. Furthermore, an understatement penalty is imposed in terms of Chapter 16 of the Act. Section 221 defines an '*understatement*' as follows:

> *'means any prejudice to SARS or the fiscus as a result of -*
>
> *(a) a default in rendering a return;*
> *(b) an omission from a return;*
> *(c) an incorrect statement in a return; or*
> *(d) if no return is required, the failure to pay the correct amount of 'tax"*

117. In terms of Section 222 of the Act the following is stated:

> *'(1) In the event of an 'understatement' by a taxpayer, the taxpayer* ***must*** *pay, in addition to the 'tax' payable for the relevant tax period, the understatement penalty determined under subsection (2)* ***unless*** *the understatement results from a* ***bona fide inadvertent error.'***
>
> *(our emphasis)*

118. The Commissioner therefore does not have a discretion with regard to imposing an understatement penalty where there is an understatement as defined. The only discretion that the Commissioner does have is when the understatement results from an *unintended error made in good faith by the taxpayer.*

119. '*Bona fide'* means 'good faith' in Latin. This means to be *honest; genuine; actual; authentic; acting without the intention of defrauding.*

120. In ***Birch v Lombard and others 1949 (3) SA 1093 (SR),*** Tregold J provided that:

> *'To my mind bad faith is a stronger term than malice, the expression which is commonly used in relation to matters of this sort. 'Malice', as a legal term of art,*

simply indicates any indirect or improper motive, but bad faith, to my mind, implies something more than an indirect motive. It implies an active and willful disregard of the considerations which were proper to the case.'

121. Good faith or *bona fides,* being the opposite of *mala fides* or bad faith, in accordance with the interpretation provided by Tregold J in the case of Birch v Lombard*, supra*, implies conduct of something more than an indirect motive, which can be implied to mean a direct intention/motive to defraud the fiscus.

122. This interpretation of a 'bona fide inadvertent error' accord with the recent decision in the Tax Court in **ABC Holdings (Pty) Ltd v Commissioner for the South African Revenue Service (ITI13772) [Para 45]** where Judge Boqwana stated that:

"a bona fide inadvertent error is an innocent misstatement by the taxpayer resulting in an understatement while acting in good faith and without the intention to deceive."

123. In the case of **ITC 1902 (80 SATC 77)**, the Court recognised that the approach to determining a penalty 'borrows heavily from the criminal law'. In this regard, the Court considered the personal circumstances of the appellant, the infringement and the interests of society. In doing so, the Court viewed the taxpayer's current tax compliance, the economic climate, finance department of the taxpayer, the number of employees and the contribution the taxpayer made to the national economy.

124. In this instance, SARS have proposed an understatement penalty on the assertion that the taxpayer was obstructive and acted with an intention to evade tax. This could not, however, be farther from the truth.

125. Having regard to the background facts of this matter and in light of what is stated above, the taxpayer submits that an understatement penalty in terms of the Act should not be imposed on the understatement due to the following:

125.1. SARS have not discharged their burden of proof imposed upon them in terms of Section 102(2) of the Act as they have not demonstrated that the taxpayer had in fact acted with the intention to evade tax.

125.2. In the 'Short Guide to the Tax Administration Act, 2011', SARS states that:

"The most important factor is that the taxpayer must have acted with <u>intent to evade tax</u>. Intention is illustrated by a wilful act, when a person's conduct

is meant to disobey or wholly disregard a known legal obligation, and knowledge of illegality is crucial."

125.3. SARS have not demonstrated that there has been a deliberate or wilful act by the taxpayer to understate his gross income for the reasons set out above. In this regard, there are rational and reasonable explanations, based in fact and in law, which substantiate the taxpayer's position insofar as it relates to his affairs (see *Thistle Trust v Commissioner for the South Africa Revenue Service (CCT 337/22) [2024] ZACC 19; 2024 (12) BCLR 1563 (CC); 2025 (1) SA 70 (CC); 87 SATC 103 (2 October 2024)).*

125.4. On SARS' own versions and records, the taxpayer has not understated his taxable income. Therefore, there has been no understatement, as defined, as the taxpayer has not underdeclared his income to SARS or committed a default in the particular years concerned.

125.5. Insofar as SARS assert the taxpayer was obstructive, this is vehemently denied. The taxpayer and his family were persecuted by various authorities in South Africa. The taxpayer and his family departed South Africa under a credible and articulated threat of assassination, with his mother being arrested on false charges, and which were subsequently withdrawn.

125.6. Since then, the taxpayer's affairs and records have been held in the custody of curators, various departments and individuals which have made it near impossible to respond to the audits. To the extent that the taxpayer could respond, he did so through his representative of the time, namely Andrew Fischer. It is illogical to suggest that a taxpayer, involuntarily fleeing persecution, is then expected to have his records immediately available as if these were not extraordinary circumstances, notwithstanding the health issues which followed the stress and anguish caused by these events.

125.7. Any understatement that may have arisen, which we deny exists, would have therefore been due to a *bona fide* inadvertent error by the taxpayer. SARS would therefore lack the necessary jurisdictional facts to raise the understatement penalty in any event.

125.8. The understatement penalty, if it were to be imposed, is entirely disproportionate to the behaviour of the taxpayer.

126. The taxpayer therefore submits that an understatement penalty should not be imposed at all. Alternatively, and if an understatement penalty had to be levied, which is denied, the largest understatement penalty that can be imposed could only be 10% in the circumstances as a standard case of a substantial understatement.

Conclusion

127. In concluding, we submit that SARS' findings and proposed adjustments are inaccurate as these amounts do not constitute the gross income of the taxpayer. Furthermore, we submit that where the taxpayer was no in a position to provide an explanation or documents to all the amounts alleged, this was due to extraordinary circumstances which have unfolded in his life. To the extent that an explanation has not been provided, these relate to nominal amounts which do not constitute a material non-disclosure or representation, as such, the assessments have prescribed.

128. Should you require any additional information insofar as it relates to these submissions, you are urged to contact the writer hereof at matthew@fgea.co.za.

129. We thank SARS for its consideration and look forward to your favourable response.

130. The taxpayers' rights remain reserved.

Yours faithfully
FABER GOËRTZ ELLIS AUSTEN INC

Per: MATTHEW NICHOLLS