

**FEEDBACK SUMMARY  
15 OCTOBER 2020**

**GENERAL**

SAICA attends various discussions and meetings on behalf of members with National Treasury (“NT”), South African Revenue Service (“SARS”), the Office of the Tax Ombud (the OTO) and other stakeholders (internal and external). These meetings represent an opportunity for stakeholders to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

**SARS/BASA/SAICA VDP WORKSHOPS  
SEPTEMBER/OCTOBER 2020**

BASA arranged a workshop with SARS to discuss the VDP challenges members experience and the concerns raised by the members at the Operational Forum meeting held with SARS in August 2020. BASA invited representatives of the SAICA Tax Administration Act Subcommittee to attend the workshop as SAICA members raised similar challenges and concerns.

Due to the number of issues raised by both BASA and SAICA (“members”), two workshops were held on 23 September and 2 October 2020. SARS were well prepared and portrayed a positive attitude of working together with members to resolve all issues and to improve the VDP process to assist taxpayers to regulate non-compliance.

## OVERVIEW

SARS' continued willingness to engage regarding refinements to the Voluntary Disclosure Programme ("VDP") process is appreciated. The key officials representing SARS included: Mark Kingon (Executive: Stakeholder Relations) and Nicholas Nematili (Head of VD Unit).

SARS set the tone for the workshop by stating that in its view, VDPs must be in the interest of the fiscus. When concerns were raised that there is too much subjectivity involved in assessing VDP applications, SARS stated that it has commenced working on guidance to clarify the process, in order to assist taxpayers.

SARS re-emphasised that the majority of matters where SARS VDP assessors ask questions after receiving VDP applications, results in increased liability owing to SARS in comparison to what was originally disclosed. SARS is therefore motivated to interrogate VDP applications, based on its past experience.

### Meaning of section 226(2)

SARS has adopted a strict interpretation regarding the voluntary nature of disclosures and the discretion to be exercised by SARS officials under section 226(2) of the Tax Administration Act, 2011 ("TAA").

SARS' view is that the discretion under section 226(2) of the TAA will only be exercised where there is no possibility that the disclosure would be discovered during the course of an audit. Furthermore, if notice of an audit has been issued, but a physical audit has not commenced this falls within the ambit of section 226(2) of the TAA.

By contrast, IT14SD submissions and verification letters are not audits and should not disqualify a taxpayer for relief under section 226(1) of the TAA, with no discretion needing to be exercised by SARS.

SARS has indicated that although the IT14SD is not considered an audit, if an IT14SD has been issued, it may in some cases result in the VDP application not being "voluntary" and the application as such being denied.

### Backlog

74% of the backlogs caused by the Special VDP in 2016 have been resolved, with the balance outstanding primarily because of outstanding information from taxpayers.

54% of new cases received since the start of 2020 have been resolved.

SARS representatives were asked if they were seeing a decline in the number of VDP submissions being made to which they responded that they are not seeing a decline despite the difficulties experienced by practitioners and taxpayers.

The SARS VDP unit is continuing to roll out internal processes to balance the backlog of cases against new submissions and expressly stated that they are not seeing a reduction in submissions.

## **Refined process**

VDP applications are each considered on their merit and subjected to an initial "preliminary" screening process to determine if the application is complete and/or may be easily resolved. If so, it is sent to a specific team of VDP assessors to be handled on an expedited basis. 162 applications have been processed in 2020 using this expedited process.

The majority of VDP applications end in agreement between SARS and the taxpayer. Where taxpayers are dissatisfied with the outcome of decisions, they may request that SARS review those applications. Senior SARS officials then review the original decision before communicating the final decision.

SARS, however, cautioned that each application is still considered on its own merits and that similar cases may still have different outcomes and that no applications are automatically rejected.

## **SPECIFIC ISSUES**

SARS robustly dealt with specific queries raised, some of which are noted separately below.

At the outset, SARS did note its concerns regarding the completeness of some submissions made and it was explicit that all issues must be canvassed in VDP applications in order for applications to be considered to be full and complete. However, SARS also stated that where any disclosure relates to a net refund to the taxpayer, relief will be denied.

### **1. VDP assessments and withdrawing**

SARS was asked to clarify the circumstances where taxpayers may withdraw applications, in the relevant guidance and / or by way of application has been made, that assessment must be dealt with in terms of the normal process of objection and appeal even if a taxpayer wishes to withdraw from the VDP, post assessment.

SARS confirmed that a taxpayer may voluntarily withdraw from a VDP process at any point prior to a VDP assessment being issued. Threats by VDP assessors to levy interest and penalties are therefore unfounded prior to the issuance of VDP assessments.

If a taxpayer withdraws from the process after a VDP assessment has been issued, the matter will not be referred to audit or any other department. The assessment must, however, be dealt with in the ordinary course, therefore the normal dispute process etc will apply. Further, if the VDP application is withdrawn after the assessments have been issued, SARS' VDU will also issue additional assessments for the penalties that would have been waived in terms of the VDP relief.

It is important to remember that the collection process commences once assessments are raised.

### **2. Expedited process for unintended or minor errors**

Suggestions were made to create an expedited process to deal with unintended and / or minor errors regularly experienced by large corporates. BASA agreed to make a submission in this regard with input from SAICA. SARS agreed to consider this.

### **3. VDP assessment before agreement is reached**

Members noted concerns that in some instances, it appears that VDP assessments are raised prior to the VDP agreement being reached. SARS advised that where assessments are issued on the system, these are not 'VDP assessments' and are instead the standard assessments automatically issued by the system on submission on returns via eFiling, during the VDP process.

