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National Treasury Policy Department and Ms Adele Collins
National Treasury / South African Revenue Service

Per email: 2024AnnexCProp@treasury.gov.za
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Dear National Treasury and Ms Collins

SAICA COMMENTS ON THE DRAFT 2024 TAX ADMINISTRATION LAWS AMENDMENT BILL

The National Tax Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the National Treasury (NT) and the South African Revenue Service (SARS) on the 2024 Draft Tax Administration Laws Amendment Bill (DTALAB).

Our submission has addressed amendments to the following tax Acts –

- The Income Tax Act, 58 of 1962, as amended (the Income Tax Act);
- The Value Added Tax Act, 89 of 1991, as amended (the VAT Act);
- The Tax Administration Act, 28 of 2011, as amended (the TAA); and
- The Promotion of Access to Information Act, 2 of 2000, as amended (PAIA)

We have set out our comments on the above in detail in **Annexure A**.

On a more general note, we wish to raise the following points:

1. There does not appear to be a public record that confirms those matters, submitted by stakeholders, have all been considered by NT and the Minister for inclusion in/exclusion from the Budget Review. As is self-evident, this results in stakeholders having no sense as to whether matters not included in the Budget Review are not a current policy or legislative imperative or whether its not within the relevant policy at all.

2. Without this certainty of outcome, stakeholders repeat submissions in the hope of an eventual clear position or outcome from NT. As Parliament noted, if stakeholders take the time to make submissions, they can expect a short explanation as to why matters were considered or not. NT did accommodate a follow-up engagement for the first time

on 3 November 2022 (“Recurring Tax Proposals") following our concerns expressed to ScoF on this matter.

3. However, we submit that this engagement on the matters that will not be addressed in the Bills should occur before the Bills are released to ensure that the Minister has properly applied his mind as to what should or should not have been included in the bills. It also does not explain why technical errors, including spelling mistakes, are not corrected.

Please do not hesitate to contact us should you have any queries in relation to our submission.

Yours sincerely

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The South African Institute of Chartered Accountants

Table of Contents

ANNEXURE A:

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DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL 2024

INCOME TAX

Paragraph 2 of the Fourth Schedule – Amendment to the "provisional taxpayer" definition (Clause 2)

1. The new subparagraph 2(bA) includes a labour broker as provisional taxpayer if a certificate of exemption has been provided.

2. However subparagraph 2(5)(a) only empowers the CSARS to give such a certificate of exemption if the labour broker is already a provisional taxpayer.

3. Submission: It is recommended that the requirements in para 2(5)(a) be deleted as relates to provisional taxpayers as such act of exemption automatically will make the labour broker a provisional taxpayer and cannot be a pre-requirement.

VALUE ADDED TAX

Section 14 – Timeframe for the collection of VAT on imported services – (Clause 9)

4. The proposed extension of the timeframe for accounting for VAT on imported services from 30 to 60 days is a welcomed, positive development.

5. However, the continued reliance on the invoice date as the basis for this timeframe does not adequately reflect the foreign payment processes employed by most vendors.

6. Typically, invoices from foreign suppliers are processed differently compared to those from local suppliers, with the former often being recorded in the Enterprise Resource Planning (ERP) system only upon payment. Due to varying payment terms, the payment date may significantly differ from the invoice date.

7. Submission: It is therefore submitted that VAT on imported services be accounted for within 60 days from the date of payment. This approach aligns with the actual timing of the financial transaction and allows for the application of the foreign currency exchange rate prevailing at the time of payment, ensuring accuracy in VAT calculations.

Section 16 – Calculation of tax payable (clause 10)

8. The 2024 DTALAB includes a proposed insertion of a new section 16(3)(p) into the VAT Act to allow vendors to claim an input tax deduction in respect of excess payments made under section 7(1)(*c*) in respect of self-assessments on imported services.

