

22 August 2018

Judge Robert Nugent
The Commissioner
SARS Commission of Enquiry
Hilton House, Second Floor
Brooklyn Bridge
570 Fehrsen Street
Brooklyn
Pretoria

Per email: commission@ingcomm.co.za

Dear Judge Nugent

SUBMISSION TO COMMISSION OF INQUIRY INTO TAX ADMINISTRATION AND GOVERNANCE BY THE SOUTH AFRICAN REVENUE SERVICE (SARS)

1. SARS is and remains one of the most critical state institutions in our young democracy and plays a critical role in ensuring that there is funding available to progress our country, although this is not its sole responsibility.
2. The National Tax Committee (NTC) on behalf of the South African Institute of Chartered Accountants (SAICA) submit the below matters for consideration by the Commission.
3. We believe that this opportunity should be used to ensure that the country obtains the maximum benefit from one of its most critical institutions, but also an institution that has for years developed a culture of performance and excellence that should be maintained and moulded.
4. We have kept the submission succinct and make submissions only in relation to clause 1.14 of the Terms of Reference of the Commission .
5. We would like to take this opportunity to thank the Commission for allowing us to participate in the process of making SARS a world class institution.

Yours sincerely

Tracy Brophy
Chairperson: NTC
The South African Institute of Chartered Accountants

Pieter Faber
Senior Executive: Tax



INTRODUCTION

1. SAICA has a proud and illustrious history in South Africa with humble beginnings as the first Society of Accountants and Auditors in South Africa starting in 1894 with just 65 members.
2. This was followed by the first provincial society which was the Transvaal Society of Accountants in 1904 with its motto *Integritas*, which has been retained over the years as an integral quality of the profession.
3. By 1951, more accountancy societies had been created and a single qualifications framework was agreed to by these provincial societies as well as the creation of legal designation Chartered Accountant South Africa, CA(SA).
4. The provincial bodies merged in 1980 to form SAICA as we know it today.
5. Today SAICA represents nearly 43 000 Chartered Accountants, more than 2 500 General Accountants, 8 800 trainees and more than 27 000 students in the CA stream. These members also include 4 000 auditors registered with IRBA and nearly 5 000 tax practitioners registered with SARS.
6. SAICA also has an international presence as a member of the International Federation of Accountants (IFAC) with 4 local and 2 international satellite offices (UK and Australia), representing nearly 9 000 foreign based CA members. This network is supported by numerous international affiliations and 9 international membership reciprocity agreements.

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| SUBMISSION OF MATTERS FOR CONSIDERATION |
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7. SAICA presents below its matters for consideration by the Commission. We would like to, at the outset, acknowledge that SARS has in recent months, including through the actions of the acting Commissioner of SARS, shown a lot more vigour in its desire to engage and communicate with the public, and the profession, in order to recognise address its challenges, with a sense of urgency, which, in our view, is a very positive step in the right direction towards ensuring that SARS becomes a world class institution once again.

GOVERNANCE FRAMEWORK

8. The role of SARS is one that is critical to the whole country, not just government, and all citizens therefore have a vested interest in an outcome as to whether SARS is recognised as being an effective, fair and efficient organ of state.
9. Furthermore, the fact that SARS has, by necessity, very draconian powers, arguably even more so than organs of state in the criminal justice system, needs to be



acknowledged and managed in such a way that its powers are not unfettered and should, at all times, be subject to stringent oversight and accountability.

10. In this regard, we submit that various changes should be made to the governance framework of SARS in order to acknowledge the above realities as set out in more detail below.

Appointment of the Commissioner of SARS (CSARS)

11. The appointment of the CSARS in terms of section 6 of the SARS Act was amended to confer the right of appointment of the CSARS from the Minister of Finance to the President. It appears that this change was effected in recognition of the significant power and substantial obligations that this position entails.
12. However, we remain concerned that this may not have gone far enough in ensuring that the appointment of the CSARS is subject to the required oversight given the importance of the position to the country and powers vested therein.

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| <ol style="list-style-type: none">13. <u>Submission:</u> It is submitted that the process to appoint the CSARS should recognise the uniqueness of the position and be more aligned to that of appointing the heads of Chapter 9 institutions, such as the public protector, namely that Parliament should interview and shortlist the candidates for the role and, thereafter, the President should make the appointment. A similar process should be followed for term renewals although we acknowledge that this may require a longer period of appointment, such as, 7 years.14. In this regard, any dismissal of the CSARS should follow a similar process to ensure that no undue influence is exercised over the CSARS, who has a limited time period in office. |
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Establishing a SARS Advisory Council

15. SARS, like many other organs of state, is subject to many oversight bodies including the Auditor General, Public Protector, National Treasury and also Parliament. However, only the USA and Australia currently have an Inspector General for Taxation playing an oversight role.
16. Unfortunately, this oversight is generally exercised in hindsight and is also not directly representative of the public stakeholders, without whose collaboration and buy-in the *Batho Pele* principles cannot be implemented. Furthermore, in our view, oversight bodies do not focus on collaboration and forward strategic planning but rather compliance and rectification.
17. Voluntary compliance, which is the most efficient way of tax collection, can only be achieved optimally where stakeholders, including taxpayers, have a shared sense of



representation and participation within SARS rather than perceiving SARS as an adversary.

18. SARS has historically implemented engagement platforms to give the profession a voice, such as the National SARS Operations Stakeholders Forum for Registered Controlling Bodies and more recently, after many years of requests, SARS has agreed to and has implemented a similar platform with their Legal and Policy Division, which has been welcomed by the profession.
19. Though these engagements are welcomed, they serve no role in providing input as to the overall SARS strategy and operational model.
20. It is our view, that to ensure that there is universal consideration and buy-in from all stakeholders, that consideration be given to the establishment of a '**SARS Advisory Council**'.
21. The objective of the council should be to support the CSARS and the SARS' management team in its strategic planning but also to consult on major operational or policy changes which have a direct impact on stakeholders before such changes are implemented.
22. The members of the council should represent critical SARS' stakeholders, from both within and outside government, to ensure that SARS is optimised in all areas that impact its efficiency, effectiveness and fairness in collecting revenue on behalf of the state.
23. The establishment of such a council would enable stakeholders to have 'a voice', which would be heard by SARS and which would not simply focus on the efficiency of tax collections but on the fairness of the process as well and ensuring an increase in overall voluntary compliance by taxpayers.

