



DAVEY'S Locker



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Taxpayer Bill of Rights mooted

Davis Tax Committee recommendation

by Tony Davey

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The Davis Tax Committee has just released a Tax Administration Report, dated September 2017 (see the Monthly Listing), which, amongst other things, addresses the need for a Taxpayer Bill of Rights (TBOR). The TBOR should be enforceable at law by the Tax Ombud, precise and concise.

Proposed rights

1. The right to finality

SARS should adhere to prescribed timeframes for audits, objections, appeals and other legal processes.

2. The right to privacy and confidentiality

This is a constitutional right, already contained in Chapter 6 of the Tax Administration Act.

3. The right to complete, accurate clear and timely information

Explanations and reasons for SARS's procedures and decisions should be provided to taxpayers. Rule 6 of the 'rules' promulgated under the Tax Administration Act

currently allows for reasons to be requested by a taxpayer before lodging an objection, but it is important that the reasons given be adequate.

4. The right to pay no more than the correct amount to tax

This is self-evident. Possibly it refers also to timeous refunds, an issue recently identified by the Tax Ombud as being problematic.

5. The right not to pay tax amounts in dispute before you have had an impartial review

The current controversial 'pay now argue later' principle contained in s 164 of the Tax Administration Act constitutes, *prima facie*, an infringement of the right to property under the Constitution. There currently exists an opportunity to request and support an application for a suspension of payment but this is at the discretion of a senior SARS official.

6. The right to legal representation

This is the current position but affordability is a limitation. It is suggested that the Tax Ombud provide such assistance on claims not exceeding a defined amount.

7. The right to quality service

This requires prompt and courteous assistance in the taxpayer's language of choice.

8. The right to fair and just tax system

This encompasses the current right to appeal against SARS's decisions, in an independent forum, but without any fear of reprisal.

Conclusion

The proposed TBOR is in line with Chapter 2 of the Constitution (Bill of Rights). Although the Tax Administration Act includes many provisions designed to achieve fairness in the treatment of taxpayers, the expeditious implementation of TBOR with legal force and effect can only be welcomed.

