

Ref:

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Dear Mark

SAICA SUBMISSION: 2022 TAX FILING SEASON

1. The SARS/RCB Filing Season meeting held on 22 February 2022 refers.
2. Firstly, we would like to again thank SARS for engaging with RCBs and their tax practitioner members to discuss SARS' proposed changes to be implemented in respect of the 2022 Tax Filing Season.
3. Whilst SARS acknowledged certain concerns raised in that meeting regarding, we would like to take the opportunity to address these in writing, as well as raise any additional concerns not specifically discussed in that meeting.
4. For ease of reference, these are noted under each of the proposals, as we understand it.

SARS PROPOSALS FOR THE 2022 TAX FILING SEASON

Commencement date for the 2022 Filing Season

5. Filing season for individuals will likely commence on 1 July 2022. In principle, we do not have an objection to this commencement date.
6. However, it must be noted that whilst this is the date when returns for individuals will be available for submissions, the true filing season commences even earlier when third parties – i.e. employers, medical aid funds, retirement funds, financial institutions etc – are obligated to make submissions to SARS regarding income accrued to taxpayers.



Third party reporting challenges – general

7. SARS' duty is to ensure that third party submissions are made timeously and that these are accurate and complete.
8. Importantly, whilst these third parties are obligated to report such information to SARS by pre-defined deadlines, there is no such requirement for the third parties to report to the taxpayers. If certificates are issued to taxpayers, this is purely a practice and not an obligation.
9. Should third parties fail to comply with the reporting requirement, SARS has a duty to enforce compliance without prejudice to the taxpayer.
10. We are aware of instances where third parties fail to meet their obligations timeously, but instead of enforcing compliance, SARS requests taxpayers to engage directly with the defaulting third party to secure the information that such third party has failed to submit to SARS.
11. For example, where employers fail to submit reconciliations timeously, SARS often refuses to accept the deduction of PAYE on assessment, requesting that the taxpayer provide evidence of same – and in some instances, does not accept the monthly payslips, but requests the IRP5 which the employer has failed to issue.
12. There have also been instances with respect to retirement fund withdrawals or retirement lump sums, where if the system identifies a mismatch, SARS insists that the individual taxpayer liaise with the relevant fund to address the discrepancy which result in delays in finalization of the returns and submission thereof (this impacts the new proposed deadline – see below).
13. In some instances, all that the taxpayer or tax practitioner can see is an error message pop up indicating that there is a data mismatch, without necessarily advising of where the mismatch lies.

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| <ol style="list-style-type: none">14. <u>Submission</u>: In light of the above, we believe SARS should endeavour to ensure that all relevant third party submissions have been made timeously and are accurate and complete.15. Should third parties fail to submit timeously, SARS must ensure that it takes necessary steps to enforce compliance and consider the impact on submission of affected taxpayers' returns.16. Where there is a data mismatch, the pop-up error message should be updated to indicate which employer or fund the error relates to and what is causing the issue. This, to enable the taxpayer to easily identify who to engage in order to more efficiently resolve the error identified by the SARS system. |
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Tax Directives

17. As has been raised in respect of prior filing seasons, taxpayers and tax practitioners continue to experience issues with the timing difference between accrual and issuance of tax directives, for example where the lump sum accrues to the taxpayer immediately before the end of the tax year, but the tax directive is raised and the lump sum and related tax paid in the following tax year.
18. It seems that when pre-populating the ITR12 information, the 'lumpsum IRP5' is sometimes captured in the incorrect tax year, resulting in a mismatch error on the return.
19. These returns are either rejected by SARS or have the 'in progress' status with no assessment issued. Manually amending the ITR12 doesn't always resolve the problem.
20. When there is a 'mismatch error' as a result of this, the error message that pops up does not give enough detail as to what the error relates to and the taxpayer is advised to engage with the employer/fund. Often the employer/fund is unable to assist with resolution and the taxpayer is the one prejudiced by this.
21. It seems that this issue arises purely because of a difference between the accrual date and payment date, which could perhaps be dealt with via a legislative change.
22. However, from a practical perspective, we believe that there are potentially other solutions which require further engagement with relevant stakeholders.

23. Submission: SARS should engage with Fund managers to decide on an appropriate practical solution to avoid repetition of this 'error' every filing season.
24. We understand that, in the past, the directive included fields where one could disclose date of payment and date of accrual. The SARS system would then populate the information in the correct period, based on this. It may be helpful to relook at the design of the form as a means of addressing the issue noted above.

