



7 September 2021

**To: The South African Revenue Service**

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**RE: Denial of PAYE credits**

**Introduction**

The employees' tax reporting process has monthly and a bi-annual components:

- Every month, employers are required to submit an EMP201 return and pay the employees' tax withheld from employees over to SARS.
- Bi-annually, employers are required to submit the EMP501 reconciliation to reconcile the EMP201s and the IRP5 tax certificates for the relevant period.

Annually, SARS uses the information provided by third party data providers during the final reconciliation process (period March to February each year) to individuals' tax returns.

The various documents:

- The EMP201, reflects the various employees' tax liabilities for a particular month, and the amount paid to SARS.
- The EMP501 reflects the various employees' tax liabilities for each month, and the amounts paid to SARS.
- The IRP5 tax certificates reflect each individual's financial tax data (earnings), as well the employees' tax withheld from the employee.

Reconciliation processes:

- Bi-annually, the EMP201s for the period must be reconciled with the EMP501 for the period.
- As part of the EMP501 reconciliation process, each employee's IRP5 earnings and employees' tax withheld must reconcile with the numbers on the EMP501.

SARS has built in validation processes in the SARS e@syfile system that prevents submission of an EMP501 if it does not reconcile with the underlying EMP201 and the IRP5 tax certificates.



In some case, despite the fact that validation was passed, an employer may have failed to:

- Submit an EMP201 returns and/or the EMP501 reconciliation; and/or
- Pay over the employees' tax withheld to SARS.

### **Current Understanding**

If SARS cannot attribute a specific employees' tax payment to a particular taxpayer, SARS will not credit the taxpayer with any employees' tax withheld.

Where an employer has not paid over the employees' tax but has submitted the reconciliation, SARS' approach appears to be inconsistent in that in some instances the employees' tax credits are allowed and collection steps are instituted against the employer and in other instances, the employees' tax credits are disallowed and the taxpayer is referred to the employer:

- To our knowledge, SARS' policy has been that if the employer has reconciled (therefore withheld employees' tax and submit the EMP501 reconciliation), but failed to pay the employees' tax withheld from the employee to SARS, the employees' tax credits would be allowed and SARS would recover the debt from the employer.
- However, SAIT has received several queries regarding the denial of employees' tax where reconciliation has taken place and SARS can attribute, but where the employer did not make payment of their debt. In these instances, SARS appears to disallow any claimed employees' tax credit. In many instances, SARS indicates that the taxpayer must approach their employers to request the employer to pay the employees' tax over to SARS. The above also occurs in instances where the taxpayer is in possession of a valid IRP5 certificate but the employer has not paid over the employees' tax debt to SARS.

### **Request**

SAIT request confirmation of SARS' current policy regarding the recognition of an employees' tax credit in the event that an employer has withheld employees' tax that can be attributable to an employee, but the employer has not paid the employees' tax withheld over to SARS.

### **Side-note**

An employer, registered for employees' tax is deemed to a separate taxpayer from the individual employee. According to section 68 of the Tax Administration Act, No. 28 of 2011 (hereafter the TAA), SARS may not disclose the information of any taxpayer to a person who is not a SARS official.

When SARS notifies a taxpayer that their employer has not paid over the employees' tax has not been paid over to SARS by the employer, SARS may be viewed as disclosing the employers' compliance information to an unauthorised third party.



Yours faithfully,

**SAIT**

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