



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA**

JUDGMENT SUMMARY

Neutral citation: *Arena Holdings Pty Ltd t/a Financial Mail & Another
v South African Revenue Service & Others*

Coram: Davis J

Heard: 3 June 2021

Delivered: 16 November 2021 (electronically)

Taxpayer confidentiality is primarily provided for in section 35 of the Promotion of Access to Information Act 2 of 2000 (PAIA) and section 69 of the Tax Administration Act 28 of 2011 (TAA). The Financial Mail sought access to the tax records of a former member of the executive (Mr Zuma) on the basis that evidence in the public domain and not denied or controverted by the taxpayer in question indicated that he was not tax compliant during his presidency. The Financial Mail contended that their rights of access to information guaranteed in section 32 of the Constitution and in PAIA and the obligation of the media to impart information which is in the public interest, as guaranteed in section 16 of the Constitution, should not be limited by the blanket ban on disclosure of taxpayer information, which in turn may be guaranteed by a taxpayer's privacy rights contained in section 14 of the Constitution. Such a limitation was found not to be justified in terms of Section 36 of the Constitution. It was found that the

“public interest override” provision contained in section 46 of PAIA, which obliges disclosure of information held by the state in circumstances where such disclosure “*would reveal evidence of substantial contravention of or a failure to comply with the law ... and the public interest in the disclosure ... clearly outweighs ... the harm contemplated ...*” should be read into section 35 of PAIA and section 69 of the TAA. Appropriate declarations of constitutional invalidity were issued and referred to the Constitutional Court. Interim orders were granted regarding the “reading-in” and disclosure of records, together with costs.