Interest accruing to natural persons

25. Government Notice 241 (see Government Gazette 41512 of 23 March 2018), lists the persons who are required to submit returns, referred to as "third party returns", in terms of section 26 of the Tax Administration Act, to SARS. The persons so required are specified in the Schedule attached to the Notice and the amounts that are required to be reported on are also listed in the Schedule. Relevant to this submission, the third parties are mainly banks and financial institutions, and the reporting is required with respect to:
 - (a) Amounts incurred or paid in respect of, by way of any investment, interest or royalty;
 - (b) transactions that are recorded in an account maintained for another person (i.e. transactional accounts like bank accounts); and
 - (c) any tax withheld.



26. SARS populates the returns of income for individuals – that is, the ITR12 forms, with the amounts of interest obtained from the returns (IT3(b)) submitted by third parties in terms of section 26. In the following instances, the incorrect amount of interest is populated to the return of income of an individual whereas no interest is populated to the return of income the other taxpayers involved.

Interest received (or accrued) in common:

27. Where the interest accrues to partners, or persons who are jointly entitled to the interest, the amount of interest is allocated to one of the persons only. In other words, the full amount of the interest is populated in the return of just one of the partners or joint owners of the account in question.

28. The same applies to spouses married in community of property. The amount of interest is reported by the financial institution of the spouse in whose name the account is held and the full amount is populated to the ITR12 of one spouse only.

29. Where this taxpayer (joint owner, partner or spouse) corrects the amounts on his or her ITR12, to reflect the actual amount the person is entitled to, it results in a verification request from SARS and SARS often “taxing” the individual on the full amount and not the proportionate amount. This is then, often, only satisfactorily resolved after a dispute with SARS.

Usufructuary holders:

30. Where an individual is entitled, in terms of a usus, to the interest on an account, the interest is often populated to the return of the bare dominium holder, if an individual. However, similar to the above, where more than one individual is proportionately entitled to the interest, the interest is again populated to the return of one individual only and not to the persons proportionally entitled to the interest.

Interest received (or that accrues) after the date of death of an individual:

31. The amount of interest for the full year of assessment is populated to both the return of the deceased person and the return of income of the estate of the deceased person. It is not apportioned to the two taxpayers and again requires a request for a reduced assessment or objection to the assessment before it is satisfactorily resolved.

Individual ceased being a resident of the RSA:

32. The amount of interest for the full year of assessment is populated to both the return in respect of the period 1 March to the date before the person ceased to be a resident and



the return thereafter or to the period in respect of which the section 10(1)(h) exemption applies. It also is not apportioned to the returns and again requires a request for a reduced assessment or objection to the assessment before it is satisfactorily resolved.

33. Submission: The third parties required to report interest that accrues to individuals should change the way this is done, to ensure that the income is allocated correctly and SARS can facilitate this by changing the relevant Business Requirement Specification.
34. Where the amounts accrue in common to joint owners of the investment, partners or usufructary holders, the proportional amounts that accrued to each of the individual natural persons must be separately reported to SARS (on the IT3(b)).
35. Where persons are spouses married in community of property, the full amount of the interest must be reported as actually accrued to each spouse. SARS applies the proportionate split on assessment. This of course applies to all interest that falls into the joint estate.
36. Where the individual dies during the year of assessment, the interest for the period 1 March to date of death, must be reported separately to the interest that accrues in respect of the period after death to the end of the year of assessment. The IT3(b) should be made out to the two separate taxpayers.
37. Where an individual ceased being a resident of the RSA, the interest which was received in respect of the period the person was a resident of the RSA, must be reported separately to the interest that was received in respect of the period that commenced on the day the person ceased being a resident of the RSA.

Auto-assessments to be considered 'real' assessments

38. The 'auto-assessment' process that SARS implemented in 2022 refers.
39. Until now, these auto-assessments have been considered 'proposed or suggested' assessments that taxpayers could either accept or reject after determining whether or not the information populated therein is accurate and complete.
40. SARS has indicated that from the commencement of the 2022 filing season, these auto-assessments will now be considered 'real assessments', which SARS believe it is entitled to issue in terms of section 95 of the Tax Administration Act, 2011 (the TAA).
41. In this instance, if taxpayers agree with the assessment, no further action is required. If there is disagreement, the taxpayer will need to request a return and complete and submit correct information to SARS.
42. In our view, section 95 does not allow for such 'real assessments' to be issued without having first given the taxpayer the opportunity to submit a return, which is the proposal that SARS seems to be making, in the first instance.



