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THE ROLE OF THE DOCTRINE OF LEGITIMATE EXPECTATION IN INCOME TAX

South African taxpayers are for the most part unaware of the full extent of rights and remedies available to them when disputing the tax liability that the South African Revenue Service ("SARS") has determined is due and payable on the income they generate. Although the **Income Tax Act 58 of 1962** offers a number of ways to dispute these amounts, the remedies are time-consuming and often difficult to comprehend. The doctrine of legitimate expectation proposes another remedy for taxpayers and can serve as a powerful weapon to force SARS to comply with the promises they make to taxpayers regarding the extent of their liability.

The doctrine of legitimate expectation is an administrative law concept that was recognised as part of South African law in the seminal case of **Administrator of Transvaal and Others v Traub and Others 1989 4 All SA 924 (AD)**. It is stated that a person will have a legitimate expectation in at least the following two instances: If a state official has clearly promised to make a certain decision and does not abide by this promise, or, if an implied promise to make a certain decision can be deduced from the actions of the state official. Legitimate expectation was also given statutory recognition in **section 3 (1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA")**, which determines as follows:

"3(1): Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair."

SARS is a state body and the decisions they make certainly falls under the mantel of administrative action. Accordingly, if a SARS official discusses an individual's income tax and agrees that there is income that will not be taxed, or expenses that may be deducted from the tax liability, in usual circumstances SARS should be bound by these agreements. PAJA at the very least guarantees that if such an agreement is not adhered to and it "materially and adversely" affects a person, it should be ensured that the decision not to keep the promise is "procedurally fair". For a decision to be deemed procedurally fair by a court, it requires that a person should be able to state their case clearly **before** a state official makes a decision and be furnished with reasons by the state official as to why a decision is made. If it is found that this decision was not fair, the decision will be changed and a claim for further damages suffered might also be possible.

National Director of Public Prosecutions v Phillips 2002 (4) SA 60 (W) sets out four requirements state action must adhere to in order to fall under the doctrine of legitimate expectation. Taxpayers may use this as a checklist when considering whether they can have the decision made by SARS reviewed. Firstly, the promise by the state official must be clear, unambiguous and devoid of any relevant qualification. Secondly, the promise must have been made by a person that has the authority to make the relevant decision. Thirdly, it must be reasonable for the individual (taxpayer) to believe the promise and lastly, the promise must not be illegal. With all of these requirements it will suffice if the individual held a reasonable and true belief that the requirement was being satisfied, even if it was in fact not the case.

The administrate law remedy under the doctrine of legitimate expectation is a very useful legal avenue for taxpayers to ensure that their rights are protected. This is especially true given the fact that SARS operate under a principle commonly referred to as “pay now, argue later”. This simply means that even if a liability is being disputed by taxpayer, the dispute does not prevent SARS from adding interests and levies on the outstanding amount while the dispute is decided. These interests and levies could have a devastating impact on the financial position of taxpayers, even if the money is eventually repaid. By using the legitimate expectation remedy instead, Courts are provided with far greater discretion when reviewing SARS’s decisions and could at the very least suspend interests and levies while a decision is being assessed. It is therefore of utmost importance that taxpayers educate themselves properly on the doctrine of legitimate expectation and how it can aid them when disputing their tax liability.

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