Reaching settlement with State Revenue Service (1/45/20)

The results of a tax audit tend to come as a nasty surprise for the taxpayer. If challenging the tax decision has failed to bring a favourable solution and the option of litigation is not acceptable, the taxpayer can consider reaching a settlement with the SRS to minimise the adverse effects of the tax decision on the taxpayer's business or financial position.

Cases where a tax settlement is suitable

If the taxpayer has carefully evaluated the arguments set out in the SRS Director-General's decision and realises that –

- the SRS is right (e.g. the taxpayer has really made a mistake in interpreting tax laws or calculating the tax charge, and the additional tax assessment and penalty are justified),
- the taxpayer has failed to run the required checks on his suppliers and has been involved in an artificial transaction, which in the circumstances prevents him from receiving fiscal advantages,
- there is insufficient evidence or rationale for litigation,

then the taxpayer should exercise the right to negotiate a settlement with the SRS.

The legal basis for a settlement and available reductions in taxes and penalties

Section 41 of the Taxes and Duties Act permits the SRS and the taxpayer to negotiate a settlement of the legal dispute over additional amounts payable to the government or about overstated refund claims resulting from a data compliance check and a tax audit. This rule allows (instead of requiring) the parties to agree, so the taxpayer should actively propose a settlement to the SRS Director-General. On receipt of such a proposal, the SRS may accept or refuse a settlement. Settling the legal dispute benefits both parties: the taxpayer can reduce the amount due, and the SRS saves the time and effort it would take to represent the government in the administrative court.

An integral part of entering into a settlement is the taxpayer's consent to the amount of tax due and his undertaking to pay the agreed amount within one year after entering into the settlement by paying proportional monthly instalments. At the other end of the deal, the SRS cancels or reduces the penalty and reduces interest on arrears (if any).

For example, if a taxpayer has to pay extra amounts on a data compliance check, the settlement may cancel 85% of interest on arrears.

If a taxpayer has to pay extra amounts on a tax audit (because of an understatement of the tax due) and a penalty has been imposed under section 32(4–5) of the Taxes and Duties Act, the settlement may cancel 50% of the penalty and interest on arrears. If a penalty is levied under section 32(7) of the Taxes and Duties Act, the settlement may cancel the full penalty and 50% of interest on arrears.

If a taxpayer has to pay extra amounts on a tax audit (because of an overstated refund claim) with a penalty levied under section 32(4–5) or section 32.4 of the Taxes and Duties Act, the settlement may reduce it by 50%. A penalty levied under section 32(7) of the Taxes and Duties Act may be reduced by

85%.

Other conditions of the settlement

Although the Taxes and Duties Act provides that with a settlement in place the debt may be split and paid within one year, the taxpayer is allowed to pay the whole debt outright, thereby taking himself off the list of debtors.

In general the taxpayer may propose a settlement of the legal dispute within one month after receiving the SRS Director-General’s decision. Also, the Taxes and Duties Act permits a settlement during litigation (in each of the three instances but before the hearing is substantially completed). So, the parties may settle even if administrative proceedings are underway.

If the taxpayer defaults on the terms of the settlement, the settlement becomes void, and the SRS will recover all the amounts additionally assessed for payment.

Finally, if for any reason a settlement is not concluded or is refused, section 24(1)(3) of the Taxes and Duties Act allows the taxpayer to ask the SRS to split the taxes, interest on arrears and penalty levied as a result of the tax control (review, audit) into instalments payable over a period of up to five years.