24. Submission: We submit that consideration should be given to the creation of a SARS Advisory Council with the members appointed by either the Minister of Finance or Parliament and which constitute representatives from amongst others: SARS Executive, National Treasury, Department of Trade and Industry, Office of the Tax Ombud, Tax Practitioner representative(s), Small Business representative(s), Large Business Representative(s), and an independent member or academic representative.

Appointment of Third Party Debt Collection Agents

25. The SARS Act in section 3 sets out its objective to collect revenue in an efficient and effective manner.
26. Section 5(1)(c) of the SARS Act allows SARS to appoint any person to perform any specific function or act.



27. However, we express much concern with the practice of appointing of third-party debt collection agents as this in essence contracting out SARS' primary function.
28. This has become even more concerning given that SARS has migrated taxpayers to a self-assessment tax system, resulting in the administrative assessment function of SARS falling away and leaving it with merely an auditing and collection function (including enforcement).
29. This practice also raises various legal uncertainties such as:
 - a. Whether the persons so appointed become 'SARS Officials' as per the section 1 Tax Administration Act (TAA) definition in paragraph (c) of the definition of SARS Official;
 - b. Whether the actions of these persons fall within the scope of the debt collection and payment provisions of the TAA and are their actions legally binding on SARS as those in the TAA, for example constituting notice of demand of payment;
 - c. If they are not SARS Officials as per the TAA, are they receiving confidential taxpayer information in contravention of Chapter 6 of the TAA;
 - d. What is the impact on the job security of SARS' own call centre and debt collection employees and does this practice pose a risk of a labour dispute and services disruption at SARS;
 - e. Are the commission payments an equitable and legally tenable arrangement for what may amount to a call centre function rather than debt collection services.

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| <ol style="list-style-type: none">30. <u>Submission:</u> It is submitted that the SARS Act in respect of appointing "any person" be reconsidered to exclude debt collection.31. Furthermore, should this power be deemed necessary to maintain an efficient and effective SARS, that amendments be made to the TAA to ensure that these contractors become SARS Officials that are subject to the TAA and its confidentiality provisions.32. We have in the interest of transparency attached in Annexure A our submission to SARS in 2017 setting out our concerns in this regard. |
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ACCOUNTING FRAMEWORK

33. The Office of the Accountant General requires various organs of state to prepare its financial statements with adherence to prescribed accounting standards.
34. The Accounting Standards Board (ASB) in terms of the Public Finance Management Act determines the accounting standards which have to be applied by 'state entities' which include SARS.
35. Historically this has only been the Modified Cash Standard¹ (MCS).
36. The ASB has adopted the Standard for Generally Recognised Accounting Practice (GRAP) as from 1 April 2012 and this will become the accounting standard to be implemented by 'state entities'.
37. It is our understanding that, in 2014, SARS applied for and was given an extension to postpone the adoption of certain GRAP standards, including the standard on contingent liabilities, to April 2018. It is our understanding that SARS has again requested and been provided with extension to delay the full implementation of GRAP to April 2022.
38. Unlike MCS, revenue is not recognised on a received basis in GRAP but an accrual basis. Furthermore, it requires that tax expenditure (i.e. medical tax credits, diesel rebates etc.) be recognised as accruals as well as other amount due but not yet paid. Amounts subject to dispute (i.e. including objection and appeal) would also depending their nature, have to either be provided for as contingent liabilities in terms of GRAP or as a reduction of revenue.
39. This seemingly does not apply to MCS and together with the “pay now argue later” principle, potentially results in cash being “received” as income but without any necessary corresponding adjustment for disputes and refunds of overpayments or tax expenditure.
40. Submission: It remains unclear why SARS would require more than a decade to fully implement a change in accounting standards. Furthermore, it is submitted that the full implementation of the GRAP standard will support more accurate financial estimates of tax revenue, contingent liabilities and tax expenditure.

¹ <https://oag.treasury.gov.za/Publications/01. Annual Financial Statements/03. For Prov. And Nat. Departments/GRAP for National and Provincial Departments/02 Modified Cash Standard/MCS FY 17.18 May 2018.pdf>



LEGISLATIVE FRAMEWORK

Drafting of Tax Administrative Legislation

41. Concern has historically been expressed with regard to the practice of SARS drafting the legislation which empowers it and regulates its powers. It is noted that National Treasury has responded to the effect that it has 'taken this function back' but concern is expressed as to whether this has truly occurred and whether sufficient oversight is exercised to ensure that the powers requested by SARS are considered from a balanced perspective and independently by National Treasury.

42. Submission: It is submitted that National Treasury under the auspices of the Minister of Finance should not just be the custodian of tax administrative legislation but should also be empowered to ensure that it considers such proposed legislation independently and also with sufficient balance to take into account all stakeholder's interests.

Review of Criminal Sanctions

43. A fundamental principle in law is that, it will, in similar circumstances be applied equally and fairly. SAICA expresses much concern that the current criminal offence framework within tax administration legislation makes the application of these severe sanctions arbitrary partly due to the lack of proper legislative oversight.
44. Our primary concerns are the overlap in criminal and civil sanctions but also the lack of an obligation to submit matters to the National Director of Public Prosecutions (NDPP) for prosecution.
45. In this regard, it leads to those who should be criminally sanctioned escaping with mere civil penalties or just making payment of their debt(s) and those who should be subject to civil penalties being subjected to criminal sanctions.
46. An example of this is the existence of certain overzealous criminal sanctions in section 234 of the TAA, of which section 234(1) is the most blatant example, whereby a mere oversight by a taxpayer in informing SARS of their change in physical or email address within 21 days is a criminal offence with imprisonment of up to 2 years.
47. It is clear that SARS has not, to date enforced this particular section and, if SARS were to suddenly enforce this section against certain people only, for example where SARS is aware that such changes have occurred, it would make such prosecution arbitrary.
48. Furthermore, many of the criminal offences also have an overlapping civil penalty, again leaving it to the relevant SARS officials to decide who should be criminally prosecuted and who should only face civil penalties.



49. Submission: Criminal offences should in our view have no civil penalty overlap and should be limited to only the most heinous of transgressions. Furthermore, once the facts for a criminal matter are *prima facie* determined, SARS must be compelled to refer the matter to NDPP.

