

**FEEDBACK SUMMARY
12 MAY 2022**

GENERAL

SAICA attends various discussions and meetings on behalf of members with National Treasury (“NT”), South African Revenue Service (“SARS”), the Office of the Tax Ombud (the OTO) and other stakeholders (internal and external). These meetings represent an opportunity for stakeholders to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

**SARS/RCB NATIONAL STAKEHOLDER ENGAGEMENT
26 APRIL 2022**

Below is a summary of some of the SAICA agenda items raised with SARS as well as SARS feedback on such issues. The matters raised are determined through engagements with members via the various committee structures and discussion groups, as well as queries logged by members on the SAICA Member Portal and those raised in the tax seminars held during the course of the year.

Delays in finalisation of verifications, objections and appeals

1. Members have noted ongoing delays with respect to finalisation of verifications, objections and appeals. This, in turn delays approval and payment of refunds or in the case of disputes,

sometimes leads to final demands and third-party appointments, sometimes unjustified as the taxpayer has requested suspension of payment.

2. With respect to verifications specifically, there have been many reports of members lodging complaints due to delayed verifications, only to have the complaint rejected on the basis that the verification is still within the turnaround time. It seems that the system automatically rejects such complaint dependent on the case reference number used – i.e. if the tax practitioner used the case reference number for the verification follow up, the system rejects the case without any manual intervention.
3. There are also instances where a suspension of payment request has been submitted, but for some reason, this is not linked to the tax compliance status, resulting in the taxpayer being noted as non-compliant.
4. Based on engagement with certain regions, there has been acknowledgement of the issue and indication that some interventions will or have been put in place.

SARS Feedback:

5. SARS noted that there are seasonal backlogs and regional backlogs – in respect of certain geographical regions (Gauteng North and Western Cape), as well as Large Business and High Net Worth Individuals. There are processes underway to address the backlogs. SARS further advised that the Office of the Tax Ombud has also been engaging SARS with respect to documents submitted and requested again, as well as cases finalised and then reopened for audit when there is follow up for refunds – such cases have been identified by SAICA and escalated to the relevant SARS regions.
6. The SARS stakeholder team noted that they are concerned about the delays beyond the turnaround time and would like to improve the turnaround to even less than the standard 21 days. It was acknowledged that there are currently too many cases and too few resources to finalise the cases within the required timeframe. SARS is trying to increase capacity and address productivity issues to ensure a quicker turnaround.
7. The SARS team also acknowledged that there are certain taxpayers that are subjected to repeated VAT verifications resulting in no adjustments. It was agreed that consideration needed to be given to the nature of the business which may result in refunds every period – for example, the export industry. Ongoing refunds trigger repeated verifications, but this should not automatically be the case if the nature of the business is such that refunds will be due in every period.
8. SARS advised that there is a dedicated team dealing with complaints and as a result, there has been a 60% reduction in the complaints inventory. The national stakeholder team is dealing with escalations as and when these come through. SARS acknowledges its failings and is working on improving.

Delays in finalisation of disputes

9. It was noted that there continue to be ongoing delays in finalisation of disputes and SARS feedback was requested in this regard.

SARS Feedback:

10. SARS noted that the number of disputes received has increased over the last few weeks, with a 30% increase in objections. The appeals inventory in total has shown a consistent reduction over the last 2.5 years and whilst there is progress in reducing the dispute inventory, it is unfortunately slow. SARS has seconded staff from other units to assist with the finalisation of appeals. SARS also advised that the section 95 amendments will assist the appeals team to finalise their matters, since that section will force taxpayers to resolve documentary issues prior to lodging disputes. Unfortunately, many disputes arise due to taxpayers not submitting documents timeously. Members must ensure that documents requested are submitted timeously and completely.
11. Following the 2020 report of the Office of the Tax Ombud, SARS has tried to refocus on addressing the issues identified during that review with a view to improving the process overall, starting from the request for reasons stage. Part of this process of improvement was to speed up the roll out of various eFiling system enhancements and efforts are being made on an ongoing basis to improve turnaround time.
12. The below system rollouts have been implemented:
 - The PAYE administrative penalty dispute function is now available on eFiling and one can separately dispute late payment and the late submission penalty.
 - SARS is also looking into the amended dispute rules which are still in draft. These are apparently close to being signed off and will hopefully be operational soon – this will include an increase in the number of days to lodge an objection – i.e. 80 instead of 30 days which will hopefully reduce the requests for condonation of late submission.
 - The SARS stakeholder team will engage with RCBs to identify RCB representatives to form part of the SARS working group to review the dispute rules and SARS will consider proposals to change the rules where there are deficiencies noted.

