Ref:

Submission File

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Dear Mark

COMMENTS ON THE DRAFT INTERPRETATION NOTE: REDUCED ASSESSMENTS – MEANING OF "READILY APPARENT UNDISPUTED ERROR"

The National Tax Committee, on behalf of the South African Institute of Chartered Accountants (SAICA), welcomes the opportunity to make a submission to the South African Revenue Service (SARS) on the second draft Interpretation Note (IN), published on 16 October 2025, that provides guidance on the interpretation and application of section 93(1)(d) of the Tax Administration Act (TAA) with specific focus on the phrase "readily apparent undisputed error".

We appreciate that some of the concerns raised in SAICA's 2021 comments on the initial (August 2021) draft IN were taken into consideration in formulating the second draft and note that there has been a substantial improvement in the current versus initial guidance. However, additional concerns have arisen.

We set out below our comments in this regard.

COMMENTS

Background

1. The draft IN deals with undisputed errors that may occur on an assessment by SARS or by the taxpayer on a tax return.

2. The timing of when the error is discovered is important as other more efficient "undisputed error" remedies may also be available such as those in section 25(5) of the TAA. This applies even though technically the eFiling process provided i.e. "request for correction", is misaligned with the law as it only provides for a request to correct by SARS and not by the taxpayer.

3. Submission: For the sake of completeness, the draft IN should mention that taxpayers can in many instances make an electronic correction to a tax return filed through eFiling to correct these errors.

4. Reference could be made to the "Request for Correction" page on SARS' website providing more details to taxpayers on the alternative processes available when they realise that they have made an error when completing their return, allowing the taxpayer to correct a previously submitted return/declaration.

Section 4.2 – Remedy under section 93(1)(d)

5. On page 4, SARS explains that the written request must be submitted to a SARS Service Centre accompanied by supporting documentation or via eFiling by submitting a RRA01 form for natural persons, or a RRA02 form for trusts and companies.

6. With respect to the submission via the SARS Service Centre, no details are provided as to the specific process in this regard. With respect to the eFiling process of submission, further details are available on the SARS website, but not referenced in the IN.

7. Submission: SARS should explain how this request is to be made where it is done outside of eFiling – i.e. should it be by email to SARS at contactus@sars.gov.za or pcc@sars.gov.za, or a different email address? Alternatively, should the SARS Online Query System be used?

8. With respect to the eFiling process, it would be beneficial if SARS could include a link to the relevant webpages for submission of the RRA01 and RRA02 forms.

9. It is notable that no timelines are provided within which SARS must respond to the request for a reduced assessment, either in the legislation as an obligation or the draft IN as a good service undertaking.

10. A taxpayer will therefore not know what time period to wait before following up with SARS. From a SARS perspective, this means that the period may be indefinite and unreasonable, to the disadvantage of the taxpayer and only solvable through a further legal process.

11. Submission: SARS should provide taxpayers with an indication of how many days SARS will take to consider a taxpayer's request under section 93(1)(d) as well as a remedy or mechanism to follow up where the turnaround time is not adhered to.

12. It is our understanding that once a request for a reduced assessment has been made, the system prevents the lodging of a dispute.

13. Though this is a pragmatic approach for SARS, the law is not aligned with such practice and none of the taxpayer protections for disputes apply nor any of the time bar exceptions.

14. Submission: Whilst the above is technically not an issue for the IN, this system error should be addressed.

15. Further consideration and engagement should also be considered as to whether the law should rather be properly aligned with this system practice so that the remedy, for matters that substantially and obviously are outside the intended dispute process, is addressed first in this process.

16. It is also stated that if SARS rejects the request, no reduced assessment will be made. Instead, the taxpayer will be advised by letter or notice of the decision taken not to make a reduced assessment under section 93(1)(d).

17. Whilst the previous draft provided guidance regarding the section 9 review process, no alternative remedy is provided for in the current version, and we are concerned that this is an omission of important procedural information for the taxpayer.

