

Suspension of payment of disputed tax

It is a well-established principle of tax law to "pay-now-argue-later". In other words, the obligation to pay tax arises when an assessment is issued and it is not suspended by an objection or an appeal against such assessment. A taxpayer who pays the disputed tax, and has his appeal or objection upheld is entitled to interest from the date of payment of the disputed amount to the date on which such amount is refunded.

 By [Graeme Palmer](#) 19 Dec 2013



© bizoo_n - Fotolia.com

There is no automatic right of suspension of disputed tax; however, a taxpayer may request a senior South African Revenue Service (SARS) official to suspend the payment of tax disputed under an assessment. The due date for the payment of tax under an assessment is usually before the due date for lodging an objection and therefore a suspension request may be made before an objection is lodged.

When exercising his discretion on whether to grant the suspension the SARS official must have regard to the following factors:

- the compliance history of the taxpayer;
- the amount of tax involved;
- the risk of the taxpayer dissipating assets during the suspension;
- whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- whether insolvency proceedings are imminent;
- whether fraud is involved in the origin of the dispute;
- whether the taxpayer has failed to furnish information requested required to make a decision on the suspension.

There is a possibility that the suspension provisions can be abused to delay payment of tax. SARS can therefore reconsider its decision, and if for example, it can be shown that the objection or appeal lodged by the taxpayer is frivolous, vexatious, or the taxpayer is employing dilatory tactics in conducting the objection or appeal, then the suspension can be revoked.

When SARS receives a request for a suspension, no tax recovery proceedings may be taken against the taxpayer. If SARS refuses the request for a suspension, or revokes a suspension, then SARS cannot take any recovery steps for ten business days after the notice of its decision or revocation has been issued to the taxpayer. This will give the taxpayer time to consider SARS's decision, and if necessary, bring an application to review the decision.

If the taxpayer is unsuccessful in disputing liability for the tax in the objection, appeal and court processes,

then the suspension is revoked with immediate effect.

ABOUT GRAEME PALMER

Graeme Palmer is a director in the commercial department of Garlick & Bousfield.
View my profile and articles...

For more, visit: <https://www.bizcommunity.com>