

9 July 2018

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
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ATTENTION: SIBUSISO NTOMBELA
BY EMAIL:

DISCUSSION DOCUMENT RE OPERATIONAL ISSUES ENCOUNTERED

We appreciate SARS's willingness to engage with us on the operational issues. The issues set forth have been encountered/experienced by members of our Value-Added Tax technical work group at various times. To be fair, many VAT returns and audits run smoothly, but the issues raised here remain of notable concern. We have accordingly included these issues for discussion in the attached annexure.

We note that the SARS Service Charter was published on 1 July 2018 and that it sets out Service Timeframes to which SARS will endeavour to adhere. We acknowledge that our comments are based on our experiences prior to this date and we hope that the SARS Service Charter will contribute to resolving these operational issues.

We welcome your input and look forward to a constructive and mutually beneficial engagement.

Yours sincerely

Victor Terblanche

Chair: Value-Added Tax Technical Work Group

ANNEXURE

SAIT VAT WORK GROUP: OPERATIONAL ISSUES FOR DISCUSSION WITH SARS

1. Delayed VAT refunds

1.1 Audit and verification notifications resulting in delayed VAT refunds

Audit and verification notifications sent to taxpayers often result in the delay of refunds otherwise due. Many taxpayers are then left in limbo.

Taxpayers will submit the audit and/or verification information on E-filing within the requested 21 days and often not receive any further communication from SARS.

Oftentimes, SARS further does not issue the scope and information request on the audit or verification for several months after the notification has been issued and replied to by the taxpayer. Audits and verifications are then not allocated to an individual SARS auditor timeously and as such there is no person at SARS to liaise with regarding the refund. Enquiries can only be done via the SARS Call Centre, with the only comment that the system indicates the audit as “still in progress” (whilst refunds are being held back).

The net outcome for many is a negative narrative. Many taxpayers are then quick to assume that spurious audits and verifications are raised with the sole purpose of delaying refunds.

It is suggested that some burden of suspicion be met before a refund audit or verification is raised and that refunds be approved in the interim if operational delays are experienced by SARS. Alternatively, it is suggested that SARS provides written reasons for the delay within 21 business days of receipt of information for both audits and verifications.

1.2 Refunds from past tax periods withheld based on audits of current tax periods

SARS often withholds verified refunds from past tax periods based on verification audits of current tax periods still in progress. In a recent case, it was necessary to lodge a court application to have a refund released. The taxpayer in question was on the verge of having to close the business due to the crippling cash flow impact. Refund audits should operate so that an audit of one refund should not generally create a stopper for all VAT refunds outstanding.

1.3 SARS withholding refunds even after verification audits have been finalized

Refunds are not always made once verification audits have been finalized. Taxpayers need to access someone in the system for prompt release. It is recommended that refunds be released within 7 business days from when a verification and/or audit has been finalized.

1.4 SARS does not respond to TAA section 190 requests to release refunds

No confirmation of receipt is sent and follow up requests are not responded to. The Taxpayer should be provided with reasons for the refunds being withheld to object in terms of section 190(6) of the TAA.

Based on the above, we propose that all communications between the taxpayer and SARS in respect of refunds be automated on SARS E-filing. This will assist to create an effective communication tool seeing that the taxpayer cannot directly contact the auditors.

We note that the SARS Service Charter indicates, in relation to refunds, that if a current year's refund is due to a taxpayer and:

- No other debt is due
- All obligations have been met

- SARS administrative control processes are adhered to, and
- No inspection, verification or audit is required or has been initiated,

SARS will endeavour to pay the current filing period refunds (above R100) within finalizing the final assessment.

2. Interest on delayed VAT refunds (section 45)

As an aside, we note that we have in the past made submissions to National Treasury that section 45 should be repealed from the Value Added Tax Act (VAT Act) and that interest on delayed VAT refunds should be dealt with under section 187 of the Tax Administration Act (TAA) to ensure that interest on all tax types are treated consistently. In the meantime, section 45 should be correctly interpreted and applied by SARS. We expand on this below.

2.1 Release of interest on delayed refunds

Section 45(1) of the Value-Added Tax (VAT) Act stipulates that SARS will only release interest on delayed refunds within 21 business days from submission of the relevant return as long as the taxpayer adheres to certain provisions, inter alia:

- **All tax returns administered by SARS must be submitted (section 45(1)(iA) of VAT Act:** We are of the view that this provision is not aligned with the Tax Administration Act (TAA) and adversely affects the right of the taxpayer to earn interest. There are specific administrative penalties in the TAA for unfiled tax returns which can be used to penalize the taxpayer if necessary. Interest should be calculated and paid over on delayed VAT refunds even though other tax returns may be outstanding. It is required that all other returns (PAYE, Income Tax, provisional tax etc.) are submitted before a taxpayer qualifies for interest on delayed VAT refunds. This requirement is not consistent with section 187 of the TAA and should be aligned. The tax system should view each tax independently.