18. Submission: SARS should include reasons for the rejection in the letter or notice.

19. Given that the decision by SARS to reject the request is not subject to dispute, the IN should provide guidance for the alternative section 9, TAA review process, in addition to the standard dispute process noted above.

20. It must also be provided that the letter or notice issued to communicate SARS' decision, will specify remedies available to the taxpayer.

21. We suggest that where the request is to be rejected due to missing documents, SARS may consider requesting the outstanding documents from the taxpayer to make for a more efficient resolution.

22. There is a limited timeframe to lodge an objection, and some taxpayers may consider it prudent to wait for the outcome of the section 93(1)(d) request prior to considering the dispute process. In many instances, SARS prolongs the decision-making, and taxpayers could lose the opportunity to lodge a dispute.

23. There is also no clear guidance that as the law currently stands, these are parallel and not consecutive processes and that taxpayers could initiate the dispute process simultaneously with the request for a reduced assessment.

24. Submission: the IN should explicitly state that the request for a reduced assessment in terms of section 93(1)(d) and the dispute process are not mutually exclusive.

25. Given the lack of timelines in the request for reduced assessment process, taxpayers should be made aware of the alternative which is to lodge a dispute, within the relevant

timelines to ensure the deadline for lodging a dispute is not missed whilst waiting for a response to the request for a reduced assessment.

Paragraph 4.2.3 – Meaning of the phrase "readily apparent undisputed error"

26. On page 8, the draft IN also states the following: "*In considering the request and the relevant supporting documents, SARS must be able to easily determine that there is an undisputed error. The presence of any possible dispute relating to the error after reviewing the request, together with the relevant supporting documents, will disqualify the taxpayer's request for a reduced assessment under section 93(1)(d). Therefore, it may be said that the error must be an obvious mistake which is unquestionable. If SARS cannot make this determination from merely looking at the return and supporting documents provided by the taxpayer in support of the request, the error cannot be said to be readily apparent although there might well still be an error.* this context the draft IN quotes the following definition of "readily apparent": *"promptly, quickly, easily"; "obvious" and "readily seen*".

27. This is an over-simplification of the process and is clearly at odds with what happens in practice as there is no prescribed mechanism other than making the application and attaching all the supporting documentation which describes the error properly.

28. It is difficult to comprehend how, by merely looking at a return or an assessment, one will be able to readily see an error. Furthermore, there is significant concern regarding the requirement (per the revised wording) that errors are to be "unquestionable" and stating that "any possible dispute" will disqualify a request. This sets an impossibly high standard that is inconsistent with the statute, creates arbitrary gatekeeping opportunities, and imposes disproportionate costs on honest taxpayers seeking to correct simple mistakes.

29. The statute requires that SARS be satisfied there is a "readily apparent undisputed error." The draft adds two additional requirements not found in the statutory text: that the error must be "unquestionable" and that "any possible dispute" will disqualify the request.

30. The words "undisputed" and "unquestionable" are not synonyms and carry materially different meanings. "Undisputed" is a factual descriptor indicating that parties agree after review of the matter. "Unquestionable" is an absolute descriptor indicating something is incapable of dispute as an objective matter. Very few things in tax law are literally unquestionable. Even simple mathematical errors can be questioned if one party challenges the underlying numbers or methodology.

31. By substituting "unquestionable" for "undisputed," the draft imposes a standard that exceeds what Parliament enacted and sets a bar that is impossible to meet in practice. This amounts to impermissible judicial legislation by adding requirements Parliament did not include.

32. Section 93(1)(d) establishes three distinct requirements that work together: the error must be readily apparent, the error must be undisputed, and there must be an error (not merely a disagreement or different view). These requirements serve different functions and involve separate inquiries.

33. "Readily apparent" addresses the ease of identification and verification. It asks: can the error be seen and confirmed without extensive investigation? "Undisputed" addresses

whether there is agreement between the parties. It asks: after reviewing the matter, do SARS and the taxpayer agree that an error exists? "Error" addresses whether there is an objective mistake. It asks: did something go wrong in completing the return or issuing the assessment?

