

Ombudsman will be a boon for taxpayers

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Taxpayers will no longer have to back down if they feel they have been treated unfairly by the taxman, say tax analysts.



Johan Troskie, a director at audit, tax and advisory services firm Mazars, says: "Tax issues can be complicated and not everyone has the knowledge or skills to deal with the tax authorities, particularly when they feel that they have been treated unfairly."

Dealing with the tax authorities can be an intimidating and unpleasant experience, says Troskie. "In certain instances, taxpayers even back down."

However, new proposals, contained in the draft Tax Administration Bill to establish a tax ombudsman's office are a "welcome initiative". "It is the role of the tax ombudsman to investigate such matters and to ensure that taxpayers are treated fairly," he says.

The latest draft of the Tax Administration Bill, released at the weekend, contains a proposal for a tax ombudsman's office in SA.

Beric Croome, a tax executive at corporate law advisers Edward Nathan Sonnenbergs, is one of many lobbyists who have been calling for such an office to be set up since 1994.

Legal steps necessary before creation of office

"However, it is not something which can take place overnight. Other administrative and legal steps have to be implemented before a tax ombud's office can be created," says Croome.

He points out that in 1997, the South African Revenue Service (SARS) published the taxpayers' charter which sets out the rights and obligations of taxpayers in SA. At that stage, no measures had been introduced to ensure that taxpayers could enforce their rights in their dealings with SARS.

Croome says where taxpayers were aggrieved in their dealings with SARS, they had to seek redress from the courts. "Unfortunately, this was an expensive remedy and not always the most ideal way to seek the resolution."

In 2002, the service monitoring office was set up to help taxpayers who had difficulties resolving problems with SARS.

It was predicted that the service monitoring office would one day be elevated to an ombudsman's office, says Croome.

Call centres not the complete answer

Ernie Lai King, head of Deneys Reitz Tax, says: "SARS in its efforts to become more efficient has relied more and more on call centres in servicing the taxpayer body." However, the average person finds it onerous and time-consuming to resolve problems by dealing purely through the call centres, he says.

"I expect the ombudsman will have an extremely busy time and it will be important that he has sufficient backup and authority."

Croome says that the Tax Administration Bill also "waters down" secrecy provisions as it allows for SARS to disclose taxpayer information to the Financial Services Board, the National Credit Regulator and the Financial Intelligence Centre.

"SARS may have a sound reason in place to protect the public at large but they have to be careful in that the provision may discourage taxpayers from coming forward and making disclosure about their tax affairs," he says.

Troskie says: "By playing around with the secrecy provisions you are opening the proverbial floodgates. If you do this once, there may be other organisations that SARS may deem it fit to report information to."

Billy Joubert, a tax director at Deloitte, says SARS has a good record of keeping taxpayers' affairs secret. The provision is essentially aimed at taxpayers charged with breaches of administration of justice, Joubert says.

There may be compelling reasons, particularly in light of the high rate of white collar crime and financial fraud, he says, in which innocent people have fallen prey to delinquent taxpayers.

More power to SARS

Further, the bill also gives SARS more search and seizure powers and in some instance can erode taxpayers' rights, says Lai King. For instance SARS will be allowed to carry out a search and seizure operation, without a warrant, to prevent the removal or destruction of documents by a taxpayer.

King says: "Taxpayers have rights, and the reasonable suspicion by a SARS official is not sufficient to allow entry without a warrant. The opportunity for abuse, harassment and intimidation is too high. SARS must properly do its research before acting."

The bill also gives the voluntary disclosure programme a permanent place in tax law. The voluntary disclosure programme allows taxpayers in default to rectify such defaults without additional tax, penalties or prosecution. However, interest remains payable.

Emile Brincker of law firm Cliffe Dekker Hofmeyr says that voluntary disclosure should not be a permanent feature.

"Taxpayers may be inclined to default and use the voluntary disclosure programme instead. They may intentionally default," Brincker says.

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