9. The proposed amendment is welcomed.

10. However, it refers to the "*tax that should properly have been charged under section 7(1)(c)*" (our underlining).

11. Submission: Given that section 7(1)(c) contains a self-assessment requirement, it is proposed that the word "levied" instead of "charged" should be used, in line with the wording used in section 7(1) of the VAT Act and to avoid confusion where no VAT was actually "charged" to the vendor by *anyone*.

12. Alternatively, the correct word is arguably "reverse charge", except that this concept is not used elsewhere in the VAT Act (only in certain industry-specific regulations to the VAT Act, for example, the Domestic Reverse Charge Regulations on Valuable Metal applicable to the gold industry).

Section 23 – Registration of persons making supplies in the course of enterprises and refunds (clauses 11 and 12)

13. The proposed amendments to section 23 are intended to ease the administrative burden of opening a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (i.e., a South African bank account) for certain vendors that typically do not have a sufficient or any physical presence in South Africa.

14. Whilst we do not comment on the proposed amendment to section 23, it seemingly contradicts the proposed amendment to section 44(3)(d) which seeks to insert the wording "in the Republic".

15. Submission: The latter will prevent the Commissioner from making a refund payment unless the vendor has furnished the Commissioner in writing with the particulars of the enterprise's banking account or account with a similar institution "in the Republic".

16. Section 44(3)(d)(i) enables a non-resident vendor to request that a refund or other amount be transferred to a group entity's South African banking or similar account, but uses the wording "other than that account of the [requesting] vendor" (our underlying), thus implying that the vendor requesting the refund must (also) have a South African banking or similar account.

17. Therefore, where the new proviso to section 23(2) applies, the affected vendors will henceforth not be able to receive a VAT refund *payment* from SARS, if regard is had to the proposed amendment to section 44(3)(d). For example, this will affect electronic services providers who occasionally incur expenses in South Africa in relation to their taxable enterprise activities and who are therefore entitled to VAT refunds, notwithstanding that they do not have a physical presence in South Africa.

18. The VAT Act does not currently contain any prohibition on the payment of VAT refunds by SARS into a foreign bank account.

19. Moreover, Section B.14 (Miscellaneous transfers) of the Currency and Exchanges Manual for Authorised Dealers states in subsection (A) (General) that:

20. *"Authorised Dealers may approve applications by South African business entities and/or individuals for the remittance abroad <u>of the payments mentioned below</u> against the production of documentary evidence confirming the amounts involved."* (our underlining)

21. Following from the above, in subsection (J)(i) (Refunds) it is stated that:

22. *"Refunds paid by SARS to non-residents, provided that Authorised Dealers are satisfied that the beneficiaries are permanently resident outside the CMA."*

23. SARS is therefore not precluded from remitting refund payments offshore.

24. It is consequently proposed that no change be made to the current wording of section 44(3)(d).

<u>Section 46(2) – Persons acting in representative capacity (Clause 13)</u>

25. The proposed new section 46(2) attempts to expand the liability for duties under a tax Act as relates non-resident persons to *"…any person responsible for accounting for the receipt and payment of monies or funds on behalf of such person.*".

26. This section does not seem to envisage any causality as relates to the receipt and payments of monies and funds from or to SA on behalf of the non-resident and therefore will include any person with such role as relates to countries other than RSA.

27. <u>Submission</u>: To ensure proper jurisdiction and causality, as relates to such an onerous obligation, it is submitted that only persons who receive and make payments of monies or funds on behalf of the person as relates to <u>its South African activities</u>, should be included in this provision.

PROMOTION OF ACCESS TO INFORMATION ACT

28. <u>Submission</u>: Though we note the pragmatic approach of amending PAIA in the TALAB24 following the *Arena* case, it is noted that the "executive custodian" of this legislation is the Department of Justice and that the Portfolio Committee of Justice and Constitutional Development should invariably also review any amendments to PAIA.