34. The language used in the IN, at page 8, improperly merges "readily apparent" with "undisputed" by requiring that errors be "unquestionable" at the identification stage and by stating that "any possible dispute" disqualifies the request under the "readily apparent" heading. This conflation undermines the statutory structure and renders the separate "undisputed" requirement (addressed at pages 9-10) largely superfluous.

35. An error can be readily apparent (easily identified) but disputed (parties disagree on interpretation). Conversely, an error can be difficult to identify but undisputed once identified (parties agree after investigation). These are distinct concepts serving different gatekeeping functions, and they should not be collapsed together.

36. The phrase "any possible dispute" is infinitely malleable and creates opportunities for arbitrary decision-making. SARS can always identify "possible disputes" if motivated to reject a request. One could dispute whether supporting documentation is authentic, whether amounts were correctly calculated, whether activities qualify under particular provisions, whether legal interpretations are correct, and countless other matters. If "any possible dispute" disqualifies a request, then virtually no request will qualify regardless of the quality of documentation or clarity of the error.

37. This language effectively grants SARS unconstrained discretion to reject requests based on subjectively determined "possible disputes" without any standard for distinguishing reasonable from unreasonable disputes or material from immaterial disputes. This is inconsistent with the rule of law and principles of administrative justice, which require that discretionary powers be exercised according to ascertainable standards that can be objectively applied and reviewed.

38. The Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2015 (at paragraph 2.49) explains that section 93(1)(d) was enacted to provide "taxpayers a less formal mechanism to request corrections to their returns and so reduced assessments, without having to follow the objection and appeal route." The provision was intended to facilitate efficient correction of straightforward errors through an administrative process rather than forcing taxpayers into costly, time-consuming litigation for matters that should be readily resolvable.

39. The 2015 amendment adding "readily apparent" to the previously existing "undisputed error" requirement was intended to address abuse of the provision. The Memorandum explains that "taxpayers have attempted to use these requests for correction to raise substantive issues that would more properly be the subject of an objection under section 104, so as to bypass the timeframes and procedures for an objection." The amendment was designed to prevent disguised substantive disputes and fraudulent refund claims, not to exclude genuine errors that require reasonable verification procedures.

40. The IN's "unquestionable" and "any possible dispute" language goes far beyond what is necessary to prevent abuse and instead threatens to exclude the very category of straightforward errors the provision was designed to address. Honest taxpayers with

legitimate, well-documented errors will be forced into objection and appeal processes with costs for the taxpayer and taking years to resolve, simply because SARS can identify some "possible dispute" or because the error is not literally "unquestionable." This frustrates rather than advances the legislative purpose.

41. It also results in both SARS and taxpayers having to unnecessarily resolve such errors through the more protracted and expensive dispute process.

42. Submission: We respectfully recommend that the problematic passage at page 8 be revised as follows:

43. *"In considering the request and the relevant supporting documents, SARS must determine whether the error can be verified through reasonable administrative procedures. The error is 'readily apparent' if SARS can confirm the existence and quantum of the error through procedures such as: reviewing documentation provided by the taxpayer; performing simple arithmetical checks; comparing information with objective source documents such as IT3(b) certificates or prior assessments; or verifying a reasonable number of supporting documents. The error is not 'readily apparent' if verification would require audit-level investigation procedures; resolution of complex factual disputes; interpretation of ambiguous contractual or statutory provisions; or extensive review of voluminous transactions requiring individual assessment."*

44. This revised formulation focuses on the practical question of administrative workability rather than imposing impossible standards of absolute certainty. It provides clear guidance on what types of verification are contemplated while excluding matters that should properly be addressed through the objection process. The language "reasonable administrative procedures" appropriately recognises that some verification is contemplated while ensuring the process remains meaningfully less burdensome than formal dispute resolution.

