

Do you know your rights as a taxpayer?

Concern over lack of remedies when Sars oversteps.

Despite constructive regulatory changes in the tax administration environment, there are concerns about the lack of cost effective remedies for taxpayers in cases where the South African Revenue Service (Sars) fails to comply with its obligations.

Dr Beric Croome, tax executive at Edward Nathan Sonnenbergs, says the new Tax Administration Act (TAA) that came into effect in October last year, has brought together administrative provisions that were previously scattered in different fiscal statutes.

Although taxpayers' rights have not been extended under the new Act, the changes aim to ensure that the provisions are in line with the rights awarded to individuals and businesses in the Bill of Rights in the Constitution.

"I think what is important – and people need to know it – is that taxpayers' rights ultimately flow from the Constitution," he says.

He says there are a number of improvements under the new dispensation. This includes the fact that Sars is now required to keep a taxpayer informed of the progress with an audit. In the past there was no legislative requirement to do so, which Croome believes was a breach of the right to administrative justice.

Also, the Tax Court is now required to publish all of its decisions (albeit in a form that would protect the identity of the taxpayer) whereas in the past it was done selectively. Croome explains that this was a breach of the right to equality since all the judgments were available to Sars, but

not to the taxpayer.

Another improvement stems from the fact that Sars will now need to inform a taxpayer of its intention to file a statement at the court which results in a judgment against the taxpayer in cases where the taxpayer fails to pay in time or neglects to engage with the revenue service to make arrangements for payment.

Croome says in his opinion the new Act is an enhancement of the previous scenario, however, he is concerned that a cost effective remedy for taxpayers does not exist in cases where Sars does not comply with its obligations.

“The one deficiency that I have been raising from time to time through articles and other things, is where a taxpayer incurs wasted costs because of the inaction or abuse by Sars, how do they recover that?”

He believes there should be some recourse or remedy so that taxpayers can recover wasted costs from the revenue service in such cases.

One possible way to address some of the shortcomings could be the appointment of a Tax Ombudsman, provided the office functions efficiently.

While the Tax Administration Act provides for the appointment of a Tax Ombudsman by the end of September this year, no appointment has been made thus far.

“If they appoint the right person, he or she has to be schooled in both tax and consumer affairs. If they get the right person, that office can be effective,” says Croome.

However, it will have to earn the trust of Sars as well as taxpayers, he says.