

The Role of a Tax Legal Specialist within South African Revenue Service during initiation of Tax Audits

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Abstract

The problem of tax compliance and tax evasion continually results in a plethora of impediments for tax regulators in South Africa and globally. An alarming number of corporate governance scandals always have an element of tax compliance issues in them. The state of unresolved SARS Audit cases, costly litigations and prolonged arbitration from the tax Ombudsman is an issue of concern and subject of this study. This is further exacerbated by technicalities emanating from legal perspectives, statutory dimensions, and regulatory frameworks. It is for this reason that this seeks to answer the question “What is the role of a tax legal specialist within SARS during initiation of tax audits?”

A comprehensive literature analysis, hinged upon mapping review, which is a typology of systematic methodology was conducted to respond to the above-mentioned research question. Mapping reviews are useful when researchers seek to understand literature on a particular phenomenon which might provide a basis for further investigation. The inclusion/exclusion criteria required articles to be between 2014 and 2020 and were supposed to be focused on tax evasion, tax avoidance and current means to combat these classified fraud activities. This resulted in 10 studies included as part of the review. Analysis followed thematic approaches using the COSTA QDA Technique on webQDA cloud-computing software.

The study found out that effectiveness and efficiency tax audits was handicapped by lack of competent tax legal audit specialist.

Key words: Tax Authority, Tax Audit, SARS, Taxpayers, Legal tax audit specialist

1. Introduction

The development of any nation depends on the amount of revenue generated and applied by the government on public infrastructure for the benefit of the citizens of that country. No economy can grow without adequate resources for infrastructural development, provision of power and public utilities for optimal service delivery (Ebimobowei & Wosowei, 2016). Taxes and tax systems are fundamental components of any attempts to build productive nations. This becomes even more essential in the case of developing nations (Olaoye & Ekundayo, 2019). Taxation has been viewed as a major vehicle for the long-term development of infrastructures of the state (Olaoye, Ogunleye & Solanke, 2018). The fulfilment for the mandate of tax agencies is predicated upon competent revenue collection and compliance thereof. This article will focus on the role played by the tax legal specialist in enhancing anticipated compliance during the initiation of tax audits.

According to Ebimobowei and Wosowei (2016) tax audit is the independent examination of the returns submitted conducted by competent and authorised individuals. In terms of the Organization for Economic and Co-operation and Development (OECD, 2006), tax audits are often more detailed and extensive than other types of examinations, such as general desk checks, compliance visits/reviews or document matching programme. A distinction is hereby postulated regarding tax investigations and tax audits within a tax revenue collection agency. Tax investigation refers to a more detailed and painstaking examination of the taxpayer's records. It is usually triggered by suspicion of fraud, evasion, and related offences (Enofe & Obazee, 2019). As mentioned before, the focus of the study will be on tax audit initiations and the importance of inclusion of the tax legal specialist at the inception of such an initiation.

The need for including tax legal specialist when conceptualizing tax audits is predicated by continuous complexities often resulting in expensive litigation and non-recovered costs, a situation that has become a perpetual phenomenon at the South African Revenue Service (Adendorff, 2019). This situation as a problem is not unique to South Africa alone, but has been reported as a persistent challenge for revenue agencies in countries such Nigeria (Ibadin & Eiya, 2013); Malaysia (Kasim & Saad, 2019); the United Kingdom (Campbell & Helleloid, 2016; Germany (Blaufus, Braune, Hundsdoerfer & Jacob); China (Wang, Xu, Sun & Cullinan, 2020). Literature further indicates that while these authorities are aware of the problem, efforts that are in place to curb the scourge and perpetuation of the phenomena, current processes merely end up in costly litigations. These maybe attested in Case No VAT1558 : The Commissioner for the South African Revenue, (2018) and also recently in Case No783/18: Africa Cash & Carry (Pty) Ltd v The Commissioner for the South African Revenue Service, (2019). These cases do not seem to be a fruitfull intervention for mitigating tax avoidance and tax evasion problems as envisaged by tax revenue agencies. Instead, they continued to be perpetuate a problem that result in

unfruitful and wasteful expenditure (Das-Gupta, Ghosh & Mookherjee, 2004 ; Mohd, Mohamad & Mohd,2013)

Scholars such as Swanepoel and Meiring (2017); Storm and Coetzee (2018) have suggested a number of recommendations that could be applied over and above current procedures that are used by South African Revenue Service. Some of these recommendations resonates with the intention of this article whereby deployment of internal legal capacity would make a feasible approach to solving the problem at the beginning of the audit process. The work of Storm and Coetzee (2018) suggest that the problem should be dealt at statutory formulation process whereby it is recommended that Parliament should enact a resolution attached to the current legislation whereby internal legal resources are involved in tax audits. These views are further corroborated in Mebratu (2016); Nyang'au (2016); Enofe and Obazee (2019) whereby various efforts are postulated as a means to intergrate existing legal remedies within the revenue collection agencies in tax audit initiatives. These scholars recognised the impact of low tax compliance and unresolved legal tax disputes.