Review of the Confidentiality Framework

50. Confidentiality of taxpayer information, like the amorality of tax, has been a key feature of tax systems globally for decades, but has also come under much scrutiny as to whether it has become an impediment to efficiency and good governance.
51. Much concern has been raised in the last few years regarding the application of the confidentiality framework to SARS, which has, in our view, become counterproductive.
52. The Standing Committee on Finance has expressed its own concerns that it cannot exercise its constitutional oversight duties when all information is claimed to be confidential taxpayer information. Furthermore, the confidentiality proceedings also obscure any oversight as to whether taxpayers are treated equally under the law, including criminal sanctions, civil sanctions and other debt procedures such as settlements.
53. The confidentiality provisions may also have made the tax system less efficient by delaying information sharing to other government agencies, such as National Treasury, the DTI and the SARB which usually results in taxpayers having to submit the same information to more than one authority. Furthermore, it prevents both SARS and the other authorities from analysing SARS' data to enhance efficiencies and identify any shortcomings in tax policy design.

54. Submission: It is our view that the matter of confidentiality should be balanced with transparency, accountability and collaboration in the public interest, which we are concerned is not the status quo.

INTEGRATION OF TAX PRACTITIONERS

55. Tax practitioners have fulfilled a vital role within the tax sphere and do not only assist taxpayers in understanding their tax obligations but also in properly executing them.
56. This important role has been recognised by government for some time, in fact it goes as far back as 2002, when the then Minister of Finance acknowledged this role, as well as the profession's obligations towards both taxpayers and the fiscus. In 2008 (as per the draft bill), it was proposed that an independent tax practitioner board should regulate the industry, however a co-regulation model was later agreed upon and implemented subsequently in the TAA. The initial intent seemed to be to ensure that tax practitioners were not only rendering a professional level of service to



taxpayers but also meeting their legal and moral obligations towards the state. Initially, it was estimated that between 60 000 – 80 000 tax practitioners operated in the market at the time and by 2017, through the introduction of this model, this number has reduced to about 18 000.

57. Although the law created a regulatory model through the TAA, the TAA did not integrate tax practitioners into either the SARS model or the operational provisions of the law. The purpose, rights and obligations with the tax system of tax practitioners remain undefined, notwithstanding that they are subject to regulation and scrutiny.
58. This, as per SAICA's previous submissions to SARS, has created an environment where the sustainability of the profession has become doubtful as the profession has been burdened by additional risk but received no further value added services. It is also our view that the current model simply adds a further scrutinising role to SARS without it directly benefiting from it.
59. It is our view that a properly regulated tax profession has much value to add to taxpayers but, whilst at the same time also relieving some of the compliance and risk burden to SARS.
60. In this regard we commend SARS for now agreeing to host a 2-day workshop in August 2018 that will engage with the profession in addressing these concerns, though more assistance in effecting such changes may be required.

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| 61. <u>Submission:</u> It is submitted that to enable the full potential of the tax profession, a more collaborative strategic approach should be followed that enables tax practitioners to effectively assist taxpayer's compliance, thus unlocking public value, and also reducing the risk burden on SARS by being part of the risk management system. Such a vested position would however require further refinement of the current tax regulatory model and the law as well as systems which would include more severe sanctions for tax practitioners who breach this duty of public trust but also provide protections such as legal privilege. Invariably some may choose to remain outside the scope of this enhanced duty to public trust and thus a tiered system should be considered. |
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62. Furthermore, it is submitted that the split regulatory model implemented under the TAA where some controlling bodies and their members are subjected to more scrutiny than others creates market distortion and also disparity in the state achieving its goal of proper regulation. In respect of the latter, it means that minimum education entry criteria and continuing education are not even aligned with no such criteria being imposed or SARS even capable of imposing such requirements.

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| 63. <u>Submission:</u> The Tax Practitioner Regulatory Model should be revisited to ensure that it is efficient by reducing the costs to regulate tax practitioners (which is a significant |
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burden) while still achieving its purpose and also ensuring uniformity and equity amongst those being regulated.

OPERATIONAL INEFFICIENCIES

64. The SARS National Operations Stakeholder Forum has been an exemplary model of SARS' success in engaging with stakeholders with a view to identifying inefficiencies and challenges in tax administration.
65. However, it has not been effective in addressing and resolving these concerns, notwithstanding that further research has been conducted by SAICA in seeking to analyse exact causes and also certain matters being identified as systemic by the Office of the Tax Ombud.
66. Some of the matters which have been raised at this forum have been outstanding for many years, dating as far back as 2015, and directly impact taxpayer morale and voluntary compliance.
67. The list of top 6 matters we are seeking to resolve urgently with SARS as on 4 May 2018 were the following:
 - a. Procedures for raising assessments
 - b. Dispute Process
 - c. Debt management
 - d. Delayed tax refunds
 - e. Lack of communication
 - f. Tax Clearance certificates
68. This list above is in addition to the other detailed agenda items brought forward from previous meetings that we have been and will continue to engage with SARS on.
69. The detail description of the above top 6 matters is contained in Annexure B as well and the index to the unresolved agenda items.
70. We acknowledge that SARS have actioned many of SAICA's concerns raised but a number of items remains outstanding.



71. We also note the numerous systemic matters that the Office of the Tax Ombud identified and believe that guiding SARS to prioritise these matters and reporting on the progress made in resolving these matters should be considered.

72. Submission: Though we acknowledge a renewed sense of engagement, it is submitted that SARS and stakeholders need better alignment and collaboration to ensure that SARS not only prioritises its needs but also the most pertinent needs of the public.

73. In seeking the real causes rather than symptoms or anecdotal evidence of tax administrative inefficiencies so that we can provide collaborative solutions, SAICA has conducted various research projects and surveys which include:
- a. VAT Refund survey 2016 (ANNEXURE C)
 - b. Identifying Systemic Tax Administrative matters 2018 (ANNEXURE D)
 - c. Actual cost of Tax Administration 2016-2019 (UNISA to proceed with SARS)

SARS Staff Training and Technical Skills

74. One of the strategic matters we raised for engagement with SARS has been our concern with the level of ongoing technical expertise of SARS officials, especially at the lower levels.
75. As noted to SARS, we are cognisant of the tremendous amount of legislative amendments passed annually which creates an enormous burden on SARS and the public, equally to keep up to date with not only with legislation but changes in interpretation and procedure.
76. However, proper and ongoing training does mean that the persons entrusted to exercise the necessary draconian powers under the tax laws are in a position to do so effectively and efficiently, especially as pertains to tax administrative law which applies to each and every SARS official.
77. SAICA and its members view competent SARS officials that can properly distinguish tax evasion or unlawful avoidance and enforce the law to its tenure to be an asset to the public whereas SARS officials who do not possess these skills are a burden to society and a liability to SARS.
78. The reality is that the burden to, on an ongoing basis maintain a minimum CPD and competency level for more than 14 000 staff is a heavy one indeed, but to do so is imperative to our society.
79. The inability to engage stakeholders, tax practitioners and taxpayers with the necessary technical skills results in delays and inefficiencies.



