

Title: Challenges in “Operationalizing” Taxpayer Rights

Adv Hanyana Eric Mkhawane

Chief Executive Officer

Office of the Tax Ombud, South Africa

Tel: +27 (0) 12 431-9330

Cell: +27 (0) 71 675-9193

E-mail: EMkhawane@taxombud.gov.za

Brief description:

Operationalizing Taxpayer Rights often present challenges to institutions seeking to educate taxpayers about these rights as well tribunals/ombud seeking to enforce these rights.

This papers looks at the South African journey in regard to educating taxpayers about their rights, incorporating rights into guidance for and education of tax agency employees, protecting vulnerable taxpayer populations and providing taxpayer rights even though there is historically high non-compliance.

After the end of the apartheid regime in 1994, South Africa appointed a commission to look into matters of tax reform. Having been appointed on 22 June 1994, the Commission completed its first Interim Report (“the first report”) on 18 November 1994.

The Katz Commission noted that the tax system is subject to the constitution and must conform to society’s commitment to the Rule of Law. This means not only that the system should be effective in the enforcement of all tax laws, equally and irrespective of status, but also that citizens right to be taxed strictly in accordance with the terms of

those laws should be scrupulously protected both in the design of those laws and in their implementation.

At that stage the Income Tax Act contained certain provisions that discriminated on grounds of sex and marital status. For example, separate tax rates were payable by married persons or unmarried persons, and those taxpayers regarded as married women. Katz Commission – concluded that discrimination based on sex or marital status was unconstitutional and inappropriate in income tax legislation. A unitary rate of tax was therefore introduced.

Before 1994 it was the general practice of the Commissioner not to supply taxpayers with reasons for decisions made in the exercise of discretionary powers, or in issuing assessments. Section 24 of the Interim Constitution gave taxpayers the right to this information for the first time. The Katz Commission Interim Report expressed the view that s 24(c) granted taxpayers the right to reasons, in writing, for administrative action affecting any of their rights. The Commission specifically referred to the cryptic approach adopted by the Commissioner in dealing with objections and appeals and stated that the prevailing practice would have to end. Not long after the publication of the Katz Commissions report the Commissioner indicated that, in future, taxpayers would have access to the reasons for decisions.

For many years, the Commissioner's internal Revenue Assessing Handbook and internal circular minutes were unavailable to the public. This caused difficulties for taxpayers who did not know why the Commissioner was taking a particular view on

certain items of expenditure or income. The Katz Commission was of the opinion that such internal documentation should be available to taxpayers, ensuring that the Commissioner and his officers complied with their constitutional obligations. Shortly after publication of the Commission's report the Revenue Assessing Handbook was published as the SARS Income Tax Practice Manual, which is now available to all taxpayers. The Commissioner started releasing practice notes, interpretation notes, media releases and other documents to assist and educate taxpayers about the interpretation of their fiscal obligations.

Third interim report ("Katz") proposed that there should be a Tax Ombud whose role shall be to protect taxpayer rights and to mediate between taxpayers and revenue authority.

Katz Commission also recommended the introduction of a statement of taxpayer's rights – 1995. But this was not to be contained in the statute. Rather, these rights should constitute a contract between revenue authority and taxpayers which could be used by taxpayers as a means of evaluating service levels and administrative action encountered in their dealings with the Commissioner.

This recommendation was in line with the OECD Comments:

"Many countries are seeking to improve the service provided to the taxpayer, in part because modern tax systems require increased co-operation from the taxpayer if they are to operate efficiently and also as a result of changing attitudes towards the role of the tax administration vis-à-vis the taxpayer. This co-operation is more likely to be forthcoming if there

is mutual trust between the taxpayer and the administration and if the taxpayers' rights are clearly set out and protected".¹

Principles to be encoded in a Statement of Taxpayers Rights were to include:

- a) expeditious and timeous tax administration;
- b) fair, impartial and consistent application of the law;
- c) full disclosure in simple language, of the reasoning behind adverse decisions;
- d) respectful, courteous and helpful treatment of taxpayers; and
- e) privacy of information.

The Joint Standing Committee on finance supported the recommendation of encoding of Public Statement of Taxpayers Right, but stated that such statement should include clearly set out taxpayer's obligations and duties and that the title should change accordingly. So instead of have a statement of Rights you end up having rights and obligations.

This led to the publishing of SARS Client Charter by the Commissioner in 2005. The Charter stated as follows:

You are entitled to expect SARS:

To help you through

- self-explanatory leaflets and booklets as well as our website
- courteous and professional service at all times
- providing clear, accurate and helpful responses

¹ Taxpayers' Rights and Obligations: A survey of the Legal Situation in OECD Countries (OECD 1990) para 1.4 at 7.

- making clear what action you need to take and by when
- being accessible via our call centre and walk-in centres
- listening to your suggestions

To be fair by

- expecting you to pay only what is due under law
- treating everyone equally
- ensuring everyone pays their fair share

To respect your constitutional rights and privacy by

- keeping your private affairs strictly confidential
- furnishing you with reasons for decisions taken
- applying the law consistently and impartially

If you are not satisfied, you may

- request that your tax affairs be re-examined
- exercise your right to object and appeal
- request that we advise you of the procedures to be followed in our Alternate Dispute Resolution (“ADR”) process
- lodge a formal complaint at any of our offices
- lodge a complaint with the SARS Service Monitoring Office (SSMO)

In return, your obligations are to

- be honest
- submit full and accurate information on time
- pay your tax and/or duties on time and in full
- encourage others to pay their tax and /or duties

- report others who are not paying their fair share
- not encourage of be party to bribery or fraud in any form

This charter did not create any new rights nor did it indicate how taxpayers might enforce their rights. The release of the Charter was intended to increase taxpayer awareness of their rights and obligations and to create and improve the service culture of the revenue staff in the dealing with taxpayers. This charter has since been removed from the SARS website. A new one has been drafted and is awaiting publication. In the meantime taxpayers are left in the dark in regard to the level of service they may expect from Revenue Authority.

