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April 2013

TAX DISPUTES: DOES THE "PAY NOW ARGUE LATER" PRINCIPLE STILL APPLY?

SARS have long held that if you have an objection to an assessment you must pay your tax and only then - if your objection is upheld - can you get a refund. The option to allow the taxpayer to suspend payment, until the outcome of the objection was known, has been at the discretion of SARS, and in practice this was seldom allowed prior to October 2012.

The potential for taxpayer hardship here is obvious. Say for example that you have what you believe to be a good case for a substantial reduction in a tax assessment. Yet you have to "pay now, argue later", and raising the money to enable you to do so is going to hurt your cash flow, if not actually bankrupt you. Also remember that SARS can collect money in dispute not only from you but they may appoint agents to collect monies owing by you – this could be your bank or even your retirement fund.

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There is, however, some good news in the form of the Tax Administration Act ("TAA") which came into effect on 1 October 2012. The TAA has given taxpayers some hope that the "pay now argue later" principle has been at least softened in line with one of the aims of the Act, that is to balance taxpayers' rights with SARS' desire to strictly enforce compliance.

The new procedure – how it works

Per the TAA, if a taxpayer requests that payment of tax be suspended as the taxpayer intends to lodge an objection, SARS may not move to collect this tax until 10 business days from the date of SARS' response have passed.

Thus, while the TAA has allowed taxpayers to buy a modicum of time, the real test is whether SARS will in the end suspend payment until the objection has been dealt with.

Once you as a taxpayer go down the objection route, you need to follow a dual approach–

1. Formally apply for payment to be suspended, and

2. Enter the dispute resolution mechanisms as laid out by the Act.

It is important to get sound tax advice as you don't want to make an error in this process – for example, you need to closely monitor whether SARS will agree to a payment suspension.

The Act lays down criteria for SARS to consider when suspending payment, some of which are:-

- The taxpayer's history of compliance (obviously your chances improve if you have a good compliance record)

- The amount of tax or whether or not SARS officials have reason to believe the risk of not collecting tax may diminish over time (such as the possibility of liquidation of the taxpayer)

- Whether there is fraud or other malfeasance involved

- Whether the taxpayer will face irreparable financial hardship if forced to pay now.

SARS may ask for security if it allows payment to be suspended.

If SARS decides not to allow the suspension of payment, then you are still obliged to pay the tax. However, the fact that SARS now has criteria it must apply when considering suspending payment, indicates at least a thaw in the 'pay now, argue later' principle.

DON'T MISS THE 30 APRIL DEADLINE FOR YOUR NEW "MOI"!

You have until 30 April 2013 to bring your shareholder agreements and your company's "MOI" (what used to be called your "Memorandum and Articles of Association" is now a "Memorandum of Incorporation") into line with the new Companies Act. Corporate PBOs (Public Benefit Organisations) - send a copy of your new MOI to SARS to retain your PBO tax status.

Take advice now if you aren't sure what to do. And don't delay, aim to finish by no later than mid-April – CIPC is warning of "intermittent system downtime" and that is going to put pressure on the whole process.

YOU AND THE BUDGET - GOOD OR BAD? PART 1 "THE BIG PICTURE"

The big picture

The budget is always one of the most talked about events of the year. Reaction to it has been sharply divided. One school of thought is that the country is sliding down the slippery slope of increased debt and that in the near future we will be another Greece. The opposite school says Minister Gordhan did an excellent job and there is no need to be worried.

Remember that before the budget speech the naysayers were convinced there would be tax hikes pushing South Africa into recession. They were also expecting another rating agency downgrade. But taxes didn't go up and there was no downgrade. Over the past fifteen years, the country has had budget stability and this has put us in a far stronger position than Europe (slashing expenditure, increasing taxes resulting in widespread turmoil) or the US where high levels of debt have resulted in the "fiscal cliff" crisis.

Yet there are some worrying signs. Last year Minister Gordhan predicted a budget deficit of 4.6% of GDP – in fact it is 5.2% and interest on government debt runs to more than R100 billion a year. The main reason for the increase in the deficit was that government collected less taxes than forecast. In the past decade, SARS has been successful in getting taxpayers to be more compliant in paying taxes which has greatly contributed to increasing government revenue but there is a finite amount to be gained from enforcing compliance. Future government revenue growth will now be more dependent on the economy growing and this in turn mainly depends on the global economy growing – something that is not certain. Thus if growth is less than Minister Gordhan is expecting, the deficit will grow unless either there are substantive cuts in government expenditure or there are tax hikes.

YOU AND THE BUDGET - GOOD OR BAD? PART 2 "HOW DOES IT AFFECT YOU?"

How does it affect you?

- **Some taxes up**. As you can see from the tables below, there are not many substantive changes to individual taxes – "sin" taxes (cigarettes and alcohol), as usual increase and the fuel levy rises by 23 cents a litre from April 1.
- **Retirement, and Trusts**. There are proposed changes to retirement funding from March 2014 – the intention is to consolidate and harmonise tax treatment on retirement funding. Presently, government proposals envisage that company contributions to retirement funds will become a taxable fringe benefit and a maximum retirement funding deduction of 27.5% of taxable income (or employment remuneration). This will cover all retirement funding and the total deduction available in any year of assessment will be capped at R350 000. Government also intends to investigate the use of trusts to avoid estate duty, capital gains tax and income tax. It will be worth following these stories to see what legislation comes from retirement funding and trusts.
- **Small businesses**. In terms of small businesses, there is a proposal that the threshold for small businesses to qualify for the lower tax rate available to "Small Business Corporations" be raised from R14 million to R20 million of turnover. The tables for tax have also been adjusted to give additional relief to these small businesses. This is a significant concession.