- **SARS must be able to gain access to the records and information of the taxpayer (section 45(1)(ii) of VAT Act):** If SARS requires additional information, it should not suspend the interest payable: Section 45(1)(ii) only allows for suspension where SARS is *prevented from gaining access to the records and information of the taxpayer*. We are of the view that section 45(1)(ii) of the VAT Act is not correctly interpreted and applied by SARS resulting in interest being lost by the taxpayer. Taxpayers often submit their verification information within the 21 days requested on the automated letters issued by SARS. Additional requests for information are then issued by SARS after these initial submissions. Based on SARS' interpretation, the 21 days are then suspended until the additional information is received. We recommend that the SARS verification letters should specify the exact information required in more detail to minimize delays. The interest calculation should not be suspended as a result of a second request for information as this is not the intention with section 45(1)(ii) of the VAT Act. This provision should be correctly applied by SARS.
- **SARS must have the bank account details of the vendor:** Before a refund is approved, SARS often requests verification of banking details under section 45(1)(iiA) of the VAT Act. Taxpayers are subject to an onerous process of validating banking details together with other documentary requirements when an application for VAT registration is made, thereby having already complied with section 45(1)(iiA). SARS often relies on this section to make a subsequent request for verification of banking details which further delays refunds and suspends interest payable. Seeing that the bank details are verified upon registration and also on the monthly VAT returns, we find it difficult to see how this provision can be applied by SARS on an ad-hoc basis as it duplicates a process which was already confirmed and validated by SARS. This section should preferably be correctly applied by SARS.

We recommend that the practical application of section 45 of the VAT Act should be based on its proper interpretation.

2.2 Interest should automatically be paid when due by SARS

SARS does not automatically pay interest in terms of section 45 of the VAT Act on delayed refunds in many cases. Some VAT auditors claim that interest is payable only if the vendor requests it. Even when a taxpayer applies for interest due, the process is extremely lengthy and time-consuming and the perception is created that SARS will refute or delay the payment of interest in most cases. In short, refund interest is an automatic right – not a discretion upon request.

2.3 Calculation of interest on delayed refunds

Interest pay-outs on delayed refunds are not always calculated correctly in terms of section 45 and at the correct prescribed rate in terms of section 187 of the TAA. It would seem that interest is not calculated after 21 business days from submission of return but rather from a date determined by SARS which is then not communicated to the taxpayer. The SARS system should be programmed to count the days correctly and calculate the interest correctly as set out in terms of rule 7 of the Rules promulgated in terms of section 103 of the TAA.

3. E-filing/practical issues

3.1 File size limits on e-filing

Until recently, a taxpayer was only allowed to upload supporting documentation limited to 2Mb per file on SARS e-filing, resulting in some cases in numerous files having to be uploaded per submission. The recent increase in the file size limit to 5Mb is welcomed. However, certain files often exceed 5Mb e.g. input and output tax schedules. Due to the file size limit, the taxpayer needs to split such files into smaller size files for uploading, which is time consuming and confusing to some degree for the reviewer. We request that the file size limit be increased to 10Mb and should also apply to SARS e-mail accounts where information is directly submitted through e-mail.

We also note that many problems associated with excessive information uploading can be solved if SARS auditors better focus their requests for information. Overly broad requests, result in excessive “data dumps” as the only defence against possible SARS assertions of non-declarations.

3.2 Process to correct overstated output tax

There is an issue on e-filing if a taxpayer has made an error in submitting a return by overstating output tax. This may be as a result of a typing error, a previous month’s output being captured by mistake, a VAT report which included a following month’s sales being used by mistake, credit notes issued not being included in output tax due to an oversight etc. When the taxpayer tries to correct the error on e-filing, the system does not allow for the correction because the correction results in a decrease in the liability due to SARS. SARS is requested to advise the process to be followed when a reduction of output tax is requested so that the liability due to SARS can be decreased.

3.3 Disclosure on statements of account

Statement of accounts do not reflect detailed history in some instances i.e. where objection was successful it does not show a descriptive line item for the correction made by SARS. In some instances, it reflects only a line item which is referred to as a “Journal” without further detail. Revised returns are reflected as “assessments” as opposed to showing that the returns were resubmitted.

