



# Updates and guidance on tax return- corrections

*YOUR KEY TO THE TAX COMMUNITY*

## WITH YOU TODAY



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# INTRODUCTION

- A request for correction (“RFC”) is a feature that has been available to taxpayers for some time.
- It has become more prevalent with the 2022 Filing Season under the Auto-Assessment (“AA”) process.
- It is important to understand RFCs under this process, specifically within the context of Chapter 8 of the Tax Administration Act (“TAA”).
- It is also important to distinguish between an RFC and a request for a reduced assessment under section 93 of the TAA.
- We will cover the workings of RFCs and requests for reduced assessments and how and when they are applicable.

# WHAT IS AN RFQ?

- An RFC allows you to correct a previously submitted return or declaration when you realise that you have made an error when completing your return.
- The RFC is not a codified process created under the TAA.
- It is a function of the SARS eFiling system that can be accessed by going to your returns history.

## AUTO-ASSESSMENT vs NORMAL ASSESSMENT

- In the 2021 Filing Season the AA process involved pre-populated returns that could be accepted or edited.
- In the 2022 Filing Season the AA process is tied to section 95 of the TAA, where SARS issues an original estimated assessment.
- If the taxpayer accepts the assessment, they wait for their refund or pay the tax due.
- If they wish to dispute the estimated assessment, they must submit an RFC.
- It is important to be cognisant that the AA and RFC processes are effectively regulated by section 95 of the TAA – be aware of the timelines.

# WHEN IS AN RFC APPLICABLE AND WHAT IS THE PROCESS?

## 1. Change in Third Party Information

- Third Party resubmits information that results in a change in information in the return, after the estimated assessment was issued.
- Taxpayer must submit an RFC within 10 business days.
- If the taxpayer fails to respond, SARS issues a revised assessment.

## WHEN IS AN RFC APPLICABLE AND WHAT IS THE PROCESS?

### 2. Taxpayer Disagrees with AA

- Taxpayer has 40 business days to submit an RFC to edit their return.
- If the RFC does not result in a change in tax liability (for example exempt income was declared) then SARS will allow the RFC but will not issue a revised assessment.
- If the RFC results in a change in tax liability the RFC goes through SARS' risk engine and is subject to manual intervention.
- SARS requests supporting documentation and if it is accepted a revised assessment will be issued.
- If SARS does not accept the RFC, the assessment stands and taxpayer must follow dispute process or section 93 (if appropriate).

## WHEN IS AN RFC APPLICABLE AND WHAT IS THE PROCESS?

### 3. Correction of an original assessment

- This falls outside the scope of the AA process.
- The taxpayer submitted a return and an original assessment issued.
- Taxpayer realises an error was made on their return and wishes to correct it.
- The taxpayer submits an RFC and SARS may then accept it or conduct a verification and decide to accept or reject it.
- If it is rejected the same process applies.



## TIMEFRAMES

- Remember the AA process now falls under section 95 of the TAA.
- Section 95(6) – taxpayer may request a reduced or additional assessment within 40 days of the estimated assessment.
- If the taxpayer fails to submit requested supporting material it is unclear how it affects their compliance status – will likely result in SARS refusing the RFC.
- Taxpayer must then submit an objection.

## TIMEFRAMES

### 1. Extension of 40-day period

- Section 95(7) – SARS may extend the period if the taxpayer shows reasonable grounds – extension may not exceed date of prescription under section 99(1) or 40 business days (whichever is longest).
- SARS Guide - if request for extension is filed after expiry of 40 business days –
  - Within 21 business days – reasonable grounds must be provided for why it request for extension was filed late;
  - After 21 business days – exceptional grounds for why request for extension was filed late.

## TIMEFRAMES

### 2. Dispute process

- Unless section 93 applies, taxpayer will have to file an objection if –
  - The taxpayer did not respond to estimated assessment;
  - RFC not accepted by SARS; or
  - Request or extension of 40 business days not granted.
- Be cognizant of timelines for dispute process – section 95(8) regards the date of the assessment to be the date of issuance.
- It is likely that the taxpayer will be required to request condonation for late filing of the objection.

## WHEN IS AN RFC NOT APPLICABLE?

- An audit or verification process was completed or an RFC was already submitted.
- Taxpayer must wait to submit an RFC if there is an ongoing verification, audit or if the supporting documentation was already submitted.
- An assessment has already prescribed under section 99(1) –
  - Three years after an original assessment;
  - Self-assessment for which a return is required – five years after date of assessment;
  - Self-assessment for which no return is required – five years from date of payment or the effective date.

## REQUEST FOR REDUCED ASSESSMENT

- Section 93(1)(d) provides for an alternative to the dispute resolution process.
- It allows for a less formal mechanism to request corrections to their assessments.
- If the RFC route is no longer available and the taxpayer meets the requirements under section 93, they may utilize this route.
- A request under section 93 may be allowed in the absence of an objection.



## WHEN CAN A REQUEST FOR REDUCED ASSESSMENT BE MADE?

- The taxpayer successfully disputed an assessment under Chapter 9 of the TAA;
- To give effect to a settlement under Chapter 9;
- To give effect to a judgment pursuant to an appeal;
- There is a readily apparent undisputed error in the assessment (most prevalent);
- SARS is satisfied that an assessment was based on –
  - The failure to submit a return or submission of an incorrect return by a third party or an employer;
  - Processing error by SARS; or
  - Return fraudulently submitted by an unauthorized person;
- Taxpayer requests SARS to issue a reduced assessment under section 96(6) of the

TAA.

