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EASING INTO 2023 **TAX DEBT COMPLIANCE 101**

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AGENDA



1 Introduction

2 SARS Collection Drive 2022

3 Strategic Objectives for 2023

4 Historic Non-Compliance

5 Remedial Measures

6 Q&A



MEET THE SPEAKER

THE SPEAKER



JASHWIN BAIJOO

Head of Strategic Engagement & Compliance
Admitted Attorney, LLB, LLM (Tax) SAIPA Tax Committee Member

Jashwin Baijoo is the Head of Strategic Engagement and Compliance. He holds both an LLB, and LLM degree, specialising in International Tax and Business Law. Jashwin has 5 years of legal experience in various aspects of South African and international law. He is an admitted attorney of the High Court of South Africa with both practical litigation and consulting experience. He has worked in law firms focusing on dealing with litigation and commercial disputes. Jashwin moved from the pure practice of law to the consulting industry and has entrenched himself within tax law, specifically dealing with the elements of cross-border taxation, corporate incorporations and compliance, and international regulatory applications.

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Judge Dennis M Davis, Chairman Davis Tax Committee, is quoted saying:

“In summary, the second edition of this carefully considered book (which not only deals with all the various tax implications of immigration/emigration but the taxation of residents working offshore) remains an invaluable guide to an increasingly complex set of tax challenges. Given these changes, it is an even more significant addition to our body of tax literature and will remain essential reading for anyone advising his or her client with regard to the tax consequences of migration and non-resident accruals.”

Tax

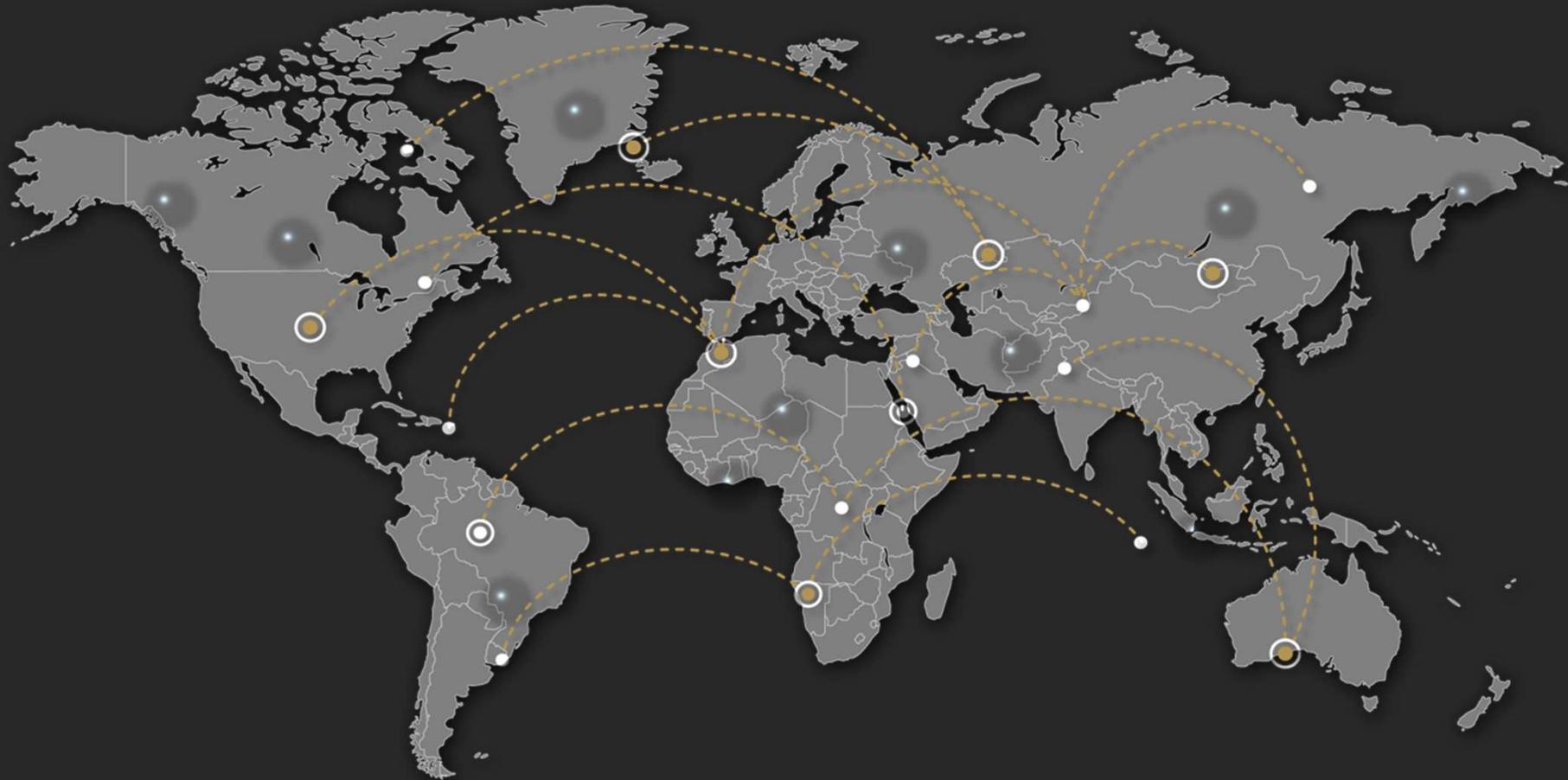
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WHAT IS A TAX DEBT?

