DAVEY'S Locker

Paddle your own canoe
Advance tax ruling certainty

by Tony Davey
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In previous issues (68 *TSH* 2008, 69 *TSH* 2008), I advocated the merits of advance tax rulings (ATRS) in providing certainty, given the conundrums of interpretation a taxpayer faces, such as the following:

☐ The interpretation of statutes is an art as much as a science and does not result in mathematically correct answers (*Corocraft Ltd v Van American Airways Inc* 1968, 3 WLR 714).

☐ The tax court is a creature of statute, and its decisions do not set binding precedents. (Under the common-law principle of *stare decisis* only the High Court and SCA judgments are a source of interpretation of the tax law.)

☐ SARS interpretation notes and practice notes do not qualify to be classified as legislation or even subordinate legislation (cf regulations) and at best set out the SARS view on a matter.

SARS also publishes binding private rulings (BPR), obviously with the names of taxpayers removed, for public information. *Prima facie* these are useful indicators of its attitude to an issue.

Nevertheless, under s 76H of the Income Tax Act, you cannot rely upon nor cite in any adjudication proceedings a BPR that has been issued to someone else, even if the facts of a proposed transaction are similar to those described in the published ruling.

I was painfully reminded of this *caveat* last week, when an ATR application which I had applied for on behalf of a taxpayer, given that the size of the investment involved merited certainty, was provisionally rejected, even though the proposed investment with the same financial institution had been successful in a BPR issued to another taxpayer and published.

In this matter (the substantive merits of which I shall deal with in a future issue), SARS advised me that, under s 76M, they intend to withdraw the published BPR and announce its withdrawal.

The moral of the story is that the only certainty is uncertainty.

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