

Taxpayers can now use non-legal practitioners in tax court

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IN A significant judgment handed down this week, the Supreme Court of Appeal (SCA) delivered what may become one of the most important procedural tax judgments in recent years. In *Commissioner for the South African Revenue Service v Poulter* [2026] ZASCA 68, the SCA dismissed Sars' appeal and confirmed that taxpayers may be represented in the Tax Court by duly authorised non-legal practitioners.

The judgment strikes directly at Sars' increasingly technical and procedural approach to tax litigation, and has potentially far-reaching implications for taxpayers, accountants, tax practitioners, and dispute resolution processes before the Tax Court.

Background to the dispute

The matter arose after Candice-Jean Poulter appealed a Sars assessment for the 2018 tax year. She authorised her father, Gary Van der Merwe, to appear on her behalf in the Tax Court by way of a power of attorney.

Sars objected to Mr Van der Merwe's appearance on the basis that he was not a legal practitioner. The Tax Court upheld Sars' objection, ruled that Mr Van der Merwe could not represent the taxpayer, and proceeded to determine the matter in the taxpayer's absence under Rule 44(7) of the Tax Court Rules.

The Tax Court then confirmed the assessment against the taxpayer and awarded costs in favour of Sars on an attorney and client scale, including the costs of two counsel.

The taxpayer successfully appealed to the Full Court of the Western Cape High Court, which overturned the



THE Supreme Court of Appeal's landmark ruling allows taxpayers to be represented by non-legal practitioners in the Tax Court, challenging SARS' restrictive interpretation of representation rights. This decision has significant implications for taxpayers and their representatives in tax disputes.

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Tax Court's ruling. Sars thereafter approached the SCA.

The key legal question

The central issue before the SCA was whether sections 12 and 125 of the Tax Administration Act 28 of 2011 ("TAA"), read together with Rule 44(7) of the Tax Court Rules and section 25 of the Legal Practice Act, prohibit non-legal practitioners from appearing on behalf of taxpayers in the Tax Court.

Sars argued that the Tax Court is a "court of law" contemplated in section 166 of the Constitution and that only admitted legal practitioners may represent taxpayers in such proceedings.

The SCA rejected this argument

The SCA's Interpretation of the Tax Administration Act

The SCA held that neither the TAA nor the Tax Court Rules requires a taxpayer's representative to be a legal practitioner.

Importantly, the Court analysed the historical wording of section 125(2) of the TAA, which previously expressly provided that:

"The appellant or the appellant's representative may appear at the hearing of an appeal in support of the appeal."

Although this subsection was later deleted, the SCA found that the deletion did not remove the taxpayer's right to representation by a non-legal practitioner.

The Court went further and relied on the Explanatory Memorandum to the amendment legislation, which described the deletion merely as a "technical correction" because the taxpayer's right to representation was regarded as implicit.

This finding is particularly important because Sars has, for several years, adopted an increasingly restrictive interpretation of representation rights in tax litigation.

The SCA confirms broader taxpayer representation rights

The SCA also analysed several other provisions of the TAA and Tax Court Rules which refer to a taxpayer's "duly authorised representative".

The Court noted that the legislation consistently recognises the role of authorised representatives without limiting those representatives to attorneys or advocates. The SCA expressly recognised that taxpayers often rely on accountants, auditors, bookkeepers,

and tax practitioners due to the specialised nature of tax disputes.

In a particularly important passage, the SCA stated: "The statutory provisions governing the performance of certain acts, and the appearance by or on behalf of the taxpayer in the Tax Court do not impose a requirement that the person who performs certain acts or appears on behalf of the taxpayer should be a legal practitioner."

This represents a substantial defeat for Sars' argument that taxpayer representation in the Tax Court should effectively be reserved for admitted legal practitioners.

Tax court not a "court" under Section 166 of the Constitution

Perhaps even more controversial is the SCA's finding that the Tax Court is not a "court of law" contemplated in section 166 of the Constitution.

The Court reasoned that the Tax Court is established on an ad hoc basis by Presidential proclamation under section 116 of the TAA, rather than directly by Parliament itself.

According to the SCA, this means the Tax Court does not form part of the ordinary judicial hierarchy contemplated in section 166 of the Constitution.

This aspect of the judgment may well spark significant future constitutional debate regarding the precise nature and status of the Tax Court within South Africa's legal framework.

Why this judgment matters

The judgment has immediate practical implications for taxpayers engaged in disputes with Sars.

For years, many taxpayers, particularly individuals and small to medium-sized businesses, have relied heavily on tax practitioners, account-

ants, and specialist tax consultants during disputes with Sars. The cost of appointing attorneys and advocates for every Tax Court appearance can be prohibitive.

The SCA's judgment now confirms that taxpayers are not automatically barred from appointing non-legal representatives in Tax Court proceedings, provided they are duly authorised.

That said, taxpayers should not misunderstand the judgment as suggesting that legal representation is unnecessary in complex tax disputes.

Tax litigation remains highly technical and procedurally demanding. Procedural missteps can have devastating consequences, particularly given that taxpayers are generally bound by the grounds raised in their objection and appeal. Furthermore, Sars continues to litigate aggressively, frequently appointing senior counsel and taking increasingly technical points in disputes.

The Poulter judgment, therefore, does not reduce the risks associated with Tax Court litigation. Rather, it clarifies who may lawfully appear on behalf of a taxpayer.

The judgment highlights a growing Sars litigation trend of relying on procedural and technical arguments to defeat taxpayers before merits are heard.

The Supreme Court of Appeal clarified who may represent taxpayers in Tax Court, reinforcing that disputes are complex legal matters involving procedure, constitutional and statutory interpretation, requiring early professional guidance.

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