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## THE STRUGGLE TO ACHIEVE CORPORATE TAX COMPLIANCE

*It's becoming tougher to do, but companies had better ensure that they comply fully with our tax laws, says Michael Honiball.*

The 2002 budget speech, coupled with subsequent comments by the South African Revenue Service (SARS) commissioner, Pravin Gordhan, contained a strong message for corporate South Africa: comply with tax law or meet SARS in court.

This message comes after a bumper year for SARS tax collections. SARS collected R15 billion more in tax than had been budgeted for,

R14 million of this excess being from companies.

Yet most of the tax relief in this year's budget was given to individuals, where there

was a shortfall in budgeted tax collection.

Why is this? SARS' attitude is clear: Gordhan says that corporate South Africa has "not come to the party" in meeting its tax compliance obligations, and consequently, he implied, companies did not deserve a tax rate reduction.

With reports in the press of complaints of harassment by SARS against them, coupled with SARS'

determination to close the so-called "tax gap," corporate taxpayers are clearly in for a rough ride this year. This comes after three years of major tax amendments which have caused com-

panies to struggle to keep up with correct tax compliance. For example, the new Section 73B of the Income Tax Act prescribes the capital gains tax information that must be included in the annual corporate tax return, while Section 70B applies specifically to financial instrument information. This information is so comprehensive that SARS has had to back down and insert an amendment that the commissioner has a discretion to determine which information is required, giving taxpayers a chance to modify their systems to produce the comprehensive information originally required.

### Only for small business

In light of this complexity, the 2002 Budget Review Document reports that an attempt will once again be made to simplify South Africa's tax system. Of course, any simplification of our currently complex tax system is to be welcomed. However, it seems that simplification initiatives will be limited to small business, and that big business will continue to be burdened by increasing reporting and administration compliance requirements.

In a report of a recent OECD survey, it was noted that taxpayers in the USA pay over 20 times more in compliance costs than what the US government spends to administer tax law. This is attributed directly to the complexity of the US tax system. South

Africa's tax system is currently not nearly as complex, but all indications are that for big business, the complexity, and therefore compliance burden, will increase.

While our tax system remains as complex as it is, SARS' new policy of issuing so-called Interpretation Notes in addition to Practice Notes is to be welcomed. Quite what the difference is between them is uncertain.

Presumably, an interpretation note sets out SARS' view of what the legislation says, while a practice note sets out how SARS will apply the law. Neither has binding force of law. This does not mean that they should be ignored, however. On the contrary, there is an increasing body of opinion (and some supporting case law) which holds that SARS is bound to act in accordance with its own practice. This is based on the common law doctrine of legitimate expectations, in terms of which a taxpayer may rely on a practice of SARS that is generally prevailing. Then, of course, there is also the South African constitution, which provides that administrative action must be fair and within the law.

It remains to be seen whether big business will cope with these complexities. At least corporate executives have the comfort of knowing that if they comply with the law, the law will be there to protect them from inappropriate harassment by SARS. ■

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