FEEDBACK SUMMARY
9 JULY 2020

GENERAL

SAICA attends various discussions and meetings on behalf of members with National Treasury ("NT"), the South African Revenue Service ("SARS") and other stakeholders (internal and external). These meetings represent an opportunity for them 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 an attempt to inform SAICA members of the discussion and of any proposals that were made during such discussion.

TAX OMBUD'S SYSTEMIC INVESTIGATION REPORT
3 JULY 2020

The Office of the Tax Ombud presented its report ("Report") on a systematic investigation into the following two issues:

1. Complaints by taxpayers regarding the fluidity of Pay As You Earn ("PAYE") statements of account; and

2. The failure by SARS to adhere to the dispute resolution timeframes prescribed by the Tax Administration Act ("TAA") and the Dispute Resolutions Rules ("Rules") promulgated under the TAA.

The **Report** was released on 23 June 2020 and the purpose thereof was to establish whether the two matters listed above constituted systemic issues or revealed emerging systemic issues. The Report revealed that some of the aspects of the two complaints constituted systemic issues, while others did not.

Fluidity of PAYE statements of account

Background

Industry bodies raised concerns over the fluidity / inaccuracy of PAYE statements of accounts. The complaints relate to statement of account balances that change constantly throughout any one day, with SARS passing journal entries with no explanation to taxpayers as to why such entries are made. The practical result is that neither SARS nor the taxpayer know the real status of a taxpayer's account at any given time.

Further, there were complaints that the PAYE account system allocates any amount paid to PAYE, Unemployment Insurance Fund ("UIF") and Skills Development Levy ("SDL"), in that sequence. Accordingly, where a debt arises in any period, all payments are allocated in this sequence regardless of the taxpayer's intentions.

In this regard, the Report provides the following with regard to Payment Allocation Rules:

1. SARS allocates payments according to the declared value in the following sequence:
   a. PAYE tax value (in the following sequence – penalty, interest, tax (i.e. capital), additional tax / understatement penalties);
   b. UIF contribution value (in the same sequence as in a) above);
   c. SDL value (in the same sequence as in a) above);
   d. any outstanding debts on other periods (in the same sequence as a) above); and
   e. Employment Tax Incentive debts (if any).

2. Payments are journalised to 'unallocated' to the extent that:
   a. there is a balance left over after the payment went through the steps listed in 1 above;
   b. payments were made using the incorrect unique payment reference number ("PRN"); or
   c. a payment is made on a period for which no debt exists (i.e. payments are made on a period without submitting the return).

3. The following transactions, which result in journals being reflected on the PAYE statements of account, reset the original payment allocated to zero and repost the payment against the revised liabilities, in accordance with the allocation rules:
   a. when the capital liability of PAYE, UIF, or SDL changes due to requests for correction or PAYE reconciliations;
   b. when the taxpayer requests reallocation of payments via e-Filing and adjusts the EMP501; or
   c. when SARS must reallocate a payment to the correct period.

4. In essence, SARS provides that no journal entries will appear on the statement of account where the PAYE return was:
   a. filed on time;
   b. the payment was made timeously and using the correct PRN; and
   c. the declaration was not subsequently changed in any way.

Outcome of investigation

The Report revealed five aspects (and provided recommendations) that might have given rise to the complaints lodged in relation to PAYE statements of account:

1. Inadequate / poor communication

   In order to comply with the latest accounting standards, SARS implemented system and statement of account enhancements. However, it was found that the explanations given by SARS on certain transactions were either not correct or not detailed enough and thus added to the confusion.

   Recommendation – SARS is requested to consider improving its communications with taxpayers and refrain from issuing generic letters.

2. SARS Errors

   SARS does in fact make mistakes which it acknowledges. However, the mistakes identified were isolated incidents of human error and cannot therefore be regarded as systemic in nature.

   Recommendation – Even though errors are isolated incidents of human error, SARS should make more effort to eliminate these.

3. Questionable Letters

   There were instances where SARS issued letters purporting to be in response to requests by taxpayers. However, it was confirmed that the taxpayers had not made any such requests but rather that the letters contained standard paragraphs that could not be edited.

   Recommendation – SARS is requested to refrain from sending letters containing information that is not relevant to the particular taxpayer. In addition, if any generic information is contained in the letter, it should be indicated as such.

4. Raising assessments to absorb credits

   SARS has historically raised assessments to clear credits on PAYE accounts. Whilst SARS has stopped this practice, it has not rectified the assessments raised under those circumstances, unless requested by a taxpayer to do so.