Low tax compliance is a matter of serious concern in many developed and developing countries, limiting the capacity of their governments to raise revenues for developmental purposes, (Mohd, et al., 2013). It is commonly acknowledged that many factors contribute to this weakness: corruption, a large informal sector, weak legal systems, ambiguity in tax laws, high marginal tax rates, paucity of adequate information and accounting systems, a culture of non-compliance, and an effective tax administration. Tax audit are therefore initiated by tax authorities to instil compliance by the taxpayers (Das-Gupta, et al., 2004). This study, therefore, seeks to answer the question, “What is the role of a tax legal specialist within SARS during initiation of tax audits?”

2. Method

A mapping review, which is a type of the systematic review methods was used to arrive at conclusions of this study (Grant & Booth, 2009). Mapping reviews are useful when researchers seek to understand literature on a particular phenomenon which might provide a basis for further investigation (Costa, 2020). After critical appraisal of articles selected purposively (Benoot, Hannes & Bilsen,2016), 10 articles were included for review. The inclusion/exclusion criteria required articles to be between 2014 and 2020 and were supposed to be focused on tax evasion, tax avoidance and current means to combat these classified fraud activities. For this study, no formal appraisal tool was used as there is no consensus within the qualitative evidence synthesis tradition regarding quality appraisal tools (Magid & Vanstone, 2018). Close analysis of literature focussed on understanding of current knowledge and sought to explicate the potential extent of theoretical gaps, methodological gaps, and practice gaps. This was done by organising articles in a table format to provide a clear picture of the gaps.

This study used webQDA software (Machado, 2020 ; Costa, Breda, Pinho, Bakas & Duro, 2015) to analyse the data collected using the COSTA QDA (Costa, 2020.) methodology. Considering the concerns and conclusions raised in such a review, the researcher further examined data by triangulating these findings with theory. It is a method for thematic analysts to identify themes, concepts, and meanings, as well to categorize data (Krippendorff, 2013). This sort of content analysis allows for the evaluation of pre-existing theoretical frameworks (Hsieh and Shannon, 2005). A close examination of all articles provided sought to find common patterns between codes inductively extracted from data (Braun & Clarke, 2006). These codes were significant statements relating to the variables within the research question. After making these codes, they were sorted according to the axial coding stage as postulated by Onwuegbuzie, Frels, and Hwang (2016). The purpose of the axial coding was important for grouping of codes and creating themes that will be used to formulate conclusions. Enumeration of articles that were used to inform this study are depicted in Table 1 below.

#	Author	Country/Tax Authority	Method	Title	Recommendation
1	(Storm & Coetzee, 2018)	South Africa	Literature Search and Legislation. Qualitative	Towards Improving South Africa's Legislation on Tax Evasion: A Comparison of Legislation on Tax Evasion of the USA, UK, Australia And South Africa	The recommendation derived from the research is that the South African Legislature should consider adding "...crime against the Republic..." in the Prevention of Organized Crime Act or in the Tax Administration Act together with suitable penalties.
2	(Swanepoel & Meiring, 2017)	South Africa	A questionnaire was employed to investigate the morality issues associated with fraud, corruption, and tax evasion in South Africa. Quantitative	Morality associated with fraud, corruption and tax evasion in South Africa	Schools, tertiary, institutions, churches, community leaders, persons in key community roles and employers can play a vital role in establishing and improving the moral conduct of the members of a community in their interaction with other people, government, and commerce and industry. If people start to implement morality in all spheres of life, it may have a positive impact on the occurrence of fraud, corruption, and tax evasion in general and for this reason, morality should be promoted at a grassroots level, as well as at the highest level of corporate governance in South Africa.
3	(Enofe & Obazee, 2019)	Nigeria	A survey research design was adopted with responses	Tax Audit, Investigation, and Tax Evasion	It was recommended that tax audit and investigation be continuously

