

The South African Taxation Standard 5000

Departure from a position previously determined in an administrative proceeding or court decision

SATS 5000

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Introduction

- .01 This guidance sets out the applicable standards for SAIT tax practitioners in recommending a tax return position that departs from the position determined in an administrative proceeding or in a court decision with respect to the taxpayer’s prior return.
- .02 The standard must be read in conjunction with the ‘Professional Code of Conduct in relation to taxation’.
- .03 For the purposes of this guidance an “administrative proceeding” includes any ruling arising from examination by the South African Revenue Service (“SARS”) of a tax return in the course of an enquiry; determination or assessment by SARS of a tax position in relation to a return or a claim for refund.
- .04 For the purposes of this guidance, a “Court Decision” means a decision by any court having jurisdiction over tax matters, including the Commissioner of SARS.
- .05 For the purposes of this guidance, a taxpayer is a client, a SAIT tax practitioner’s employer, or any other third party recipient of tax services.

Standard

- .06 A tax return position with respect to an item as determined in an administrative proceeding or court

decision does not restrict a SAIT tax practitioner from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a written agreement or dispensation.

Therefore, as provided in South African Taxation Standard (SATS) 2000 Filing Tax Returns, the SAIT tax practitioner may recommend a tax return position that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer.

Guidance

.07 If an administrative proceeding or court decision has resulted in a determination concerning a specific tax treatment of an item in a prior year's return, a SAIT tax practitioner will usually recommend the same tax treatment in subsequent years.

However, departures from consistent treatment may be justified in such circumstances as the following:-

- a. SARS tend to act consistently in the disposition of an item that was the subject of prior administrative proceeding but generally are not bound to do so. Similarly, a taxpayer is not bound to follow the tax treatment of an item as consented to in an earlier administrative proceeding.
 - b. The determination in the administrative proceeding or the court's decision may have been caused by a lack of documentation. Supporting data for the later year may be available.
 - c. A taxpayer may have conceded in the administrative proceeding for settlement purposes or not appealed the court decision, even though the position met the standards in SATS 2000.
 - d. Court decisions, rulings or other authorities that are more favourable to a taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was held.
- .08 The consent in an earlier administrative proceeding and the existence of an unfavourable court decision are factors that the SAIT tax practitioner should consider in evaluating whether the guidance in SATS 2000 is met.

Compatibility with International Taxation Standards

.09 This South African standard is consistent with international tax standards and best practice in all material respects as followed by members of the International Tax Directors' Forum.