   It was found that where SARS raised the assessments incorrectly, that resulted in the EMP501 reconciliation reflecting as outstanding. The taxpayer therefore cannot file an amended EMP501 reconciliation because its initial declaration would be deemed correct.

   Recommendation – SARS should identify all transactions where it incorrectly raised assessments to clear out credits on PAYE accounts and correct these.

5. Lack of knowledge on Payment Allocation Rules

   Based on the submissions received from taxpayers, it was found that many did not understand how the payment allocation rules work. This is an education issue and not systemic in nature, therefore no recommendations were made.

SARS's failure to adhere to timeframes prescribed by the TAA

Background

The Rules promulgated under section 103 of the TAA set out certain procedures and timeframes to be followed in relation to objections, appeals and alternative dispute resolution matters.

SARS adopts a strict approach towards taxpayers in enforcing compliance with the timeframes, however, it has been found that SARS does not itself always adhere to these timeframes. Despite repeatedly having these shortcomings brought to its attention, SARS has not taken the necessary steps to resolve the underlying causes of the delays.

Outcome of investigation

The investigation revealed that both taxpayers and SARS failed to adhere to the prescribed timeframes. It is important to note that SARS was found to be at greater fault due to the power it wielded against taxpayers.

More specifically, the key findings and recommendations set out in the Report are summarised below:

1. System automated calculation of days

   The SARS system incorrectly calculates the dates for dispute resolution and does not exclude public holidays, weekends and the period between 16 December and 15 January. This creates delays in the dispute resolution procedure and adds to the workflow of both taxpayers and SARS' staff. In addition, this results in objections and appeals being routed incorrectly for condonation.

   Recommendation – SARS should promptly correct its system to calculate the number of days during the dispute resolution process correctly and in accordance with the Rules.

2. Notification of Invalid Appeal Letters

   It was found that in cases where taxpayers submit appeals so late that SARS does not have the discretion to condone the late filing thereof, the letters issued by SARS correctly inform the taxpayer that SARS has no discretion to entertain appeals that are lodged more than 75 days after delivery of the Notice of Disallowance of Objection.

   However, these letters contain a standard paragraph that provides that a new Notice of Appeal may be submitted "*and if late, a request for late submission must be submitted by you.*" This paragraph is not applicable in cases where more than 75 days have lapsed since a decision was taken on the objection and SARS tries to work around the issue by adding a line: "*Please ignore the below paragraph – Case concluded*".

   Recommendation – A standard letter should be included on the SARS's system to cater specifically for section 107(2)(b) matters. This would avoid confusion and instances where taxpayers try to lodge new Notice of Appeal forms in accordance with the current standard letters.

3. Requests for condonation

Whilst there is no specified time period for SARS to attend to condonation requests, an analysis of the information provided by SARS revealed that they were quick in attending to the condonation cases for objections. With reference to appeals, it took SARS an average of 113 days to make a decision to allow requests for condonation to the late filing of appeals. The timeframes within which SARS addressed appeal condonation matters were thus found to be unreasonable.

Recommendation – Since it was found that almost 90% of all requests for condonation are allowed by SARS, consideration should be given to rather allow taxpayers three years to object to an additional assessment and to remove the provisions of the TAA and the Rules relating to condonation. Similarly, during the appeal process the timeframe could be set at 75 days with no further option of extension. In addition, SARS needs to ensure its own compliance with timeframes contained in the Rules.

4. Non-compliance with timeframes for objections

SARS failed to inform taxpayers within the prescribed timeframe where there was an error or omission on submissions made. This led directly to delays in amended objections being filed and ultimately delays in the finalisation of objections. SARS was also found to incorrectly invalidate objections.

Recommendation – When it comes to the different steps of an objection, there is a great imbalance in the powers between SARS and the taxpayers, considering the 'pay now and argue later' rule and the threat of SARS taking collection steps. The responsibility therefore lies heavily on SARS to ensure compliance with the timeframes.

5. Non-compliance with timeframes for appeals

Factors contributing towards SARS's non-compliance include its manual inventory management systems, capacity challenges, delayed submission of information by taxpayers, jurisdictional challenges where cases need to be reassigned to the correct jurisdiction, internal delays within business units and the raising of non-meritorious additional assessments.

Recommendations –

a) the SARS system needs to be aligned to record each step of the appeal process and its accompanying correspondence;
b) SARS must review and improve the process of raising additional assessments as well as the efficiency of its objection committee mechanism; and
c) taxpayers must submit all the necessary and relevant documentation timeously from the outset.