			<p>obtained through a well-structured questionnaire administered to staff of revenue generating agencies in Bayelsa State, Nigeria.</p> <p>Quantitative</p>		<p>applied by relevant tax authorities in Bayelsa State. Specifically,</p> <ol style="list-style-type: none"> 1. Tax audit should be carried out on a routine basis to serve as a check and a preventive tool for tax evasion. 2. Emphasis should be placed on ethics, such that tax auditors embarking on field audit will perform their duties diligently and avoid any form of collusive acts that may result in loss of revenue to the government. 3. It is important taxpayers are adequately profiled and selected for audit to avoid inefficiencies and audit delays. 4. Lastly, tax evaders and abettors should be investigated and prosecuted to ensure that revenue due to the government is not lost to evasion.
4	(Olaoyea & Ogundipe, 2018)	Nigeria	<p>Relevant data was sourced from the administration of questionnaire</p> <p>Quantitative</p>	Application of Tax Audit and Investigation on Tax Evasion Control in Nigeria	The study recommended that revenue agency should frequently engage in desk and field audit as they both contribute largely to the control of tax evasion in the country, while in the conduct of field audit and tax investigation, they must put in place adequate

					<p>machinery in the form security personnel to help protect tax inspectors to mitigate the occurrence of fracas between tax inspectors and tax evaders which makes it impact not to be felt on tax evasion control.</p>
5	(Ibadin & Eiya, 2013)	Nigeria	<p>Literature Search</p> <p>Qualitative</p>	Tax Evasion and Avoidance Behaviour of the Self-Employed Nigerians	<p>It was recommended that authorities should constantly review tax rates to reflect prevailing economic realities, make tax laws and procedures less technical, and ensure that necessary assistance is always provided.</p>
6	(Mbilla, et al., 2018)	Chana	<p>The paper used a quantitative survey design, convenience sampling technique & questionnaire as primary data collection instrument</p> <p>Quantitative</p>	Drivers of Tax Compliance Among Self-Employed in Ghana	<p>The paper recommends that government must reconsider (reduction if possible) the tax rates particularly for self-employed in Northern Ghana. Also, Government must ensure judicious use of tax revenue and equitable distribution of national wealth to ensure that all citizens derive the needed benefits from their tax obligations. This recommendation is based on Oberholzer (2005) who advocated that Government should be transparent in the utilization of taxpayers' "money"? Lastly, Government needs to intensify her regular tax compliance checks, initiate fines, and penalties on self-employed who evade taxes. This recommendation is based on the findings that economic factors and</p>

					individual factors influence tax compliance. The study also recommends that chiefs, opinion leaders, social and religious leaders in the society must join government effort to educate and inform members (citizens) on the need to be responsible by filling tax returns regularly and accurately. Festivals and social events can be used as avenues for education, information, and advocacy for member to be socially responsible. This recommendation is informed based on the findings that social factors strongly influence tax compliance among self-employed in Northern Ghana. Notwithstanding, individuals must develop personal drive to be socially responsible by filling and paying the taxes promptly. Last, government must not emphasize on characteristics of respondents in designing tax policies. Personal characteristics such as ages, level of education and sector of operation do not drive self-employed to comply with tax obligations in the Northern Ghana.
7	(Mebratu, 2016)	Ethiopia	Literature Search. Qualitative	Impact of Tax Audit on Improving Taxpayers Compliance: Empirical Evidence from Ethiopian Revenue	The results of the study are expected to contribute insights for empirical models to examine the impact of tax audit on improving taxpayer's compliance by using secondary data. Potential limitations