43. Section 95(1) provides that:

'SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer—

(a) does not submit a return;

(b) submits a return or relevant material that is incorrect or inadequate; or

(c) does not submit a response to a request for relevant material under section 46, in relation to the taxpayer, after delivery of more than one request for such material.'

44. As noted above, section 95 only applies where a taxpayer does not submit a return or relevant material or submits an incorrect return. It is only in such instances that SARS may make an estimated assessment in terms of section 95.

45. Auto-assessments do not fall into this category and in our view, there is a real risk that some taxpayers will move to have such assessments set aside on review, as invalid.

46. Furthermore, subsection (4) provides that:

'The making of an assessment under subsection (1) does not detract from the obligation to submit a return or the relevant material.'

47. This subsection seemingly indicates that even if SARS issues an estimated assessment, this does not relieve the taxpayer of the obligation to submit a return. It is unclear as to how SARS has reached the conclusion that it is empowered to issue estimated assessments without even affording the taxpayer the opportunity to submit a return.

48. Submission: Should SARS wish to proceed with this approach, we believe that the legislation would need to be amended to specifically cater for auto-assessments to be issued in the manner and circumstances in which SARS envisages.

49. In addition to the legislative aspect noted above, from a practical perspective and based on engagement with third parties, it has been noted that in prior years the pre-population has delivered concerning results – from missing accounts to selective population of the tax certificate values e.g. incorrect population of the income tax return or any value under R100 is not populated in the tax return. If accurate pre-population of the tax return is not guaranteed or if the SARS Call Centre does not have the ability to interrogate the source of the auto assessment on demand to correct the assessment, the risk remains of an understatement penalty being applied to the tax return.

50. Submission: SARS to advise as to steps to be taken to mitigate the risks noted here as well as in the first point regarding issues related to pre-population of specific types of third party data (points 7 – 37 above).



Process and timeline to submit return

51. As noted above, following SARS' new approach, if taxpayers agree with the assessments issued by SARS, no further action is to be taken.

52. However, if taxpayers disagree, they will have 40 business days within which to submit a true and full return, presumably as envisaged in section 95(6) which notes that:

'The taxpayer in relation to whom the assessment under subsection (1)(a) or (c) has been issued may, within 40 business days from the date of assessment, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.'

53. As far as we are aware, SARS has not yet decided whether it will issue all auto-assessments on 1 July or in batches. If all estimated assessments are issued on 1 July, to ensure equal treatment to all taxpayers, should a taxpayer disagree with the estimated assessment issued by SARS, they will need to submit a 'true and full return' by 26 August 2022 – i.e. 40 business days from 1 July.

54. Concerns were raised that this time period was likely too short for some taxpayers. Whilst those impacted should ideally not be subjected to estimated/auto-assessments in the first instance – i.e. due to the nature and source of their income and related deductions and allowances – as we have seen in prior years, many such taxpayers are inadvertently issued with such assessments.

55. In the first year, there were many taxpayers in this category who did not even become aware that such assessments were issued and would not have expected such, especially those who are provisional taxpayers, by definition. As SARS is aware, this resulted in those taxpayers even receiving estimated assessments after 31 January, on the basis that they did not submit a return to SARS given that they did not accept or reject the auto-assessment issued by SARS, by 31 January.

56. Where tax practitioners are tasked with submitting returns for affected taxpayers, these individuals will be overwhelmed in terms of the number of assessments that will now be required to be checked against supporting documents and either accepted or a full and true return prepared and submitted by 26 August.

57. In some instances, taxpayers and their tax practitioners struggle to obtain relevant information even by the historical due dates and due to the number of clients each practitioner services, they would normally plan their workflow in accordance with historical deadlines and would manage to submit timeously on this basis.