29. PAIA is a "Constitutional statute" and the TAA is not and therefore the TAA is invariably subordinate to PAIA.

TAX ADMINISTRATION ACT

Section 12(1) &(2) – Right of Appearance of SARS Officials (Clauses 15(1)(a) and (b))

30. Section 12(1) was initially inserted to expand on the old section 81 ITA (CSARS could only give right of appearance for tax court matters) and give SARS leeway that Senior SARS Officials could appear in chambers *ex parte* in the high court as well without having to brief a registered legal practitioner, for example, for search warrants. These would practically only be in a high court or lower court.

31. Section 12(2) was to specifically acknowledge that only SARS officials who legally had the right of appearance could represent SARS in actual court proceedings.

32. The two amended provisions now propose:

(a) by the substitution for subsection (1) of the following subsection:

"(1) Despite any law to the contrary, a senior SARS official may, on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear ex parte in a judge's chambers, in the tax court, ***[or in]*** *a High Court or any other court recognised in terms of section 166 of the Constitution of the Republic of South Africa, 1996.";*

(b) by the substitution for subsection (2) of the following subsection:

"(2) A senior SARS official may only appear ***[in the tax court or a High Court only]*** *as provided under subsection (1) if the person is a legal practitioner duly admitted and enrolled under the Legal Practice Act, 2014 (Act No. 28 of 2014).";*

33. Submission: Given the purpose of section 12(1), it is unclear why SARS officials would need to or could appear in judge's chambers *ex parte* in courts higher than the high court. This provision seems superfluous and requires Treasury to clarify which matters the SCA and CC hear in chambers ex parte.

34. The proposal to cross reference s12(1) to s12(2) changes the scheme of s12 and results in only SARS officials who have right of appearance being able to appear *ex parte*, reducing the scope of right of appearance, which does not seem to be the intention.

Section 12(3) – Tax Court appearance on behalf of a taxpayer (Clause 15(1)(c))

35. A "fit and proper" test is introduced in the proposed new subsection (3) without specifying any criteria or process that should be followed in determining this test.
36. Although "fit and proper" is a known term in the legal fraternity, this test is now being expanded to potentially all natural persons without certainty as to its application.
37. What is clear, including from the *Poulter case*, is that there is no requirement to have a legal qualification or have knowledge of legal procedure as part of this enquiry.

38. Submission: Clarity is required on how the phrase "fit and proper" will be applied and that the lack of legal qualification should specifically be excluded as requirement to ensure no doubt.

Section 12(4) – Recovery of SARS' legal costs in tax disputes (Clause 15(1)(c))

39. The proposed amendment provides that where a Senior SARS Officials appears *ex parte* as envisaged in s12(1) in judge's chambers, SARS should be able to have taxed the cost of that proceeding as if a private legal practitioner had appeared.

40. Submission: There seems no rational reason why SARS would require this provision as there would be no cost order against another party as the proceedings are *ex parte* in s12(1).

41. It is also objectionable that SARS seeks to create a cost at a level of a private legal practitioner e.g. senior counsel, when no such cost exists and in fact no such equivalent person appeared on SARS' behalf.

42. Should SARS envisage some form of recovery from a taxpayer of non-party to proceedings of "deemed cost", such proposal is also objectionable as SARS initiated the proceedings at its own will and direction. Furthermore, such proposal would seem Constitutionally questionable.

43. Our views and objections remains similar if the intention was to create a fee recovery at deemed cost in other proceedings as well.

Section 47(1) – production of relevant information under interview (Clause 16)

44. The provisions of section 47 are already contentious as this section compels responses to SARS officials' questions under threat of criminal sanction in section 233 without judicial process and is already a "circumvention" of the more formal section 50 Inquiry process.

45. Its initial incarnation was therefore specifically limited to verification and audit which is a "relevant information" process.

46. The proposed amendment seeks to expand this to *"ii)…expedite the recovery of tax or an application for write-off or compromise of a tax debt*;".

47. Submission: The expansion of this power to "expedite" (i.e. merely makes things faster) recovery of tax is overly broad and highly subjective. It also seems that this proposal lacks appreciation for how invasive this SARS power for taxpayers is and that such invasive powers should be limited where not absolutely necessary.