				<p>Authority at Federal Level</p>	<p>intrinsic in the usage of secondary data should be granted. That is, examining taxpayer's compliance by using secondary data only inclines in one side point of view. It lacks including taxpayer's view in depth manner. Nonetheless, this can have little influence on the validity of the results. Since most of taxpayers are not voluntarily disclose their views freely due to lack of knowledge, lack of awareness and other reasons, their exclusion has little impact on the validity of the results. Since tax compliance has a multi-faceted measure and theoretically, it can be defined by considering three distinct types of compliance such as payment compliance (timely payment of all obligations), filing compliance (the timely filing of any required return), and reporting compliance (the accurate reporting of income and of tax liability), further research could be done to examine in which level the impact of tax audit highly effective on tax compliance is potential avenue. The study concludes that since the contribution of tax audit on improving taxpayer's compliance is significant among other measures, revenue authorities of the country and other concerned parties should</p>
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					give more emphasis on the role of tax audit by fulfilling the required staff and qualifications to improve taxpayer's compliance and thereby increasing countries revenue through tax.
8	(Kasim & Saad, 2019)	Malaysia	This study utilized the tax return form data from the Inland Revenue Board Malaysia (IRBM) Qualitative	Determinants of Corporate Tax Avoidance Strategies among Multinational Corporations in Malaysia	Moreover, the tax enforcement can be implemented efficiently by using analytics as described in this study which could reduce the administrative and compliance costs of the tax authority.
9	(Harelimana, 2018)	Rwanda	Both Primary and secondary data was used. Mixed Methods	Effect of Tax Audit on Revenue Collection in Rwanda	The study recommends that the tax audit reports be submitted to the public and a standard procedure to be found in choosing the companies that random audit is conducted. This is to assure the public that those audited randomly are not eyed or discriminated but at least they see the result and be aware of the procedure used in the selection. The public is also urged to submit their taxes fully and seek clarification wherever they are not sure of what to do. For further research, this study examined the effects of tax audit on revenue collection over a period of less than 5 years. There is a need for further studies to carry out similar tests for a longer time. Due to the importance of having high quality audit, further studies

					should explore the areas that relate to audit quality such as customer service satisfaction, customer loyalty, auditors switching and auditors' turnover. This will go along incorporating quality and independence of management and board membership, internal audit considerations. Furthermore, there is need for a study on how the size of a company influences the auditing as there is variation for various organizations based on the size. Further, a study should be conducted on the procedures followed during audit to see if all the Rwanda Revenue employees follow the same procedures or a standard procedure is in place and adhered to.
10	(Nyang'au, 2016)	Tanzania	The researcher employed both quantitative and qualitative approaches. The researcher employed both primary and secondary methods in collecting information. Mixed Methods	An investigation of the causes of tax evasion and tax avoidance in Tanzania: A case study of Magu district	It was observed that to overcome problems of tax evasion and avoidance the following steps should be taken. i.e., i. Provision of education to the taxpayers on the significance of paying tax to the Government. ii. Keeping marginal rates of tax low so as encourage taxpayers not to evade and avoid tax.

- **Theme Two:** institutional factors (the role of the tax authority, simplicity of the tax returns and administration and probability of detection).
- **Theme Three:** social factors (ethics and attitude, perceptions of equity and fairness, political affiliation and changes on current government policy, referent groups); and
- **Theme Four:** individual factors (personal financial constraints, awareness of offences and of penalties).

These themes are further discussed in the next session, with implications and recommendations.

4. Discussion

Thematic expressions, which were key and overarching in this study, following a rigorous thematic analysis (Costa, 2020; Grant & Booth, 2009) are hereby discussed together with their implications.

4.1 Theme One: economic factors

SARS continues to focus on businesses and activities engaged in transfer pricing as one of the high-risk areas identified in the compliance programme. During 2015/16, SARS completed eight transfer pricing audits, achieving a 100% success rate, and raising R790.6 million in taxes. The increased tax compliance during 2017/18, SARS achieved audit coverage of 14.47% of the tax register against a target of 12.00%. During the 2017/18 tax under review, SARS conducted a total of 51 audits, 43 business reviews and factory visits, collected 10 outstanding returns, and banked R228 263 218.45 in revenue. (South African Revenue Service, 2018). SARS was able to expand the High-Net worth Individual's (HNWI) database from 4 417 to 5 951 individuals in 2015/16. SARS is utilising an enhanced methodology to identify HNWIs based on their declarations and by matching various third-party data sources. The system still has flaws in view of ensuring compliance.

4.1.1 Implications: Ontological perspectives of Tax System in South Africa

A Tax Audit would serve to ensure that the books of accounts and other records are properly maintained; faithfully reflect the income of the tax payer and claims for deduction correctly made by him/her; help in checking fraudulent practices; and facilitate the administration of tax by a proper presentation of accounts before the tax authorities and considerably saving the time of assessing officers in carrying out routine verifications like checking correctness of totals and verifying whether purchases and sales are properly vouched or not, thereby their time could be utilized for attending to more important investigational aspects of the case (Reagan, 2015).

