Media Summary – H R Computek v CSARS (830/2011) [2012] ZASCA 178 29 November 2012)

Supreme Court of Appeal (SCA) dismissed an appeal by H R Computek (Pty) Ltd (formerly H R Computek CC) (Computek) against a judgment of the Johannesburg Tax Court in favour of the Commissioner for the South African Revenue Services (SARS), which held that Computek had not objected to a Value-Added Tax (VAT) assessment levied on it by SARS in terms of s 31 of the Value-Added Tax Act 89 of 1991 (the Act). During October 2003 SARS conducted an audit in respect of the tax affairs of Computek. The audit revealed that Computek had under-declared and, in consequence, underpaid VAT to SARS in terms of the Act. The taxpayer was assessed to tax in total the sum of R4 040 377.28, being: (a) R1 246 177.57 as to under-declared output tax (the capital amount); (b) R2 492 355.06 as to additional tax levied on the capital amount; (c) R124 617.75 as to a penalty levied on the capital amount; and (d) R177 226.90 as to interest levied on the capital amount. On 24 March 2004 Mr Harry Chakhala, who described himself as the sole member of the taxpayer, filed a notice of objection with SARS. Nowhere on that objection form nor on annexures filed commensurately with it did he state that there was an objection to the capital amount. On 28 July 2004 SARS informed the taxpayer that its objection had been disallowed because, as SARS put it, there was ‘no objection to the quantum of additional vat output raised suggesting your acceptance of these figures’. On 22 January 2007 the appellant filed a notice of appeal (form ADR 2) in respect of SARS’ disallowance of its objection. Once again there was no reference to the capital amount. It was only when the taxpayer filed its rule 11 statement with the Tax Court on 15 March 2011 that it raised issue for the first time. The Tax Court found in favour

of SARS but granted leave to Computek to appeal to the SCA. The SCA held that it is quite clear that Computek did not object to the capital amount, which Mr Chakhala could quite easily have done by ticking the appropriate box on the objection form.

Computek's case before the SCA was that in referring to the globular amount of R 4 040 377 as being the 'amount of tax in dispute in terms of the assessment' it had by necessary implication raised an objection to the capital assessment, which was but one component of that globular sum. The SCA held that not having raised an objection to the capital assessment in its notice of objection, Computek was precluded from raising it on appeal before the tax court and that when the taxpayer challenged the capital amount for the first time in its rule 11 statement, it effectively raised a 'new objection' directed at an individual assessed amount that had not previously been objected to.

The SCA added as no objection had been lodged against SARS' assessment that the taxpayer was liable for additional VAT output tax in the sum of R1 246 177.60, that assessment became final and conclusive in April 2007. And as a period of three years has elapsed, Computek could not thereafter lawfully require SARS to revisit its assessment.