45. All references to "unquestionable" and "any possible dispute" should be deleted as they exceed statutory language and create the problems identified above.

46. It is submitted that in all cases, the taxpayer will be required to provide additional motivation and proof explaining the error. This proof would include the Annual Financial Statements or other necessary information submitted as supporting documents to the return or requested to be submitted for consideration in determining if it is an error under section 93(1)(d).

47. If the error is not clearly understood based on the additional information provided, then arguably it is not readily apparent.

Example 4 – Voluminous supporting documents received

48. In the example, it is provided that the taxpayer made an error in the wear and tear allowance claimed due to the incorrect classification of a large number of machinery. The taxpayer prepared substantial supporting documentation to evidence the error made. This included journal adjustments, fixed asset registers, invoices and other documents.

49. The IN notes that *"If SARS cannot make this determination from merely looking at the return and supporting documents provided by the taxpayer in support of the request, the error cannot be said to be readily apparent although there might well still be an error."*

50. We submit that whether it was 10 documents or a single document provided as evidence of the error, should not be the measure. If SARS can clearly see from the documents provided as to whether or not an error was made, then the request can be considered in terms of section 93(1)(d) though may not eventually be approved.

51. The example seems to indicate that the taxpayer made it quite clear what the issue was, and this could be seen by merely looking at the supporting documents. If there was further interpretation and investigation required, then it could be said that this was not a face value verification.

52. Submission: SARS to reconsider the approach provided for in this example and whether it is appropriate to illustrate the difference between a face value verification of information versus what is a more in-depth investigation and interpretation of the facts.

4.2.3(c) – Error

53. The current draft of the IN provides that "omissions" will be considered errors in terms of section 93(1)(d). We welcome this addition and commend SARS for adopting this reasonable and practical interpretation.

54. Consideration should also be given to **SARS system errors**, such as for instance where taxpayers are assessed incorrectly due to a system glitch (for instance, where an entity is taxed at a rate of 28% instead of the SEZ rate of 15% due to the logic questions in the ITR14 being incorrectly configured). A further example is various undisputed SARS system failures that prevent taxpayers from complying timeously with a SARS request for verification of VAT returns submitted.

55. In both of these situations, taxpayers have to spend many hours trying to rectify these situations and ultimately have to submit an objection which can take months to resolve, not to mention the costs involved in this process.

56. SARS system errors should be easily confirmable by SARS and easily accepted as falling within the scope of this provision.

57. Submission: It cannot be that these system errors are not regarded as readily apparent undisputed errors. It can be proved to be readily apparent and undisputed because there is a full audit trail of, for example, telephone calls made and emails sent to and from SARS and even, in some instances, communication from SARS or recognised controlling bodies confirming the system errors.

58. We question why a taxpayer should have to go through the objection process where there is a SARS systems failure which is clearly an error.

59. The IN also clarifies at page 11 that *"an error by a taxpayer in a return must be interpreted to include an error that originates in the records that are used to complete the return."*

60. This functional approach recognises that errors in returns typically stem from errors in underlying accounting systems, source documents, or calculations. The draft correctly focuses on whether incorrect information is reflected in the return rather than requiring detailed tracing of where the error first occurred.

61. Submission: This practical approach is consistent with the provision's remedial purpose and is both welcomed and supported.

Assessments issued which differ to the return submitted by the taxpayer

62. Situations do occur where SARS issues an original (or additional) assessment which differs from the return submitted by the taxpayer, with no grounds (or inadequate grounds) provided.

63. In terms of section 96(2)(a) of the TAA, SARS is required to (must) provide these grounds.

64. Submission: The draft IN should also address this situation by stating that SARS can deal with such situations by invoking section 93(1)(d)(i) and saving the taxpayer from having to lodge an objection in this regard.