80. Submission: It is submitted that the challenge in implementing appropriate training and competency levels may be compounded if SARS does not at least subject its staff to at least the same tax competency and CPD requirements of 15 hours annually as applies to tax practitioners. Furthermore, as is applicable to tax practitioners, all tax specialist and professionals in SARS should also at least meet the NQF 5 or higher qualifications threshold.
81. However, it is submitted that SARS should not shoulder the burden alone and in addition to having National Treasury reduce the volume of tax legislation, SARS should be empowered to collaborate with the private sector in ensuring its officials remain the most competent within the tax profession with an equal investment from the private sector. In this regard, SAICA is more than willing in the interest of the country to partner with SARS and we believe many other will see this as a worthy investment into our country.



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| ANNEXURE A |
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10 March 2017

**South African Revenue Service
Lahae la SARS
299 Bronkhorst Street
Nieuw Muckleneuk
Pretoria
0001**

BY E-MAIL: BNaidoo2@sars.gov.za; SHenson@sars.gov.za; SNtombela3@sars.gov.za;
vsibande@sars.gov.za

Dear Mr Naidoo

SUBMISSION ON THIRD PARTY DEBT COLLECTION AGENTS

1. We herewith present the South African Institute of Chartered Accountants (SAICA) written submission on the third party debt collection agents on behalf of the SAICA National Tax Committee (NTC).
2. Our submissions include a request for comment on certain legal issues, tax policy considerations as well as a number of operational issues experienced by our members in their dealings with these agents.
3. We have deliberately tried to keep the discussion of our submissions as concise as possible, which means that you might require further clarification. Please do not hesitate to contact us.

Yours sincerely

Pieter Farber
Senior Executive: Tax
The South African Institute of Chartered Accountants



Annexure A

1. Introduction

- 1.1. In this submission we wish to express some of our more pressing concerns with the appointment and deployment by the South African Revenue Service (SARS) of third party collection agents (the agents) to collect tax debts. From previous discussions with SARS we understand that SARS considers the appointment of agents to be in line with the SARS mandate as set out in the South African Revenue Service Act 34 of 1997 (the SARS Act) and as further governed by the Tax Administration Act 28 of 2011 (the TAA).
- 1.2. On the basis that our members have expressed various concerns about their dealings with the agents, we will greatly appreciate some clarification of some of these legal, policy and operational issues so that we can provide proper feedback to our members.

2. LEGAL ISSUES

2.1. The SARS constitutional mandate to collect revenue and delegation of authority

- 2.1.1. Section 238 of the Constitution entitled “agency and delegation” provides that an executive organ of state in the sphere of government may:
 - 2.1.1.1. delegate any power or function that is to be exercised or performed in terms of legislation to any other executive organ of state, provided the delegation is consistent with the legislation in terms of which the power is exercised or the function is performed; or
 - 2.1.1.2. exercise any power or perform any function for any other executive organ of state on an agency or delegation basis.



- 2.1.2. It is therefore recognised that some form of delegation of powers and the exercise of these powers may be required for the efficient functioning of the executive organs of state. Specific mention is made to delegated functions and powers to other organs of state. No mention is, however, made of any delegation of powers or functions and the exercise of these powers and functions by an organ of state to an external third party.

2.2. The SARS Act mandate to collect revenue and delegation of authority

- 2.2.1. The SARS Act was enacted to make provision for the efficient and effective administration of the revenue collection system of South Africa and for this purpose to reorganise and to establish an advisory board and to provide for incidental matter. SARS is established in terms of section 2 of the SARS Act as an organ of state within the public administration but as an institution outside the public service.
- 2.2.2. The objective of SARS, as stated in section 3, is the efficient and effective collection of revenue, which means, by way of definition in section 1 as “income derived from taxes, duties, levies, fees, charges, additional tax and any other moneys imposed in terms of legislation, including penalties and interest in connection with such moneys”.
- 2.2.3. To achieve this objective it is peremptory in accordance with section 4(1)(a) that SARS secures the efficient and effective, and widest possible, enforcement of legislation concerning the collection of revenue that may be assigned to SARS either in terms of legislation or an agreement between SARS and the organ of state entitled to the revenue.
- 2.2.4. SARS must perform its functions in the most cost efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the Constitution (section 4(2)).



- 2.2.5. Section 4(3) specifically provides that SARS performs its functions:
 - 2.2.5.1. Under the policy control of the Minister of Finance; and
 - 2.2.5.2. Subject to any directives and guidelines on policy matters issued by the Minister of Finance.
- 2.2.6. It is recognised in section 5(1) of the SARS Act that SARS may do all that is necessary or expedient to perform its functions properly. These functions include among other things:
 - 2.2.6.1. Obtaining the services of any person, including and state department, functionary or institution, to perform any specific act or function (section 5(1)(c));
 - 2.2.6.2. Engaging in any activity, whether alone or together with other organisations in South Africa or elsewhere to promote proper efficient and effective tax administration (section 5(1)(j); and
 - 2.2.6.3. Do anything that is incidental to the exercise of any of its powers (section 5(1)(k)).
- 2.2.7. When exercising its powers SARS must comply with any conditions imposed by the Minister of Finance in a directive issued under section 4(3). This may include a requirement that a specific power may be exercised with the prior approval of the Minister.
- 2.2.8. Section 10 of the SARS Act deals specifically with the assignment of powers by the Commissioner, who may:
 - 2.2.8.1. Assign management and other duties to employees with appropriate skills to assist the Commissioner in the management and the control over the functioning of SARS (section 10(10(a));



2.2.8.2. Delegate any of the Commissioner's powers in terms of the SARS Act to a SARS employee (section 10(1)(b)); or

2.2.8.3. Instruct a SARS employee to perform any of the Commissioner's duties in terms of the SARS Act (section 10(1)(c)).

2.2.9. It seems clear that the intention of the SARS Act is that SARS is created as the only tax revenue collection agency in South Africa and that certain functions may be delegated to employees of SARS or in certain instances to other organs of state. SARS in the exercise of its duties and powers are under the strict control and direction of the Minister of Finance.

