

FOR PSA MEMBERS: **SOUTH AFRICAN REVENUE SERVICE (SARS)**

04-03-2024

SARS 2021-wage dispute appeal procedures

Members were informed that the employer submitted an application for leave to appeal against the High Court Judgement in relation to the outstanding 2.3% salary increase. The PSA will be opposing the employer's application for leave to appeal. The PSA has received several requests to outline the procedure and would like inform members of the following procedure:

- SARS having served the application for leave to appeal and the application for condonation on Thursday, 22 February 2024, the PSA is required to file its notice of intention to oppose both applications by Thursday, 7 March 2024.
- Following the delivery of the PSA's notice of opposition, applying the usual periods, the PSA will have 15 court days to deliver its answering affidavit to the application for condonation. No formal document needs to be filed in response to the application for leave to appeal. However, the PSA will need to address the merits of the appeal to some degree in dealing with the application for condonation.
- Thereafter, SARS will have a further ten court days to deliver its replying affidavit.
- Once all the aforesaid documents have been delivered, parties will approach Judge Kubushi to arrange a date for the hearing of both the applications for condonation and leave to appeal. The PSA anticipates that the applications will be dealt with simultaneously.
- Together with the allocation of a hearing date, it may also be directed by the Judge that parties file heads of argument.
- If condonation and/or leave to appeal is refused, SARS will be entitled to seek leave to appeal from the Supreme Court of Appeal (the SCA) within one month of such refusal. This occurs by way of the delivery of a notice of motion and a supporting affidavit to this effect. If SARS does so, the PSA will be required to answer the application by way of an answering affidavit within one month of the delivery of the application to the SCA. Following the delivery of the PSA's answer, SARS will have a further ten court days to deliver a replying affidavit.
- The application for leave to appeal to the SCA is then considered by two judges of the SCA and is usually decided on the papers. The SCA can, however, direct parties to appear and argue the application for leave to appeal together with the merits – this only occurs on rare occasions.
- Should the SCA refuse SARS's leave to appeal, SARS will be entitled to seek leave to appeal from the Constitutional Court within 15 court days of such refusal. The PSA will have ten court days to oppose and answer the application, with SARS having no automatic right to reply thereto. All the judges of the Constitutional Court consider the granting or dismissal of the application for leave to appeal. Similar to

the SCA, the Constitutional Court does on rare occasions direct parties to appear and argue the application for leave to appeal together with the merits.

- Should leave to appeal be granted at any of the above stages, SARS will be required to deliver the record of proceedings in the High Court to the relevant appeal court. This comprises the affidavits, any notices, the judgement (including any judgements on leave to appeal), and the orders of the court only – it does not include the heads of argument or the transcript of the oral submissions by parties. Thereafter, heads of argument will be exchanged, and a date for a hearing allocated by the relevant appeal court.

The PSA will do all in its power to expedite the process to limit the time members will have to wait for the matter to be concluded. Members will be informed of developments.

SARS employees who have not yet chosen the PSA as their Union of Choice can visit the PSA's website (www.psa.co.za), send an email to ask@psa.co.za, or contact PSA Provincial Offices.

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