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The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
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BY EMAIL: Narcizio Makwakwa (NMakwakwa@sars.gov.za)

RE: APPARENT SYSTEM ERRORS THAT NEED FIXING

This submission draws SARS' attention to certain areas where SARS' systems do not appear to be fully aligned to the Tax Administration Act (TAA), to enable SARS to take appropriate action to resolve the apparent errors. Other practical issues, which are not necessarily specifically governed by the TAA, are also highlighted.

We appreciate the opportunity to bring these areas to your attention and would welcome further dialogue.

Please do not hesitate to contact us should you need further information.

Yours sincerely

Patricia Williams
Chair of the Tax Administration Technical Work Group

APPARENT SYSTEM ERRORS THAT NEED FIXING - ANNEXURE

1. OPERATING SYSTEMS FOR USING EFILING

1.1 **Problem:**

1.1.1 Taxpayers who wish to access assessments or other documents such as SARS correspondence via eFiling often receive a blank page with an error message instead of the verification letter or even an additional letter requesting precisely what is required by SARS.

1.1.2 This may result in inadvertent delays to access important correspondence and decisions made by SARS, e.g. a notice of audit with a request for information, a notice invalidating an objection or an assessment with tax debt due which the taxpayer may dispute.

1.1.3 One aspect of the problem is that some of the search engines and software are preferred and supported by the SARS operating systems, i.e. it appears that Google Chrome, which is a very commonly used web browser, is incompatible with eFiling, it appears that Microsoft Edge, which is the standard browser with Windows 10, is incompatible with eFiling. In addition, forwarded eFiling documents (for example when a taxpayer sends this to their tax representative) are frequently incapable of being opened.

1.1.4 It is submitted that SARS' systems should be designed to be compatible with a variety of different operating systems.

1.1.5 Furthermore, there is no functionality on the eFiling portal to cater for applications for remission of interest (Chapter 15 of the TAA) and more often than not, the feedback received is that an objection should be lodged – which is the incorrect procedure. Another example is for instance Section 93 requests for reduced assessments – there is no portal on the Efiling page to upload such an application neither is there a tab for Section 9 reviews (which SARS indicated they were working on making more accessible for taxpayers).

1.2 **Recommendation:**

1.2.1 SARS should take steps to update or upgrade the eFiling system, so that this is at a minimum compatible with the top 3 web browsers / search engines.

1.2.2 SARS should upgrade their Efiling system to allow for receipt of full comprehensive documents requesting information (such as verification notices)

1.2.3 SARS should upgrade their Efiling system to allow for applications for:

- 1.2.3.1 Section 9: review of SARS decisions;
- 1.2.3.2 Section 93: reduced assessments;
- 1.2.3.3 Chapter 15: applications for remissions of penalty.

2. SUSPENSION ITO SECTION 164 OF THE TAA

2.1 Problem:

- 2.1.1 Pending the outcome of the suspension request, suspension of payment requests do not appear to be reflected on the SARS system. Also, SARS' system does not appear to reflect a suspension of a tax debt after this suspension has been granted.
- 2.1.2 As a result, tax debts are collected as per normal with no regard to the suspension, resulting in the undue recovery of tax debts.
- 2.1.3 Underpayment penalties occur when a successful suspension of payment request for a specific period is not noted on the system and subsequent payments for the following periods are inadvertently allocated to the period(s) in dispute instead of the intended subsequent periods. This "underpayment" of the tax for the later period results in penalties levied inadvertently against the taxpayer, which in turn need to be disputed.
- 2.1.4 Taxpayers may also have tax clearance certificate applications rejected, on the basis of outstanding taxes, even though the relevant tax debt is suspended.

2.2 Recommendation:

- 2.2.1 The SARS system should be corrected and new controls implemented to specifically implement the intended mechanism of section 164 of the TAA, to isolate the suspended tax debt, barring collection of disputed tax debts in terms of section 164 and to correctly allocate tax amounts and interest due to SARS.
- 2.2.2 It should further ensure that tax clearance certificate applications are not affected by the suspended tax debt.
- 2.2.3 The above is in line with the newly released Service Charter (dated 1 July 2018) where 21 day turnaround times are promised to taxpayers.

3. INCORRECT CALCULATION OF DAYS IN TERMS OF CHAPTER 9 OF THE TAA

3.1 Problem:

3.1.1 A taxpayer who is aggrieved by an assessment or by a decision of SARS which is subject to objection may object to the assessment or decision in terms of rule 7 of the Rules promulgated in terms of section 103 of the TAA ("the Rules").

3.1.2 This means that a taxpayer must lodge its objection within 30 days after either

3.1.2.1 the date of assessment of the disputed assessment where a taxpayer has not requested reasons under rule 6, or

3.1.2.2 where a taxpayer has requested reasons, the date of delivery of the notice under rule 6(4) - i.e. where the SARS official is satisfied that reasons were provided - or the reasons requested under rule 6, or

3.1.2.3 where SARS fails to provide the reasons under rule 6 required to enable the taxpayer to formulate an objection under rule 7, and the taxpayer has applied to the Tax Court for an order that SARS must provide such reasons, the date of the final outcome of the application, including an appeal against the tax court judgment to the High Court.

3.1.3 In terms of rule 1 of the Rules, a "day" is defined as a "business day" in terms of section 1 of the TAA.

3.1.4 In terms of section 1 of the TAA a "business day"

"means a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9, excludes the days between 16 December of each year and 15 January of the following year, both days inclusive".

3.1.5 However, based on practical experiences, it appears that the SARS system incorrectly calculates the days as defined in the rules which results in SARS incorrectly invalidating objections (and issuing assessments before the expiry of 21 or 30 days – as the case may be), resulting in a further unfair procedural steps and administrative burden of having to submit a new objection.

3.1.6 When SARS invalidates an objection not complying with any of the requirements in terms of rule 7, the following may happen:

3.1.6.1 In terms of rule 7(4) of the Rules, SARS may inform the taxpayer within 20 days of delivery of the invalid objection that it is not accepted as a valid objection; and

3.1.6.2 A taxpayer who receives a notice of invalidity under rule 7(4) may within 20 days of delivery of the notice submit a new objection. Should the amended objection comply with the requirements

of a valid objection, SARS should consider it as such, although this is not always the case in practice – SARS' system routinely rejects "second round" valid objections and often cites that "reasonable grounds" for the delay in submitting the objection was not included in the objection.

3.1.6.3 If the taxpayer does not submit a new objection within the 20-day period under rule 7, the taxpayer may submit a new objection together with an application to SARS for an extension of the period for objection under section 104(4), i.e. "reasonable grounds" for the delay in lodging the objection.

3.1.7 The SARS system therefore does not seem to reset the counting of days when an objection is invalidated to allow the additional 20 days to resubmit the objection and automatically assumes that a second attempt is a late submission.

3.2 **Recommendation:**

3.2.1 The SARS system should be corrected to fully incorporate the Rules and its definition of "day" and correctly calculate the days in terms of Chapter 9 of the TAA and the Rules to prevent unnecessary administrative consequences with costly implications on taxpayers and SARS.

3.2.2 The system should be programmed step by step as set out in the Rules, especially with reference to the mechanics of Rule 7.