The establishment of the Office of the Tax Ombud – took much longer.

A possible reason for that could be that the SARS processes and procedures had not improved sufficiently. This is clear from the statement by the then Minister of Finance when he introducing the new Court rules:

“Once SARS’s processes and procedures have improved sufficiently, the next important step that will be taken in emulating international standards will entail an important role of an Ombud”.

Challenges

1. Absence of Taxpayer Bill of Rights

South Africa does not taxpayer bill of rights. There is also no Service Charter.

The Service Charter is still in a draft.

The mandate of the Tax Ombud is in terms of s16(1) to review and address any complaint by any taxpayer regarding a service matter or procedural or administrative matter arising from the application of the provisions of the tax Act.

What remains a problem though is the level of service that should be rendered to taxpayers and how should taxpayers be treated when there is no service charter and no taxpayer bill of rights.

Taxpayers have been left to read text books or the entire Tax Administration Act in order to find out what their rights are in a specific encounter with revenue. A taxpayer can only enforce a right he/she knows/or is aware of.

Rights can be enjoyed only by those who are aware of them and sufficiently informed to ensure their possession.² Such rights need to be well documented and be made accessible to those who need to exercise them (rights) and those who are supposed to ensure compliance with such rights.

2. Who has to draft these taxpayer rights?

The revenue authority had been informed that for effective establishment of the Office of the Tax Ombud it would be necessary to have a service Charter and I suppose taxpayer rights. OTO has taken the initiative to draft the rights and will soon be send them to the revenue for consideration.

Methodology used was to compile a list of 138 rights contained in the Tax Administration Act and then categorized them into 10 taxpayer specific rights.

² Prof Gerald Caiden in his book, international Handbook of Ombudsman

More effort is placed on Policing taxpayer obligations than on service and educating taxpayers about their rights. Similarly there is a tendency to act swiftly when certain actions will bring in more money.

3. Communicating the rights to taxpayers and revenue officials.

With communication, the challenge is the resources – budgets etc. This is even a greater problem for an institution that is 2 years old. Our current legislation provides that the expenditure connected with the functions of the Tax Ombud is paid out of the funds of SARS.

3.1 The role of SARS

Firstly it is the Revenue Authority that is supposed to adopt the Service Charter, of which principles would then be embedded into its working culture. The Complaints Management Office or Service Monitoring Office would then be an internal avenue that ensures that such Taxpayer Rights are operationalised. In this way, Employees of the Revenue Authority (SARS) would know the basic rights of taxpayers. Employees of the Revenue Authority cannot be educated about taxpayer rights without an adopted Service Charter or Taxpayer Bill of Rights.

4. The role of Tax Ombud

The Office of the Tax Ombud has a role of ensuring that the rights of taxpayer rights are protected. It is however a challenge to be such a champion of taxpayer rights when such rights have not been formally adopted and when taxpayers do not know about them. The Tax Ombud has a mandate to provide information to

taxpayers about his/her mandate. It is the responsibility of the Revenue Authority to educate taxpayers about their obligations as well as their rights. However as the enforcer of such rights the Tax Ombud also plays a role in educating the Taxpayers about their rights. One challenge that is faced by the OTO is that there is no adopted Service Charter or Taxpayer Bill of Rights that has been formalised. It cannot be possible to publicise and educate Taxpayers about their rights unless if they are published. Another challenge is lack of financial resources to do educational campaigns such as mass media and roadshows.

5. The role of Tax practitioners

Due to the nature of their work, which is mainly to handle the tax affairs on behalf of their clients (taxpayers), Tax Practitioners are one such grouping which always advocates for Taxpayer Rights. This is because most of them are specialists in the areas of Tax and Tax Law and can therefore confidently challenge SARS if they are of the opinion their clients' rights are being violated. But, how about ordinary taxpayers?

Due to a low level of financial literacy, many South Africans do not understand how the Tax system works and would usually rely on the Revenue Authorities' officials as well as trained Tax Practitioners to help them with their Tax matters. Taxpayers rarely get to have their rights explained to them. However, they know that they have to comply, because the message of the Revenue Authorities speaks mainly about compliance. There is no balance between informing taxpayers about their obligations and informing them about their rights. Taxpayers cannot be able to

enjoy these rights unless efforts are made to educate them about their rights in the same light that they are informed about their obligations.

6. CULTURE OF ENFORCEMENT/ SERVICE AND COOPERATIVE COMPLIANCE

With a high level of non –compliance and the pressure to meet the set targets of collecting revenue, the revenue authority seems to have adopted more of an enforcement approach rather than exploring cooperative compliance through taxpayer education and good service. Both the initiatives of enacting the Tax Administration Act, which brought into being the Office of the Tax Ombud, and the establishment of a Complaints Management Office, are good steps towards the realisation of taxpayer rights.

However for these Offices (OTO & CMO) to champion taxpayer rights, such rights must be adopted in the form of a Service Charter or a Bill of rights. Lack of clarity on the taxpayers' Service Charter and Bill of Rights makes it difficult for the OTO and CMO to provide the necessary education to Taxpayers about their rights.

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