

EVASION OF VAT AND INCOME TAX

71. The allegations that the creation of the 11521 suspense account was intended to evade tax is wholly without merit. We did not and never intended to avoid the payment of income tax or value added tax in respect of the matters in question. Fees were debited in respect of every one of those matters in sequence, the VAT was paid, and the only beneficiary was the Attorney's Fidelity Fund which received all the interest earned on those amounts held in trust.
72. When Reddy raised the question of the Practices 11521 suspense account and the Zunelle account, I furnished him with a detailed explanation as to why the directors had created those two accounts. The creation of a suspense account i.e. in reality simply a list of those matters which had been finalised, all service providers paid, and the clients accounted to, related to money being held in the Practices current trust account, and which the Practice was entitled to appropriate when it chose to do so, by the debiting of fees.
73. All interest earned on those funds are required by law to be paid to the Attorneys Fidelity Fund and this was done, resulting in the Practice receiving certificates of recognition as exceptional interest generators, from the Fidelity Fund. Attached as **Annexure "35"** are copies of Attorneys Fidelity Fund Certificates awarded in recognition of exceptional interest contributions.
74. The creation of this ledger account was based on a suggestion, by the multiple convicted fraudster bookkeeper employed by our Practice – Bernadine van Wyk, and who unbeknown to us had been recruited by discovery to set us up for a TAX authority audit, the intention being as explained by her to the firms receptionist Liza Bouwer, to result in the arrest of the firms directors and closure of the firm.
75. Van Wyk told me that her friend was employed at the South African Revenue Service office at which the Practice lodged its VAT returns. Her friend had noted that the Practices income demonstrated a peak and valley profile, and that this was likely to trigger a VAT audit of the Practice. My response was "so what", as the reason for the variation in fees was that during the periods the courts were in recess there were no trials, and therefore no judgements and settlements, and which then resulted in a drop in fee income for a few months following on the recess.
76. Van Wyk related to all three directors that a VAT audit was a nightmare even if the business was fully complaint, as the SARS auditors received commissions on any additional VAT recovered after an audit. She went on to describe the major disruption an inspection had caused in the office of one of her former employers and where members of SARS inspection team due to their receiving commission on whatever additional tax they could extract, severely disrupted the operation of that Practice for months. She was emphatic that she was not prepared to deal with the enormous additional work load such an audit would entail.

77. She emphasized that it was essential that the Practice showed a smooth cash flow, and this could be achieved by her monitoring the cash flow needs of the Practice and the directors. She would prepare a monthly schedule a few days before the end of each successive month, and unless the directors had any additional and specific needs, fees would be debited and the funds transferred from Trust to Business in accordance with her schedule. In this way the pool of trust funds would be available to provide money for fee debits, in the months after court recesses, during which income was always reduced.
78. We told her to discuss her suggestion with the Practice's auditor, and after her confirming to me that she had done, her proposal was implemented.
79. It must be stressed that there was absolutely no financial benefit to the firm or its directors, as all interest amounting to millions of Rands was paid to the Attorneys Fidelity Fund. In hindsight I was foolish to agree to what was obviously an intention to set us up for the proposed SARS audit, as had fees been debited immediately the matters were finalised the money would have been available for investment on interest for the benefit of the Practice and its shareholders or dividends declared to the shareholders. As became apparent at the time of the SARS audit, van Wyks sole intention was to create as many suspicious circumstances in the firm's books as possible so as to bring about the firms downfall following on a tax audit.
80. The Zunnelle account comprised business funds belonging to the shareholders and all interest earned on such monies were declared from inception of the account. During the SARS audit August 2012, both the directors and the Practice were found to be entirely tax compliant, save for some disagreement between our very senior tax attorney, who was formerly a senior SARS employee and the leader of the SARS inspection team with regard to penalties which he wished to impose on the VAT in relation to the funds held in Trust and listed in the 11521 ledger.
- 80.1 The Practices Tax advisor formerly one of the most senior employees of the South African Revenue Services was emphatic that there was no basis for any penalty, as the fees in respect of the matters listed, were debited and the VAT paid over, and the VAT issue was simply a timing one, which in terms of the Income Tax Act will attract 10% interest from the date on which the fees could have been debited, and the VAT paid over until the date on which this in fact occurred. I attach as **Annexure "36"** and **Annexure "37"** which are letters of good standing issued by SARS .
81. With regard to the Zunelle account, these were not trust funds but surplus business funds which belonged jointly and severally to the Practice directors in accordance, with their shareholding the Practice. My explanation to Reddy is attached and regrettably also seems to have been ignored by the court, and notwithstanding that I informed Reddy of the correct facts, and our auditor confirmed to him that all interest declared on these funds from the start, it is malicious and mischievous for him to have alleged that the Zunelle account can be said to be a tax evasion strategy.

82. During the SARS audit both the 11521 and the Zunelle account were discussed and no contraventions were alleged save that SARS insisted on interest being paid on the VAT which it contended should have been paid and the fee it contended should have been debited immediately funds were available, until which the fee was debited and the VAT paid.
83. In a clear indication of the agenda which was followed by the Discovery controlled Law Society Council, notwithstanding that the court appointed curator to the Practice had furnished his report to the Council in January 2016, it, with Millar at the helm, deliberately and wilfully withheld this from the court. Clearly this was deliberately done, so that the fabrications and malicious allegations of trust fund misappropriation etc. by Reddy could be persisted with.