



# MoneyTalk

## Who has the right to inspect records?

PERHAPS you have had the experience of having someone pitch up at your business demanding, by reason of being an agent of SARS, a SETA or the Department of Labour, to inspect your books. If so, it's very likely you were unsure whether to allow them access to your records or to show them the door.

This scenario has become quite commonplace over the last few years, and before making any stranger privy to their financial records, business owners must be absolutely sure of the prospective inspector's authority to do so.

Taxpayer rights specialist, Beric Croome, who is an advocate of the High Court of SA and tax executive at Edward Nathan Sonnenbergs, recently addressed this issue in an article for *Accountancy SA*, and advised that certain agents be kept at bay.

### UIF INSPECTORS

Croome says since the new Unemployment Insurance Contributions Act came into force, it seems that the Department of Labour has appointed inspectors to check on the Unemployment Insurance Fund deductions paid by businesses.

"Under the provisions of the new Act, the Department of Labour is empowered to appoint persons to check on certain particulars regarding the employees and ensure that they are properly registered for UIF purposes," says Croome.

The rules regulating the UIF are now contained in the Unemployment Insurance Act, Act 63 of 2001 and section 58(9) of that Act allows a Director-General to:

- a. *appoint agents or designate agency offices to serve as employment offices as may be necessary to assist the Director-General, Commissioner, Board or Fund in properly administering this Act; and*
- b. *confer on the agents or the officers of such offices such functions as may be necessary to give effect to this objective.*

Croome says that if agents are appointed, they can only assist a Director-General in respect of the Unemployment Insurance Act. In so far as the contributions due to the Unemployment Insurance Fund are concerned, he continues, those are regulated under the Unemployment Insurance Contributions Act, No. 4 of 2002 (UICA).

This Act is administered by the Commissioner and, in

accordance with its section 14, several administrative provisions of the Income Tax Act apply equally to this Act.

In particular, the rules regulating enquiries, search and seizures and obtaining information in respect of the calculation of contributions due and payable under the UICA are governed by the provisions contained in the Income Tax Act.

Croome points out that under section 15 of the UICA, the Commissioner: SARS or Unemployment Insurance Commissioner may request a labour inspector to assist in the investigation of any employer required to contribute in terms of section 8 or 9 of the ICA. So any employer registered under the UICA could be subject to an inspection by the Commissioner's officers.

If a business is not required to be registered as an employer under the Fourth Schedule of the Act, its contributions will be paid to the Unemployment Insurance Commissioner, who would also be entitled to appoint an inspector to ensure that the contributions paid to the Fund are correct.

### SETA INSPECTORS

Certain Sector Education Training Authorities (SETAs) are using inspectors to check that the Skills Development Levy (SDL) is being paid over correctly by employers. However, the Commissioner: SARS has confirmed that any person purporting to act on behalf of a SETA has no authority to inspect the books and records of an employer in so far as the payment of the SDL is concerned, advises Croome.

"As is the case with other inspectors, only the Commissioner: SARS and his employees have the authority to inspect books and records for the purposes of auditing the SDL paid over by employers to SARS and/or the respective SETA," he says.

Therefore any agent claiming to act on behalf of a SETA should be denied access to the business's books and records, as such request is in Croome's opinion unlawful and contrary to the provisions of the Skills Development Levies Act.

Croome advises business owners to ask for proper identification from anyone claiming to be an officer of the Commissioner: SARS, in order to validate their authority to act as an officer of the Commissioner.

Croome says taxpayers are also entitled in terms of the Act to reasonable notice of an audit or inspection of their books and records.

So don't be pushed into allowing just anyone purporting to be an authorized agent access to your financial records. Make sure to check their authority first.

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