The bottom line – and will taxes increase?

In general, people and businesses with relatively low incomes will get some relief. As you go up the income scale, your benefits diminish.

Minister Gordhan has also set up a commission, chaired by Judge Dennis Davis, to review and make recommendations on taxes.

The budget was really a holding operation – we await the Davis commission proposals and an indication of whether economic growth will at least be in line with government forecasts. If Minister Gordhan continues to miss his revenue forecasts, we will almost certainly face tax increases.

NEW TAX TABLES 2013/14

Taxable Income	Tax	Average Tax Saving versus Last Year %
R0 - R165,600	18% of each R1	4.10%
R165,601 - R258,750	R29,808 + 25% of the amount above R165,600	3.80%
R258,751 - R358,110	R53,096 + 30% of the amount above R258,750	2.60%
R358,111 - R500,940	R82,904 + 35% of the amount above R358,110	2.40%
R500,941 - R638,600	R132,894 + 38% of the amount above R500,940	2.10%
R638,601 and above	R185,205 + 40% of the amount above R638,600	1.40%

NOTES	2013/14	CHANGES FROM LAST YEAR
Rebates		
Persons under 65	R12,080	Increased by R640
Persons 65 - 74	R18,830	Increased by R1,000
Persons 75 and over	R21,080	Increased by R1,120
Tax Thresholds		
Persons under 65	R67,111	Increased by R3,555
Persons 65 - 74	R104,611	Increased by R5,555
Persons 75 and over	R117,111	Increased by R6,222
Interest Exemption		
Persons under 65	R23,800	Increased R1,000
Persons 65 and older	R34,500	Increased R1,500
Dividends		
Taxed at 15%	No change	No change
Medical Aid Tax Credits per beneficiary		
First two beneficiaries	R242 p.m.	Increased R12
Third and more	R162 p.m. each	Increased R8
Business Travel - Tax free		
Up to 8,000 kilometres per annum	R3.24 per km	Increased by 9 cents per km
Travel Allowance		
Travel allowance still taxable at 80%	No change	No change
Logbook compulsory		
Other Taxes		
Capital Gains Tax - Individuals/Special Trusts	No change	No change - 13.3%
Capital Gains Tax - Companies	No change	No change - 18.6%
Capital Gains Tax - Trusts	No change	No change - 26.6%
Fuel Levy		Increases by 23 cents a litre
Cigarettes		Increases by 60 cents a packet
Wine		Increases by 19.5 cents a bottle
Spirits		Increases by R3.60 a bottle
Beer		Increases by 7.5 cents a 340 ml bottle

SMALL BUSINESS CORPORATIONS - NEW TAX TABLE

Taxable Income	New SBC Tax Rates	Change vs Prior Year
R0 - R67,111	Nil	Band raised by R3,555
R67,112 - R365,000	7% over R67,111	Band raised by R15,000
R365,001 - R550,000	R20,852 + 21% over R365,000	New Band
Over R550,001	R59,702 + 28% over R550,000	Band raised by R200,000

Note 1: Turnover threshold to qualify raised from R14 million to R20 million per annum (proposed)

Note 2: Tax savings increased significantly

Note 3: Micro Enterprises may benefit from turnover tax - take advice if your turnover is R1 million or less

(Note: If the tables above do not display correctly, please see the "online version" - link above the compliments slip)

BLIMEY! THERE'S HORSE IN MY WORS AND KANGAROO IN MY KEBAB – WHAT DOES THE CONSUMER PROTECTION ACT SAY?

A month ago we were smugly reading about horsemeat in supermarket food in Europe, then we discovered we were just as bad, with water buffalo, kangaroo, donkey, goat, mountain zebra (on the endangered list) all found in products sold in our supermarkets. We also had undisclosed meats (such as pork when the label said chicken) and preservatives not disclosed on the label. Such was the outcry that Minister Davies ordered an enquiry into the scandal.

A lesson here for businesses

The resultant adverse publicity for meat suppliers and retailers confirms once again the need for any and all businesses involved in the supply chain of food products to the public – including producers, importers, distributors, wholesalers and retailers – to understand their obligations in terms of the Consumer Protection Act ("CPA").

What does the CPA say?

In terms of labels the Act states that no person may "knowingly apply to any goods a trade description that is likely to mislead the consumer" and there is similar wording in relation to the advertising and marketing of products. Clearly, there is a contravention of the CPA, but only if the business in question acts "knowingly".

The CPA empowers courts to order suppliers to stop any practices such as incorrectly labelling meat. It is heartening to see that in most cases where incorrect labelling was pointed out to retailers, the response was positive, investigations were made and any misleading packaging was withdrawn and corrected.

Can the consumer claim for damages?

Consumers: you have strong rights under the CPA, learn about them and enforce them! But as to whether or not the CPA will give you a damages claim when you find out you have been duped by false labelling, the answer is unfortunately likely to be no as kangaroo, water buffalo and donkey are not actually harmful to your health. The CPA allows the courts to refund consumers the purchase price and any related "losses and expenses" - but to award damages only for any harm actually sustained by consumers. Perhaps a consumer suffering emotional shock on finding out that he/she has eaten something in contravention of a religious or moral requirement will test the legal waters in that regard, but it seems unlikely.

All in all an embarrassing scandal for those in the meat industry but the fact there have been efforts by suppliers to remedy the situation, shows at least that the CPA is having an impact.

TAX CORNER: ARE YOU READY FOR THE 2013 EMPLOYER RECONCILIATION?

SARS will allow you to input your EMP501 Employer Annual Reconciliation from 2 April. Although the due date is only by the end of May, it pays to do it early as it gives you time to sort out any reconciliation queries SARS may have.

Have a Great April!

detailed advice.