

Ref #:774441

Submission File

20 April 2023  
South African Revenue Service  
Private Bag X923  
Pretoria  
0001

BY E-MAIL: [acollins@sars.gov.za](mailto:acollins@sars.gov.za)

Dear SARS

**COMMENTS ON THE DRAFT PUBLIC NOTICE ON RETURNS OF INFORMATION TO BE SUBMITTED BY THIRD PARTIES**

1. We herewith present the comments of the South African Institute of Chartered Accountants' (SAICA) in respect of the Draft Public Notice on Returns of Information to be submitted by third parties in terms of section 26 of the Tax Administration Act, 2011 ('the TAA')
2. We set out below our general and specific comments in this regard.

**GENERAL COMMENT**

**First year 2023 tax year**

3. Similar to our comments and concerns on the draft BRS for trusts and donations on 1 August 2022, we again raise concerns about the year of implementation<sup>1</sup>.
4. The draft notice sets out "returns" that must be submitted to SARS for the 2023 tax year (i.e. retrospective data) and following years during the 2023 calendar.
5. Three new "returns" are required in 2.14, 2.15 and 2.16.
6. Clause 4 then sets different dates for 2.14, 2.15. and 2.16 as follows:
  - 2.14 – Deferred reporting till 2024 calendar but includes 2023 tax year i.e. must already start gathering the required data for section 18A donations. We do note that SARS website notes that the BRS was only issued on 9 February 2023<sup>2</sup> whereas correspondence from SARS notes it was published on 28 November 2022 with a call

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<sup>1</sup> [SARS Third Party Data Submission-IT3t-and-IT3d.pdf \(windows.net\)](#)

<sup>2</sup> [Business Requirement Specification - Submission of Section 18A receipts issued | South African Revenue Service \(sars.gov.za\)](#)

for testers (a call that was repeated on 2 March 2023). We further note that the BRS indicates the issue date as 22 October 2022<sup>3</sup>.

- 2.15 – Must report on 2023 tax year data. The BRS was only issued on 28 November 2022 together with a call for testers<sup>4</sup> i.e. data systems and data-gathering would have to be implemented after the fact. The first report will be due in September 2023 in relation to the 2023 tax year.
  - 2.16 – No date as no consultation has occurred and no BRS issued.
7. What is evident from the above is that the notice is premature. As noted from our previous submissions SARS should, at a minimum, give taxpayers 12 months after the final BRS are issued, to get their systems and resources in place to comply to ensure administrative fairness.
  8. In the above both BRS's issued and published were after the obligation imposed to gather the data was already 8 months into the period.
9. It is submitted that the notice as relates to these obligations is premature given that the actual obligations defined and issued after the relevant year had already begun.
  10. The obligation to report for 2.14 and 2.15 should be deferred to 2025 to give taxpayers a 12 month period to implement systems and then do actual data-gathering in 2024 for reporting in the 2025 calendar year. A similar reasonable approach has been adopted by SARS for the new PAYE reporting. From the initial testing, it is also quite evident that both groups are going to have significant challenges, which a deferral provides time to SARS to further refine the BRS.
  11. As relates solar installers, given that no industry consultation has even occurred, never mind a BRS being issued, it is submitted that this proposal as a check and balance measure requires a reconsideration. The fact that it will be for a single year makes this proposal even more difficult to understand its rationale and reasonability.

### **BRS Details**

12. We are aware that from the SARS engagement with industry regarding the reporting envisaged in 2.14 and 2.15, industry has identified various challenges. This to our knowledge includes industry originations such as the Banking Association of South Africa who are well placed to make informed comment on implementing third party obligations.
13. In respect of 2.14, (PBOs), SARS is also fully aware that given the nature of these organizations, creating awareness of new obligations and getting these organizations to fund any process, human capital and systems to comply would be a challenge given their reliance public gratuitous funding.

<sup>3</sup> [SOUTH AFRICAN REVENUE SERVICE \(sars.gov.za\)](https://sars.gov.za)

<sup>4</sup> [IT3 Data Submission | South African Revenue Service \(sars.gov.za\)](#)

