

# Tax Alert

14 February 2011

## “Pay-now-argue-later” applies to old and new objections

### *All objections subject to the new provisions*

Many taxpayers are now aware that, from 1 February 2011, the so-called “pay-now-argue-later” rule means that *objections* to income tax and VAT assessments can no longer be used as a basis for delaying payment of such assessments —unless specific payment-suspension arrangements are made with SARS. (See the PwC Tax Alert of 2 February 2011.)

These rules are contained in s88 of the Income Tax Act and s36 of the VAT Act.

However, substantial debate has arisen over whether the new provisions apply to objections lodged before 1 February 2011. The reason for the confusion is that the amendment applies to amounts “payable on or after” the effective date. Some commentators argue that older assessments would originally have been payable “on” a *previous* date, and thus not payable on or after 1 February 2011. An alternative interpretation is that “payable on” should be taken to include assessed

amounts that were already “outstanding on” 1 February 2011. A third view is that even if older assessments (under dispute) were not previously considered to be “payable”, the coming-into-effect of the new “pay-now-argue-later” principle may by itself have rendered such assessments “payable” on 1 February 2011.

So far, no formal communication from SARS appears to have been published on this matter. However, it seems (according to reports) that some SARS officers have now proceeded to recover amounts that were subject to objection prior to 1 February 2011.

Taxpayers who have older objections lodged with SARS should therefore take heed of this change. Consult your tax advisors and either prepare for payment of the assessment subject to objection, or apply for the payment-suspension relief available in s88(2) of the Income Tax Act or s36(2) of the VAT Act.

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