

Tax

Structured self-insurance for farming business backfires

High court upholds Sars's additional tax assessment against Eastern Cape citrus farmer.



Amanda Visser · 6 Jul 2026, 04:03

SANTAM R394.49 0.72%

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A large, semi-transparent watermark of the Moneyweb logo, consisting of a stylized bar chart icon and the word "Moneyweb" in a large, bold, sans-serif font.

The court found the agreement with Santam was not a sham, but concluded that the contract between the two parties was akin to an investment deposit in a bank account. Image: AdobeStock

A citrus farm in the Eastern Cape learnt an expensive lesson in insurance contracts when it lost its battle over the tax deductibility of premiums paid to an insurer.

The Western Cape High Court overturned a decision by the Tax Court and confirmed an additional assessment which disallowed an expense claim of almost R10 million and a 10%

understatement penalty for the 2017 tax year.

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The court found that the contract between insurer Santam and Meiring Citrus was an investment transaction disguised or simulated as an insurance contract.

“The Santam structured agreement was not a sham contract. The parties intended it to have effect in accordance with its tenor,” the court found.

However, the fact that the parties pasted a label on the contract that it is an insurance agreement and that the amount paid, labelled as a premium, was deductible as an expense did not make it a contract.

In her testimony before the high court, Meiring Citrus CEO Marina Meiring highlighted the risks inherent to her business and particularly pests such as citrus black spot and false codling moth (FCM) that impacted exports. The farm has suffered losses in the past because of FCM.

Deductible expense

During discussions around the 2017 provisional tax return Meiring asked for ways to expense an amount of R10 million with their accountant, Jeandre van Zyl, from Moore Stephens WK Incorporated.

He informed her of a structured self-insured product offered by Santam that could increase the business's tax-deductible expenditure.

Meiring Citrus would pay a premium of R10 million over six months and would be covered for an amount of R12 million including value-added tax.

The arrangement would see Santam deducting an underwriting fee of R400 000 and the remaining R9.6 million being credited to an 'experience account' – with any insurance claims effectively being paid from this account, and these funds earning notional interest for the benefit of Meiring Citrus.

Meiring Citrus claimed R10 million paid for the Santam structured insurance contract as a deduction, reducing its taxable income for 2017 from R13.6 million to R3.6 million.

Verification requests

The South African Revenue Service (Sars) flagged the substantial increase in Meiring Citrus's insurance expenses from R220 527 in the 2016 tax year to R10 million the following year.

Another request followed in 2018 with respect to the 2017 tax year.

Van Zyl responded on behalf of Meiring Citrus that the insurance expenses increased because of self-insurance taken out from Santam and that it was deducting it in terms of the Income Tax Act as an expense.

Sars completed its verification processes and did not adjust the assessments for 2017 and 2018.

The contract was renewed until June 2021 when Meiring Citrus cancelled it.

The credit in the 'experience account' at that time was just over R11 million and was paid to Meiring Citrus in July 2021. This amount was included in Meiring Citrus's taxable income for the 2022 year of assessment; however, because Meiring Citrus was in a tax-loss position that year, no tax was payable.

The prescription problem

Sars wanted detailed information relating to insurance expenses and interest for the 2017 to 2019 financial years.

Van Zyl responded and for the first time provided the complete Santam structured insurance contract for the 2017 to 2019 tax years.

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Sars raised additional assessments and issued a final audit letter in July 2021.

Sars acknowledged that the assessment had prescribed but insisted that it intended to reopen it, as the business failed to declare a notional interest in the 2017 tax return. The amount: R1 197.52.

Van Zyl objected to the additional assessments and Sars partially allowed the objection. It waived the penalties and interest imposed in respect of the underpayment of provisional tax. The underwriting fee of R400 000 paid to Santam was allowed as a deduction. However, objections to the remainder of the adjustment were disallowed.

Meiring Citrus then appealed to the Tax Court, which found in its favour, setting aside the additional assessments.

That decision has now been dismissed.

The high court agreed that Sars could reopen the verification process since it was prevented from making a correct assessment due to the “misrepresentations and the non-disclosures of material facts” by Meiring Citrus (the interest income on the ‘experience account’ of R1 197.52).

Sound judgment, but ...

Charles de Wet, tax executive at ENS, says there seems to be a wide use of self-insured products in the market. The problem users face is to what degree there is truly a transfer of liability. The user pays a premium for the transfer of liability.

The question then is how reasonable it is to pay a premium of R10 million for risk coverage of R400 000, and the money is paid back if there is no claim, remarks De Wet.

There has to be a transfer of risk in exchange of paying a premium, he adds.

The high court concluded that the contract between Meiring Citrus and Santam was akin to an investment deposit in a bank account.

De Wet says although the high court’s judgement is sound, there are concerns about the scope under which Sars is allowed to reopen a previously assessed tax return. In this case Sars did not focus on the non-declaration of the R1 197.52 interest income, but the entire return was opened for reassessment.

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Sars’s appeal against the Tax Court decision was upheld with costs on scale C (maximum hourly rate), including costs of two counsel.

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