Tax audits in South Africa play an important role in revenue collection, detect fraud; detection of high-risk tax refund claims and ensuring that taxpayers are compliant. Taxpayers, even those without complex transactions must deal with requests for information from SARS at some point in time. The

basis for audit findings, and subsequent raising of assessment by SARS was the subject of a recent case heard by the Supreme Court of Appeal of SARS vs Pretoria East Motors (Pty) Ltd on 12 June 2014 (Pretoria East Motor case). Considering the abovementioned case, this article briefly considers what to subject, demand and accept as part of such a request for information or audit in terms of the TAA.

The TAA makes a provision for two types of audits. The first, a so-called desk audit which is covered by section 46 of the TAA that deals primarily with requests for relevant information. The second type of audit is a field audit as contemplated in section 48 of the TAA. The TAA is not prescriptive as to the exact nature of the documentation or information to be kept by a taxpayer.

4.2 Theme Two: institutional factors

The filing compliance of HNWI's declined between 2011/12 and 2013/14 with on-time filing decreasing from 82% to 72% whilst late filing increased from 8.9% to 13.3% in the same period. With respect to payment, compliance has consistently improved with on-time payment compliance increasing from 64% in 2011/12 to 75.4% in 2015/16. The main risk areas identified include under-declaration of income and failure to declare income or gains on sale of property or other assets. In 2015/16, SARS completed audits as follow:

- Completed 81 audits of HNWI's and achieved an overall success rate of 75.3% which raised additional revenue of R224.5 million
- Completed 138 audits on trusts associated with HNWI's and achieved an overall success rate of 51% and raised additional revenue of R8.2 million and recovered R76.8 million debt from HNWI's and referred one trust case for criminal investigation (South African Revenue Service, 2016).

4.2.1 Implications: Number of Cases Referred to Objections, Appeals, Tax Court/Board and Tax Ombudsman

SARS resolves appeal cases on a fair and reasonable basis. This is done through the Alternative Dispute Resolution (referred to as "ADR") process, the Tax Board or litigation processes. Governance support is also provided to regional and head office committees. The following cases were dealt with : 1 415 cases were withdrawn by taxpayers, 102 cases were referred to be dealt with through the Tax Court process, 21 cases were referred to the Tax Board, 13 cases were referred to a branch, 85 Customs and Excise cases were terminated, 422 cases were settled, and 4,984 cases were conceded, 465 were partially conceded, out of the 69 cases that were finalised through the Tax Board process, 6 were upheld, 7 were partially upheld, 15 conceded, 16 withdrawn, 3 referred for further appeal to Head Office, 15 dismissed and 7 settled. The number of finalised cases were 7 042 appeals through the ADR process (South African Revenue Service, 2019).

During the 2017/18, 6 634 appeals were dealt with through the ADR process and 205 revenue and customs, and excise matters finalised through the litigation process, of which 86.83% were successful (South African Revenue Service, 2018). The monetary value of the unaudited overdue taxpayer debt or uncertain debt for objections and appeals amounted to R21 596 422 316 (2017/18); R23 559 982 364 (2016/17) and R17 898 818 225 (2017/18) and R26 286 831 315 (2016/17). The total amount of debt under dispute is R39 495 240 541(2017/18) and R49 846 813 679 (South African Revenue Service, 2016); (South African Revenue Service, 2018). The inclusion of the legal tax audit specialist will reduce cases being referred to committees mentioned in the study and will drastically reduce the cost of revenue collection and improve better revenue collection.

According to the Office of the Tax Ombudsman's annual report, queries received more than tripled, increasing from 3 771 in the 2015/16 financial year to 12 204 in 2016/17 and 11 952 queries and 4 822 complaints were received during 2018/2019 financial year (South African Tax Ombudman, 2019). According to the report, some of the complaints and queries are SARS revising assessment without issuing a letter of findings, incorrectly invalidating the notice of appeal and request for remission of penalties or interest or penalties and interest, unfairly levying administrative penalties on taxpayers earning below the threshold.

The Australian Tax Office received 1,391 complaints via the Inspector-General of Taxation and Taxation Ombudsman (IGTO) in 2018–19. Of these, 823 complaints (59%) had not previously been lodged with us and were subsequently transferred back to our complaint-handling process 568 complaints (41%) were referred to us to provide a response to the IGTO for resolution with the client (Australian Tax Office, 2019). In 2018/19 tax year, the Canadian Ombudsman received a total number of 1, 920 complaints. Complaint volumes have remained consistent with the previous fiscal year. The Office closed 1,971 complaints, helping to meet the Minister's request and our goal to reduce the backlog of open complaint files (Canadian Office of the Tax Ombudsman, 2019).

