Taxpayer victory as ‘pay now, argue later’ principle successfully challenged

In terms of the ‘pay now, argue later’ principle, the South African Revenue Service (SARS) is entitled to collect amounts owing by a taxpayer in terms of an assessment.

In terms of section 164 of the Tax Administration Act, 2011, a taxpayer may request SARS to suspend the payment of tax.

If SARS does not allow the suspension, then SARS’s decision in this regard may be reviewed in terms of the provisions of the Promotion of Administrative Justice Act, 2000. However, since it may take several months for such review application to be heard, it is necessary to either agree with SARS that it will not collect the disputed tax until the finalisation of the review application or apply for an interdict prohibiting SARS from collecting the disputed tax.

Depending on the timing of the payment required by SARS, it may be necessary to obtain such an interdict on an urgent basis.

It is notoriously difficult to obtain urgent interdictory relief, particularly in matters dealing with the suspension of payment, given the ‘pay now, argue later’ principle.

However, on 31 August ENSafrica successfully obtained such an urgent interdict against SARS in the high court, preventing it from collecting over R1-billion of tax pending the review.

This is a ground-breaking judgment as it shows that, despite the “pay now, argue later” principle, it is possible to ensure that, pending the finalisation of the review application, no payment is made to SARS.

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