48. Furthermore, the expansion to administrative matters such as a write-off and taxpayer-initiated processes like compromises is wholly inappropriate and arguably does not meet the reasonability requirements in section 36 of the Constitution. SARS can clearly perform or evaluate both processes without such an invasive power.

Section 91 – Original assessments (Clause 19)

49. As per the Memo on the Objects of the 2024 draft TALAB, the addition of subsection (4) seeks to clarify SARS' power to issue auto assessments – this being in response to concerns raised that the current legislative framework does not provide for this.

50. We are grateful that there is a proposal to address the concerns raised.

51. However, it is submitted that the current wording of the proposed subsection (4) should be reconsidered.

52. The current wording provides as follows:

53. *"(4) If a tax Act or the Commissioner does not require the taxpayer to submit a return, SARS may make an original assessment based on an estimate under* section *95 of the Act.".*

54. In practice, SARS issues auto assessments in situations where a tax Act may require a taxpayer to submit a return and is not only relevant where there is no obligation to submit. The current wording implies that auto assessments may be issued only in cases where a tax Act or the Commissioner does not require the taxpayer to submit a return.

55. Submission: The wording should be changed to align with what SARS is doing in practice. The current proposal, whilst it is welcomed, does not clarify the responsibilities for SARS and the taxpayer in the circumstances where an auto assessment is issued.

56. SARS does address this in the communication sent to taxpayers who are auto assessed, but we believe that it should be clarified within the legislation. The legislation should clarify roles and responsibilities of taxpayers and SARS where an auto assessment is issued.

57. The proposed amendment expands the scope of original assessment to include instances where " the "*taxpayer voluntarily submits a return*".

58. All returns are submitted by taxpayers under legal compulsion or direction by the CSARS and it is unclear in which circumstances a taxpayer will "voluntarily submit a return".

59. Auto assessed returns are not submitted voluntarily as they are compelled by section 95(6) TAA. The submission of a return is the only procedure available to a taxpayer to correct or amend an estimated assessment, issued by SARS unilaterally, where the taxpayer does not agree with such auto assessment.

60. Submission: The expansion of section 91 to include instances where a *"taxpayer voluntarily submits a return*" should be deleted as there are no such returns.

61. Our concerns regarding SARS using section 95 as the basis for introducing and implementing the auto assessment regime remains as per our previous submissions,

since there are fundamental issues with SARS' approach to "correcting" an avoidance and compulsion section to also apply to a normal compliance process.

Section 104(6) & (7) – ADR before objection (Clause 20)

62. Section 104(6) and (7) are inserted to propose an ADR proceeding prior to SARS considering a taxpayer's objection.

63. Many taxpayers hope that this will assist in ensuring that they have a "new ear" at SARS to consider the matter.

64. No draft rules have been issued, but if an approach similar to PART C of the Dispute Rules is followed, then it would be factual issues or SARS system issues i.e. not technical interpretational matters that will be dealt with in this process.

65. Furthermore, the rule regarding 90 days after the proceedings begin may similarly apply, though even at appeal, this process seldom meets this deadline.

66. Submission: We can unfortunately not support this proposal as we do not believe that it will result in a "new SARS ear" to review the matter and also does not detract from the fact that many of these matters would not arise if the quality of SARS assessments were to improve, including assessments arising due to SARS system challenges. We would have preferred that these operational matters rather be improved than adding another process in law.

67. Furthermore, it is open to abuse by SARS officials who merely want to win time as they can take an unspecified time to "set down" the matter for ADR, then 90 days to finalise the process which also can be extended and then for no good reason, just withdraw and move back to the objection process. SARS officials therefore have to "put nothing on the table" though taxpayers have to still comply with the whole objection process, including the cost and time associated with such process.