Additional examples that could be included in the IN

65. Submission: Additional examples of readily apparent undisputed errors that could be included in the draft IN are:

** A section 6quat tax credit claimed in a tax return that was not included in an assessment.*

** SARS not crediting a taxpayer with interest in respect of the overpayment of, for instance, provisional tax in terms of section 89quat(4).*

** A donation incorrectly calculated by the SARS e-filing system in the context of a REIT. Section 25BB(2A)(c) provides that a donation deduction is determined before a "qualifying distribution" deduction, however, the eFiling system does not calculate it this way, resulting in an incorrect assessment being raised.*

4.3 – Limitations on issuance of assessments under section 93(1)(*d*)

66. Section 99(2)(d)(iii) provides that the period of limitations in section 99(1) does not apply "if SARS becomes aware of the error referred to in that subsection before the expiry of the period for the assessment under subsection (1)." This language preserves SARS' power to make reduced assessments after prescription if SARS became aware of the error before the period expired.

67. The critical question is: when does SARS "become aware" of an error? At pages 12-13, the draft states that *"it is thus a factual enquiry to determine the exact date on which SARS became aware of the error"* and that *"the awareness by SARS will depend on the specific circumstances surrounding the request of each case."* This formulation provides no meaningful guidance and creates significant uncertainty.

68. Does SARS become aware when the taxpayer submits the request? When SARS acknowledges receipt? When the request reaches the desk of the decision-maker? When

the decision-maker actually reviews the file? When SARS makes a decision on the request? The draft provides no answer to these fundamental questions.

69. This ambiguity creates a serious practical problem illustrated by the following scenario. A taxpayer's assessment was issued on 15 March 2021. On 10 March 2024 (five days before the three-year prescription period expires on 15 March 2024), the taxpayer submits a properly formulated section 93(1)(d) request with supporting documentation via eFiling. SARS acknowledges receipt on 10 March 2024. Due to processing backlogs, SARS only reviews the request on 10 June 2024 and grants the reduced assessment on that date.

70. Is this reduced assessment valid? Under section 99(2)(d)(iii), it is valid only if SARS "became aware" of the error before 15 March 2024. But when did SARS become aware? On 10 March when submitted? On 10 June when reviewed? Whilst the example seems to provide some indication that the date SARS would consider as 'becoming aware of the error' is the date of submission of the request, the IN does not explicitly address this and other questions.

71. There may be a risk that different SARS officials may reach different conclusions, leading to inconsistent treatment of similarly situated taxpayers.

72. Moreover, the ambiguity creates manipulation risk. If "becoming aware" occurs when SARS actually reviews a request, then SARS can effectively defeat taxpayers' rights by simply delaying processing until after prescription. A taxpayer who diligently submits a request before prescription could find relief denied because SARS did not get around to processing it in time.

73. Submission: We respectfully recommend adding the following language to section 4.3:

74. *"For purposes of section 99(2)(d)(iii), SARS becomes aware of an error when a taxpayer submits a written request under section 93(1)(d) accompanied by supporting documentation before the assessment prescribes under section 99(1). Where a taxpayer submits a qualifying request before prescription, SARS' power to make a reduced assessment under section 99(2)(d)(iii) is preserved regardless of when SARS completes its review. SARS cannot defeat this power by delaying processing beyond the prescription period. The request must be considered on its merits and decided in accordance with section 93(1)(d) requirements."*

75. This internal rule would provide certainty, prevents manipulation, protects diligent taxpayers who act timeously, and is consistent with the objective, verifiable event of submission. It appropriately places the processing timeline risk on SARS (who controls processing) rather than on taxpayers (who have no control over SARS' internal procedures).

4.4 – Burden of proof under section 102(1)

76. At pages 13-14, the IN correctly explains that taxpayers bear the burden of proof under section 102(1) when requesting reduced assessments. The IN cites *GB Mining and Exploration SA (Pty) Ltd v Commissioner for the South African Revenue Service* and *Rampersadh and Another v C: SARS and Others* for the proposition that taxpayers must

place information before SARS to substantiate the error and must satisfy SARS that the information furnished is correct.