Challenges with respect to supporting documents request letters

13. There are still instances with respect to the supporting document request letters being inadequate or not actually sent to the taxpayer or tax practitioner.
14. Whilst the first letter may be uploaded on eFiling, this is usually a 'generic letter' requesting supporting documentation for verification purposes.
15. However, this is sometimes followed by a second letter which is often also generic and/or refers to a letter sent to the taxpayer. This sometimes happens with the IT14SD request letters, where SARS requires specific information, but the letter detailing this is not available on eFiling. The tax practitioner then has to call the SARS contact centre and the agent then emails the letter. In some instances, the letter is not even on service manager, creating further delays.
16. To avoid this difficulty, it was proposed that SARS auditors should upload the specific request letters on eFiling and a notification should be sent to the preferred contact person.
17. As an aside, a matter raised with SARS first on 26 October 2021, there seems to have been a change on eFiling where instead of notifications being sent to tax practitioners, these were now

being sent to the taxpayer directly, resulting in delays in submission of information to SARS. It is unclear as to whether this has been resolved, despite multiple follow ups including in 2022.

SARS Feedback:

18. There were intermittent issues with notifications of assessment outcomes being generated, but not sent to taxpayer or practitioner. This was 'fixed' mid-April and these notifications are being sent. If the problem persists, examples must be escalated.
19. SARS acknowledged instances where the specific letter is sent via email and a generic letter placed on eFiling. This is being addressed. It was noted that for both PIT and PAYE, in respect of the 2022 filing season, the system will generate the specific letter on eFiling.

Administrative late submission penalty for taxpayers that temporarily changed from provisional to non-provisional in respect of the 2021 tax year

20. As previously noted to SARS, towards the end of January 2022, SAICA received numerous complaints from members noting that many of their clients who were 'registered' as provisional taxpayers, received penalty assessments on submission and assessment of their ITR12 income tax returns – seemingly on the basis that the returns were submitted late, even though the deadline for provisional taxpayers is only on 31 January 2022.
21. On further analysis of the examples submitted and engagement with members, it appeared that in some instances the 'late submission' penalty was triggered by the SARS system where the taxpayer had selected the provisional tax 'tax type' on eFiling, but did not meet the definition of "provisional taxpayer" in the Fourth Schedule to the Income Tax Act, 1962 (the Act) at the time of submitting their income tax return. In most instances, this 'disqualification' or exclusion appeared to be as a result of the R30 000 threshold on certain income (paragraph (dd)(BB)).
22. For many of the affected taxpayers, the reason the 'other income' dropped below the threshold was due to the consequences of the COVID-19 pandemic and for many, this reduction was temporary – i.e. in the prior year, the taxpayer may have qualified as a provisional taxpayer and similarly may do so in respect of 2022, but not so for the 2021 tax year.
23. Following initial engagement with SARS, many of the penalties were reversed. However, in February 2022, some of the penalties that were reversed were reinstated.
24. Whilst we note that the imposition of penalties in the aforementioned circumstances is technically correct, it is clear that this transpired only due to SARS having changed the rules in respect of which a penalty may be imposed – i.e. the penalty is now imposed if one or more tax returns is outstanding as opposed to two or more returns outstanding (Government Notice 1531 in Government Gazette 45540, refers).
25. In our view, what transpired was an unintended consequence of the change and we respectfully requested that SARS take a more pragmatic view as a transitional measure.
26. As noted by members, having 2 months longer to submit an income tax return is not the reason for selecting the provisional tax type. It is in fact more burdensome to fulfil the compliance obligations of provisional taxpayers and for many, they believe prudence demands that they

comply with the provisional tax return submission and payment deadlines in case, by the end of the year they do end up being provisional taxpayers given that this was historically the case.

27. Further, as many have pointed out, SARS has 'accepted' the provisional tax payments (despite the individual evidently not being compelled to make these) and in some cases has taken exceedingly long to pay out refunds due to affected taxpayers and has therefore benefited from having retained these funds for so long, even though the amounts were not due to SARS at the time.
28. Tax practitioners are aware that remission of the penalties may be made, if the taxpayer qualifies for such. However, the view is that this is unnecessarily making use of remission for 'first incidence of non-compliance'. Further to this, SARS is apparently requiring that every request for remission is accompanied by a specific Power of Attorney. It is not clear as to whether this is SARS practice or the practice of certain individual SARS staff.
29. It was noted that SARS had communicated its decision in respect of the imposition of the penalty and the legality thereof. However, based on member input, SAICA again sought engagement on this matter with a view to reach agreement on the best way to deal with this.