MATTERS NOT ADDRESSED IN DRAFT TAX BILLS 2024

68. In addition to the various matters mentioned above, there are other areas of importance that we feel should have been considered in the 2024 DTLAB and the DTALAB. These include the following and are briefly discussed below:

    a. Constitutionality of various provisions in the legislation
    b. VAT refunds
    c. Information gathering (Chapter 5 of the TAA) – Verification process
    d. Section 104 of the TAA – Decisions subject to objection
    e. Section 190(2) of the TAA – Refunds of excess payments
    f. Section 252 – 255 of the TAA – Electronic delivery of documents

Constitutionality of various provisions in the legislation

69. SAICA has over the years expressed its concerns over the constitutionality of powers provided to either the Commissioner of SARS (CSARS) or NT. Examples of these include:

    a. The constitutionality of the default judgment procedures in terms of section 172 -176 of the TAA (see SAICA's 2020 TLAB submission dated 20 October 2020 and the Annexure C 2021 Budget Review submission dated 23 November 2020) where SARS argues that these procedures fall outside of judicial oversight and are thus not subject to judicial review;

    b. the removal of the requirement of "wilfulness" from certain statutory offences that could result in selective or arbitrary prosecution by SARS (see SAICA's Annexure C 2021 Budget Review submission dated 23 November 2020); and

    c. the powers of CSARS to prescribe the List of Qualifying Physical Impairment and Disability Expenditure (see SAICA submissions https://saicawebprstorage.blob.core.windows.net/uploads/resources/SAICA_submission_on_List_of_qualifying_disability_expenses.pdf dated 24 May 2019 and 31 May 2021) allowing CSARS to determine what is tax deductible or not.

70. Added to this list is NT's power in terms of section 10(1)(r) as discussed in the previous SAICA submissions. Section 10(1)(r) of the Income Tax Act affords NT the power to declare free of tax, any gratuity (other than a leave gratuity) received by or accrued to any person from public funds upon his retirement from any office or employment, or from funds of the Land and Agricultural Bank of South Africa upon his retirement as a member of the board of the said bank.

71. Submission: In all the above examples, CSARS or NT have been given the power to provide relief from taxation. It is submitted that this power is unconstitutional and invalid as only Parliament may, in terms of the Constitution, levy taxes.

72. Secondary legislation that prescribes tax deductible expenditure would therefore also be legislation of a "money bill" subject to section 77 of the Constitution and which the Executive

must excuse itself to allow the legislative authority of the Legislator - meaning that the Executive does not have the power to change the legislation and the proposed changes in the secondary legislation would need to follow the normal legislative process allowing the legislator (Parliament) to consider public comments before approving any changes to the law.

73. These sections should be revisited to ensure that Parliament approves the levying (or not) of taxes in these particular circumstances.

VAT refunds

74. In 2020 various concerns, including those raised by SAICA, were raised with SARS, NT and Parliament, regarding the delay in the payment of VAT refunds by SARS. Unfortunately, this situation is still problematic in many cases.

75. Submission: In order to protect taxpayer rights, legislative changes should be introduced to provide that –

- a VAT audit must be completed within a maximum period of six months, provided that the taxpayer submits information and documents to SARS timeously;
- SARS' requests for relevant material must be clearly relevant to the audit at hand and not overly broad and onerous;
- while that audit is conducted, SARS may not continuously roll out further audits until the audit for the original periods has been finalised;
- only the VAT refunds for the original audit periods may be withheld;
- SARS at the outset must set a deadline with the taxpayer for the audit finalisation;
- any extension of the audit must be supported by a full motivation for the extension; and
- once the audit is finalised, SARS must issue an assessment within one month from the date of finalisation; and
- interest on VAT refunds withheld for the period exceeding 21 days from the verification or confirmation of banking details is payable without the taxpayer having to request such payment.

76. A further concern is that SARS cannot make any part payments of VAT refunds withheld. The taxpayer must provide security for 100% of the VAT withheld. A part refund is not possible.

77. Submission: Part payment of VAT refunds should be allowed where the taxpayer cannot provide security for 100% of the VAT withheld.

Verification process – Information gathering (Chapter 5 of the TAA)

78. Chapter 5 of the TAA addresses information gathering and, in its title, sets out 4 processes and states that the chapter covers the "General rules for inspection, verification, audit and criminal investigation".

