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Dear Basil

DISPUTE RESOLUTION PROCESS

1. We would like to bring to your attention, with the aim of having you consider these matters and revise your processes where possible, the issues that our members are facing with the current dispute resolution processes being followed at SARS, including processes leading up to disputes.

Number of days

2. According to the tax Administration Act, 2011 (the TAA), the taxpayer must submit the notice of objection within 30 business days from the date that written reasons for the assessment were provided by SARS or the date of the assessment as per the notice of assessment.
3. In some instances, it appears that the number of days is not calculated correctly, with examples of the *dies non* being included in the count and in other examples, the day of the assessment is included as day 1.
4. Although the following extract of the Interpretation Act is clear, based on the experience of our members, this is not consistently applied by SARS officials.

“4. Reckoning of number of days.—When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.”



5. We were under the impression that the number of days' calculation is determined automatically by the system. However, it has become known that SARS auditors, when dealing with the disputes, calculate the number of days manually and this is giving rise to many inconsistencies.

6. Submission: We urge SARS to provide clear guidelines as to how the number of days should be calculated and possibly automate the calculation as well as have the number of days populated on the notice of objection or notice of appeal on eFiling, because the disputes are, in most cases, submitted online and both parties (taxpayers and SARS) can immediately have sight of this information.

Quality of reasons provided

7. It is important to note the quality of reasons provided when SARS are issuing additional assessments, in cases other than formal audits where a letter of audit findings is issued.
8. There is too often no explanation of the specific facts considered in making adjustments, what applicable law has been considered and how the law has been applied in reaching the conclusion that an additional assessment should be raised.

9. Submission: We propose that SARS should provide proper grounds for raising additional assessments where these assessments do not accord with the return submitted by the taxpayer, in order to comply with section 96 of the TAA.

10. This will reduce the correspondence between SARS and the taxpayer in order to understand the reason/s it should object to.

Lack of independence in the dispute process

11. In relation to objections lodged, the auditor responsible for the audit is also the person reviewing the objection and related documents. There is a perception that this impacts the objectivity of the process, as it is, in a way a 'self-review', in that the auditor is reviewing and making a decision on his own findings/opinion.

12. Submission: We propose that the dispute be considered by an independent auditor before the dispute is presented to the Committee.

13. This will allow for an all-round independent review and afford the taxpayer an unbiased opportunity of having their case considered before a recommendation is made.

14. We would also encourage an independent review of the case prior to any additional assessment being raised as there is a perception that, in some instances, there is a skills gap in respect of the auditor working on the case. The technical knowledge of the



relevant legislation is not sufficient and the lack of understanding of the administrative processes as laid out in the TAA, results in unnecessary disputes.

15. We respectfully suggest that SARS issues internal process manuals that explain the legislative process which needs to be followed before an additional assessment is raised. This will also assist to bridge the skills shortage.

ADR proceedings without a facilitator

16. We understand that in some instances, ADR meetings have been conducted without a facilitator even when one has been requested.
17. The reason as provided by SARS is to make the process more efficient and/or cost effective. However, Paragraph 16(2) of the Dispute Rules makes it clear that the parties must agree to the use of a facilitator. We believe that this practise can disadvantage the taxpayer.

18. Submission: In our view, it would be best if Facilitators are present in all ADR meetings.

19. However, if it is SARS' view that this is not necessary in all cases as well as being inefficient in some instances, SARS must issue a policy as to the types of matters and circumstances in terms of which SARS deems the absence of a Facilitator to be appropriate, in order to ensure consistency in treatment of taxpayers.

SARS 'Committee' seeking a better position for SARS

20. Our members are increasingly experiencing instances where a 'Committee' or reviewing SARS officials, after being requested to approve the recommendations made and agreements reached by both parties to the ADR, seem to be seeking a more favourable/advantageous position for SARS.
21. At times there have also been requests for additional information from the taxpayer even though the parties to the ADR had reviewed and reached agreement on the matter. This results in delays in finalising the agreements reached.
22. Further, in our view, it appears that the Dispute Rules do not provide for such review, if a decision has already been taken in the dispute hearing.

23. Submission: we propose that SARS issue guidelines in terms of when it would be appropriate to request more information and perform an additional review of the matter, by the Committee, following agreement by parties at the ADR meeting.

24. In this way, there would be more transparency and consistency.



Virtual Meetings

25. SARS sometimes requests 'virtual' ADR meetings via the use of teleconferencing facilities, especially where the distance to travel to a SARS office is too far for the taxpayer, its representatives and/or SARS staff.
26. Teleconferencing facilities are not the most conducive for this kind of engagement as usually there is a sharing of documentation in face-to-face meetings which result in a more effective meeting and more efficient resolution of issues.
27. Submission: We propose that 'Virtual' meetings be held on a virtual meeting platform (for example, MS Teams or Zoom) rather than via teleconferencing.
28. Meeting platforms make it easier to share documents (screen sharing) and makes for a more effective meeting for both parties.
29. We appreciate the opportunity to engage SARS on these issues with a view to working together towards resolving these. Should you wish to discuss any aspects of this submission, please contact us.

Yours sincerely

Somaya Khaki

Project Director: Tax

Marelize Loftie-Eaton

Chairperson: SAICA TAA Subcommittee