SARS Feedback:

30. SARS noted that unfortunately, it would not reconsider the decision to retain the penalty in the circumstances. However, taxpayers were welcome to request remission of the penalty, which, as noted above seems to be granted in most instances.

SARS system and related errors for which there is no accountability

31. There are a number of system errors that have arisen over the past few years, many of which have been escalated to SARS. However, these have not always been adequately resolved.
32. Some of the issues relate to eFiling forms that require changes and/or functionality that is not available or does not work, as well as issues that have been identified as systemic matters impacting multiple taxpayers, on a national basis. The system errors impact the taxpayer's ability to maintain compliance and impact the ability for tax practitioners to provide their services.
33. There have also been instances where close to and on the deadline for submission of returns/payments, the relevant system has been unavailable. In SAICA's view, despite escalations, the action taken to address the impact on taxpayers was not always adequate or timely. For example, despite being aware of the issue, if it resulted in penalties due to late submission, the affected taxpayer would need to follow the normal channels to request remission of penalties and have to prove (via a screenshot) that the system error prevented timely submission – such requirement communicated after the deadline had passed.
34. In addition to these errors placing taxpayers at a disadvantage, tax practitioners are often also disadvantaged as the extra work arising from this is often not billed, due to the taxpayer not being willing to pay for the additional service necessitated through SARS systems not working correctly.

35. Examples of such issues were provided to SARS and the request was for SARS to implement a policy in terms of how to deal with such matters when they do occur. In SAICA's view, where SARS cannot resolve system issues timeously, there needs to be a suitable alternative including a dedicated platform or communication channel to address the consequences of such errors.

Suspension of payment request seemingly not linked to the Tax Compliance Status (TCS) system

36. It was noted that the suspension of payment request does not appear to be linked to the TCS System, resulting in a taxpayer having a non-compliant status despite section 256(3)(b)(ii) of the Tax Administration Act, which provides that the taxpayer must be reflected as compliant if the taxpayer does not have any outstanding debt, excluding a debt that may not be recovered for the period specified in section 164(6), of that Act.
37. SAICA is aware that the 'Challenge Status' functionality may be and is used and documents uploaded, but unfortunately, it takes time for SARS to resolve this, sometimes resulting in taxpayers losing tenders.
38. There is also a systemic issue preventing a second application for suspension – i.e. if an objection is disallowed, there is no mechanism to request the suspension again.

SARS Feedback:

39. SARS acknowledged that the functionality is not linked and requires human intervention – i.e. one needs to challenge the TCS and follow the process. SARS further advised that the filing of a suspension request will never be brought into the TCS system until it has been approved.
40. SARS is concerned that taxpayers will misuse this and has requested proposals as to how to deal with 'fictitious' requests. Due to SAICA challenging SARS on the basis that this was not in terms of the legislation noted above, SARS requested proposals as to how to deal with this whilst mitigating the risk noted.
41. Regarding the system inability to request a second application, SARS advises that the system should allow the request and will look into this.

Extending tax practitioner profile to a firm as opposed to restricting it to individuals

42. Whilst SAICA understands that keeping individuals accountable for the advice they provide is important and in line with the Tax Administration Act, the limitation of tax practitioner profiles to specific individuals has given rise to a number of practical concerns in the context of incorporated practices and partnerships.
43. Workarounds may have been used, but there is a concern that this is not correct in terms of the law.
44. In addition, a number of the eFiling changes since the introduction of SSO (Single Sign On) have made these workarounds 'unworkable'.

45. If the nominated tax practitioner were to ever leave the Inc./partnership, the entire firm's tax practice would leave with it, given that all power of attorney's and authorisations would have been issued in the practitioner's name and other employees only have access to the clients' profiles through the related profile.
46. Given that the eFiling profile is linked to the individual, it cannot simply be passed on to the firm. Retaining the clients would also not be feasible.
47. Although it is possible to transfer these profiles to the new tax practitioner, this is an extraordinarily time-consuming process as it would require a manual transfer request for every single client and a new Power of Attorney signed for every single client.
48. The same would apply even for a deceased tax practitioner.

