

A tax primer for the uninitiated (errors and omissions excepted)

D Meyerowitz SC
Cape Bar

The editor of *Advocate* asked me to produce a short article on tax relating to the obligations of members of the Bar in respect of their liability for the various taxes that plague us, with particular reference to the returns to be made by them to the South African Revenue Services (SARS). His request reminded me of a series of short brochures issued many years ago by an accountant entitled "What every ... should know". Each brochure referred to a different profession, business or trade such as a farmer, accountant, lawyer, etc. Ninety per cent or more of each brochure repeated the contents of every other one because except for factual variations resulting from the nature of the activity there is no difference between the taxation of taxpayers.

It seemed to me therefore that I should focus on those of our members who have recently joined the ranks of the Bar and are faced for the first time with the subject of taxes imposed by the taxing Acts upon them. In other words I start from the beginning (assuming that the reader has not encountered tax in his studies before coming to the Bar).

Income Tax

Income tax is assessed by SARS on the basis of a return of income and expenditure rendered annually.

Newcomers to the Bar who may not be on SARS's register and therefore will not receive returns automatically, have an obligation to apply for a return if for the year of assessment their gross income (ie before exemptions and allowable deductions) exceed the tax threshold. For the tax year ended in February 2000 the figure is R19526. For the year of assessment ending 28 February 2001 the figure will be R21111.

The form of the return and in particular the SARS brochure that accompanies the return contains enough information to assist a taxpayer completing his return. I shall therefore refer only to

some aspects which complement the brochure.

Source and residence

For the tax year ending 28 February 2001 the definition of gross income (receipts and accruals of a revenue nature) is based on their source being within or deemed to be within the Republic. For example, an advocate appearing in the courts of countries other than the Republic could argue that their fees fell outside section 9(1)(d) which deems payment for services to be from a South African source when performed anywhere by a person in the course of carrying on his trade in South Africa. In respect of the tax year commencing 1 March 2001, all income accruing to a South African resident wherever the source may be is subject to South African tax, subject to rebates to avoid double tax on the same income in South Africa and in the country in which the services are rendered. Much of this double tax will be regulated by double taxation agreements, while there are also exemptions where the income is derived in a designated country. This aspect is far too complicated to be dealt with in a digest such as this.

Expenditure

The rule is that expenditure, not of a capital nature, incurred in the production of income, is deductible, with prohibitions and deferred deductions not germane to advocates, except that which prohibits domestic or private expenses. It is possible, however, for a member to claim the costs of maintaining a study at home which is exclusively devoted to the purposes of his practice.

Equipment of chambers

If a member hires equipment for his chambers such as computers, typewriters etc, he can deduct the rent. If he purchases the equipment he is entitled to write the cost off on the basis of a

straight line percentage over a period of years. SARS has a schedule of acceptable periods.

Gowns, books and periodicals

A gown is the acquisition of a capital asset and its cost is not deductible except by way of wear and tear. However, I understand (but am not sure) that SARS will accept a write-off in the year of purchase.

SARS permits the cost of periodicals (such as the *Law Journal*, *Tydskrif*, etc) to be deducted in the year in which it is incurred. The cost of law reports may be written off entirely in the year of purchase and the cost of binding them in the year in which it is incurred.

Motor cars

It is long established that the cost of travelling from home to chambers and *vice versa* is private expenditure, but it is accepted practice to equate the position of a person trading in his own right with that of an employer and an employee, namely to allow the costs relating to the acquisition and running of the car as a deduction (such as wear and tear, interest, repairs, depreciation, insurance etc, as also rent payable in terms of a lease of a car) less 1,8% per month on the determined value of the car (annually 21,6%). If however the distance travelled during the year is less than 10000 kilometres, the percentage is reduced in the ratio the distance travelled bears to 10000 kilometres.

Entertainment expenses

There are two types of deductions of expenditure on entertainment. The one falls under section 11(a), namely expenditure incurred in the production of a taxpayer's income, ie for the purpose of producing income. In the case of an advocate, entertainment would include providing refreshment and meals for clients, witnesses etc, during the course of consulting or during a

trial. There is no limitation upon the *quantum* of such expenditure, but SARS may call for proof thereof.

The other type of expenditure is provided for in section 11(u). It refers to entertainment (including club subscriptions) incurred directly in connection with the taxpayer's trade and not falling under section 11(a). The deduction is the greater of (i) R2500, or (ii) R300 plus 5% of so much of the taxable income (before the deduction) as exceeds R6000.