## READILY APPARENT UNDISPUTED ERROR

### 1. Readily apparent

- The error must be clearly visible.
- It must be identified without hesitation or difficulty – easily determinable.
- The error must be in a return or in an assessment.
- The error must be so obvious that SARS can identify it by merely looking at the return or assessment.

# READILY APPARENT UNDISPUTED ERROR

## 1. Readily apparent - example

### **Example 1 – Readily apparent**

#### *Facts:*

A visits a SARS branch office for assistance to complete the annual income tax return on eFiling. A provides SARS with all relevant documentation required for completion of the return, such return being completed and submitted by a SARS official. A receives the notice of assessment and discovers an inconsistency between the notice of assessment and the supporting medical tax certificate for out-of-pocket medical expenses. The inconsistency being that the notice of assessment reflects out-of-pocket medical expenses of R5 000 whereas the amount on the supporting medical tax certificate is R50 000. A being of the opinion that a clerical error had occurred which is readily apparent and submits a written request under section 93(1)(d) to SARS, requesting a reduced assessment.

#### *Result:*

One of the requirements under section 93(1)(d) is that the undisputed error must be “readily apparent” in the return by the taxpayer or the assessment by SARS. In the present scenario, the error occurred in the completion of the return. The undisputed error must be “readily apparent” and in this case it is clearly so from the said return. As the undisputed error can be confirmed without hesitation as it is clearly visible from the supporting documentation without requiring any further verification, it can be concluded that the undisputed error satisfies the requirement of being readily apparent.

## READILY APPARENT UNDISPUTED ERROR

### 2. Undisputed

- In addition to being readily apparent, the error must be undisputed.
- It must not be questioned and it must be accepted by SARS.
- If there is any dispute of fact or if there is an interpretational issue with regard to a statute, treaty or a document it cannot be said that the error is undisputed – ***Crookes Brothers Ltd v CSARS***
- Is SARS' interpretation too strict?

# READILY APPARENT UNDISPUTED ERROR

## 2. Undisputed – example

### **Example 2 – An “undisputed” error by the taxpayer in a return**

#### *Facts:*

A, as a sole proprietor sells vintage cars. In the annual income tax return submitted, A included a capital gain arising from the disposal of a vintage car, which was used for private purposes, thus not forming part of trading stock. A was unaware that the vintage car is regarded as a personal use asset since it was used for a purpose other than carrying on of a trade. Capital gains arising under these circumstances should have been disregarded.<sup>26</sup> This error was discovered three months after the assessment was issued, leading to A submitting a written request for a reduced assessment under section 93(1)(d). A did not submit any confirmation that the vintage car was a personal use asset and not a business asset.

#### *Result:*

Section 93(1)(d) requires that the error must not only be readily apparent but must also be “undisputed” either, in the return by the taxpayer or the assessment by SARS. In the section 93(1)(d) request, A provided reasons why the vintage car is a personal use asset but did not provide any documentary proof to substantiate the claim. In the absence of the necessary documentary proof to substantiate the claim, the request under section 93(1)(d) is in dispute, and therefore does not satisfy the requirement of being “undisputed”. Accordingly, the request under section 93(1)(d) must be rejected and the taxpayer notified of the decision.



## READILY APPARENT UNDISPUTED ERROR

### 2. Error

- It must involve an error in a return or assessment.
- It must be a *bona fide* mistake by a taxpayer in a return or by SARS in an assessment.
- The error cannot be in the underlying documentation such as accounting or tax records.
- It cannot constitute an omission according to SARS.
- The determination is made against the declaration submitted by the taxpayer.

# READILY APPARENT UNDISPUTED ERROR

## 2. Error – example

### **Example 3 – Whether an “error” or “omission” occurred in a return**

#### *Facts:*

Company B is registered with SARS as an eFiler, that is, to submit its tax returns electronically. In completing the ITR14 income tax return wizard Company B did not request the line item for expenditure incurred relating to international travel. After reviewing the original income tax assessment for the relevant tax period Company B realised that a deduction for international travel was not claimed. Company B submitted a written request for a reduced assessment under section 93(1)(d) and its request is accompanied by the necessary documentation to substantiate the deduction.

#### *Result:*

One of the requirements of section 93(1)(d) is that there must be an “error” in the assessment by SARS or the taxpayer in a return. For an “error” to have occurred in the ITR14 tax return a declaration in respect of the deduction must have been made in the return. When customizing its ITR14 tax return Company B did not request the line item for a deduction for international expenditure incurred. As Company B did not initially request a deduction in respect of international travel it had omitted the deduction in total. An omission according to its ordinary meaning does not qualify as an “error” for purposes of section 93(1)(d). Accordingly, the request under section 93(1)(d) must be rejected and Company B notified of the decision. Company B must follow the normal dispute resolution process provided for under section 104.

## PERIOD OF LIMITATIONS

- Section 99(1) – a reduced assessment may not be made after the periods described under this provision.
- The limitations do not apply if –
  - SARS became aware of the readily apparent undisputed error before the period under section 99(1) lapses;
  - The request for a reduced assessment is made under section 93(1)(d).

## PROCESS

- There is no prescribed form that must be used – it must be in writing.
- SARS “may” reduce the assessment – not “must” – the taxpayer bears the burden of proof.
- The request is either accepted or rejected – seemingly no further process.
- A decision not to reduce an assessment is not an assessment and does not constitute an “decision” under section 104(2) – the taxpayer must review the decision under section 9.
- Objection vs request for reduced assessment –
  - Can they be submitted concurrently?
  - Timelines?

## CLOSING COMMENTS





Thank you!!

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