SARS Feedback:

49. SARS acknowledged the challenges and indicated that it would initiate separate discussions in this regard.

Foreign employment exemption

50. Members have noted that there are many cases where SARS disallows the foreign employment exemption and issues an additional assessment if this exemption is utilised. To resolve this requires that taxpayers lodge a dispute, which, as we have noted above, takes time to finalise, given that there are already long delays in the process.
51. Based on input from members, concerns were also raised that the current ITR12 form and coding can be very confusing to individuals and if individuals use the incorrect codes, this is most likely what results in the queries and additional assessments issued by SARS. Disclosure is scattered in three different parts of the return and it is not obvious from the Wizard as to where the different information needs to be disclosed.
52. SAICA recommended that SARS reconsider the design of the form in respect of this aspect and/or request relevant documents via the normal audit verification process instead of simply disallowing the exemption. SAICA further noted that it would be happy to facilitate review of the 2022 ITR12 to provide proposals on any improvements to the form.

SARS Feedback:

53. SARS noted that it will engage further and will consider issuing guidance to assist taxpayers and tax practitioners in terms of how to complete the form.

Foreign Investment Allowance (FIA) Approval turnaround time

54. Members have noted delays with the FIA approval process, in that it takes at least 2 weeks for SARS to provide feedback after documents are uploaded. One of the bigger issues is the fact that when a request is rejected, a generic letter is sent out with no details as to why it has been rejected, making it difficult to determine how to respond and what, if any, supporting documents are still required by SARS.

55. With income generating opportunities available for short term trading gains through crypto arbitrage (a model that has been around for a few years), the current SARS process is cause for concern for those involved in providing the service and those making the trades. Given that trades are executed daily and in real time, due to the passage of time to obtain approval, it results in income lost on trades for the trader and consequently, a loss of revenue to the economy and SARS.
56. SAICA proposed that it may be useful for SARS to upskill staff to deal with this and potentially consider a separate channel for FIA applications related to crypto currency transactions.

SARS Feedback:

57. The SARS team acknowledged that there are aware of delays with respect to the up to R10m investment allowance and crypto arbitrage transactions.
58. It was further noted that the three types of tax clearance 'certificates' currently available do not cater for crypto arbitrage transactions – that is, to facilitate funds leaving the country and returning practically on a daily basis. The SARS system is not geared towards this kind of trading and SARS is investigating ways in which to address this.
59. Enhancements are planned in respect of the TCS, system in general in order to improve turnaround time.

Refund related issues

60. SAICA has identified that delays in payment of tax refunds has increased in the last few months. There are different reasons identified for the delays and in some cases, the reasons are not clear. Specific examples have been escalated to the relevant SARS regions and following intervention, many of the refunds are paid. However, it is concerning that this requires intervention as there are many taxpayers who may not have access to such 'interventions'.
61. There have also been complaints about 'special stoppers' placed on refunds without the taxpayer and/or tax practitioner being informed. In addition, there have been a few cases reported of the refund being paid out and then recalled.
62. Insight was requested from SARS as to what is triggering these 'special stoppers' and why the risk is identified only after a refund is paid. Furthermore, it was noted that it is questionable as to why no communication is sent to the taxpayer and/or tax practitioner when the refund is reversed. This non-communication results in calls to the SARS Contact Centre which is already overburdened with calls and sometimes takes multiple calls before any information is attained.

SARS Feedback:

63. SARS acknowledged delays in refund payments and noted that interventions were in place to address this. Many delays are related to the delays in finalisation of verifications which has been addressed above.

EMP 301 penalty assessments received in cases where all EMP501 forms have been submitted

64. Members have complained that SARS is sometimes issuing EMP301 penalty assessments even though there is no non-compliance. On submitting a Request for Remission (RFR), this is invariably rejected as invalid based on late submission after the EMP301 due date.
65. The due date changes when another period is added to the EMP301 penalty list, as the due date will be relevant to the date that the new penalty has been imposed, resulting in tax practitioners having to resubmit the RFR multiple times.
66. It is not clear what is triggering this and SAICA noted that tax practitioners are engaging with relevant branches (where possible) in attempts to resolve the issue.
67. This impacts on the taxpayer's compliance status and can and has impacted on the employment tax incentive claim and utilisation/refund event.

SARS Feedback:

68. SARS agreed to investigate examples provided and committed to providing feedback at a later stage.

Partnership registration for VAT and PAYE

69. Whilst it is noted that partnerships are not considered legal entities for tax purposes and individual partners therefore have to register for and recognise the proportionate income in their personal capacities, there is often still a requirement for the partnership itself to register for VAT and PAYE.
70. The SARS eFiling system is not set up to efficiently facilitate the activation of the tax types as it requires taxpayers to insert a registration number to get access to an eFiling profile and therefore, one cannot request the different tax types unless there is a registered representative appointed for the partnership according to eFiling.
71. SARS seems to identify income tax as the main profile to which it links the registered representative, but since the partnership does not have an income tax number or registration number, one can only create a profile based on the VAT or PAYE numbers. If the income tax number or ID number of a partner is used, then the VAT or PAYE profiles will link to that individual.
72. There is a workaround which requires creating a taxpayer on eFiling with the registration number 0000000000 and the PAYE or VAT number as the tax reference number. The challenge arises in that although it is the same partnership registered for VAT and PAYE profiles, these two profiles have to be created separately (there is no single reference number to link them) and they are therefore not linked to each other in any way. The VAT cannot be activated and requested on the same profile as the PAYE as the option does not exist to request the VAT profile on the EMP profile or vice versa.
73. This creates further problems as government departments do not accept tax clearance certificates where all tax numbers are not shown on a single tax clearance certificate.

74. This has no doubt been a problem since partnerships were used as a means of operating a business or trade. In SAICA's view, it does not make sense to continue using this workaround since SARS have long been aware of the practical challenges related to this. It is similar to foreign entities that need to register for VAT only which requires manual registration and manual submission of related returns.
75. SAICA proposed that SARS prioritises system updates to accommodate these types of taxpayers or advise if development of this is in progress.

SARS Feedback:

76. SARS advised that its eFiling development team will investigate the system capabilities and explore ways in which to resolve the issue.

Bank account verifications

77. Tax practitioners are receiving many notices that SARS has invalid bank details in respect of long-standing clients that have received tax refunds in past years and there have not been changes to bank details. SAICA sought insight as to what is triggering this and how it can be avoided, since it seems to be creating unnecessary administration for both SARS and taxpayers/tax practitioners.
78. Where banking details are being verified and documentation submitted on request, SARS sends weekly mails (on weekends) indicating that it is busy with the verification and the process will take about 10 days. However, these are taking months to finalise. The emails on Sunday mornings are also something that is cause for concern. It would be advisable for SARS to instead send such notifications to tax practitioners when action is required on the part of the tax practitioner or taxpayer.

SARS Feedback:

79. SARS is investigating and will provide feedback at a later stage.

SARS Online Appointments

80. Currently, the SARS online booking system does not allow business representatives (that are not tax practitioners/registered representatives) the opportunity to book for online appointments.
81. There are instances where an administrator of an eFiling profile is not a registered representative and is accordingly not able to utilise this functionality. This poses a significant challenge for such persons who are required to interact with SARS on operational day-to-day problems.
82. The options available for tax practitioners to request appointments are also limited and SAICA requested that additional options should be made available, including for submission of manual disputes and 'Other'.

SARS Feedback:

83. SARS welcomed proposals on how to enhance the appointment booking system, whilst taking into account the risk of fraud.
84. Regarding the options available to tax practitioners, SARS agreed to consider enhancements in respect of this.

SARS insistence that before remittance of penalties and interest is considered the taxpayer must first have paid these in full

85. Members have noted that there are instances where certain SARS staff insist that prior to considering a request for remission, the taxpayer must have first made payment of the related penalties and interest, even if this is not yet due – i.e., despite the fact that section 215 of the Tax Administration Act provides for a request of remittance to be made on or before date of payment.
86. However, if payment is made and the remittance is subsequently allowed, a refund of the amount may be delayed for some time. As a result, the taxpayer experiences unnecessary cashflow difficulties and stress even though they have co-operated and paid their outstanding taxes in full.
87. It is not clear if this is a practice communicated by the SARS national office or due to lack of knowledge on the part of the consultants. If the latter, SAICA requested that SARS engage with staff to ensure that they understand the relevant legislation and act accordingly.

SARS Feedback:

88. SARS acknowledged that this is not correct, and that staff should not be imposing this. Specific examples must be escalated to SARS as this is not a practice supported and will be addressed.

SARS Contact Centre Challenges

89. SAICA has received multiple complaints of challenges with the SARS Contact Centre, including long waiting times, calls dropped after waiting up to 2 hours and call backs either not honoured or made a few hours after being requested.
90. It was noted that often tax practitioners call the Contact Centre as a last resort – i.e., if there are no other clear channels of engaging with SARS on the particular matter.
91. It was further noted that the SARS Commissioner has acknowledged that challenges exist, and SAICA requested insight as to how these will be managed going forward and how SARS will measure the impact of any interventions.

SARS Feedback:

92. SARS acknowledged the challenges, but also raised concerns that some tax practitioners and their staff were using the Contact Centre instead of the various other channels and platforms available.

93. Tax practitioners need to ensure that they familiarise themselves with the other channels available and avoid using the Contact Centre unless absolutely necessary.