2.2.10. It is further clear that the collection of revenue is a primary or key function of SARS and the SARS Act does not appear to empower an outright delegation of this primary function to an external party. On the basis that primary legislation is the exercise of delegated authority in terms of the Constitution, any further delegation (i.e. sub-delegation) will therefore need to be specifically authorised by legislation either expressly or by implication.

2.2.11. SARS does not appear to have any authority either expressly or by implication to sub-delegate any of its key functions and it is also not clear what policy directive or guidance has been issued by the Minister of Finance in this regard..

2.2.12. Request: We request that SARS clarifies its views on the constitutional and SARS Act mandate which forms the legal basis of and therefore on what basis it is considered that SARS is legally justified to sub-delegate the key function of revenue collection the agents.

2.2.13. We furthermore request clarity on the policy directive or guidance issued by the Minister of Finance on such sub-delegation.



2.3. SARS powers and duties and the TAA mandate to collect revenue and delegation of authority

2.3.1. The TAA came into effect on 1 October 2012 and consolidates the tax administration provisions of all the tax Acts administered by the Commissioner, except for Customs & Excise which is governed through a separate legislative framework within SARS.

2.3.2. The TAA contains a number of provisions in Chapter 2, Part A dealing with the purpose of the TAA and the administration of tax Acts, whereas Chapter 2, Part B deals with the powers and duties of SARS and SARS officials, and more specifically:

2.3.2.1. the powers and duties of SARS around tax debt enforcement; and

2.3.2.2. the delegation of powers.

2.3.3. Section 6(1) of the TAA provides that the powers and duties of SARS under the TAA may be exercised for purposes of the administration of a tax Act, which includes the administration of the TAA. Subsection (2) sets out that the powers and duties assigned to the Commissioner by the TAA must be exercised by the Commissioner personally but that he or she may delegate such powers and duties in accordance with section 10 of the TAA. Subsection (3) provides that powers and duties required by this Act to be exercised by a senior SARS official must be exercised by:

2.3.3.1. The Commissioner;

2.3.3.2. A SARS official who has specific written authority from the Commissioner to do so; or

2.3.3.3. A SARS official occupying a post designated by the Commissioner in writing for this purpose.



- 2.3.4. Subsection (4) provides that the execution of a task ancillary to a power or duty under subsection (2) or (3) may be done by a SARS official under the control of an official referred to in subsection (3)(a), (b) or (c). Subsection (4) was substituted by section 35 of Act 23 of 2015 with effect from the date of promulgation of 6 January 2016 and the high-lighted text is therefore a more recent addition to the TAA, possibly to enable a delegation to the agents.
- 2.3.5. Powers and duties not specifically required by the TAA to be exercised by the Commissioner or by a senior SARS official, may be exercised by a SARS official (Section 6(5)).
- 2.3.6. Other than the delegation of ancillary tasks, no legislative authority is given in section 6 for any delegation of any of the duties or powers to the Commissioner to a third party outside SARS.

2.4. Powers and duties of SARS officials

- 2.4.1. Apart from setting out the powers and duties of SARS, the TAA also governs the powers, duties and obligations of SARS officials.
- 2.4.2. A senior SARS official is defined in section 1 with reference to section 6(3) of the TAA, namely that powers and duties required by this Act to be exercised by a senior SARS official must be exercised by the Commissioner, a SARS official who has specific written authority from the Commissioner to do so, or a SARS official occupying a post designated by the Commissioner in writing for this purpose.
- 2.4.3. Section 1 of the TAA in turn defines a “SARS official” as the Commissioner, an employee of SARS or any person contracted or engaged by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner.



- 2.4.4. Provisions of the TAA governing the powers, duties and obligations of SARS officials, as defined, include section 8.....
- 2.4.5. Section 8(2) of the TAA provides that when a SARS official exercises a power or duty for purposes of the administration of a tax Act in person outside SARS premises, the official must produce the identity card (which SARS may issue under subsection (1)) upon request by a member of the public). Subsection (3) provides that if the official does not produce the identity card, a member of the public is entitled to assume that the person is not a SARS official.
- 2.4.6. Section 9 deals with decisions by SARS officials, and provides that a decision by a SARS official is on the face of it considered to be authorised by SARS until the contrary is proven.
- 2.4.7. A more senior SARS official may also in certain circumstances withdraw or amend a decision taken by a SARS official of a lower ranking for as long as three years after the decision was taken. (section 9(1)(a) and (b)).

2.5. Delegation of powers

- 2.5.1. Section 10 of the TAA provides that a delegation by the Commissioner under section 6(2):
 - 2.5.1.1. must be in writing;
 - 2.5.1.2. becomes effective when signed by the Commissioner;
 - 2.5.1.3. is subject to the limitations and conditions the Commissioner may determine in making the delegation;
 - 2.5.1.4. may either be to a specific individual or the incumbent of a specific post; and
 - 2.5.1.5. may be amended or withdrawn by the Commissioner.



- 2.5.2. Importantly a delegation of powers or duties does not divest the Commissioner of the responsibility for the exercise of delegated power or the performance of the delegated authority (Section 10(2)).

2.6. Legally enforceable tax debt

- 2.6.1. Tax debt is defined in section 169(1) of the TAA as an amount of tax debt due or payable in terms of a tax Act is a tax debt due to SARS for the benefit of the National Revenue Fund.
- 2.6.2. Whilst the definition seems somewhat circular, it goes without saying that for a debt to be due, there must be no conditionality or contingency attached to it. In practice SARS often issues assessments that are incorrect based on either being subject to a dispute, withdrawal or amendment. A taxpayer has various legal remedies available to dispute an assessment. In addition, a taxpayer is entitled to request a suspension of payment, a temporary or permanent compromise of debt or enter into an instalment payment agreement with SARS.
- 2.6.3. An assessment issued by SARS reflects three dates, namely the date of the assessment, the due date and the second date. The second date is generally a month after the date of the assessment, and it is only from this date that the debt indicated in the assessment becomes due and payable.
- 2.6.4. The mere fact that a SARS statement of account may reflect an amount as due to SARS does not necessarily mean that the amount is a tax debt due to SARS, as defined, and not all amounts reflected as due in terms of an assessment or statement of account is legally enforceable.



3. TAX POLICY ISSUES

3.1. Lawful delegation of powers and duties by the Commissioner in terms of section 10 of the TAA

3.1.1. From a tax policy perspective it is important to consider that the collection of revenue is a key function of SARS and that the intention of the legislation is that SARS carries out its key functions itself with strict reporting lines and control measures in place. On the correct reading of the provisions of the SARS Act, read with the TAA, such delegation may only be made to a SARS employee and not to an external third party.

