Navigating the minefield of a tax audit

As a taxpayer you have the right to administrative justice. So, if you undergo a South African Revenue Service (Sars) audit, both you and tax office need to be compliant. But it is a complicated process to police. And costly.

Dr Daniel Erasmus

Sars announced in June that the tax season has been shortened by three weeks and will run from 1 July to 31 October 2018. It also announced a campaign of stricter verification and collection of taxes. Not only from previous tax dodgers, but an increased vigilance among all taxpayers. This will mean more queries, proof of documents and expenses and Sars going through tax returns with a fine toothcomb. It also increases the possibility of a tax audit.

The word 'tax audit' strikes fear into most people – even if you have nothing to hide. "If you have ever been targeted for a Sars audit, you will know the feeling"' says tax expert, Dr Daniel Erasmus. Whether it is an internal desk audit, or an in-depth audit in more high-risk cases, it's stressful, time-consuming and can be very expensive. Your accountant (or tax attorney if necessary) will need to collate information and follow the strict procedural rules. A task which requires time, experience and special expertise.

Rights

"The good news is that as a taxpayer you have rights in terms of the Constitution, the Tax Administration Act (TAA) and surrounding applicable legislation. The 'not' so good news is that most taxpayers are unaware of these rights and how to access them. It often happens that Sars fails to follow proper procedures when conducting an audit and in some cases they neglect to respect the rights of a taxpayer as set out in the Constitution. A recent example is the case of IT13726 where an assessment that followed from an audit was found to be constitutionally invalid for failure to comply with applicable tax laws," says Erasmus.

The different legal and internal remedies available to you as a taxpayer are set out in the different tax laws, the Constitution and even the common law. It's unrealistic to expect you to know these, never mind police them. "If you're still not convinced, cast your memory back to the budget speech this year. The tax revenue shortfall in 2018 was an eye-watering R48.2bn. Fingers are being pointed at Sars – it is after all a reflection of poor administration, productivity and expertise. Sars is not without its internal politics either and they are under constant pressure by the Treasury to meet targets. This means a crack-down on taxpayers who have failed to submit their returns, and a massive increase in verifications and audits on taxpayers, even those who are honest and who pay their taxes diligently."

The inevitable result of a Sars tax audit in most cases is that an additional assessment is issued, and an additional tax liability is created for which you are legally responsible. The 'new liability' often includes penalties, sometimes as high as 200% of the new tax debt.

Due process

Sars is required to follow a due process when they engage a taxpayer for an audit, which includes:

- A notification of audit and an opportunity to reply.
- To keep the taxpayer informed during the audit process and the potential adjustments.
- Once an audit has been conducted, they are obliged to provide the taxpayer with an 'audit findings' letter and provide adequate explanatory reasons why they wish to make a potential adjustment.
- They have to give the taxpayer 30 days to respond prior to issuing the new additional assessment.

Failure to follow these steps will be regarded as a contravention of the principles codified in Section 33 of the Constitution, which includes, "the right to fair, reasonable and lawful conduct" by Sars officials.