

Multi-faceted approach to tax gives Customs extra bite

The SA Revenue Service (Sars) customs still has sharks' teeth when it comes to its rights to search without a warrant – something that has been argued against for years by the whole of the freight and trade industry.

Indeed, this Great White's bite is even harder, and backed by the powers of a Constitutional Court finding, according to Quintus van der Merwe, partner and head of lawyers Shepstone & Wylie's transport and international trade department.

And, changing the metaphor, he told FTW: "It would seem that, contrary to Sars' powers being curbed, it has in fact added a number of extra arrows to its quiver to allow it to take far reaching and draconian

steps against potential tax offenders. The possibility of a combined approach under the Customs Act and Tax Administration Act (TAA) is

a daunting one.

"Sars' teeth are sharper than ever."

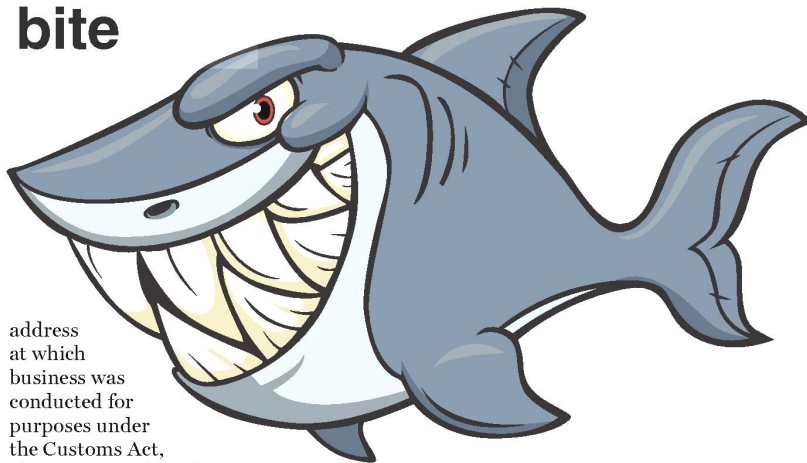
The story first started with the judgment in the Gaertner case at the Cape High Court.

It held that portions of Section 4 of the Customs and Excise Act (the Customs Act) were unconstitutional. It thus indicated that customs' powers – amongst other things, to search without a warrant – might be curtailed.

However, the Constitutional Court was

then requested to confirm this invalidity of portions of Section 4. "And their judgment substantially softened the ambit of the attack on Section 4," Van der Merwe said.

"The main thrust of the Constitutional Court's decision was that it was only when entering a private home or premises not licensed or registered as the



address at which business was conducted for purposes under the Customs Act, that Sars was obliged to obtain a search warrant.

"In all other instances Sars was entitled to gain entry without a search warrant for the purposes of ascertaining compliance with the act."

While customs matters are specifically excluded from the TAA – which governs all tax matters other than customs – Sars has, as Van der Merwe phrased it, "increasingly approached audits from a multi-faceted approach".

"In other words," he said, "customs compliance will be assessed in terms of the Customs Act, while all other tax compliance can

simultaneously be assessed under the TAA."

And this multi-faceted approach – in auditing clients simultaneously for customs, income tax, and value-added tax (VAT) compliance – allows Sars a whole host of additional powers under the TAA, according to Van der Merwe.

"This includes the convening of tax inquiries. And even the obtaining of a preservation order, in which assets are frozen pending the determination of whether there is any tax liability.

"Collectively under the legislation, Sars has vast and

draconian powers to ensure compliance."

These powers include:

- The right to enter premises;
- The right to call for documentation and information;
- The right to require that any person appear before a designated officer for the purpose of questioning that person and;
- The power to stop and detain and examine goods.

So, beware of where you swim, in case you are bitten.

– Alan Peat

“



It would seem that, contrary to Sars' powers being curbed, it has in fact added a number of extra arrows to its quiver.

– QUINTUS VAN DER MERWE