



DAVEY'S Locker



Davey's Locker

May 2013

Advance tax rulings

Time for a reassessment

by Tony Davey

© 2013 A H Davey (tonyd@harding.co.za www.tonydavey.com)

In previous issues, I have endorsed the SARS advance tax ruling (ATR) system despite having experienced both successes and failures under the system.

A recent, successful application for a private binding ruling on behalf of a taxpayer (121 TSH 2013) refocused my thoughts on this process.

ATR benefits

In a tax world of ever-changing legislation, and certainty in complex matters, especially when large amounts are at stake, a resort to the ATR system must be preferred to opinion-shopping.

The calibre of SARS ATR staff is such that the desired characteristics of efficiency, timeliness, courtesy and professionalism are evident. While SARS evaluation committees also play a role, Johan Roos, who was the SARS-assigned facilitator steering my application, epitomized these qualities.

ATR risks

Don't take obviously hopeless matters to ATR, in the hope that you may get lucky. The onus is on the taxpayer (and advisers) to prepare a proper motivation in favour of the desired result, akin to heads of argument in court proceedings.

SARS charges a professional fee for its ATR services, which, in my experience, ranges from R25 000 to R50 000, with no refund if you are unsuccessful, although you may withdraw during the process and save future fees.

This cost arises in addition to your adviser's fees.

Conclusion

Prevention is better than cure, and, in my view, the price of a private binding ruling is certainly worth paying in complex tax matters.

In any event if a ruling is unfavourable, the taxpayer can still proceed with the transaction, albeit under caution.