The difference between section 11(a) and section 11(u) is that in the former case the deduction must be related to the production of income; in the case of section 11(u) it is enough that it is connected with the taxpayer's trade, such as entertaining business associates or clients without the immediate object of producing income, or belonging to a club because it may be "good for business". This is a somewhat fine distinction and raises an ethical issue for advocates. Such entertainment expenditure could be or could come close to being considered touting. Some of us have therefore been reluctant to claim that we indulge in such expenditure. SARS, sympathetically, has adopted the practice of allowing advocates (among other professions) to deduct expenditure under section 11(u) (not exceeding R2500) without requiring the expenditure to be supported by proof (see *SARS Practice Manual A-223*).

Value-Added Tax

Registration as a vendor is compulsory for every enterprise which has a turnover in fact or reasonably expected of R300-000 per annum. Below this figure registration is voluntary but not possible if the annual turnover cannot reasonably be expected to exceed R20000 within twelve months from the commencement of the enterprise. When the enterprise is registered input tax can be claimed in respect of the period before registration.

Registration brings with it the burden of having to fill in forms for each tax period (two months) setting out (in total) output tax (VAT on fees charged) and input tax (VAT paid on expenditures) resulting in a net amount payable to revenue or a net amount refundable by revenue. Registration is worthwhile because it enables counsel to recover the VAT payable by them on rent, telephone, equipment or the like. (There is no output tax on salaries paid to staff.)

Where counsel operate in association for the purpose of expenditure (other than salaries) such as rent, equipment etc (usually payable from floor dues), the input tax payable will be shared between them, ie each must claim his share in rendering his VAT return.

Regional Services Levies

There is a regional service levy (payable monthly or at longer intervals by arrangement with the relevant

authority). There are two levies: one on gross turnover, the other on salaries paid, including drawings by the taxpayer. There could be a theoretical difference between the net amount left over after paying all expenses and the drawings of counsel. Because of the small amount of levy involved, I suggest that the net amount be treated as drawings whether or not it is fully withdrawn from the practice bank account. It will save a lot of calculation.

[*Quaere*: are all counsel aware of the existence of the levy or, if aware, are all paying?]

Skills Levy

This is a very recently imposed levy. It is imposed on every person who has an employee or employees. The rate is 0,5% on the total remuneration paid to staff, increasing to 1% from 1 April 2001. The Act is the Skills Development Levy Act 9 of 1999.

General

Finally, a word of advice. Do not regard what you have just read as completing your tax education. Go to one or other of the reliable textbooks which you can borrow from colleagues who possess them and learn therefrom what your country expects from you by way of tax.



Plain English

One of the features of the new Civil Procedure Rules (CPR) which were introduced in England in 1998 (following Lord Woolf's *Access to Justice: Final Report*) is the introduction of "plain English".

In *New Zealand Law Journal* September 2000 David Cairns comments as follows:

"The Civil Procedure Rules ("CPR") are drafted in plain English. This has meant the demise of much familiar terminology in favour of plainer alternatives: plaintiffs are now claimants, discovery is now disclosure, statements of claim are now claims, and pleadings are statements of case; an Anton Piller order is a "search

order" and a Mareva injunction a "freezing injunction". Further, the CPR contain, in addition to the definition section, a "Glossary" as a layman's guide to the meaning of certain common legal expressions retained in the CPR (such as affidavit, counterclaim, injunction, and privilege).

The use of plain English is not simply a cosmetic change nor is it intended, as in the plain English drafting of banking and insurance contracts, to facilitate the comprehension of the text while leaving the substantive meaning unchanged. Rather the use of plain English serves two functions integral to the philosophy of the new rules. Firstly, it emphasises the *new constitutional significance* of civil procedure. Access to justice is a constitutional

right and therefore the rules which define access to the Courts should be readily comprehensible by the ordinary citizen. Secondly, plain English eliminates much legal terminology encrusted with precedent, thereby achieving a *radical break with the past* and privileging the text of the CPR over common law practice. A dramatic illustration of the simplification and break with the past achieved through plain English is in Part 18 which consists of two rules relating to "Obtaining Further Information". The provision of further information pursuant to Part 18 replaces the historic concepts of interrogatories and particulars, and makes irrelevant all the accumulated case law relating to these defunct concepts."