

Exploratory Case Study: Judicial Discretion and Political Statements Transforming the Actions of the Commissioner for the South African Revenue Service

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Abstract : The Commissioner for the South African Revenue Service (SARS) holds a high position of trust in South African society and a lack of trust by taxpayers in the Commissioner's actions or conduct could compromise SARS' management of public finances. Tax morality - which is implicit in the social contract between taxpayers and the state - includes distinct phenomena that can cause a breakdown if there is a perceived lack of action on the part of the Commissioner to ensure public finances are kept safe. To promote tax morality, the Commissioner must support the judiciary in the exercise of its discretion to punish fraudulent tax activities and corrupt tax practices. For several years the political meddling in the Commissioner's actions and conduct have caused perceived abuse of power at SARS, and taxpayers believed their hard-earned income paid over to SARS would be fruitless and wasteful expenditure. The purpose of this article is to identify and analyse previous decisions held by the South African judiciary regarding the Commissioner's actions and conduct in tax matters, as well as consider important political statements and newspaper bulletins for the purpose of this research. The study applies a qualitative research approach and exploratory case study technique. Keywords were selected and inserted in the LexisNexis electronic database to systematically identify applicable case law where the ratio decidendi of the court referred to the actions and/or conduct of the Commissioner. Specific real-life statements, including political statements and newspaper bulletins, were selected to support the topic at hand. The purpose of the study is to educate the public about the perceptions that have transformed taxpayers' behaviour towards the Commissioner for SARS since South Africa's fledgling constitutional democracy was inaugurated in 1994. The study adds to the literature by identifying key characteristics or distinct phenomena regarding the actions and conduct of the Commissioner affecting taxpayers' behaviour, including discretionary decision-making. From the findings, it emerged that SARS must abide by its (own) laws and that there is a need to educate not only South African taxpayers about tax morality, but also the public in general.

Keywords : commissioner, SARS, action and conduct, judiciary, discretionary, decision-making

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