The UK operates a two-tier internal complaints process. However, if a customer remains dissatisfied with its decision, they can refer their complaint to the independent Adjudicator's Office (AO) and then to the Parliamentary and Health Service Ombudsman (PHSO). The AO received 6% more complaints about HMRC than the previous year. They investigated 1,066 cases with 865 requiring a decision. The Adjudicator upheld in part or in full 35% of these in the customers' favour, down from 39% in the previous year. Of the 53 complaints which were investigated by the PHSO in 2017-18, the latest year for which figures are available, no cases were fully upheld by the PHSO and only two were partially upheld (HMRC , 2019).

4.3 Theme Three: social factors

These requirements should be read considering the burden of proof that rests upon the taxpayer. In short, the burden of proof requires that a taxpayer should be able to prove on a preponderance of the probabilities that an amount received is not taxable, that the taxpayer is entitled to a deduction or rebate or that an amount should be taxed at a particular tax rate. The scope of this provision is relatively wide, causing this to arguably be quite a gruelling task for a taxpayer who must gather and maintain such information. The last aspect related to information to be provided to SARS is the definition of ‘relevant material’ to be submitted in terms of section 46 of the TAA. This term is defined as “any information, document or thing that is foreseeably relevant for the administration of a Tax Act as referred to in section 3”.

4.3.1 Implications: Taxpayer Perceptions, awareness, and tax competencies

It is important to note that administration of a Tax Act extends beyond merely checking whether a return has been completed correctly. To be prepared to provide that should be kept in terms of the TAA to SARS when requested, it is imperative that a taxpayer is aware of the requirements of the legislation that affects the business. The type of information to show adherence to these requirements should be considered pro-actively, possibly together with the advisor. It is submitted that the exact nature of this information could vary from taxpayer to taxpayer and would depend on the nature of the taxpayer’s business. Failure to identify and keep such information could, and is likely to, result in assessments to be raised on the lack of the taxpayer being able to fulfil its burden of proof.

In the Pretoria East Motors case, the taxpayer operated a car dealership on behalf of Toyota South Africa. The taxpayer was audited for its 2000 to 2004 years of assessment. During this period, the taxpayer, due to the relationship with Toyota, used a complicated accounting system that provided certain information on a branch-basis for management purposes. This information showed certain internal transfers as income for the branch from the rest of the group, even though no external sales took place. From the evidence, it appeared as if certain assessments of these transactions were raised by the SARS auditor where she did not fully understand the transaction on the basis that the taxpayer still had an opportunity to disapprove these findings. The Court however observed the following:

“The raising of an additional assessment must be based on proper grounds for believing that, in the case of VAT, there has been an under declaration of supplies and hence of output tax, or an unjustified deduction of input tax. In the case of income tax, it must be based on proper grounds for believing that there is undeclared income or a claim for a deduction or allowance that is unjustified. It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as it is obliged to do. It is also the only basis upon which it can, as it must provide grounds for raising the assessment to which the taxpayer must then respond by demonstrating that the assessment is incorrect.”

From the above judgement extract, two aspects that the taxpayer can demand are evident. In the first place, a taxpayer can reasonably expect a SARS auditor to only raise an assessment if proper grounds for doing so exist. Raising an assessment should not be an exercise to overcome a situation where the tax auditor is unable to determine whether a taxpayer's treatment of a transaction was correct or not, and now leaves it to the taxpayer to explain in objecting to the assessment. The second aspect which is supported by section 42 of the TAA, is that a taxpayer can demand a document that contains the outcome of the audit and specifically the grounds for the proposed assessment. Section 42(3) of the TAA states that a taxpayer then has 21 business days to respond in writing to the facts and conclusion set out in the findings document.

