

taxpayer's taxable income must, in the process of assessment, be accurately determined preparatory to the calculation of the amount which he (or she) is required to hand over to the *fiscus*. In that light, it is clear that a taxpayer whose taxable income has been determined on an erroneous basis, is always 'aggrieved' even if the source of error is entirely attributable to him."

[25] I agree with Hurt J, notwithstanding the oddity of a taxpayer being aggrieved by an assessment based on erroneous information it provided in its return. Accordingly it was permissible for GB Mining to follow the course that it did.'

In the light of the above *dictum*, we consider

that there is no reason why a taxpayer cannot deliberately submit a return which it considers to be wrong, in order to protect itself from the levying of a penalty by SARS, fully intending to object to the resulting assessment by which it will be 'aggrieved', notwithstanding the fact that it will be the author thereof. If it is possible in these days of electronic submission of tax returns, a taxpayer could even write to SARS to explain the basis on which its return is being submitted, and announcing that it intends to object to the resulting assessment.

This may be what Swain AJA called an 'oddy' but in certain circumstances it may well be an oddity that makes a good deal of sense.

ARTICLES AND NOTES

THE MULTILATERAL INSTRUMENT – A SOUTH AFRICAN PERSPECTIVE

By Peter Dachs

Background

In October 2015, the OECD released its final reports on the fifteen action items of the Base Erosion and Profit Shifting Action Plan. The issue identified was that implementing the changes proposed in these reports by way of bilateral amendment to the various double tax agreements would take many years to complete. Therefore, in order to enable jurisdictions swiftly to implement the Base Erosion and Profit Shifting ('BEPS') double tax treaty based recommendations, the multilateral instrument ('MLI') was developed and agreed to in November 2016 by approximately 100 jurisdictions.

On 7 June 2017, 68 jurisdictions signed the MLI. In addition, various other jurisdictions signed the MLI after that first ceremony.

It is important to note that the MLI does not function in the same way as an amending protocol to a bilateral double tax agreement. This is because any such protocol directly amends the text of the specific double tax agreement. Instead, the MLI applies alongside existing treaties and modifies

their application in order to implement the BEPS measures. This is a novel approach and one which has not been tested in international tax law.

Timing of the application of MLI provisions

On 22 March 2018 Slovenia deposited its instrument of ratification, acceptance or approval of the MLI, becoming the fifth jurisdiction to do so. Before Slovenia, Austria, the Isle of Man, Jersey and Poland had deposited their respective instruments with the OECD.

This means that the MLI entered into force on the first day of the month following a period of three calendar months from that date, namely 1 July 2018. The MLI has therefore entered into force.

South Africa has signed the MLI. At the date of signature, signatories (including South Africa) submitted a list of their tax treaties that they designated as covered tax agreements, ie agreements to be covered by the MLI.

In this regard, South Africa has stated that it wishes its double tax agreements with 76 jurisdictions