

COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE REVIEW OF REMUNERATION PAYABLE TO MEMBERS OF THE TAX COURTS

The Law Society of South Africa (LSSA) has been requested by the South African Revenue Service (SARS) to submit recommendations regarding the remuneration payable to members of the Tax Court. The LSSA wishes to make the following comments on the current rates of remuneration:

1. *The remuneration payable for the attendance of a court sitting where a case is fully heard, notwithstanding the duration thereof: R2 623 per day.*

The LSSA is of the view that the rate is very low. It is said to be based on the remuneration of public service personnel, but it must be remembered that a public servant does not pay rent for offices, the salaries of supporting staff and fellow office workers, general office expenses such as telephone, communication and the like. A member of the Tax Court usually has to pay all of these expenses or has to produce budgeted income, which takes all of these expenses into account. We submit that the basis used by SARS for the determination of the remuneration is accordingly inappropriate. Senior counsel are now charging between R28 000 and R35 000 per day, even if a matter is stood down, postponed or partly heard for one or two hours. On that basis, the remuneration for a member should be in the order of R5 500 per day plus VAT as a minimum daily rate.

This fee is still significantly below market, but recognises the professional duty of expert and experienced members of society to contribute to the social good.

Furthermore, it is not the fault of the Tax Court member if the matter is not “fully heard” on a particular day. It does not change anything relevant to the cost to the member of being available to sit in court for the day if an application for a postponement is to be considered or a settlement has to be noted and the matter is not “fully heard” on that day. We submit that there is no

justification for the practice of reducing the remuneration of the members of the Tax Court in such cases.

2. *The remuneration payable for occasions when the court is sitting exclusively for the delivery of judgements, the noting of withdrawals of appeals, the considering of applications for postponements and / or the noting of the conditions of settlements: R1 311 per day.*

It should be noted that the members of the Court do not need to sit for the delivery of a judgement. In fact, they never do. Where the withdrawal of an appeal is to be noted on the day appointed for the hearing, the Tax Court members will have been present at court (or advised of the postponement only a day or so before the appointed day) and nothing changes the cost structures of the member simply because the hearing for some reason does not take place on the appointed day.

The LSSA is of the view that there is no justification for the reduction of the day fee in these circumstances. A judge does not take a reduction in salary if on any day a case is settled as he/she walks into court and he/she has no other cases scheduled for the rest of the day or if the litigants on that day only want to argue an interlocutory application. We are of the view that it is inappropriate that a member of the Tax Court, embracing, as he/she does, the sacrifices of a good citizen, be penalised for the vagaries of Tax Court litigants. A judge is paid for the day and so should the Tax Court member.

3. *The remuneration payable when a member is notified of a sitting but the latter is not held for some or other reason:*

We submit that, although there is justification for such a rule, it all depends on when the member is advised that his/her services would not be required on the appointed day. If advised, to use an extreme case, six months before the appointed day that the matter will not proceed, there is no justification for any fee. We suggest that, if a member is advised that his services will not be required on the appointed day (or for the appointed sitting), no fee should be payable under this

item if the notice is given by the Registrar of the Tax Court at least 14 days before the appointed day. The day fee should be payable only if notice of less than 14 days is given.

Adjustments to this rule will have to be made where the hearing has been set down for more than one day. A member who has taken two weeks out of his diary to sit in the Tax Court should not be left financially prejudiced if the Tax Court case is aborted by the litigants a day before the case was due to commence. In such a case, the member ought to be entitled to the day fee per day for at least the first week (five days). The principle is that the member should be compensated for one or more days, determined on the number of court days for which the matter was set down, when within 14 days of the date set for the hearing the matter is postponed or abandoned.

R665 per day.

There is no logical basis for such a fee. If the member were in April of one year to be reserved for a sitting of one month on a particular matter to be heard in November of the same year, he/she would have to be paid a day fee for the whole of November, even if the matter were to be settled in September. It is unclear why this is necessary – even the Bar Council does not have such a rule.

Provided that the total of the remuneration payable to any member for a day does not exceed the remuneration payable for a full day as set out in paragraph (1) above.

This proviso is not logical.

4. *The remuneration payable for hours actually spent on preparation of a case: R328 per hour.*

We suggest that the amount be increased to R1 000 per hour and that it be made clear that this remuneration is payable in addition to the day fees dealt with in the previous paragraphs.

Provided that the total of the remuneration payable to a member for the preparation of a case does not exceed the total remuneration payable for a full day as set out in paragraph (1) above.

The LSSA submits that the preparation hours should always be remunerated at an hourly rate, subject to a maximum of the daily rate. Preparation hours might be overstated. However, good corporate governance requires the appointment of persons that can be trusted to record hours genuinely spent on preparation. Members of the Tax Court should be appointed for their expertise and integrity.