3.1.2. Request: We request that SARS clarifies the limitations and conditions that apply to the delegation of powers to the agents

3.1.3. We further request that SARS clarifies how SARS regains the powers and duties delegated to the agents considering that SARS concludes fixed term contracts with the agents, as appears from the tender documents.

3.2. SARS labour force

3.2.1. It is our understanding that SARS currently has in excess of 800 employees involved directly or indirectly in the tax debt collection function.

3.2.2. SARS has indicated that the current initiative to delegate the debt collection function to agents is a pilot project and that it anticipates rolling out this function to a larger extent going forward.

3.2.3. There are some concerns around any potential instability at SARS among the tax debt collection staff in the event that the outsourcing of the tax debt function is further expanded in future, as this may in our view be potentially disruptive for taxpayers and



our member in particular. Clearly the importance of stability and job retention is high on the agenda of SARS and taxpayers alike.

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| 3.2.4. | <u>Request:</u> We request that SARS clarifies its views on how it would deal with potential job losses and associated labour force issues. |
| 3.2.5. | We will also appreciate comment from a tax policy perspective on how SARS anticipates dealing with stability issues of the SARS service deliverables should the current staff complement be retrenched and related to this how any strike action will be dealt with. |

3.3. Specific issues around the confidentiality of taxpayer information

- 3.3.1. Section 67 of the TAA prohibits the disclosure by SARS of taxpayer information which means any information provided by the taxpayer or obtained by SARS in respect of taxpayers, including biometric information.

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| 3.3.2. | <u>Request:</u> We request clarity on the information shared with agents and how SARS ensures that confidential taxpayer information is protected. |
| 3.3.3. | We request clarity on how any transgressions by agents are monitored and sanctioned by SARS. |
| 3.3.4. | We furthermore request clarity on how SARS envisages remaining accountable for actions of agents and what remedies would be available to taxpayers where agents are considered to exceed their delegated powers and duties. |

3.4. Recommendations by Davis Tax Committee

- 3.4.1. We note that the Davis Tax Committee (DTC) was requested in August 2016 to comment on a similar issue namely the outsourcing of the tax debt collection function to agents in terms of



the Border Management Agency Bill, 2015 (the Bill) insofar as it impacts on revenue collection (taxes and customs and excise) for SARS.

3.4.2. Whilst the DTC commented that their response was not as comprehensive as they would have preferred, they expressed firm views against the delegation of collection powers by SARS to the Border Management Agency (the BMA), considering this to be fiscally imprudent. The DTC considered that even if it is considered that a delegation of powers may not be in conflict with the Constitution, it would be undesirable and contrary to the TAA and the spirit thereof and it was therefore recommended that the power to delegate tax administrative powers remain with the Commissioner for SARS.

3.4.3. Whilst the comments by the DTC were specifically aimed at the delegation of powers to the BMA, we would appreciate if you could comment on whether any policy decisions have in the meantime been taken based on the recommendations of the DTC.

3.4.4. Request: We request clarify from a tax policy perspective on whether SARS intends to delegate the overall debt collection function of SARS to agents on a more expanded and possibly permanent basis going forward.

3.4.5. In communication received by SAICA from SARS it appears that the current delegation to agents is considered by SARS to be a pilot project and that the delegation has been extended until 31 May 2017. We also request clarity on the proposed further extension (both in time and scope of duties) of the current delegation to agents.

3.5. Efficient revenue collection

3.5.1. From a tax policy perspective, and specifically in terms of the SARS Act as mentioned above, SARS is required to perform its



functions in the most cost efficient and effective manner and in accordance with the values and principles mentioned in section 195 of the Constitution (section 4(2)).

3.5.2. We understand from prior engagements with SARS that SARS considers the outsourcing of certain elements of the debt collection function to contribute to overall efficiency and cost effectiveness.

3.5.3. Request: We request clarity from a tax policy perspective on how SARS considers the outsourcing of the tax debt collection function to contribute to overall cost effectiveness, particularly in view thereof that SARS has a vast infrastructure, access to confidential taxpayer information and extensive tax collection powers and therefore seemingly has a significant advantage in terms of its ability to carry out these functions itself without having to outsource to external third parties.

3.5.4. Whilst we understand that there may have been some SARS staff losses and that there may have been occasional inherent systemic issues with the implementation of sophisticated systems to deal with a complex tax debt collection function, there are some concerns around how the appointment of agents may add to further complexities and in possibly further divorcing the tax debt collection function from the underlying merits of the matters involved.

3.5.5. Request: In light of this, we will appreciate if some clarity could be provided on how SARS considers this aspect could be addressed in ensuring a more cost effective and efficient debt management process.

3.6. Agents considered to be SARS officials

3.6.1. There are some concerns around whether the agents are considered to be SARS officials, and their powers and duties therefore being subject to the provisions of the Tax Administration



Act or whether the intention is that they operate outside these parameters.

- 3.6.2. Where a SARS official, for example, cannot positively identify himself/herself, a taxpayer may rightfully assume that such person is not a SARS official in which case there is no obligation to, for example, share information with such person. There would also not be any right to share confidential taxpayer information, there would be a system in place for withdrawal of decision and a myriad of powers and duties which fall within the legislatively governed domain of SARS officials.

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| 3.6.3. | <u>Request:</u> We request clarity on whether SARS considers tax collection by agents to be classed under the heading “tasks ancillary to a power to be exercised under section 6(2) or (3)”. |
| 3.6.4. | In this regard we request that SARS provides clarity on whether the agents are considered by SARS to be senior SARS officials or SARS officials and whether they are therefore considered to form part of the internal SARS structures. |
| 3.6.5. | On this basis we request clarity whether a senior SARS official may withdraw or amend any decisions taken by the agents. |
| 3.6.6. | We furthermore request clarity on whether SARS has a verification process which is implemented to verify the identity of agents, which taxpayers may be rely on as a matter of course or whether agents are issued with SARS identity cards. |

4. OPERATIONAL ISSUES

4.1. Potentially problematic debt collection practices

- 4.1.1. In a number of SAICA stakeholder meetings it has come to light that there is increasing evidence of possible intimidation, harassment and arbitrary behaviour by some of the agents.



- 4.1.2. We consider that since most of even the more serious cases may not be of such magnitude that it would warrant pursuing a costly legal procedure.

4.1.3. Request: We request clarity on what practical remedies may be available to a taxpayer who is aggrieved by the actions of an agent, including alleged instances of intimidation, and whether any direct approach by a taxpayer to SARS would be the most appropriate option.