79. However, on closer inspection of the Chapter 5 guidelines, no rules are set out for verification.

80. Procedurally this has become untenable as SARS practice has become to use verification as the catch all process from "desk audits, to verification to even forensic audits".

81. In practice and substance none of these procedures differ from "field audits", other than in scope.

82. The primary reason why the practice is untenable is that SARS does not abide by fair administrative practices and seem to make up the rules of these catch-all processes as it goes along.

83. SARS is a creature of statute and should operate within the confines of that statute, while balancing its powers with the rights of taxpayers. Employing practices and tactics that have no defined empowering legislation seems to be outside that scope as merely relying on a single undefined word does not justify SARS's actions in this regard.

84. However, it must be acknowledged that SARS does require various information gathering processes to be legislated, but such processes should be defined and constitute fair administrative practices, such as is the case for inspections, field audits and criminal investigations.

85. Submission: It is submitted that Chapter 5 of the TAA should be expanded and additional sections inserted that define what a "verification" is and what SARS processes fall thereunder. It should also identify and insert the relevant taxpayer rights and fair administrations provisions, similar to what occurs in the remainder of Chapter 5. This includes giving notification and reasons for commencement, protection of taxpayer rights regarding the reasonability of requests, compelled feedback after certain time periods and the notification of completion of the verification and its outcomes.

Decisions subject to objection – Section 104 of the TAA

86. In *Barnard Labuschagne Inc v CSARS & MoF CASE NO: 23141/2017 (15 May 2020)* the judge states the following in his judgement at [70]:

> *"In my opinion, the fact that SARS allocated payments incorrectly and subsequently, made a decision to recover a debt based on an incorrect amount, was a legitimate reason for the applicant to have raised an objection. I find the applicant's contention opportunistic and mischievous as the applicant was bent over backwards to confer to*

itself its own jurisdiction to hear its dispute and thereby disregarding the dispute resolution mechanism as set out in the TAA."

87. We have reviewed the relevant provisions of the TAA including section 104 and section 3 of the Income Tax Act and find no remedy of objection to SARS making incorrect account entries or allocations.

88. Submission: To effect the remedy that the honourable judge was of the impression exists in the TAA, we propose the insertion of a new section 104(2)(d) TAA which gives the taxpayer the right to object against any entry on the taxpayer's account added by SARS which does not properly reflect an assessment or payment or other entry in law and for which SARS has refused to reverse.

Refunds of excess payments – Section 190(2) of the TAA

89. The TAA currently provides that SARS may not authorise a refund until such time that a verification, inspection, audit or "criminal investigation" has been finalised.

90. In some cases, these verifications, inspections, audits and "criminal investigations" by SARS take months or years to finalise.

91. However, it remains unclear what the term "criminal investigation" entails and whether it will be applied per taxpayer or include entire industries etc.

92. The legislation must clarify whether "criminal investigation" referred to is in respect of a person against whom there is confirmed evidence of a crime committed and whether this crime was reported to the South African Police Service (SAPS) and a SAPS case number been obtained.

93. As SARS impacts taxpayer rights by withholding refunds, lack of legislative clarity in this regard should not continue. An example is the 2019 investigation of an entire industry, the agriculture sector, followed by a blanket withholding of refunds.

94. The verification, inspection, audit or criminal investigation in the section should refer to the specific refund in question and not any refund, as required in section 190(2).

95. As was evidenced in the Tax Ombud's 2019 report on Systemic Issues at SARS, one of the issues identified was that refunds for one period were being withheld whilst an audit/verification was in progress for another period. As stipulated in section 190(2), withholding of the refund should be relevant to the period under audit or investigation and not to unrelated periods. This mostly applies to VAT refunds.

96. A taxpayer currently has no recourse against this administrative decision made by SARS and SARS is also not compelled to provide reasons for the decision to withhold the refund.

