

## SOMETHING TO DECLARE

# Full disclosure is of importance when settling disputes



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SARS is bound to secrecy with regard to any information that is disclosed about the taxpayer's affairs

**I**N LAST month's column we considered the circumstances under which the South African Revenue Service (SARS) will consider settling a customs dispute.

We will now consider what the procedure is to conclude such a settlement.

The taxpayer must at all times disclose all the relevant facts in the discussions during the process of settling the dispute. SARS will be bound to adhere to the secrecy provisions contained in the Customs Act with regard to any information that is disclosed to SARS about the taxpayer's affairs. SARS will not be allowed to disclose the terms of any agreement concluded with a taxpayer under the Customs Act to third parties unless authorised by law or by the taxpayer concerned.

The Customs Act contains a general secrecy clause which provides that the Commissioner or a customs officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except in the performance of his or her duties under the Customs Act or by a court order.

The settlement will be conditional upon full disclosure of all material facts that are known to the taxpayer at the time of the settlement. The settlement must be reduced to writing by way of a settlement agreement concluded between SARS and the taxpayer. SARS will prescribe the format in which the agreement must be drafted.

The following details must be included in the agreement:

■ How each issue was settled;

- Relevant undertakings by each party;
- Treatment of that issue in future years;
- Withdrawal of appeals; and
- Arrangements for payment.

The agreement will represent the final agreed position between the parties. It will also be in full and final settlement of all the specified aspects of the dispute in question between the parties. If the dispute is not settled, the Commissioner is obliged to explain to the taxpayer what his or her further rights are regarding the institution of legal proceedings.

SARS is obliged to keep a register of all settled disputes. SARS is also obliged to document the process in terms of which each dispute was settled. This document must be signed by SARS and the taxpayer.

SARS must provide a summary

annually of all disputes concluded by it to the finance minister and the auditor-general. The report will not disclose taxpayers' identities. It will specify the details of the number of disputes settled; and the amount of revenue foregone or estimated amount of legal costs that were saved due to avoiding litigation by settling.

Once the agreement is concluded, SARS will be bound to adhere to the terms thereof unless any material facts were not disclosed to it or if there was fraud or misrepresentation of the facts by the taxpayer. If the taxpayer does not adhere to any arrangement regarding payment, SARS may recover any outstanding amounts in full.

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