4.1.4. Could SARS please comment on whether there are any plans for specific reporting procedure to a disciplinary body or committee that may hear these cases, particularly if the mandate to delegate to agents is extended.

4.2. Timing of calls to taxpayers

- 4.2.1. Instances are recorded where agents would phone the taxpayer at unreasonable times and may demand payment and make threats if payment is not made. This seems to be problematic especially since there does not seem to be a reliable verification process in place to authenticate the identity of an agent.

4.2.2. Request: We request SARS to clarify the accepted verification process that agents are required to observe in any engagement with a taxpayer.

4.3. No prior communication of amounts due and payable

- 4.3.1. Our member have reported receiving communications from agents indicating that taxpayers have been handed over due to outstanding debt whereas there were no prior notification on e-filing or otherwise of such outstanding debt.



4.3.2. Upon further investigation it appears that the transactions may relate to alleged transactions of more than ten years ago with no notification of any outstanding tax debt.

4.3.3. It also appears that attempts to communicate with the agents are sometimes difficult if not impossible and it has been reported that no feedback is received on enquiries made to agents.

4.3.4. Request: We request that SARS provides clarity on the policy adopted as well as the monitoring measures in place around the mandate of the agents in terms of the age of debt,

4.3.5. We also seek clarity on the accepted policies and practical implementation around notifications issued by agents to taxpayers and how taxpayers should appropriately deal with any issues around inadequate notifications.

4.4. Disconnection between underlying dispute and tax debt collection process

4.4.1. An instance was reported where a taxpayer, upon the finalisation of an audit verification process, was denied the deduction of all expenditure. The taxpayer lodged an objection. The taxpayer received notification that:

4.4.1.1. The objection was invalid, (without being given reasons for invalidity); and

4.4.1.2. not lodged within the correct time frame, (which is clearly incorrect);

4.4.2. After consultation with the Customer Complaints Resolution Officer at SARS, the taxpayer was advised to note an appeal. This is clearly not the appropriate next step to take in the dispute process. The taxpayer submitted a notice of objection (NOO) and request



for suspension of payment within the prescribed timeframe. SARS did not decide on the objection as required.

- 4.4.3. The agent in the meantime continuously harassed the taxpayer for payment and made certain threats. There is clearly a disconnection between the underlying dispute process and the tax debt enforcement process, which is not improved in any way through the involvement of the agent.

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| 4.4.4. <u>Request:</u> We request that SARS consider looking into possible irregularities and harassment by agents and to provide feedback to SAICA on this so that we can communicate the outcome to our members. |
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4.5. Amounts not due and payable

- 4.5.1. SAICA members have reported instances where amounts not yet due and payable are being enforced by agents which raises the question of what the mandate of these agents should be. While SARS has, on occasion, stated to our members that only debt of four years and older, and for amounts above a certain threshold, will be handed over to agents, this does not appear to be the case.
- 4.5.2. Not all amounts reflected as due and payable are necessarily tax debt the collection of which is enforceable.
- 4.5.3. The simple fact that the SARS statement of account reflects an amount outstanding by the taxpayer does not mean that there is a tax debt due.
- 4.5.4. Furthermore, in terms of current inadequate SARS internal processes there may be some disconnect or lack of communication between the SARS departments dealing with the underlying merits of a matter and the tax debt enforcement side thereof. Based on practical experience, the appointment of agents



seems to further divorce the underlying merits from the debt enforcement.

- 4.5.5. The concern is that there is no connection seemingly between the agents and the underlying merits of the amount reflected to be outstanding.

4.5.6. Request: We request clarity on the procedures in place to ensure that only unconditional tax debt that is also proved to be due and payable and not subject to any dispute processes, agreement or suspension of payment request are being enforced by agents.

4.5.7. We further request clarity on the remedies available to taxpayers, including possible formal complaint procedures available at SARS, in the event that agents endeavour to enforce amounts that are considered unenforceable.

4.6. Unauthorised sharing of confidential taxpayer information

- 4.6.1. SAICA members have reported instances where confidential taxpayer information is seemingly being shared by agents with third parties, for example, to market debt collection services. The possibility of unauthorised sharing of taxpayer information is of concern to us and our members.

4.6.2. Request: We request clarity on the nature and extent of confidential taxpayer information that is being shared with agents and how the prevention of possible leakage of such information is being managed as well as the steps and remedies that are in place should such a breach be uncovered.

4.7. Information gathering by agents

- 4.7.1. We note from the tender documents that while the initial communication by SARS was that the agents were appointed purely for tax debt collection, that they also seem to be mandated



to have a measure of information gathering powers and in some instances, potentially even including a degree of investigative power on behalf of SARS.

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| 4.7.2. | <u>Request:</u> We request clarity on the extent of the mandate given to agents and the basis on which the mandate is extended to include information gathering and investigative powers. |
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ANNEXURE B

EXTRACT FROM SAICA AGENDA ITEMS FOR SARS RCB NATIONAL STAKEHOLDER FORUM

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[5.3. VAT penalties on delayed diesel rebates – status on splitting this \(h\)](#) **Error! Bookmark not defined.**

[5.4. SARS Audit and other correspondence \(5.8 \(a\) – \(d\)\)](#) **Error! Bookmark not defined.**

A. TOP MATTERS REQUIRING URGENT RESOLUTION

1. Procedures for raising additional/estimate/default assessments

There have been multiple concerns raised regarding how SARS deals with assessments and related communications, including those set out below.

- *There is a concern that in some instances additional assessments are issued without clear reason or justification*
- *For example, SARS may request documentation to validate information contained in a return. However, the request is not clear in its requirements and when the taxpayer provides information which SARS feels does not fit the requirements (which were not defined), a default assessment is raised*
- *Verification procedures (increasingly an issue with individual taxpayers and which was raised at the recent SARS/RCB Leadership meeting) often result in additional assessments without the taxpayer being engaged on the proposed adjustments*
- *In some instances, requests for information do not reach the taxpayer or tax practitioner and a default assessment is raised on the basis that the taxpayer ignored the requests*
- *There have been examples where the assessment refers to a 'letter' providing reasons, but no letter is provided or available on eFiling*
- *Communication is not always issued when an assessment is loaded on a taxpayer's eFiling profile or the communication does not indicate that an additional assessment has been raised and sometimes doesn't even include taxpayer details*
- *Adjustments/journals and in some instances penalty amounts appear on taxpayer statements of accounts, without a related assessment or notice of adjustment being issued. This is in contravention of section 3 of the Promotion of Administrative Justice Act*
- *In addition, these 'assessments' by journal adjustments on the statement of account also brings into question what route needs to be taken to dispute this*
- *Delays have been noted in the reversal of assessments following a Tax Court judgment in favour of a taxpayer – there is no defined process as to how this should be dealt with*

2. Dispute process

There are many challenges experienced with respect to the dispute resolution process. Given that this is a legal process, it is of utmost importance that the resolution of these issues be prioritised. Below are some of the issues currently experienced which has been ongoing for some time and remains unresolved.



