



DAVEY'S Locker



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Tax practitioners

Some opinions more equal than others

by Tony Davey

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Penalty table—s 223

The recently promulgated Tax Administration Act contains an understatement-penalty-percentage-table, which is to be welcomed, since it provides objective parameters, as distinct from the decisions of the SARS penalty committee.

Naturally, the matter is not cut and dried, since penalty-percentages range from 25% to 200%, dependant, amongst other things, upon the categorization of the default and the degree of the taxpayer's negligence or intent, which will continue to spark dispute.

Penalty remittance—s 223(3)

Relief is nevertheless available, since the legislation states that SARS must remit a penalty if the taxpayer was in possession of an opinion by a registered tax practitioner, provided that it

- was issued by no later than the date that the relevant return was due;
- took account of the specific facts and circumstances of

the arrangement; and

- confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeded to court.

Whose opinion counts?

In 112 *TSH* 2012 I considered the new requirements for tax practitioners to register with both a controlling body and SARS.

An exemption is provided by s 240 for lawyers (attorneys and advocates) providing advice solely in anticipation of or in the course of litigation to which the Commissioner is a party.

Such exempt persons are not required to be registered tax practitioners; thus, in my interpretation, their opinions do not qualify for the s 223 penalty-relief.

Suffice it to say that the short and simple solution (for which I have already taken my registration-medicine) is for lawyers voluntarily to register as tax practitioners.