It would be wise for a taxpayer to assist a tax auditor in understanding its business and the commercial realities to avoid assessment being raised on a similar basis to those in the Pretoria East Motors case. The opportunity to respond in writing to audit findings offers a further chance to ensure that any misunderstandings or flaws in the analysis of a SARS auditor are reduced. The importance of involving a legal tax audit specialist at this stage of the process, rather than when the objection has been filed or even later in the process, is obvious. Whether a taxpayer is audited or not, it is not necessarily within the control of the taxpayer or their tax practitioner. Certain criteria seem to trigger tax audits, for example when claiming a tax refund. The TAA however states that SARS may select a person for inspection, verification or audit based on any consideration relevant for the proper administration of a Tax Act, including on a random or a risk assessment basis. A taxpayer can therefore not argue that it did nothing wrong and should therefore not be audited. SARS's weakness as stated in its strategic plan are real and involve being under-staffed and under-skilled with the inability to distinguish between disputed and undisputed debt and very little automation (South African Revenue Service, 2018).

4.4 Theme Four: individual factors

The first key to successful audit is in the case selection methodology. Case selection using risk management techniques, a technological tool which (Service Manger) is necessary to ensure that the audit programme is fully in line with the administration's compliance strategy, and to set up the necessary audit trails to show why cases have, and have not, been made the subject of an audit. This subject is dealt with in some detail in companion papers to this document, the second of which also gives detailed case studies of some case selection frameworks in place. Pre-contact analysis is considered an essential part of the audit process. Time invested here can pay dividends in terms of a reduced burden on taxpayers and reduced compliance resources expended during the audit.

As the name suggests, this activity takes place before the audit begins, and where a thorough going risk management process is in place, is an essential part of the risk analysis and prioritisation process. In other circumstances the activity will be carried out by the auditor in preparing the audit plan. One

element of many case selection procedures that usually sits within audits teams is the manual review or screening of tax returns. There are several key facets in this process (OECD, 2006 pgs. 37-38). Some of the most critical aspects of an audit strategy are the methods and tools used to select taxpayers to be audited. Given the broad guidelines, tax officials had a fair amount of discretion in determining whether a case should be scrutinized.

4.4.1 Implications: OECD and individual Case-basis analysis

Analysis of literature on OECD as mentioned above indicates unfettered power to tax officials and led to rent-seeking behaviour. In fact, the ability of tax officials to select cases for detailed audit has been a source of many complaints of corruption, and taxpayers have often gone public with claims that officials have demanded bribes not to select their cases. The following are the main methods used by tax administrations to select taxpayers for audit are:

- Individual or manual screening: Screening is one of the oldest audit selection methods, dating back to time when tax administrations made limited use of information technology. It consists of manual selection of audit cases by auditors based on their own knowledge of the taxpayers' behaviour and environment (OECD, 2004a, 2004b).
- Random selection: This technique is the opposite of screening. Taxpayers to be audited are selected randomly from the overall population of taxpayers (OECD, 2004c).

Risk-based selection: Most tax administrations have developed audit strategies focusing on taxpayer noncompliance risks (OECD, 2006). This experience has shown that an efficient audit selection strategy must identify those taxpayers who are the most likely to be noncompliant, that is, who have the highest likelihood of yielding large amounts of audit adjustments and penalties. It is the most preferred audit selection strategy in many developed countries' tax administrations and one that has been advocated by international organizations in transitional and developing countries.

5. Conclusion

This study found that tax authorities rely on audits to deter tax avoidance and sustain government tax revenues (Allingham & Sandmo, 1972). The deterrent effect emanates from two dimensions: firstly, is the *ex-ante* threat of an audit and secondly is the *ex-post* incidence of an audit. Prior studies examined outcomes stemming from a higher *ex ante* audit threat (Guedhami & Pittman, 2008; Hopes, Mescall, & Pittman, 2012; Hanlon, Hopes & Shroff, 2014). In contrast, there is little empirical evidence on the *ex-post* consequences of actual tax audits (Slemrod 2007; DeBacker, Heim, Tran & Yuskavage, 2015).

In view of the above, the study concludes that the absence of the services of a legal tax audit specialist during the initial audit until completion stage of the tax audit will increase the cases referred to tax audit committees. The role of these specialists will:

- To assist auditors with the Interpretation of the Tax Policy
- To assist with Advance Tax Rulings
- Legal professionals dealing with dispute resolution
- Manage and/or conduct litigation concerning a variety of tax and customs issues.

This will in turn enhance the revenue collection process and tax audit cases will be finalized timeously. The other advantage is that wasteful expenditure to the tax authorities' resources through litigation will be averted.

Materiality factor should be considered when conducting tax audits to reduce the cost effectiveness in the audit process (cost benefit versus factor). The inclusion of tax legal practitioners at all levels of tax audits needs to be considered in further studies regarding tax compliance in South Africa

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