14. How widely SARS has consulted this industry as to the BRS requirements is unknown though we are aware that even larger well-funded PBOs have concerns about the proposed obligation even without the benefit of a finalized BRS.
  15. Should small PBOs who receive a multitude of small donations have to provide a significant amount of demographic and financial data of donors, this poses a significant burden. Their full understanding of the BRS requirements that SARS expects is therefore imperative.
  16. Given that both BRS's were only issued later during 2022, with further implementation testing still happening in March 2023, it seems unreasonable that SARS requires taxpayers to implement new systems and data-gathering that they may either not be capable of obtaining, or which the current BRS make it such an impossibility as it requires refining and further communication.
  17. SARS not having a sandbox environment for these rollouts means that organizations like SAICA can effectively assist organizations like PBOs to better understand the obligation and what would in reality be required from them.
  18. As relates 2.16, only inferences of what a future BRS will require can be made from the correspondence SARS has issued to date and what the draft notice states. It should be noted that unlike trusts and PBOs, this is an industry that has never had a SARS reporting obligation and will also now en masse have to register for this function.
  19. Furthermore, it seems from the draft notice that SARS does not seem to appreciate what is currently in an Electrical Certificate of Compliance ('COC'), the fact that it is in paper format and what an "solar installer" can or cannot validate.
  20. Requiring an installer to confirm things like the PV panels being new or unused makes various assumptions including that the installer is also the supplier of the panels. Furthermore, it also assumes that the installer is in fact the certified electrician who actually by law issues the Electrical COC, which in most cases is not the case.
  21. The electrician is in most instances a party contracted to quality-check the installation for the installer before commissioning, which is how builders use registered engineers as well to sign off on structural matters required by law. The electrician would not know when the panels were first brought into use. The notice also says that the ID number of the person on behalf of whom the installation was done must be supplied, that would in fact be the ID of the installer and not the client of the installer.
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| <ol style="list-style-type: none"> <li>22. It is submitted that this inclusion is premature, and that this proposal is not appropriate and should be withdrawn.</li> <li>23. It is submitted that as relates 2.16, it should be withdrawn and the rebate treated as other income tax allowances, i.e. the relevant taxpayer providing invoices of purchase and installation.</li> </ol> |
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24. Given how few people will be able to access this rebate given financial constraints and that it is for a single year, the proposals seems wholly disproportionate to the risk to the fiscus.

### Thresholds exclusions

25. With respect to the time and cost implications of the new reporting requirements, there is a concern that the administrative burden for small family or business trusts and Public Benefit Organizations (PBOs) could be unwarranted as reflected in our previous submission on 1 August 2022.
26. Furthermore, many of these taxpayers may not have the funds to develop the systems or employ tax practitioners to enable these kinds of data submission events.

27. Submission: We propose that SARS consider implementing the reporting responsibility for taxpayers above certain thresholds in addition to gradually phasing in the reporting responsibility over a number of years.
28. There is also a need for SARS to provide coherent and easily accessible training to PBOs and trust registered representatives to enable these taxpayers to build and facilitate these data submissions, as the third-party data submission mechanism may not be as easily available to these taxpayers.
29. SAICA would be happy to be involved in the proposed education and communication initiatives, as required with a sandbox environment a necessary tool. A contact point for 'problem' declarations needs to be established as some filers will not be familiar with the problem resolution process that SARS employs for eFiling and data submission issues.

### SPECIFIC COMMENTS

#### Paragraph 5 – Manner of submitting a third-party return

30. Paragraph 5.1.1 notes that where a third-party return comprises 20 or fewer records, the relevant data must be submitted via the SARS e-Filing platform. However, third party returns with between 21 and 50 000 records must be submitted using the SARS electronic filing service – hypertext transfer protocol secure (https) bulk data filing.
31. HTTPS bulk data filing is also available on the e-Filing platform, with SARS also having published a [Guide For The Submission Of Third Party Data Using The Https Channel](#) on how submissions can be made.
32. A reading of the Guide reveals that submitting third party data to SARS via the HTTPS Channel is a complex process. The Guide itself is also difficult to understand for a lay person, containing a lot of information technology (IT) jargon.
33. PBOs, trusts and persons issuing solar installation certificates of compliance will be expected to use this complex HTTPS Channel if they have as few as 21 persons (donors/beneficiaries/customers) in respect of which data should be submitted to SARS.

34. This is a massive administrative burden on the public officers of the abovementioned organisations. Many of those installing the solar installation certificates are very small businesses struggling to operate in this difficult economic climate. Consider the example of a PBO with thirty (30) donors each contributing R1 000 per tax year. Such an entity will also be expected to use the HTTPS Channel. This is simply too onerous for such persons and may even discourage voluntary tax compliance.

35. Submission: It is submitted that the requirement to submit third party data via the HTTPS Channel only apply in instances where the return comprises at least one hundred (100) records, and that returns comprising less than 100 records be submitted on the 'normal' e-Filing platform. Consideration should be given to expanding the capabilities of e-Filing to handle up to 100 records in order to accommodate the smaller PBOs, trusts and installers of the certificates of compliance.

36. SARS should furthermore consider updating the *Guide For The Submission Of Third Party Data Using The Https Channel* and make it much easier to understand.

37. It is also suggested that SARS produce video content educating taxpayers and tax practitioners on how to submit these third party returns of information.

## Conclusion

38. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges that ensure voluntary compliance as relates to fair tax administrative practice. Should you wish to clarify any of the above matters please do not hesitate to contact us.

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Yours sincerely

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*The South African Institute of Chartered Accountants*