

Tax Alert

02 February 2011

“Pay-now-argue-later” principle applies from 1 February 2011

“Objection” no longer a basis for deferring payment on assessment

Taxpayers were, until 31 January 2011, entitled to defer payment of an income tax or VAT assessment until the internal “objection” process was finalised and an “appeal” had been lodged through an external forum such as the Tax Court. To expedite collections the 2009 Taxation Laws Second Amendment Act (No 18 of 2009) rescinded this position, thus compelling taxpayers to pay immediately upon assessment (i.e. on the due date) and only then contest its validity, hence “pay-now-argue-later”. However, the effective date was subject to a notice to be issued by the Minister of Finance, which he has now done—declaring the effective date to be 1 February 2011.

Taxpayers should note the effect that these changes will have on their cash flows where assessments are challenged.

Although taxpayers will be entitled to apply for a suspension of the payment, the granting of the suspension is subject to the Commissioner’s discretion. Factors to be considered by SARS include the compliance history of the taxpayer, the amount of tax in dispute, and the risk of the dissipation of the taxpayer’s assets (and several other factors). However, it is unlikely that the suspension will be granted if the objection is considered to be “frivolous” or intended to



delay the process. Even if the suspension is initially granted, it may still in some cases be subsequently revoked, e.g. if the objection is only subsequently found to be frivolous, or if there is material change in the initial facts, etc.

If the dispute is subsequently resolved in the taxpayer's favour (whether by court judgement or SARS concession), the new rules also entitle the taxpayer to interest from the date of the taxpayer's original payment to the date of the refund from SARS. However, taxpayers will remain concerned that

inordinate delays (by SARS) in responding to objections will mean that this new "pay-now-argue-later" rule could significantly impact taxpayers' cash flows. The need for, and importance of, remedies that taxpayers might use to compel SARS to keep to prescribed time periods for (for example) deciding on objections and submitting grounds of assessment to the courts — remedies such as the objection and appeal rules issued in terms of s107A of the Income Tax Act (or perhaps even a Tax Ombud in terms of the future Tax Administration Act) — will now be thrown into sharp relief.

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