97. Though not part of this specific matter, we have also previously raised concerns with SARS' involvement in the criminal justice system, how constitutional rights are protected and how powers are given within the constitutional mandate. This ranges from search and seizure, sanction, overlap of civil and criminal investigations, who decides on criminal investigation and prosecution if not SAPS and the NPA and who oversees the legality of all these processes as they are outside of the jurisdiction of the Independent Police Investigative Directorate.

98. In regard to criminal intelligence-gathering, which is part and parcel of criminal investigations, we note in the 2017 OECD report that SARS claims it conducts no criminal intelligence-gathering activities at a covert level[1]. SARS doing investigations and then also paying and sourcing counsel for NPA matters essentially puts SARS on equal footing with the historical Scorpions unit.

99. Submission: "Criminal investigation" for the purposes of withholding refunds should be defined and limited to a particular taxpayer and a reasonable timeline of 30 days in which SARS must finalise the verification, inspection, audit and criminal investigation relating to the specific refund should be included.

100. The administrative decision made by SARS should be subject to objection and appeal.

101. To ensure that SARS does not turn into a *quasi* Scorpions Unit, it should ensure that its actions do not overlap with those of the NPA and SAPS whose role it is to follow up on criminal matters and who have the prosecution rights in this regard.

Electronic delivery of documents – Section 252 – 255 of the TAA

102. Sections 251 and 252 of the TAA state that delivery of notices, documents or other communication is regarded as having been delivered if it is:

> (d) sent to the person's last known electronic address, which includes—
>
> (i) the person's last known email address;
>
> (ii) the person's last known telefax number; or
>
> (iii) the person's electronic address as defined in the rules issued under section 255(1).

103. The section 255 rules at paragraph 3(2) state that delivery will occur for electronic filing communications when SARS correctly submits it on the users electronic filing page.

[1] https://www.oecd.org/tax/crime/fighting-tax-crime-the-ten-global-principles-first-edition-63530cd2-en.htm

104. We note the judgment in *SIP Project Managers (Pty) Ltd v CSARS (Case No: 11521/2020)* clarifying the law that 'correctly submitted' means 'when the user can access it'.

105. This judgment is welcomed as it aligns the law of delivery for electronic filing pages to that of other electronic communications under the same rules.

106. Of concern was, as held in the judgment, that the applicant's version that the letters were not sent on the dates reflected therein remains accordingly unchallenged, and there can be no *bona fide* dispute of fact on this point.

107. This has been our members experience as well.

108. It is pertinent to note that in section 1 TAA "date of assessment" means -

(a) in the case of an assessment by SARS, the date of the issue of the notice of assessment;
…

109. The law may now be clear that date of issue for the purpose of section 252-255 and the rules is not the "letter date" or even the date that SARS adds something in the back end, but rather the date that the taxpayer can access to it on his eFiling profile.

110. Submission: Though the law is now clear, it remains a problem in practice that SARS' letters are dated before the taxpayer can access them and that SARS calculates the days from the date of the letter or when uploaded on the backend and not from date that the taxpayer is able to access it on eFiling.

111. It is submitted that the solution lies in the draft section 255 TAA rules that were issued in 2016 and never implemented, where it was proposed in a new clause 4(2)(a)(iii) that[2]:

(2) A SARS electronic filing service must—

(a) provide a registered user with the ability to—

(iii) nominate an alternative electronic address to which the SARS electronic filing service must deliver a notification of the submission of an electronic filing transaction by SARS to the registered user's electronic filing page.

112. It will then be easy to align the "date of delivery" as being the date when the email notification entered the communicators system, which is again aligned to what the rule already states for other SARS electronic communications.

113. This will also address taxpayers' long held concern that eFiling is not a proper or appropriate notification method and will avoid taxpayers being subject to SARS' sporadic

[2] https://www.sars.gov.za/wp-content/uploads/Legal/Drafts/LAPD-LPrep-Draft-2016-24-Draft-Replacement-Rules-for-Electronic-Communication-under-Section-255-of-the-TAA-15-March-2016.pdf

“other notifications”, like SMS etc. which only work in respect of certain products and services.