

New tax act may attract litigation

It may take a long time to bed down what the new Tax Administration Act means because there are a host of sections which could be subject to litigation, according to high court judge and government tax review head Dennis Davis.



The review was set in motion in February by President Jacob Zuma and Finance Minister Pravin Gordhan to investigate the effect of tax on employment, growth and development.

Davis, who last year dismissed the government's appeal against the R16.5bn Walmart-Massmart merger and made provision for Massmart to contribute a maximum of R200m to a supplier development fund that would develop small and medium business, is particularly concerned about the potential effect of the new act on small business.

"When it comes to small business we have to think very carefully if this act has struck the balance properly between rights of the taxpayer and South African Revenue Service (SARS) powers. What I mean is, in terms of transactional costs and levels of complexity," he said on Thursday (16 May). The balance was being properly struck for bigger businesses, in his view.

Davis told a national tax conference he was surprised he had seen so few administrative matters come before his court, and cautioned that some of the broader elements of the new tax rules - like the ones allowing senior tax officials to make decisions which may have serious consequences - may open the door to challenges.

Balance needed with new act

The new Tax Administration Act last year gave SARS powers to search and seize without warrants in some instances, but the courts have already limited this right by balancing it against the right to privacy and dignity in parallel tax legislation (the Customs and Excise Act).

"Tax officials should be aware of the Promotion of Administrative Justice Act and the fact that tax courts, being creatures of statute, cannot deal with issues of regulation," said Davis, who was recently re-appointed to his long-standing role as judge president of the Competition Appeal Court.

International tax attorney Daniel Erasmus told the conference SARS had to act in a lawful, reasonable and procedurally fair manner, adhering to its constitutional obligations. "A failure to do so would render its decision to invoke its powers liable to be set aside on review on any applicable codified review grounds stated in section 6(2) of the Promotion of Administrative

Justice Act," Erasmus said.

ENS director of tax Robert Gad said it was difficult to get certainty on tax issues and it was "taking years to get to finality".

ENS's Michael Katz, head of a prior commission of inquiry into tax reform, said SA's tax system had become complex over the years as numerous additions were lumped onto the 1962 Income Tax Act.

Lawyers and tax practitioners at the conference highlighted numerous concerns, notably over SARS' ability to search and seize without a warrant, incomplete requests for audits and how privileged or sensitive information will be protected if it forms part of a request for further information by SARS.

Source: Business Day via I-Net Bridge

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