Section 169 of the Tax Administration Act, 28 of 2011, sets of the criteria for a “Debt due to SARS” as:

“an amount of tax due or payable in terms of a tax Act is a tax debt due to SARS for the benefit of the National Revenue Fund.”

To expand on this, a tax debt, is a sum of money owed to SARS, which amount is both due and payable under law, and which amount has remained unsatisfied by the respective taxpayer, usually for a period exceeding 30 days from payment due date.

To just clarify at the outset, the relief mechanisms to be discussed today, are **NOT** available to clients who simply wish to pay more tax than is rightfully owed to SARS, or are considering using these relief mechanisms to avoid / evade their tax obligations in South Africa.

HOW A TAX DEBT ARISES

A tax debt arises by virtue of unpaid tax liability owed to SARS, by either an individual, or corporate client, which amount has either remained unpaid due to negligence / a lack of knowledge, on the part of the taxpayer, or alternatively, intentionally, due to insufficient funds, or opting to keep a business afloat, in favour of compliance with SARS.

These amounts can be both historic or current taxes due, with no bar on the time period within which the tax debt relief mechanisms may be applied. It is noteworthy, that only in very limited circumstances, is a taxpayer permitted to utilise a debt relief mechanism on Provisional Taxes due.

A large, light-colored, stylized outline of the word 'Tax' is positioned in the lower right quadrant of the slide, serving as a background element for the footer.

Section 200 Compromise of Tax Debt Application

In terms of the Compromise, section 201 of the TAA imposes upon the taxpayer a rather heavy evidentiary burden, in terms of detailed income and expenditure calculations and 3-year projections for future income and expenditure, and in the case of a company, annual financial statements and management accounts to evidence that there was no mismanagement of funds.

The Compromise does however also permit the most favourable tax position to the taxpayer, with compromise settlement figures being anything from 60% of the tax liability, to 10% of the liability.

The only catch is that SARS generally requires the entire settlement amount to be paid as a lump sum payment, which is not always feasible for the cashflow-restricted taxpayer.

Settling this amount in instalments is not impossible, but highly unlikely.

Section 200 Compromise of Tax Debt Application Versus Deferral of Payment

A key point to note on any Deferral is that the relevant sections do not speak to a significant reduction on the tax liability due by the taxpayer, but rather the taxpayer must still pay the full liability, just in instalments.

It is important to note here that in terms of the criteria provided in section 168 of the TAA, future prospects must show an upturn for the taxpayer, which is not necessarily the case with the Compromise.

The Compromise, however, presents a more attractive option for taxpayers with a stable income that do not have the means to settle the debt in a single instalment.

IDENTIFYING ELIGIBILITY | THE MEANS ANALYSIS

Now this may sound fairly straightforward, but there are a number of considerations which both taxpayers, and practitioners, are not aware of:

This asset value includes all intangible assets i.e., crypto assets such as currency and virtual land;

In the case of a company, SARS may request documentation pertaining to its Directors personally, as well as any and all other related entities, persons, and trusts – this is a deep dive into compliance of said related persons;

In the case of an individual, when declaring assets value, as well as the corresponding finance arrangement, if applicable, taxpayer's who own assets jointly, or are married in COP, are to only declare their half share;

In the case of a company, loan accounts and Director drawings are severely scrutinised by SARS, so ensure these are in order.

Should you (or your clients) require debt relief, and would be eligible for this form of assistance, please do not hesitate to reach out to me, or alternatively introduce the client directly to me.

A golden scale of justice is centered in the frame, resting on a light-colored wooden base. The scale has two pans hanging from a central beam. The background is dark and out of focus, showing the spine of a book on the left. The word "QUESTIONS?" is written in large, white, bold, sans-serif capital letters across the middle of the image, partially overlapping the scale.

QUESTIONS?



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THANK YOU

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