



Back to basics: navigating a SARS audit and dispute process

by Taryn Solomon

Receiving and responding to a request for relevant material from the South African Revenue Service (“SARS”) and generally dealing with SARS during an audit or a dispute can be a daunting task for any taxpayer. In this article, we go back to basics in briefly discussing the processes followed by SARS during audits and disputes (up to the appeal stage), including providing some tips and insights in dealing with SARS in these processes, which may assist taxpayers in navigating their way through them.

Request for relevant material and audit findings

SARS has wide information gathering powers in terms of section 46 of the Tax Administration Act, 2011 (“TAA”) and may require a taxpayer or another person to submit relevant material “for the purposes of the administration of a tax Act”. A taxpayer or another person must be given a “reasonable period” within which to submit the relevant material. Upon receiving a request for relevant material from SARS, a taxpayer or person should therefore firstly consider whether the information requested is indeed required for the administration of a tax Act and secondly, whether SARS has provided the taxpayer or person a reasonable period within which to respond to the request. If the material requested is voluminous and/or covers an extended period of time, a further period may be requested to submit the response. It is a criminal offence in terms of section 234(h) of the TAA to refuse or neglect to furnish information requested by SARS.

Once SARS has completed its audit (which may involve various correspondence over a period of time), and where the audit identified potential adjustments of a material nature, SARS must, in terms of section 42(2)(b) of the TAA, provide the taxpayer with a document containing the outcome of the audit including the grounds for any proposed assessment or decision. This document is commonly referred to as the letter of audit findings. A taxpayer must, within 21 business days, respond in writing to the facts and conclusions set out in such letter. Based on the complexities of the audit, an extension can be requested by the taxpayer. The letter of findings and response thereto is an important step in the audit/dispute process, as this is the first time in which SARS formally sets out its views following an audit and it gives the taxpayer the first formal opportunity to provide SARS with any further explanation and/or the opportunity to correct any misinformation or misunderstanding prior to SARS deciding to raise additional assessments.

The issuing of additional assessments and suspension of payment application

Where SARS is unpersuaded by a taxpayer’s response to the letter of findings, it will issue a finalisation of audit letter reflecting the adjustments to be made and additional assessments will be issued in terms of section 92 of the TAA. Upon receipt of an additional assessment, the following two important dates should be noted:

- The **issue date** of the additional assessment. It is 30 business days from this date where a taxpayer needs to take the next step in the dispute process, ie, requesting reasons for the

additional assessment or objecting thereto. This is also the relevant date for determining whether a year of assessment has prescribed in terms of section 99 of the TAA.

- The **second due date** of the additional assessment. This is the final date by which payment of the amount due in terms of the additional assessment must be made. It is also the date by which a taxpayer must submit its suspension of payment application in terms of section 164 of the TAA, as discussed further below.

The obligation to make payment by a taxpayer of an assessment is not suspended merely because that taxpayer intends on disputing such assessment. However, section 164 of the TAA provides taxpayers with the opportunity to submit a suspension of payment application to SARS in which the taxpayer must motivate in terms of the legislated factors why such payment should be suspended pending an objection and appeal. Importantly, a taxpayer's obligation to make payment is, however, suspended while SARS is considering the taxpayer's application for suspension of payment in terms of section 164 of the TAA. Accordingly, and from a practical perspective, should the SARS debt management division make contact with a taxpayer regarding payment while SARS is still considering a suspension of payment application, a taxpayer can and should inform debt management that its obligation to pay is suspended at that time.

Request for reasons, objection and appeal

If, despite the explanations offered by SARS in the letter of audit findings and the finalisation of audit letter, it remains unclear as to why the additional assessments were issued and the taxpayer requires reasons to enable it to formulate its objection, it may request reasons in terms of rule 6 of the rules promulgated under section 103 of the TAA (the "**Rules**") within 30 business days from the issue date of the additional assessment.

Once SARS has supplied the reasons, the taxpayer has 30 business days to submit its notice and grounds of objection (where there is no request for reasons, the 30 business days start running from the issue date of the additional assessment). The requirements for an objection are governed by section 104 of the TAA, together with rule 7 of the Rules. A taxpayer's objection is a fundamental document in the dispute process as the taxpayer does not get another opportunity to add further grounds of objection after this point. The objection must, *inter alia*, specify the grounds of objection in detail including the specific amount of the disputed assessment being objected to; which grounds of the assessment are being disputed; and must include any documents required to substantiate the grounds that the taxpayer has not previously provided to SARS.

SARS has 60 business days to allow or disallow the objection. If disallowed, the taxpayer has 30 business days from that disallowance to submit its notice and grounds of appeal. The requirements for an appeal are governed by section 107 of the TAA, together with rule 10 of the Rules. The appeal must, *inter alia*, specify in respect of which grounds of objection the taxpayer is appealing; the grounds for disputing the basis of the decision to disallow the objection; and any new ground on which the taxpayer is appealing. Despite being able to appeal on a new ground, such new ground may not constitute a new objection against an amount of the disputed assessment.

There is an opportunity in the notice of appeal form to elect to refer the matter to an alternate dispute resolution ("**ADR**") process. Such a process freezes the time periods in respect of the next steps in the formal dispute process and provides the parties with an informal forum to try resolve the dispute. There are specific rules (rules 13 – 25 of the Rules) that govern the ADR process.

Where an ADR process is not followed or where such a process is unsuccessful in resolving a dispute, the parties will draft and exchange their tax court pleadings (colloquially referred to as the Rule 31 and Rule 32 Statements), which will crystallise the issues in dispute and will then undertake all the preparatory work for the tax court, including discovery, pre-trial conference and the like. All of these procedures are also governed by the Rules.

Knowing and understanding the rights and obligations involved

As is evident from this article, which merely provides a glimpse of what is involved, the audit and dispute processes are intricate and detailed and are also governed quite rigidly by legislation. It is therefore important at each stage of an audit and/or dispute process for a taxpayer to know and understand both its and SARS' rights and obligations, as well as the consequences of information provided and actions taken.

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