3.4 Other information and SARS correspondence

In most instances, Notice of Assessment (NOA) and outcomes of disputes are not reflected on SARS E-filing. Even though assessments reflect on the statement of account, the actual NOA is required to submit objections and is therefore critical to access on E-filing.

3.5 Complaints

Outcome letters issued by SARS in respect of complaints submitted on E-filing is a standard template which reflects that the complaint has been resolved without providing any further detail. The taxpayer then has to contact SARS CMO to obtain information pertaining to the outcome.

3.6 Query SARS status

A standard response is provided where a query is logged on E-filing for an update on SARS status. It is recommended that the relevant SARS Department provides an accurate update when a status request is submitted.

3.7 Operating systems for using e-filing

The SARS e-filing system does not appear to be compatible with all the prominent web browsers / search engines. This often results in taxpayers who wish to access documents such as SARS correspondence finding a blank page with an error message instead. It is not immediately clear which browsers and software are preferred and supported by the SARS operating systems. We recommend that SARS' systems should be updated to be compatible with a variety of different operating systems and at least the top 3 web browsers / search engines.

4 Verification/Audit/Adjustment process (General Tax Administration Issues)

It should be noted that the tax administration issues listed below in this section are more general in nature. These issues are nonetheless raised given their regular impact on VAT compliance.

4.1 Counting of business days

The standard verification letter notes that taxpayers have **21 business days** within which to respond. However, SARS applies **21 calendar days** in practice. Query whether this is an

operational policy overriding legislation or an issue arising only in respect of certain branches?
Secondly, how do taxpayers properly respond if they currently find themselves being cut short?

4.2 Keeping taxpayers informed during audit

In many instances, SARS does not adhere to section 42 of the TAA in respect of keeping the taxpayer informed before raising an assessment. Assessments are often raised before the SARS request for additional information. In theory, SARS should send the taxpayer a letter of audit findings in accordance with section 42 of the TAA before raising an assessment.

We understand that SARS is working to resolve issues of this nature. We trust this concern is within the list to be resolved. In the meantime, how do taxpayers address these seemingly “rushed” assessments? Issues should be well-defined before disputed assessments are raised; otherwise, conflict emerges too soon, thereby entrenching positions before an appropriate dialogue and possible settlement.

We also recommend that the taxpayer be informed prior to assessments being raised for “verification” audits as such assessments are also regarded as an “administrative action” which negatively impacts the taxpayer if such assessments can be avoided through interaction between the parties. Such notifications for intent to raise assessments should preferably be reflected on SARS E-filing from where the Taxpayer can respond.

4.3 Letters with reasons for additional assessment not received

SARS issues additional assessments which refer to a letter that sets out the reasons for the assessment. However, the letter referred to is often not received on e-filing or otherwise. Without this information, the basis for the re-assessment is unknown other than the technical adjustment reflected on the assessment (e.g. “assessment raised or burden of proof not discharged”). The taxpayer must subsequently request the reasons for the assessment.

SARS is requested to issue the reasons for the assessment on e-filing when the assessment is raised. As a matter of best practice, all SARS correspondence should be issued on e-filing and the taxpayer notified accordingly so that a clear audit trail is kept in one place. The information request should also be specific, for example, how many invoices needs to be provided. Specific information requested (to the extent viable) would greatly ease the need to perform wholesale data dumps arising from “guess-work” responses.

4.4 Use of standard letters rather than specific requests

If a taxpayer has replied to a verification letter (request for information in terms of s46 of the TAA), SARS VAT auditors often send out the standard letter rather than a specific request for the information actually required. We hope that specific requests will in future also be sent for VAT as has been foreshadowed by recent changes in SARS practice for the income tax filing season. Again, how best can taxpayers deal with these open-ended requests rather than be forced to provide an overwhelming amount of information or being forced to run to the trenches?

4.5 Wholesale disallowance of input tax deductions by SARS

Problems arise when SARS incorrectly raises assessments on input tax claimed as invalid, especially when SARS can easily be shown that the assessment is baseless. In these circumstances, SARS often recommends that the input tax be claimed in the next period (as opposed to SARS issuing prompt refund).

Setting aside the normal cash delays, there are instances where the incorrect assessment results in a false shortfall, giving rise to taxpayer penalties and interest being raised. Instead of SARS reversing the error, the taxpayer is forced into incurring the expense of submitting an objection to resolve a clear SARS error. This also has an impact on any future understatement penalty that may be levied as the taxpayer does not have a clean compliance record. In short, incorrect assessments must be fully reversed as opposed to resolving amounts owing to taxpayer via adjustments in future years.

