



24 October 2024

To: The South African Revenue Service

Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

VIA EMAIL:

SARS: acollins@sars.gov.za

RE: VERIFICATION: TRUST TAX RETURNS

Dear Colleagues,

We have become aware of new verification requests that are issued by the South African Revenue Service (SARS) in respect of the income tax returns submitted by trusts. We wish to refer comments regarding these verification to SARS in light of the requirements of the Tax Administration Act No 28 of 2011 (the TAA).

We value the opportunity to submit this commentary and would welcome further engagement where appropriate.

Please do not hesitate to contact us should you require further information.

Yours sincerely,

SAIT Tax Technical and select members of the Tax Administration and Dispute Management Workgroup

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1. Verification letters issued and information requested.

1.1. Discussion

1.1.1. Annexed hereto is a sample verification (SARS letter) request as reference, marked Annexure A. The SARS letter is entitled "Verification of Income Tax Return". The sample letter was received from one of many tax practitioners within our network that have received exactly the same letter in respect of many of their clients.

1.1.2. It should be noted that the submission of Annual Financial Statements (AFS) is not yet mandatory for trust income tax returns. We submit that in many cases a review of the AFS by SARS should provide answers to some of these questions already:

By way of example:

- Confirmation of the number of properties should be clear from the AFS notes to fixed assets. Only where the AFS notes are incomplete as to the number of fixed properties should the taxpayer be asked that question.
- The request for a split of the income per fixed property. This request is the same for trusts that have 1 property and trusts that have more than 1 property. The request is thus superfluous for trusts that have a single fixed property. SARS should only request this split where it is clear from the AFS that more than 1 property exists.

1.1.3. Moreover, we submit that trusts generally have unsophisticated accounting systems with the books of account often only being drawn up once a year. Many trusts would therefore not be in a position to supply the split of income and expenses per property, if applicable, without further analysis to be done on the AFS. In these cases, taxpayers will not be in a position to provide the information to SARS in the time period specified by SARS.

2. Verification or audit

2.1. In the case of *FORGE PACKAGING (PTY) LTD V CSARS* ("the Forge Case")¹ the courts agreed with SARS that there is a difference between an audit and a verification as referred to in the TAA.

2.2. An extract from the judgment summary that was accessed from LexisNexis provide as follows (emphasis added):

By 'verification' the Commissioner meant a process in which the taxpayer was called upon itself to check and confirm the accuracy and correctness of the return that it had made. A verification process did not extend beyond verifying the information supplied by the taxpayer and therefore did not include an interrogation of the authenticity and completeness of the supporting information and in essence the process was limited to establishing whether the amounts declared by the taxpayer were correct and correctly represented the tax treatment described by the taxpayer.

On the other hand, an audit did more than establish the corroboration of a taxpayer's state of affairs as it interrogated all information supplied by the

¹ 85 SATC 357



taxpayer and obtained from other sources in coming to an accurate assessment of the taxpayer's tax position."

- 2.3. Further, emphasis added;
"That SARS's understanding of an audit was that an audit did more than establish the corroboration of a taxpayer's state of affairs; it interrogated all information supplied by the taxpayer and obtained from other sources in coming to an accurate assessment of the taxpayer's tax position and an audit might entail extending its scope to directly obtaining third party confirmation of tax amounts. This process might entail interrogating the supporting information to obtain an insight into the completeness and authenticity of the information disclosed to SARS."
- 2.4. We submit that the information requested goes beyond a verification. While the SARS letter calls for the taxpayer to review its disclosure and take corrective action, the information requested by SARS provides it with the information to "*more than establish the corroboration of a taxpayer's state of affairs*" and will provide SARS with an opportunity for "*interrogating the supporting information to obtain an insight into the completeness and authenticity of the information disclosed to SARS*"
- 2.5. On the basis that the SARS letter is in fact the commencement of an audit we submit that the current communication to the taxpayer via the SARS letter does not meet the requirements of section 42(1) of the TAA as to a commencement of an audit.

3. Conclusion and Recommendation

- 3.1. We wish to express our concern regarding the evolving nature of verification processes, which appear to be increasingly resembling audit tools. This shift raises several issues for our members and the broader compliance landscape.
- 3.2. Verification processes are intended to ensure the accuracy of information submitted by taxpayers in a manner that is efficient and supportive. However, when these processes begin to adopt characteristics of audits—such as extensive scrutiny and in-depth investigations—there is a risk of creating an environment of apprehension among taxpayers. This could lead to unintended consequences, such as discouraging compliance and fostering mistrust in the system.
- 3.3. Moreover, the transition towards audit-like verification may divert valuable resources away from essential support services that taxpayers need to navigate their obligations effectively. It is crucial to maintain a clear distinction between verification and auditing to ensure that the primary goal of facilitating compliance is not compromised.
- 3.4. We therefore request that these types of detailed requests not be couched a "verification" by SARS but that they be regarded as an "Audit". Should SARS disagree with this request we request that detailed reasons for SARS' position be provided in light of the Forge case findings.

End.