SARS also advised that under the current system taxpayers may either file returns and make payment upfront or at a later stage, but that interest will be an issue where payment is not made by the due date per the assessment.

### **4. Voluntary VAT registration**

SARS confirmed that the VDP process is not intended to assist taxpayers to regularise ordinary course non-compliance where the taxpayer is already registered for particular tax types and has not submitted certain returns - i.e. non-submission of returns does not give rise to a valid VDP submission. VDP is therefore not intended for taxpayers to file outstanding returns.

However, where the taxpayer has never been registered and was required to, SARS confirmed that new registrations (VAT and for other tax types) via the VDP process will be accepted and processed by the VDP unit.

### **5. VDP applications and input VAT older than 5 years**

The VDP unit accepts disclosures without limitation to time periods (e.g. 5 year rule under VAT).

Full disclosure must be made regarding any default alleged. Where input VAT claims are withheld and not included in the VDP application, this will be flagged as not being full and complete disclosure, which will delay the process and may result in the application being rejected.

SARS agrees that VAT is a period-based tax and should be viewed with reference to each VAT period. SARS, however, repeated that VDP applications will only be processed where they are full and complete.

SARS also confirmed that it considers applications holistically provided that the applications results in a net amount payable to SARS.

### **6. Requests for additional information**

There were concerns regarding SARS requesting additional documentation to validate information included in the VDP application. Some taxpayers feel that the applications is audited in a way, whereas in the past SARS seemed to accept information at face value.

SARS noted that due to its experience in handling VDP matters, it has become necessary, in some instances, to request additional information. SARS further challenged tax practitioners to compare the value of original disclosures made against the final amount determined as being due and payable before challenging the request for information process.

SARS representatives advised that they expect the VDP auditors to review and refine standard requests. SARS conceded that oversights and errors, particularly regarding offshore disclosures, have been made and that as far as possible these issues have been resolved.

In view of these experiences, SARS was asked what was being done to bolster the VDP unit's resources. SARS did not directly answer this question, but confirmed that it works closely with legal interpretation and consults internally extensively on VDP matters. The SARS representatives specifically stated that negative outcomes are considered carefully before being communicated to taxpayers.

By way of an update, SARS also advised that there are approximately 10 SVDPs outstanding, which are being finalised. SARS representatives also advised that the critical issue regarding foreign VDP disclosures, and related delays, pertained to the origin of the seed capital. In SARS' view, the lack of information available regarding seed capital is what contributed significantly to delays that arose over the last 3 to 5 years.

## **7. Confidentiality of information shared with the VDP unit**

There were concerns raised that there seems to be sharing of information between SARS' VDP unit and SARS Enforcement as there was a perception that, in some instances, specific matters included in a VDP application became the subject of a SARS audit.

SARS stated that from a policy perspective, all information received by the VDP unit is confidential and no other SARS departments (including enforcement) have access to the VDP systems and information.

Marelize Loftie-Eaton (Marelize) then raised examples that she is aware of where information disclosed as part of a VDP became the subject of an audit shortly after the taxpayer commenced with a VDP process. The VDP unit confirmed that they do not share any information with other departments within SARS.

Submissions were then made that assessments raised by VDP should not be capable of being seen by other departments and should be ring-fenced otherwise taxpayers will be disinclined to undertake VDPs for fear of their profile being flagged by SARS.

SARS confirmed that VDP assessments are raised only within the VDP unit and that taxpayers should not be concerned where disclosures made in terms of a VDP process are full and complete.

SARS also assured participants that specific issues disclosed as part of a VDP and found on a VDP assessment are not able to be identified by other departments within SARS as only monetary adjustments are disclosed on the relevant VDP assessments.

Marelize suggested then that where issues like this arise, this will be raised directly with Nicholas Nematili for further investigation.

## **8. Inconsistent outcomes**

Concerns were raised that there are sometimes inconsistent outcomes on VDP matters involving different applications on similar issues.



SARS confirmed that its main goal is to reach agreements with taxpayers on individual matters and that specific cases may be escalated where a taxpayer is not satisfied with the outcome. SARS undertook to continue to refine, work and improve processes and systems with the goal of entering into VDP agreements with as many taxpayers voluntarily coming forward as possible.

Marelize then queried whether, if a default arises for a large, corporate taxpayer across various group entities, there is scope for the matter to be dealt with by the same official for all the group entities. SARS advised that it attempts to allocate matters to the same official, but that this is not always possible. SARS confirmed, however, that where the same issue is split between officials, consensus-seeking discussions are held internally to prevent different outcomes for the same issue.

## **9. VDP-related payment arrangements**

A participant raised the issue regarding delays and difficulties encountered when taxpayers apply for payment plans as well as whether there is scope to appoint extra resources to review these requests.

SARS noted the need for extra resources and also confirmed that payment plans are done internally and that the delay of over two and a half months experienced by the specific clients was the exception to the norm. SARS conceded that this was an issue and that it is receiving attention.

SARS representatives also confirmed their view that once a taxpayer approaches the VDP unit, they are assumed to be able to pay the liability found to be due to SARS.

## **CONCLUSION**

Marelize, as a representative of both BASA and the SAICA TAA Subcommittee, offered assistance from BASA and SAICA to draft the proposed SARS VDP guide. Alternatively, if SARS is not amenable to this, it was proposed that a draft should be circulated for comment prior to being finalised and published.

Marelize also reminded SARS that submissions will be made motivating for a separate process (outside of VDP) to correct unintended system errors on an expedited basis.

SARS agreed to future engagements with the wider BASA and SAICA community.

SAICA is grateful to Marelize, as well as the rest of the SAICA TAA subcommittee members, for their ongoing efforts in this regard.

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