



Dealing with your tax liability

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In 1789, Benjamin Franklin said there was two certainties in life being death and taxes. Although the eventuality of death remains certain, tax on the other hand with its many uncertainties at times remains a stressful and begrudgingly accepted liability for any individual or business. Albeit it is a recurring liability, sometimes it catches up with individuals and businesses when the cashflow is not available to discharge the liability.

The South African Revenue Service “SARS” is mandated with the collection of taxes and the administration of numerous tax legislation dealing with different tax types. One important piece of legislation administered by SARS is the Tax Administration Act, 28 of 2011 (“TAA”). The TAA fundamentally deals with general tax administration aspects relating to various tax types, which includes how to register as a taxpayer, submission of returns and SARS Audits, just to name a few. However, the TAA can be utilised by companies and individuals when faced with hardship and/or difficulties relating to the payment of their taxes.

Some of the more important provisions in the TAA are contained in Chapters 8, 9, 10, 11 and 14. The topics of these chapters are set out below:

- Chapter 8 deals with the distinct types of assessments and other aspects related thereto, including when an assessment becomes final;
- Chapter 9 deals with dispute resolution between SARS and taxpayers, which includes the right to appeal an assessment and settlement of a dispute between SARS and taxpayers;
- Chapter 10 deals with the tax liability and payment of taxes, including security by a taxpayer for the tax liability and the deferral of payment;
- Chapter 11 deals with the recovery by SARS of tax debts; and

- Chapter 14 deals with the write off or compromise of tax debts.

For purposes of this article chapters 10, 11 and 14 of the Act are particularly relevant.

The receipt of that letter from the SARS with a bold subject line “letter of assessment” or as it is sometimes known these days, as a letter of finalization of audit, brings about a chilling feeling which throws many into panic as to how to deal with it. More so, if the letter of assessment reflects an outstanding tax liability and the taxpayer’s cashflow does not immediately accommodate such a liability, which may often be substantial and requires full payment within a short space of time.

Should the taxpayer wish to dispute its liability after the receipt of a letter of assessment, Chapters 8, 9 of the TAA and the Rules of the Tax Court are relevant, and in some instances, the Rules of the High Court may also be applicable. The workings of these chapters and Rules are not discussed in any detail herein, as same require an in-depth discussion, if the lodging of a formal dispute is the more favourable route for the taxpayer in dealing with the liability.

It is imperative that a taxpayer is aware of the “pay-now-argue-later” principle. This means that despite lodging a formal dispute, the full tax liability becomes payable immediately. There is however possible relief for the taxpayer, such as a suspension of payment in terms of section 164 under Chapter 10 of the TAA, which can be applied for by the taxpayer and granted by SARS if the taxpayer meets the requirements.

Where the taxpayer has no intention of disputing the assessment, the other routes available to taxpayers in dealing with tax debt is a request for the deferral of payment and/or a request for a compromise of the debt. These routes can offer relief to taxpayers whose financials are in dire straits.

In cases where the taxpayer is unable to pay the tax debt in a once off payment when due and payable, the taxpayer can in terms of section 167 of the Act request for an instalment payment agreement from a senior SARS official.

In order for a senior SARS Official to conclude the instalment agreement (deferral of payment), the following criteria must be satisfied:

- the taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future;
- the taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;
- prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future;
- collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection; or
- the taxpayer provides the security as may be required by the official.

In simplistic terms, a request for a deferral of payment is a request made to SARS to pay off the outstanding liability over a deferred period, therefore alleviating pressure in immediately having to pay the full amount demanded in one go. Usually, SARS can grant up to 12 months to pay off the amount in instalments. If a longer period is required, SARS can review the financial position of the taxpayer on an annual basis and may extend the payment period.



The other route available to the taxpayer, is to request the compromise of debt. The request for the compromise of debt is a process by which SARS may accept a reduced amount in full and final payment of the outstanding tax debt. This is rarely granted, and the taxpayer will have to go through a vigorous process conducted by SARS to determine whether it is in such financial hardship that it would be appropriate and the best interest of the fiscus for SARS to compromise on the amount it will accept as full and final payment of the outstanding tax debt.

Whether the request for deferral of payment or request for the compromise of debt has been implemented, or whilst pending a decision from SARS, SARS will not take any of their usual drastic steps to collect the tax debt. However, once the tax debt becomes due and payable, SARS may utilise various collection steps available to it to recover the funds. Some of these steps may include obtaining a civil judgment for recovery of the tax debt against the taxpayer in terms of Section 172 of the TAA, whereafter they will attach and take into execution the movable and/or immovable property of the taxpayer to be sold at a public auction. This will also result in the taxpayer being blacklisted by the credit bureaus.

SARS can also appoint third parties to collect the debt on its behalf, for example, a bank holding funds in an account on behalf of a taxpayer may by way of notice be requested by SARS to pay the amount equivalent to outstanding tax liability over to SARS, and/or SARS may in terms of Section 177 of the TAA institute proceedings for the sequestration, liquidation or winding-up of a person or company for a tax debt.

It is clear from what is above, that there may be light at the end of the tunnel if the taxpayer is aware of the relevant legislative provisions which deal with relief measures to assist taxpayers in a tight financial position.

Whether the taxpayer opts to challenge the assessment, or wishes to pursue the deferral of payment and/or a compromise of debt route, it is advisable to always obtain advice from a tax professional as to which of the processes is best suited for the taxpayer based on the facts of their case.

By LR Nyama (Director), M Diphagwe (Associate) and L Kotzee (Candidate Legal Practitioner) | Tax Department

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