Bill of rights is key to Davis tax proposal

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The Davis tax committee released in March its closing report on the work completed over almost five years. The committee was advisory in nature and has only made recommendations to the finance minister.

Regarding the advisory nature of the committee and that any recommendations of the committee will require legislative amendments, it is possible to evaluate the extent to which any changes to the tax system have been implemented or are likely to be implemented.

The committee felt that it was within its remit to examine certain key aspects of the tax administration model, as the highly acclaimed Katz commission did in the 1990s, but only in cases where these aspects affect the implementation of certain tax policy recommendations.

It also felt that this was an opportune time (about 20 years later) to review the Katz Commission's recommendations, which were implemented and underpin the current tax administration model.

The committee examined the following tax administration areas:

- Whether the governance and accountability model for SARS, as proposed by the Katz Commission, is still relevant. This included the question of the rights of taxpayers (increasingly relevant around the world) and the efficacy of the current Tax Ombud model.
- Whether the current structure and operations of SARS is congruent with the recommendations by the DTC, especially with regard to base erosion and profit shifting (BEPS), corporates, small businesses, and high net worth individuals.
- Whether SARS has the correct mechanisms to deal with illicit financial flows from an integrated tax and customs perspective.

Recommendations

One of the more interesting recommendations made by the committee is the need for a taxpayer bill of rights. The committee recommends that there is a need for a bill of rights to not only guarantee taxpayers' rights in their interactions with SARS, but also to make SARS responsible in its dealings with taxpayers and regulate interactions and expectations of the relationship between SARS and taxpayers.

The bill of rights does not create new rights, but only makes existing rights more accessible to taxpayers and their advisors as well as to SARS and their officials.

A further consideration that is unclear is whether the bill of rights will include rights relating to administrative fairness.

The bill of rights is a proposal and it will be of interest to see if there are any future developments in this regard.

Disclosure

The tax administration subcommittee also provided advice to the finance minister on the feasibility of the Border Management Agency Bill as well as a potential special voluntary disclosure programme after consulting with the governor of the Reserve Bank and SARS.

The disclosure programme recommendation was accepted and implemented. The programme has yielded about ZAR3 billion to date.

A corporate income tax report was submitted to the finance minister and published on the committee's website in April.

It covers areas such as efficiency of the corporate income tax structure, average and effective corporate income rates in various sectors of the economy, and the efficacy of tax incentives.

Although the committee recommends that a reduction in the rate of corporate income tax cannot be sustained, it does recommend that the dividends tax rate be reduced back to the original 15% as opposed to the current 20%. The increased dividends tax rate creates concerns from a black economic empowerment perspective.

The committee also recommends that the capital gains tax inclusion rates be adjusted to compensate for the effects of inflation.

An important recommendation relates to the corporate restructuring rules as contained in the Income Tax Act regarding the complexity in implementation and anti-avoidance provisions and failure to consider cross-border issues sufficiently.

There are no current provisions to implement any of these proposals and it will likely take some time before any such changes are made.

Too onerous

The report states that the current tax revenue stream is under severe pressure to meet and sustain the needs of the country, including future developmental needs.

According to the committee legislation has become far too onerous and complicated and the associated tax compliance and reporting requirements are becoming too burdensome and expensive to comply with. The report states that ''there is a need for simplicity and certainty to encourage local and foreign direct investment'.

Given the wide scope and extent of topics covered by the committee, it is likely that the content of the various reports issued by the committee will be considered in future.

The taxpayer can well expect that legislative changes will be proposed, and it will be a question of whether the recommendations are accepted or modified regarding the comments received in preparing the relevant legislation.

The concern is that due to all the recommendations and analysis involved, the tax legislation will not necessarily be simplified. It will be interesting to watch the changes in legislation and processes.

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