4.6 Further need for clear time frames for SARS to respond to certain requests

We note that the SARS Service Charter sets out service timelines within which SARS will endeavor to conclude certain matters, for example verifications, audits, refunds and applications for suspension or deferral of payments. We hope that these service timelines will address some of the issues that we have been experiencing. However, there are no time frames in which SARS is required to respond to certain other requests including claims for interest, penalty remission, or for interest to vendors on late VAT refunds, or for extension to submit information.

While we understand that SARS keeps these dates open not to unduly limit its ability to enforce, we believe certain operational guidelines should be set at least internally so taxpayer can have at least a “soft level” of expectation.

4.7 Indirect exports

Recent amendments to the Customs and Excise Act requires that all qualifying purchasers (foreign recipients) or their registered agent’s details must reflect on block 2 in the SAD 500. This results in SARS not accepting indirect exports as a zero-rated supply and also not refunding such qualifying purchasers if a VAT refund is submitted through the VAT Refund Administrator (VRA) where such foreign recipients are not reflected on the SAD 500 as the exporters. The foreign recipients will therefore have to apply for a “foreign exporters code” in the event that their registered agents do not act on their behalf. The difficulty is that these non-residents cannot obtain an exporters code as they do not have South African bank accounts as required by SARS Customs.

However, the foreign vendor may be represented by a registered and licensed clearing agent. We find that registered agents are hesitant to act on behalf of foreign recipients which then makes it more complex for the foreign recipients to transact with South African suppliers. This VAT amount now becomes a cost for the foreign recipient which may ultimately lead to such foreigners looking to other countries for their purchases.

We recommend that the South African suppliers should be allowed to be reflected as the exporters on the SAD 500 to zero rate indirect exports as well as for purposes of obtaining VAT refunds through the VRA where VAT was levied at the standard rate.

5 VAT registrations

5.1 Turnaround time

We note that the SARS Service Charter indicates that when a taxpayer applies for registration and all registration requirements have been met, SARS will process and finalise the application within 2 business days where no inspection is required. Where an inspection is required SARS will process and finalise the application within 21 business days. We welcome this endeavor and would like to make some recommendations based on our experience so far.

The VAT registration process is extremely onerous and with just cause as it may result in fraudulent registrations and/or refunds. However, for compliant taxpayers exceeding the threshold, it results in penalties and interest as it takes on average a month or more just to get an appointment with SARS for new registrations. In the interim, taxpayers are making sales and can only submit once a VAT registration number is issued.

We recommend that new VAT applications be submitted on e-filing irrespective of whether or not the taxpayer is already registered for another tax (currently applications can only be made on e-filing where the taxpayer is already registered for another tax). A formal interview can then be scheduled for the taxpayer to physically visit a SARS office to submit supporting documents. It would also assist if the documentary requirements can be standardized and aligned throughout the branch offices as it often happens that branches require different types of supporting documents which results in delays.

5.2 Non-standard VAT registrations

There is a significant lack of understanding amongst SARS branch offices regarding non-standard VAT registrations i.e. enterprises which will only reflect future income and seeking registrations based on current expenses incurred, contracts reflecting that future income will be earned and foreign entities without physical presence in South Africa. Applications are sometimes declined by individual SARS branches if such entities do not have sales exceeding the minimum threshold even if the VAT Act allows for them to be registered based on proof of expenses incurred, fixed contracts for future revenue etc. Foreign enterprise applications are also often declined due to these entities using third party bank accounts as allowed for in terms of the VAT Act. We recommend a VAT Guide be published to clarify these issues and/or a formal instruction be issued which can be presented to the SARS official when making non-standard applications for VAT registrations.

5.3 Proof of business address by means of CRA01 and original lease agreement of the seller

There is inconsistency amongst SARS branch offices regarding this. The Confirmation of Business Address (CRA01) form and lease agreements are sometimes not accepted because they do not reflect the details of the applicant taxpayer to proof its business address. This occurs when the taxpayer sub-leases and/or utilizes the same building as its parent/holding company and the lease agreements are therefore not in the applicant's name. This also occurs where a foreign entity without presence in South Africa utilizes the business address of its Representative.

6 Communication/SARS responsiveness

We note that the SARS Service Charter indicates that SARS will endeavour to respond to a tax query within 21 business days of receipt thereof. We welcome this.