58. As noted in the meeting with SARS, where there are Trusts involved or the taxpayer is a director of a private company, the related Trust or company financial statements require finalization, prior to finalization of the taxpayer's final return for the year. Whilst it was acknowledged that tax practitioners should know the income and expenses with relative



certainty as at 28 February of each year, the tax practitioners noted to SARS that whilst this may be 99% correct at the time of submitting the second provisional tax return, on finalization of financial statements there may be slight variations in amounts and in order to ensure 100% accuracy in returns, such information first needs to be finalized and audited prior to being submitted to SARS.

59. SARS did note that section 95(7) provided for the allowance for a senior SARS official to grant an extension to the submission deadline if reasonable grounds for such extension are provided by the taxpayer. However, presumably, taxpayers and/or tax practitioners would have to follow SARS normal channels to request such extension and unless a separate channel with very short turnaround times is provided, this option is unlikely to be feasible.

60. Submission: Taxpayers should be entitled to file a return for the full duration of the filing season in the case of estimated assessments, even more so given the concerns raised above regarding the validity of such assessments.

61. Furthermore, we believe that it is inequitable to treat those issued with auto/estimated assessments the same as taxpayers who fail to submit a return as this is clearly not the case given that the issuing of such assessments is purely by SARS' change in approach to filing season and not due to any default on the part of the taxpayer. As such, a different rule should apply to auto/estimated assessments issued prior to the taxpayer even having the opportunity to file a return.

62. In addition to the above, the proposed changes have not been announced publicly and it would take some time to educate the public about this change, This turnaround time may not be conducive to query resolution which has in the past been very slow with SARS during the employee filing season. With an already over-burdened Contact Centre, with calls being dropped or not answered, it seems highly likely that the Contact Centre will not have capacity to deal with issues arising as a result of the proposed changes.

63. Submission: should SARS proceed despite the concerns raised, we would appreciate insight as to steps to be taken to specifically mitigate the risks raised.

One filing season deadline for both provisional and non-provisional taxpayers

64. SARS indicated that it is considering a **single filing season deadline** for both provisional and non-provisional taxpayers.

65. Whilst we are not opposed to this, in principle, we have concerns regarding the potential deadline proposed by SARS, that is **30 September 2022**.

66. At the meeting on 22 February, RCBs and tax practitioners provided various reasons as to why a deadline of 30 September 2022 will not be feasible, including the following:



- 31 August is the first provisional deadline for the current tax year with 30 September being the top-up payment deadline for the preceding tax year. Many tax practitioners assist taxpayers with the related calculations and submissions so this is generally a very busy period for many tax practitioners;
- The condensed filing season will create practical difficulties for tax practitioners who already struggle to finalise and submit all returns by the current deadline of 31 January.
- As noted above, there are often errors with third party submissions or information populated incorrectly. In our experience, resolving this with SARS and/or the third party/employer takes a long time and often results in a delayed submission – through no fault on the part of the taxpayer.
- Taxpayers that are directors of private companies or trustees of Trusts often need to wait for finalisation of financial statements and returns of those entities before being in a position to submit the individuals' tax returns (see detail above)
- The proposal fails to take into account that some provisional taxpayers have concessions to account for profits to a later date for purposes of the February tax year end. For example, A Partnership has a September financial year end and the partners account for profits in the February tax year by taking account of profits up to September of the same year – Interpretation Note 19 (Issue 5) refers. A September deadline would be impossible to comply with as the financial results and profit distributions will not be finalised by that time, even if the partnership had an earlier financial year end, for example June.

67. Submission: in light of the above as well as concerns voiced in the engagement with SARS, we respectfully request that SARS consider 31 January as the 'single filing deadline'.

68. If SARS disagrees with this deadline in terms of its longer term Vision 2024, we believe that at the very least 31 January should apply as an interim measure for the 2022 filing season.

Other suggestions

Proposed improvement to the trust and deceased estates tax returns

69. Members have requested that when SARS is reviewing the Trust and deceased state income tax returns, consideration should be given to not pre-populate the various containers as there is always a split in income which leads to a number of issues. The issues regarding pre-population of interest were noted earlier in this submission.

70. Submission: We submit that the Trust and Deceased Estate tax returns are not pre-populated by SARS.



Auto-assessments for non-residents

71. Concerns have been raised regarding auto assessments that would be issued to non-residents who are liable for tax in South Africa. Given that eFiling does not accept foreign mobile numbers, it is not clear as to how such individuals will receive notification from SARS if an auto assessment has been issued.