- *In some instances, the request for reasons has not been available on eFiling*
- *Where reasons are provided, it is felt that especially with respect to individual taxpayers, these are insufficient, both from a factual and legal interpretative perspective, to enable a taxpayer to properly formulate grounds of objection*
- *Invalid objections are being issued with reasons which seem more aligned to a disallowance rather than the limited criteria applicable to an invalid objection*
- *Perception that this process is being used as an information gathering/audit process*
- *Overall, there are concerns that SARS are not complying with applicable timeframes in respect of the dispute process*

3. Debt management

There are increasing concerns regarding the debt management processes at SARS.

- *Demands for payment are being sent even after a suspension of debt request has been submitted*
- *Where a suspension of debt request is submitted via email (due to the functionality not being available on eFiling in certain circumstances), there is no communication within SARS departments to note and action the requests. In our experience, these are tabled only after we have intervened*
- *There is no clear process to follow where the suspension request is not available on eFiling – for example, for Trust related disputes – or where the request is to be made after the dispute form has been lodged on eFiling. This then creates uncertainty for both SARS and the taxpayer as to what constitutes a ‘valid’ request and different SARS staff offer different solutions resulting in the taxpayer being exposed*
- *Third party/agent appointments appear to have increased in the first quarter of 2018 and what is more concerning is that they are sometimes based on ‘default’ assessments – i.e. an assessment issued on the basis that no/insufficient support has been submitted for deductions claimed and all deductions are then disallowed*
- *SARS have in the past advised that multiple attempts are made to contact the taxpayer or tax practitioner prior to issuing an ITA88, but in a specific example where R2.2m was taken, the contact made was a call which the taxpayer’s wife answered due to him being occupied and no clear instructions were provided as to what action was to be taken in this regard*

4. Delayed tax refunds

The delay in the payment of tax refunds continues to be of great concern and whilst this was acknowledged at the recent SARS/RCB Leadership meeting, we wish to highlight the following:

- *Constant requests for bank verification for the same taxpayer even where banking details have not changed. SARS has noted that the reason for the verifications are as a result of fraud. Perhaps SARS should consider sharing*



statistics related to bank account fraud as a means of demonstrating to all stakeholders the justification of concerns in this regard

- *There are examples of special stoppers being applied again in respect of certain refunds*
- *Clients have demands for payments whilst in the objection phase and then when successful the refunds do not materialise*
- *Capacity of audit staff is insufficient to finalise audits in a timely manner, thus delayed the payment of refunds where taxpayers are under audit*
- *At the 16 May 2017 meeting, a commitment was made to address the issue of blanket assessments specifically. As noted above in the section dealing with assessments, this is an ongoing issue and we await feedback on this.*

Given the high profile nature of this long standing issue and the extent thereof, we propose discussing potential collaboration efforts with SARS as a means of reaching some resolution in this regard.

5. Lack of communication

As previously raised, the communication between SARS and taxpayers, tax practitioners and RCBs is deficient. SARS have again acknowledged the issue and in the recent SARS/RCB Leadership meeting agreed to working harder on improving this.

We have seen an effort to improve the communication. However, there is a perception that efforts to consult/communicate may be more mechanical rather than with a real intent to seriously consider submissions made.

Below are examples of areas in respect of which consultation is perceived to be merely a 'tick-box' exercise:

- *Shortening of the tax period*
- *Addressing specific VAT refund issues as a result of the findings of the related SAICA VAT Refund Survey in 2016*
- *Policies and procedures are still being amended, without timeous communication to stakeholders, despite SARS previously agreeing to communicate*

Furthermore, there is insufficient communication and resolution regarding issues discussed at previous stakeholder meetings, as can be seen by the previous matters raised which remain unresolved. We would like to work together with SARS in this regard in attempts to address the communication issues.

6. Tax clearance certificates

Members have noted recent problems with securing tax clearance certificates (TCCs). TCCs are critical because the lack of a TCC often denies the taxpayer the right to apply for tenders, and so has a real and immediate impact on profitability, which will in turn affect tax collections. Furthermore, this could affect the businesses ability to continue to operate in the long run, resulting in job losses as well. Taxpayers need access to SARS officials who are available, and senior enough to understand



and resolve, any problems with tax clearance certificates. Common issues noted (and in respect of which examples may be sought), include the following:

- Taxpayers have submitted an application for suspension, but this does not show on the system, and so SARS unlawfully denies the tax clearance certificate;*
- SARS denies the TCC because of an audit;*
- SARS denies the TCC because of an outstanding item on its system, where this item has actually already been resolved one example was where an IT14SD was submitted more than a year ago, and SARS appears to be unable to resolve this item on its system, and so the taxpayer has to get a “manual override” every two months).*
- SARS denies the TCC, because it wants to do a bank account verification*
- TCCs have, in some instances, been declined where the 2018 IRP5 ANNUAL RECONCILIATION (only due by 31 May) had not yet been submitted*

7. VAT rate increase

- As noted in our submission in respect of the VAT rate increase, dated 28 March 2018, to National Treasury (on which SARS was copied) there are doubts as to whether or not Parliament will sanction the proposed VAT rate increase, given the many concerns raised regarding the impact of such an increase on the majority of South Africans.*
- To this end, Parliament had initially agreed to bring forward the date for the tabling of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018 to some time in April, to ensure that a final decision is made in this regard. However, this did not materialise.*
- There are real concerns that, subsequent to vendors and SARS having implemented the increased VAT rate, Parliament may as part of the normal legislative process of twelve months to adopt the Budget proposal to increase the VAT rate, actually reject the rate increase. This will result in VAT refunds having to be paid to affected vendors on the basis that the increase was not promulgated.*
- In light of this, we request that SARS urgently engages with stakeholders regarding what will be done if the VAT rate increase is rejected despite already having been implemented.*



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| ANNEXURE C |
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Separately attached

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| ANNEXURE D |
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Separately attached