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Ensuring fairness

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Ethical Behaviour by Taxpayer and Tax Collector

Ethical behaviour by both the taxpayer and tax authority has long been a subject of interest. Revenue authorities are tasked with collecting the maximum amount of tax due to the state; and taxpayers are obliged to comply with applicable tax laws and make honest and full disclosures on their returns and pay their taxes due, and on time. It is, however, rare to find maximum co-operation between these two role players.

Given the fact that maximum tax must be collected, the question arises how best to extract it from the tax payer. The tax authority can employ various methods; drastic and high handed methods, or a stick and carrot approach; we don't have to go into that. What we do know is that taxpayers need to be motivated to pay tax, in a manner that would achieve maximum compliance. Vanessa Johnson reminds us that *"the intrinsic motivation for individuals to pay taxes, or tax morale, is multifaceted and complex"* and that it is *"related to many aspects of tax administration and government; including: civic duty, trust worthiness of tax agencies, representatives of the tax administration, government corruption, procedural justice, and perceived value of public money's use, including complaints resolutions."*¹

Central to all this is the issue of ethical behaviour by both role players: the taxpayer and the tax collector.

¹ "Taxpayer Attitudes vis-à-vis the Tax Administration: Differentiate and Classify Taxpayer Behaviours" Case Study 2.1



I would say that most people accept that they should pay; but challenges may arise regarding the extent to which they are prepared to pay what is actually due. It has been argued, and I think correctly, that one of the sources of a positive disposition on the part of taxpayers is the force of good ethics. An integral part of good ethics is honesty, and a sense of civic duty. From some of the reports received, there is a woeful lack of honesty on the part of not only individual taxpayers, but especially multinational corporations operating in Africa. Sophisticated schemes are devised to avoid tax – an ethical issue. For example, while expatriating profits to avoid tax may not necessarily be illegal, it raises serious ethical questions whose implications are often underestimated, and which give rise to all sorts of problems such as labour unrests; couple that with obscene remunerations to executive staff. In the process, the relationship with tax authorities is also bedevilled and trust is destroyed. Fortunately, from our stakeholder engagements, we gather that there is a paradigm shift in large accounting and auditing firms to move away from seeking to create the biggest tax benefits for their clients while hiding behind the fact that the schemes fall within the confines of the law. This is welcomed as it shows that tax practice in South Africa is intent on leading the way towards creating a culture of tax morality, which promotes voluntary compliance.

As said earlier, ethical conduct on the part of the tax authority is also important. While it is accepted the world over that tax authorities need to have immense powers to fight fraudulent conduct, one of the insurances against the abuse of such powers is an ethical approach on the part of the officials. Here we widen the concept to include amongst others fairness, equal treatment of the like, etc. Taxpayers would be hesitant to open up to a tax authority with a dubious and unethical track record. In my experience, a number of taxpayers are, rightly or wrongly, distrustful of at least some of the tax officials; sometimes they perceive them as being corrupt, malicious, and even vindictive. Very often these negative perceptions afflict the entire system.



Crucial to the inculcation and nurturing of good ethics towards tax payment, is the knowledge that collected tax will be used properly, and for the benefit of the people in general, and not only the well connected. Corrupt use of public funds, or their improper use, lessens the feeling of guilt on the part of evasive taxpayers, because they give all these ills as an excuse not to pay. No wonder the more corrupt the government, the less tax is collected – a recipe for a failed state.

It is essential that taxpayers are treated in an even handed manner. The stated criteria must be applied without favour. It was reported some time back that there had been attempts to exempt the ruling party from paying tax duty in respect of some T-shirts from China. That would have been very unethical if not downright corrupt. It would erode ethics as a basis for compliance. Speaking of even handedness, a tax authority may be faced with a genuine dilemma: to grant or not to grant amnesty. While amnesty may encourage deviant taxpayers to comply, it may erode the moral basis in those who comply; the problem would be exacerbated if amnesty is regularly given. But tax amnesty *per se* still retains a strong element of ethical content and, properly applied, may encourage compliance.

There is one thing I like which SARS has been doing. It has gone to great lengths to show taxpayers how their taxes have been used to benefit society: for example, the building of schools and infrastructure. This heightens a sense of civic and moral duty. It also demonstrates to taxpayers that they too would stand to benefit. A normal decent person should find it unconscionable to enjoy the fruit of the effort of others, while withholding their own harvest for themselves.

To sum up, there are at least four stakeholders responsible for creating an ethical tax system. The first two are taxpayers and tax authorities. Government institutions also play a key role to ensure that taxes are used properly. Tax practitioners, in their role as advisors to taxpayers, should promote ethical behaviour and tax morality rather



than simply chase the biggest tax benefits for their clients at all costs. The common objective should be the creation of an ethics loaded tax regime.

If tax morality level increases, perceived imbalances between taxpayer rights and the powers of a tax authority as well as frustrations experienced by all parties in the equation, would decrease.

Finally, where does all this leave the Office of the Tax Ombud? It is important for taxpayers to know that there is a third impartial and independent institution to take their complaints to against the tax authority; that is where the OTO comes in. They should have recourse if their sense of civic and moral duty is being exploited or abused.

There is indeed a multiplicity of factors which serve to engender ethical conduct, or erode it. It is an important tool towards tax compliance.

Judge Bernard M Ngoepe
Tax Ombud