72. Submission: SARS to consider and advise as to how it will communicate notification of auto-assessments in respect of taxpayers who have been unable to include mobile numbers on their eFiling profiles.

eFiling allowing submission of 2022 company returns prior to 1 July

73. As has been noted in our engagements, there are many companies with a 2022 year end which may be ready to submit returns prior to 1 July.

74. Currently, the SARS eFiling system does not allow submission of such returns until the individual filing season opens.

75. SARS has advised that the reason for this is due to the ITR14 returns requiring updates to align with the most recent legislative changes.

76. This delay in allowing such submissions further impacts affected tax practitioners' workflow and if SARS brings the individual filing season deadline forward, this will further exacerbate the difficulties with the condensed filing season.

77. Submission: as agreed in the engagement in February, SARS should allow earlier filing of 2022 company tax returns by facilitating this on eFiling.

Severance benefits – IT3(a) tax directives and ITR12 disclosure

78. An employer is required to apply for a tax directive for a tax resident in respect of a severance benefit which is partially sourced outside of South Africa and partially sourced in South Africa.

79. However, currently the IRP3(a) tax directive application form (Form IRP3(a)) does not distinguish between South African and foreign sourced severance benefits – see extract from the form below.



84. In order to practically overcome this problem, some taxpayers have tried to apply for a tax directive and declared only the South African sourced portion of the severance benefit on the IRP3(a) tax directive application form. The foreign sourced portion of the severance benefit was then processed via the payroll under payroll code 3951 (foreign sourced gratuities/severance benefits) and the South African sourced portion of the severance benefit was processed under payroll code 3901. The individual's income tax return was pre-populated with the aforementioned information as reflected on his IRP5 Employees' Tax Certificate.
85. When completing the individual's income tax return, since there is no specific place in the ITR12 to reflect a foreign sourced severance benefit, the amount was reflected under code 4235 "*foreign income on SA IRP5 taxed outside SA s10(1)(o)(ii) does not apply*" in the individual's tax return.
86. When the individual's income tax return was assessed, it was determined that SARS had taxed the foreign sourced portion of the severance benefit at a rate of 45% as opposed to the retirement fund lump sum benefit tax tables. In one case, the difference in tax was approximately R300 000 and the matter will now need to be addressed via the objection process. This is a time consuming and costly process.
87. Employers have considered the options available for resolving this issue and have noted the following:
- If the taxpayer cancels the current tax directive and re-applies for a directive showing the foreign sourced portion of the severance benefit under "other" on the IRP3(a) tax directive application form, as there is no other place on the IRP3(a) form to reflect this amount, the SARS system will code the amount under source code 3907 and tax this as an annual payment/bonus. The SARS External Guide – Completion Guide for the IRP3(a) and IRP3(s) forms states that if the tax directive reason 'Other' is used the amount will be treated as normal income and it will be taxed using the annual payment / bonus calculation method. Clearly the section 'Other' is not intended to be used to indicate foreign sourced severance benefits.
 - Another problem is that where a severance benefit is not processed via a South African payroll (i.e. where it is paid by a non-resident foreign entity), there is no specific place on the ITR12 income tax return that one can disclose the income as a severance benefit. This results in the severance benefit being taxed in accordance with the individual's marginal tax rate instead of the severance benefit tax table.
88. Thus there appears to be problems both with the IRP3(a) tax directive application form and the ITR12 income tax return, as neither takes into account that a person may receive a foreign sourced severance benefit. In addition, a person (non-resident or resident) receiving a South African sourced severance benefit from a non-resident entity would also



not be able to reflect the amount as a severance benefit is his/her ITR12 return because there is no specific place in the tax return to reflect a severance benefit. This would therefore also result in the amount being taxed at marginal tax rates.

89. Submission: SARS should update its tax directive application form (IRP3(a)) to take foreign sourced severance benefits into account for globally mobile employees. The tax directive application form should therefore include an additional line item for the foreign sourced portion of the severance benefit.

90. Furthermore, the ITR12 income tax return should also be updated to allow:

- resident employees to reflect the foreign and South African sourced portions of their severance benefit in their tax returns (whether paid by a resident or non-resident employer); and
- non-resident employees to reflect the South African sourced portion of their severance benefit in their tax returns, if paid by a non-resident employer.

We look forward to working with SARS to address the concerns raised. Please feel free to contact us should you wish to clarify any of the above comments.

Yours sincerely

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