

**FEEDBACK SUMMARY  
18 FEBRUARY 2021**

**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/SAICA MEETING  
SAICA SUBMISSION: SARS NON-COMPLIANCE WITH SECTIONS 42 AND 96 OF THE TAA  
6 FEBRUARY 2021**

On 9 November 2020, SAICA made a submission to SARS to address [SARS' non-compliance with sections 42 and 96 of the Tax Administration Act, 2011](#) (the TAA), as well as the lack of a legislated/defined process for ‘verifications’. The concerns raised were in respect of non-compliance with the TAA read with the Promotion of Administrative Justice Act (PAJA). We encourage members to read the full submission.

The practical aspects of the non-compliance have previously been addressed with SARS via the SARS/RCB national stakeholder meetings over the last few years and the requirement for a legislated verification process has been addressed as part of the Annexure C submissions to National Treasury.

Following the submission, SARS initiated a meeting to better understand the issue and to provide insights regarding the concerns raised. The main points of discussion are summarized below.

1. SARS' non-compliance with issuing letters of findings following the completion of some audits

In terms of section 42 of the TAA, SARS is obliged to issue the taxpayer with a letter of findings on the conclusion of an audit and to allow the taxpayer the opportunity to respond to such findings, within 21 days of the issuance thereof. There is an exception such that this process need not be followed "if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit". In these circumstances, "the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision".

In practice, it appears that there are no letters of findings issued in certain situations. It is important to note that in this regard, SARS distinguishes between what it considers a detailed audit vs a verification or what SARS refers to as a 'desk audit'. SARS seemingly makes this distinction due to the provisions related to a request for relevant material. SAICA's view is that a verification fits within the ordinary meaning of the word 'audit', but this aspect is dealt with separately below.

Setting 'verifications' aside, there have been complaints that no letter of findings is issued in respect of some audits and it is not clear why this is the case. SARS advised that it is aware that this may have been caused due to issues with delivery of such letter. In some instances, this may be due to contact details not being updated by the taxpayer or tax practitioner or system issues impacting successful delivery. Regarding the system issues, SARS notes that it addressed these towards the end of 2020. To this end, should members find that they have not received letters of findings in certain instances, in respect of what SARS considers an 'audit', these cases must be logged on the SAICA Member Portal under the SARS Operational category to enable SARS to establish why this may be occurring.

2. SARS' non-compliance with the requirement to issue adequate notices of assessment

Section 96 of the TAA requires that SARS issues a notice of assessment to a taxpayer and sets out the various requirements for this notice.

As detailed in our submission, one of these requirements is that, in the case of an estimated assessment or "an assessment that is not fully based on a return submitted by the taxpayer", SARS must give the taxpayer "a statement of the grounds for the assessment". Therefore in the case of an additional assessment – issued both in respect of 'verifications' or formal 'audits', SARS is required to fulfil the requirement of issuing grounds for the additional assessment.

Further to this, the requirements of section 3 of PAJA apply to "[a]dministrative action which materially and adversely affects the rights or legitimate expectations of any person". In our view, an additional assessment would result in financial prejudice to a taxpayer and accordingly this is a material and adverse effect.

In the circumstances, based on our interpretation of this section as well as relevant case law as cited in our submission, SARS must give the taxpayer "adequate notice of the nature and purpose of the proposed administrative action", "a clear statement of the administrative action" and "a

reasonable opportunity to make representations”. In our view, this applies regardless of whether such assessment arises after completion of a formal audit or a ‘verification’.

What has been found in practice is that, in some instances, even where the notice of assessment is issued it does not comply with the requirements of section 96 and does not contain adequate grounds of assessment. The notice of assessment will sometimes refer to a letter having been issued, but none has been received by the taxpayer or tax practitioner. Consequently, the taxpayer is unable to determine whether or not to pursue a dispute or if a dispute is the chosen route, it would be difficult to formulate an objection without fully understanding SARS reasons’ for its adjustments and the related additional assessment.

SARS expressed its view that in most instances, the information provided in the notice of assessment is fulfilling the requirements in terms of the law, by setting out the facts, the relevant legislation and SARS’ conclusion, without necessarily providing the thought process in reaching such conclusion. This, SARS stated, was in line with its interpretation of the legislation and relevant case law precedent.

Whilst it was acknowledged that one of the remedies is for the taxpayer to request for reasons in terms of the dispute rules, SAICA noted that this was not the most efficient approach and furthermore, by not issuing the grounds upfront, this was in contravention of the legislation as well as relevant case law.

### 3. Lack of a defined process for verifications

As noted above, SARS distinguishes between verifications and audits and therefore the processes and timelines as set out in the TAA as relates to what SARS considers a formal audit, are not applied in respect of verifications.

This has led to many difficulties for taxpayers in that verifications often seem to be ongoing, with no obligation on SARS to provide status updates. In SARS’ view, a verification also does not require the issuance of a letter of findings and consequently no opportunity for the taxpayer to address such findings prior to an additional assessment being issued, as such letter is only required in the case of a formal audit.

Some of the consequences are:

- Delayed refunds due to ongoing verifications that take a significant amount of time for SARS to finalise, negatively impacting cash flow and in the case of small businesses, creating going concern issues;
- Taxpayers or tax practitioners having to follow up on an ongoing basis regarding the status of the verification and each time, having to wait 21 days before being ‘allowed’ to follow up again;
- When assessments are issued, in some instances, insufficient details are provided therefore limiting the taxpayer’s ability to determine whether or not SARS’ position is correct and therefore whether a dispute is necessary;
- The request for reasons process is often also problematic, as SARS does not always respond timeously therefore delaying the objection process. In some instances, taxpayers choose to

lodge the objection even though SARS have not yet provided reasons within the relevant timelines and this sometimes leads to the SARS system invalidating the objection on the basis that it is 'late', when in fact the timeframe for lodging the dispute would only commence from the time SARS has provided the reasons requested;

- In the case of disputes, the recent systemic investigation report of the Tax Ombud confirmed that there are many instances of SARS not complying with the dispute timelines, thereby creating further disadvantage to the taxpayer who chooses the dispute option after eventually receiving the additional assessment arising following the verification.
- Ultimately, the process is inefficient for both SARS and the taxpayer and does not, in our view, achieve a fair administrative process for the taxpayer, as set out in detail in our submission.

Regarding the verification process, SARS indicated that an explanation of verifications and how the process works is set out on this [SARS page](#).

Our concerns remain, that without the process being legislated or SARS issuing clear guidelines in terms of practice to be adhered to by its officials and taxpayers, this leaves room for many inconsistencies and unfairness.

Whilst remedies in terms of the TAA and related dispute rules are available, these are neither cost nor time efficient, both for taxpayers and SARS.

SARS noted that the concerns raised would be discussed in more detail internally before a formal response is issued.

Where members have examples of the issues noted above, namely:

- Letters of findings not issued on completion of a SARS audit; and/or
- Notice of assessment not issued prior to SARS issuing an additional or revised assessment and/or inadequate grounds of assessment provide by SARS;

we urge you to please log these on the SAICA Member Portal for escalation to SARS.