

When “self-insurance” is not insurance

THE MEIRING CITRUS CASE

The recent judgment of the Western Cape Division of the High Court in *Commissioner for the South African Revenue Service v Meiring Citrus (Pty) Ltd*¹, has significant implications for taxpayers, insurers, and tax advisers involved in structured insurance arrangements.

The court was called upon to determine whether a purported insurance product marketed as a “structured self-insurance” solution qualified as insurance in law and whether contributions made under the arrangement were deductible under section 11(a) of the Income Tax Act 58 of 1962 (“Income Tax Act”).

Factual background

Meiring Citrus is a citrus farming company operating in the Eastern Cape. It faced real risks to its crop, including drought, frost, and two damaging pests. Before 2017, the company simply absorbed any losses from its own reserves. It did not insure against these risks. In 2017, the company’s accountant learned of a product offered by Santam, described as “structured self-insurance”. The accountant recommended it to the company, partly because the company wanted to increase its tax-deductible expenses that year.

The company agreed to pay a premium of R10 million over six months, in exchange for R12 million of cover. Of the R10 million, R400 000 was an underwriting fee paid to Santam. The remaining R9.6 million was credited to an “experience account” held in the company’s name. The experience account earned interest for the company’s benefit. Any claim the company made would be paid out of this account. The company could cancel the policy at any time on 30 days’ notice and recover whatever balance remained, together with interest. The company could also pledge the account as security for other purposes.

The company claimed the full R10 million as a tax-deductible insurance premium in its 2017 tax return. It did not declare the interest earned on the experience account as income. The South African Revenue Service (SARS) later audited the company and disallowed the R10 million deduction. SARS also reopened the 2017 assessment outside the usual three-year time limit, on the basis that the company had misrepresented the nature of the arrangement and had failed to disclose the interest it earned.

The Tax Court initially found in the company’s favour, holding that the arrangement was a valid, if unconventional, insurance contract, and that SARS was out of time to reopen the assessment. SARS appealed to the High Court. The High Court overturned the Tax Court’s decision on every point.

Was this really insurance?

The court revisited fundamental principles of insurance law and remarked that “a person who possesses a vested interest in patrimonial assets, such as crops, risks suffering significant losses if that insurable interest is compromised or damaged; hence the need to take insurance”².



Accordingly, there are five distinguishing elements of a contract of insurance, namely:

- The insured possesses an interest of some kind susceptible of pecuniary estimation, known as an insurable interest.
- The insured is subject to a risk of loss through the destruction or impairment of that interest by the happening of designated perils.
- The insurer assumes that risk of loss.
- Such assumption is part of a general scheme to distribute actual losses among a large group of persons bearing similar risks.
- As consideration for the insurer’s promise, the insured makes a ratable contribution to a general insurance fund, called a premium³.

The court concluded that the Santam structure failed the essential characteristics of insurance. Several features troubled the court: Firstly, the insured controlled the premium. At each renewal, the company could decide to increase or decrease what it paid. Ordinarily, it is the insurer who assesses the risk and sets the price. Here, the roles were reversed.

Secondly, no risk assessment was carried out. The insurer accepted the business based on prior dealings, without investigating the risk it was supposedly taking on. An insurer who does not assess risk has, in truth, accepted none.

Thirdly, the premium was fully refundable. The company could cancel at any time and recover the balance of the experience account, with interest, regardless of whether any claim had been made. The Court noted a long-standing principle of insurance law, namely, an insurer who has never truly been at risk has not earned a premium and must return it. Here, the insurer was obliged to return the money as a matter of course.

Fourthly, the account could be pledged as security. This confirmed that the money in the experience account was, in reality, an asset belonging to the company, not a sum that had passed to the insurer in exchange for cover.

Lastly, expenses do not earn interest; deposits do. The Court treated this simple observation as decisive. If the company were truly paying an insurance premium, there would be nothing left to earn interest for its own benefit. The fact that interest accrued to the company showed that the money had never really left its ownership.

Tax consequences

Having found that the arrangement was not insurance, the Court turned to whether the R9.6 million could nonetheless be deducted as a business expense under section 11(a) of the Income Tax Act. It held that the deduction failed for two independent reasons.

On the one hand, no genuine expenditure was incurred. The company merely substituted one form of asset (a claim against its bank) for another (a claim against Santam), both of equal value and equally recoverable on demand. In principle, this is indistinguishable from an ordinary loan. Parting with money in exchange for an unconditional right to its return does not amount to “expenditure” in the tax sense. It represents only a change in the form in which an asset is held, not a diminution or loss of that asset.

On the other hand, even if the payment were to be treated as expenditure, its character is capital rather than revenue. In effect, the company acquired an enduring, interest bearing and pledgeable asset, namely, the “experience account”, rather than paying for a finite period of genuine risk cover. Such capital outlays, however protective their purpose may appear, fall outside the scope of section 11(a) of the Income Tax Act and cannot be deducted.

Time bar question

Ordinarily, SARS is precluded from issuing an additional assessment more than three years after the original assessment. The statutory exception arises only where the shortfall is attributable to the taxpayer’s own misrepresentation or non disclosure.

In this case, the Court held that the exception applied. Meiring Citrus had failed to disclose the true terms of the Santam contract and the interest quietly accruing in its favour when SARS first requested information. That omission, the Court found, was precisely what prevented SARS from assessing the correct tax within the prescribed period. The consequence was that SARS was entitled to reopen the 2017 assessment, and the understatement penalty of 10 per cent was duly reinstated.

Lessons for insurers and brokers

The judgment is a strong reminder to the insurance industry that true insurance must involve genuine risk transfer and pooling, not financial engineering. Refundable deposits or “experience accounts” disguised as premiums cannot withstand judicial scrutiny.

For insurers, the case highlights the need to design products that are actuarially sound, commercially sensible, and legally compliant.

For brokers, it underscores the duty to educate clients on the difference between self funding mechanisms and bona fide insurance.

Overall, the ruling is a cautionary tale: innovation must be anchored in the fundamentals of insurance law to preserve credibility, ensure tax compliance, and maintain regulatory trust.



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¹ [\(A161/2025 IT 46080\) \(“hereinafter Meiring Citrus judgement”\)](#).

² Meiring Citrus, at para 33

³ Meiring Citrus, at para 33