77. However, the draft does not specify what standard of proof applies. Must taxpayers prove their case on a balance of probabilities (the typical civil standard)? Must they make out a prima facie case? Must they prove beyond reasonable doubt (the criminal standard)? Must they satisfy some undefined threshold of SARS "satisfaction"? The draft is silent on this fundamental question.

78. The draft also does not address what quantum or quality of evidence is required or when the burden is discharged. If a taxpayer provides clear documentary evidence such as invoices, proof of payment, and supporting certificates, is the burden discharged, or can SARS nonetheless reject the request by asserting it is not "satisfied" without articulating specific concerns with the evidence? Without guidance on these questions, the burden of proof discussion provides limited practical utility.

79. Submission: We respectfully recommend adding the following after the existing section 4.4 content:

80. *"The standard of proof under section 93(1)(d) is the balance of probabilities, consistent with the civil standard applicable to tax disputes generally. The taxpayer must establish that it is more likely than not that: (a) the error exists as claimed; (b) the quantum of the error is as stated; and (c) all requirements of section 93(1)(d) are met.*

81. *The taxpayer typically discharges this burden through documentary evidence such as invoices and receipts; bank statements and proof of payment; contracts and correspondence; certificates issued by third parties such as IT3(b) certificates or medical tax certificates; prior tax assessments; and financial records. Where documentary evidence clearly establishes the error and enables verification through reasonable administrative procedures, the burden is discharged provided SARS has no reasonable grounds to dispute the evidence.*

82. *SARS may reject a request where insufficient documentary evidence is provided to verify the error; the documentary evidence provided is contradictory, unclear, or does not support the quantum claimed; or verification would require procedures beyond reasonable administrative capacity as discussed in section 4.2.3(a) above."*

83. This formulation clarifies the applicable standard (on a balance of probabilities), provides guidance on the type and quantum of evidence required, explains when the burden is discharged, and identifies circumstances where SARS may properly reject requests despite evidence being provided. This will promote consistent, predictable application of section 93(1)(d).

Issue not addressed in the draft IN – Timing of the conditions

84. A question that arises in relation to the draft IN is the following: At what point in time must the conditions apply for a reduced assessment be met? That is, must the conditions be at the time of filing the return/issuing the assessment, or could it occur later?

85. For example: Assume that a trust distributes an amount to a beneficiary, and the beneficiary incudes it in his/her tax return and pays the tax due. At a later stage, SARS holds the view that the amount was not properly or legally distributed by the trust, and thus the trust should have paid the tax. SARS accordingly raises an assessment on the trust. This occurs before the beneficiary's assessment in respect of the year in which s/he was taxed on the receipt has prescribed.

86. Clearly at the time of filing the beneficiary's return there was no readily apparent undisputed error, and neither was there such an error in the assessment. There are two possible scenarios here.

87. Scenario 1: The trust immediately acknowledges its error (and the beneficiary agrees that there was this error) and accepts the assessment. Does SARS accept, knowing full well that the beneficiary had paid tax on the amount, that as soon as SARS raised the assessment on the trust there must at that point be a readily apparent undisputed error in the beneficiary's return, allowing SARS to reopen the assessment and refund the beneficiary?

88. Scenario 2: The trust disputes that assessment and it goes on appeal, and eventually the court/s find/s against the trust, but this happens after the beneficiary's assessment has prescribed. If the answer to 1 above is yes, it is clear that SARS must have been satisfied that, at the date it raised the assessment against the trust, there was a readily apparent error in the beneficiary's tax return. But at that point it was not undisputed. It only became undisputed when the appeal process for the trust was exhausted, but this was after prescription. Would SARS nevertheless still reopen the beneficiary's assessment and refund him/her?

89. Submission: Clarity on the above should be provided in the IN.

Conclusion

90. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard.

91. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely,

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The South African Institute of Chartered Accountants