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Tax talk

Compliance is the new tax planning

The dangers of getting compliance wrong can be crippling.

Greig Sinclair | *14 September 2015 13:55*

If your tax advisors are still in the business of finding loopholes to lighten your tax load, your tax planning tactics are out of date. SARS has spent the last two decades and vast resources closing down tax schemes and structures that companies and individuals were using to minimise their tax burden. A more cost-effective tactic that SARS adopted in combating tax evasion was to lower the effective tax rate to a rate acceptable to the taxpayer, at the same time increasing the penalties for misbehaviour.

Did you know?

- In 1994 the tax for individuals earning the inflation-adjusted equivalent of R1million in today's terms had an effective rate of 39.6%, and companies 49%. Today an individual taxpayer earning R1million has an effective tax rate of 31.3% and companies tax at 38.8% (if Dividend withholding tax is included). Over the last 20 years of democracy individuals in the highest marginal income tax bracket have saved 8.3% and Companies 10.2% in their effective tax rates.

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The catch is: be compliant! The dangers of getting compliance wrong can be crippling and if you break the rules, you can be heavily penalised. Fortunately, people's attitudes to income tax are changing – long gone are the days where tax planning was conducted with a dash of subterfuge and the hope that SARS would not catch you out. A healthy moral issue has emerged, that of respecting income tax as a law and SARS as an autonomous tax collection unit. The consequences of transgressing is hefty fines and penalties, stress and time wasting as well as possible criminal sanction if found out.

From around 2006 and the introduction of e-filing there was a shift from the taxpayer preparing their own tax returns and having SARS assess them to the taxpayer preparing, self-assessing and submitting the tax return and then sitting back and waiting for SARS to approve or decide on the need to audit. The change in emphasis is subtle but by getting taxpayers to asses themselves before submitting returns, this frees up SARS resources to conduct investigations. For salary-earning individuals an audit is rare, but for business owners and provisional taxpayers regular audits are more common, as SARS has developed software programs for assessing risk and has created extra resources as described above. Our experience is that requests for the taxpayer to submit additional supporting documentation relating to a return are increasing in frequency.

SARS is on the ball and has even taken to doing lifestyle audits on individuals who have been flagged by their system. SARS has access to the new motor vehicle sales database and they are also capable accessing the deeds office and doing searches on property purchases linked to individuals and companies, combing through assets and investment managers' portfolio registries and bank accounts. Bottom line is that if your net asset value increases at a rate that is higher than the income declared on your tax returns, it won't be long till SARS starts looking into your financial and tax affairs.

This modern tax regulation system is long overdue. The tax savings that were obtained incorrectly in the past have now been given to the taxpayer by reducing the effective tax rates over the last twenty years – beware though, there is no room for aggressive tax planning that falls foul of the law. This means that tax compliance has become the new tax planning, as avoiding penalties is the most important part of a good tax plan. When contemplating arranging your affairs to minimise your tax (which is perfectly legal) you need to answer one simple question: Would you be happy for SARS to see every detail of the tax plan that you are contemplating? If the answer is no, then your tax planning techniques are simply out of date.

Tax planning is no longer an encouragement to find a loophole to avoid payments; modern tax planning requires compliance with SARS.