

ESTIMATED ASSESSMENTS IF A TAXPAYER DOES NOT SUBMIT A RETURN

2 March 2021

Background

The 15 February 2021, extended deadline for provisional taxpayers who file electronically via eFiling has passed. However, despite the extension granted, some taxpayers still failed to submit their tax returns on time.

At the start of the 2020 Filing Season, SARS issued an 'auto -assessments' to a certain category of taxpayers based on available third-party information. These taxpayers had two options:

- Accept the auto-assessment; or
- Submit a return.

At that time, SARS also indicated the process that will be followed when persons do not accept or amend the 'auto-assessment' provided to them. In response to taxpayers failing to respond to 'auto-assessments', SARS recently started to issue estimated assessments and monthly administrative penalty assessments to taxpayers who did not exercise one of the above-mentioned options.

In this document, we review the position of a taxpayer that received an 'auto-assessment', but that did not submit their tax return before the deadline.

Estimated assessments – the Legislation

Section 95 of the Tax Administration Act, No. 28 of 2011 (the TAA) was amended by the Tax Administration Laws Amendment Act, No. 24 of 2020, to allow SARS to issue an estimated assessment when a return was not submitted. The effective date of the amendment was 20 January 2021, the date of promulgation of the Amendment Act.

In summary, and in relation to estimates assessments in the case of 'auto-assessments', we discuss the below:

Provision	Paraphrasing the legislation	Meaning
Section 95(1)	SARS may make an original, additional, reduced, or jeopardy assessment based in whole or in part on an estimate <u>if the taxpayer does not submit a return.</u>	This means that where a taxpayer does not submit a tax return on time, SARS may issue an estimated assessment.
Section 95(2)	SARS must make the estimate based on information readily available to it.	Especially in cases where SARS has 3 rd party data regarding the income of the taxpayer, SARS will have information available to make an estimate.
Section 95(3)	If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly, which assessment is not subject to objection or appeal.	This provision allows a taxpayer to come to an agreement with SARS regarding the amount of tax chargeable, should the taxpayer be unable to submit an accurate return.

Provision	Paraphrasing the legislation	Meaning
Section 95(4)	The making of an assessment under section 95(1), does not detract from the obligation to submit a return.	If SARS issues an estimated assessment in terms of section 95(1), the taxpayer is still obliged to submit a tax return.
Section 95(5)	An assessment under section 95(1) is not subject to objection or appeal, unless the taxpayer submits the return referred to in section 95(1).	The taxpayer that received an estimated assessment cannot object or appeal against such assessment, unless and until the taxpayer submits the relevant outstanding tax return. Read with section 95(6).
Section 95(6)	The taxpayer in respect of whom the assessment under section 95(1) has been issued may, within 40 business days from the date of assessment, request SARS to issue a reduced assessment or additional assessment by submitting a true and full return.	Where a taxpayer has received an estimated assessment in terms of section 95(1), the taxpayer may request SARS to issue a reduced assessment or additional assessment by submitting a true and full return. The taxpayer has within 40 business days from the date of assessment to submit the return and access the right to request a reduced assessment or additional assessment.
Section 95(7)	A senior SARS official may extend the period referred to in section 95(6) within which the return must be submitted for a period not exceeding the relevant period referred to in section 99(1).	SARS may extend the 40 business day period in relation to the relevant period in section 99(1).

Conclusion

When applying section 95 of the TAA to the scenario of a taxpayer that received an 'auto-assessment', but that did not submit their tax return before the deadline (even if they rejected the 'auto-assessment'), it appears that:

- A true and full return must be submitted to replace the estimated assessment and to allow the taxpayer to dispute any of the information on the estimated assessment.
- Since no tax return has been submitted by the taxpayer, they remain eligible for administrative penalties, irrespective of the fact that they received an estimated assessment.
- Although a taxpayer can request the remission of the monthly administrative penalty assessments by submitting a Request for Remission (RFR) to SARS, it is doubtful that SARS will grant such a request unless the taxpayer has very good reasons as to why the tax return has not been submitted, and considering that section 95(3) is available to allow the taxpayer to come to an agreement with SARS in cases where the taxpayer is unable to submit an accurate return.

End.