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IN PRACTICE

Tax revolt can lead to sequestration, conviction

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Over the past few years there has been discussion about a "tax revolt" in SA. The latest discussion was sparked by Western Cape premier Helen Zille's comment that "unless the corrupt are brought to justice within a reasonable amount of time, we have to look for accountability mechanisms that actually work, one of these is a form of tax revolt".

About 25% of SA's gross tax revenues come from indirect tax such as value-added tax. Personal income tax makes up about 38% of SA's gross tax revenue, while corporate income tax makes up about 18%. These sources of tax revenue comprise about 80% of total tax revenue collections.

The Tax Administration Act was enacted in 2012 and this statute sets out many of the relevant provisions relating to the legal obligations of taxpayers to comply with the tax laws.

In this regard, an individual or a company registered for tax is required to submit a tax return in the manner prescribed by the South African Revenue Service (Sars) so it may raise an assessment for the amount of tax due by the taxpayer. If the taxpayer simply does not file the necessary tax return, Sars may raise a tax assessment based on its estimate of the tax owing by the taxpayer.

Once this assessment has been raised, it constitutes a tax debt due to Sars.

Sars may therefore, after providing the taxpayer with 10 business days' notice, file a certified statement with the clerk of the appropriate court setting out the amount of tax due. The certified statement is treated as a civil judgment for a liquid debt for the amount specified in the statement.

This judgment would then be enforced against the taxpayer and Sars may, if necessary, authorise the institution of proceedings for the sequestration, liquidation or winding up of the taxpayer for the outstanding tax debt.

Sars may also collect the tax debt from various third parties. In the case of a company, this includes anyone who is involved in the management of the company's financial affairs if that person's negligence resulted in the failure to pay the tax debt. This means that the person responsible for submitting the necessary tax returns on behalf of the company may be held personally liable together with other relevant persons in the finance or tax department of that company.

It is also a criminal offence for a taxpayer to deliberately fail to submit a tax return to Sars, with a potential prison sentence of two years. So, if an individual or corporate taxpayer, as part of a tax revolt, does not submit a tax return to Sars, Sars will simply issue an assessment based on its estimate of the tax due to it by the taxpayer.

ABOUT 25% OF SA'S GROSS TAX REVENUES COME FROM INDIRECT TAX SUCH AS VALUE-ADDED TAX

This assessment becomes an amount due to Sars, which, upon filing a statement with the relevant court, becomes a judgment for the amount owing.

In addition, Sars could potentially collect the tax owing from various third parties who become personally liable for such tax debt. Also, criminal charges may be brought against the relevant taxpayer.

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