6.1 Requests sent to the SARS practitioner mailbox

It is not clear whether there is a formal SARS escalation process for requests/queries sent to the SARS practitioner mailbox and escalated via the SARS Call Centre, after the initial 21-day period has passed. This results in practitioners having to make numerous follow up calls to query the status. In most cases, practitioners need to find an alternative ad hoc route to resolve the matter. We recommend that a formal escalation process should be put in place and communicated to tax practitioners.

6.2 Specific information regarding progress of audits

All enquiries can only be made via the SARS Call Centre, with the only comment generally being that the system indicates the audit as “still in progress” (whilst refunds are being held back). There are no other means of finding other information in this regard.

The Call Centre agents have only limited information/knowledge regarding specific taxpayer matters. It would make sense if taxpayers could contact the auditor in charge.

7 Dispute resolution process

7.1 Suspension of payment where objection has been lodged

We note that the SARS Service Charter indicates that when a taxpayer applies for deferral or suspension of payment and all the requirements have been met, SARS will endeavor to consider the request within 21 business days of receipt of the complete application and communicate accordingly.

This would be a significant improvement. Our experience to date has been that there is seldom any reply or coordination from SARS regarding requests for suspension of debt. The

collection process action needed to suspend collection seems to run independently of the legal process even if the suspension is granted.

SARS often continues debt collection steps where a request for debt suspension has been lodged but no response has been received. It has been extremely difficult to follow up on these requests. SARS should make a decision and issue the response on e-filing, notifying the taxpayer thereof. SARS often continues with its collection efforts even though suspension of debt was granted and/or confirmed by SARS. This could have a number of adverse consequences for taxpayers including the incorrect allocation of payments for the following periods to the earlier period in dispute resulting in understatement penalties being levied for the subsequent periods. This could, in turn, result in the taxpayer's tax compliance status being undermined.

7.2 Adherence to timelines in Dispute Resolution Rules

We note that the SARS Service Charter indicates that SARS will endeavour to comply with the time periods in the dispute resolution rules. This would be a welcome improvement.

Our experience to date has been that SARS does not deal with objections and appeals within the 60 business day timelines prescribed in the Rules. This exacerbates the real problem namely that SARS often issues "verification" assessments before other avenues have been exhausted, as indicated in our paragraph 4 above, to resolve queries with the taxpayer. The taxpayer then has to object to incorrect assessments whereas the issues could be resolved prior to the assessments being raised. In addition, Taxpayers are not consistently receiving Notice of acceptance of ADR meetings within the prescribed 30-day period from date of Appeal. This further delays the Appeal process.

8 Ruling Applications

8.1 Timelines for acknowledgement

Rulings have timelines but initial SARS letters acknowledging ruling requests do not. More specifically, SARS provides an “acknowledgement of receipt” letter in which the ruling is classified based on its complexity when a ruling request is submitted. The SARS response time is then allocated based on this classification. Yet, there is no timeline from the date of ruling request submission to the date that this acknowledgment letter is issued. In respect of some rulings, the taxpayer waits in excess of 2-3 weeks for this acknowledgment letter and then the timeline allocated by SARS only starts to run from the date of that letter.

As far as we can see, this matter has not been specifically addressed in the SARS Service Charter.

9 Voluntary disclosure programme (VDP)

9.1 Timeframes imposed

The TAA does not provide a set timeframe within which each of the elements of the application process must be concluded. However, the SARS VDP unit instructs taxpayers to file revised returns and to make payment within a certain timeframe, failing which the application will be declined. No legislative basis exists for this limited timeframe.

9.2 VDP agreement versus revised returns

The TAA does not require revised returns to be submitted in order for SARS to raise assessments and finalise the VDP agreement. However, the SARS VDP Unit insists that revised returns be submitted. (This is more difficult and time consuming where, due to e-filing system issues, the returns are to be submitted manually as opposed to the simpler submission via e-filing.)

Section 230 of the TAA provides that SARS must consider the application and, if approved by a senior SARS official, SARS must issue an agreement that includes details of the arrangements and dates of payment. Further, section 232 of the TAA provides that only once a voluntary disclosure agreement has been reached (as envisaged in section 230) may SARS issue an assessment or make a determination for purposes of giving effect to the agreement.

On at least two occasions, taxpayers were threatened by the VDP Unit that the applications will be cancelled if the revised returns are not submitted by a particular date. The VDP unit took this position on the apparent basis that the TAA provides that an application must be full and complete in all material respects. Where a taxpayer complies with these requirements of the TAA by making a VDP application (which was full and complete in all material respects based on the known facts and circumstances at the time of the submission) the application must be allowed to be duly processed and the VDP agreement should be reached based thereon. Thereafter SARS may issue an assessment or make a determination for purposes of giving effect to the agreement.

END