



28 November 2025

**To: The National Treasury**

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**The South African Revenue Service**

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**VIA EMAIL: National Treasury  
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Dear Colleagues,

**ANNEXURE C PROPOSALS FOR BUDGET 2026: TAX ADMINISTRATION AND DISPUTE  
MANAGEMENT TECHNICAL WORK GROUP**

At the outset and over and above the technical proposal made below, we wish to reiterate our commitment to engage and participate with National Treasury in investigating and finding solutions that may have unintended consequences as respects tax administration before such amendments are made to subsequent tax legislative cycles.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.

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

Yours sincerely,

**Tax Administration and Dispute Management Technical Work Group**

**Disclaimer**

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**Unless otherwise indicated all references to legislation are to the Tax Administration Act, No.28 of 2011 (the TAA).**

## **1. SARS verifications escalating into audits without complying with section 42**

### **1.1. The legal nature of the problem**

- 1.1.1. The WG (and members at large) have raised concerns that SARS “verifications” are often recharacterized into “audits” often in contradiction with SARS’ compliance with section 42 of the TAA. We believe that there should be no difference between an audit or verification – SARS is looking into the taxpayer’s affairs and is in a position to issue additional assessments if they are of the view that the taxpayer defaulted.
- 1.1.2. While in many cases a verification calls for confirmation of information already submitted these are often followed by requests for additional information that goes more than the mere “checking of third party data and financial and accounting records”.
- 1.1.3. Per SARS’ website an audit is defined as follows::
- 1.1.3.1. *In an audit, SARS examines your financial statements, accounting records, and supporting documents to check that you correctly declared your tax position. If the taxpayer did not file a declaration or tax return, the audit will investigate if the taxpayer’s actions comply with tax law.*
- 1.1.4. These requests for additional supporting information often encroaches on the “audit” definition set out by SARS without triggering the section 42 (of the TAA) requirements as these are requested under the guise of the initial verification. The taxpayer is often subsequently issued with an additional assessment that could have been avoided had SARS complied with section 42 and afforded the taxpayer an opportunity to respond. We have also observed that the reasons provided by SARS are often inconsistent and the taxpayer is then required to request reasons or attempt to infer what SARS has disallowed and on what basis. A sanitised example is provided below

Grounds for the assessment
DECLARATION INCORRECT
Adjustment Reason
R1 004 352.00 business expenses added back. Taxpayer failed to provide invoices with proof of payment and the breakdown as requested. No USP imposed

### **1.2. Request and Recommendation**

- 1.2.1. We request that all verifications by SARS should be classified as audits for the purposes of section 42 of the TAA. We support SARS’ authority to confirm that taxpayers file proper tax returns However, at this stage there appears to be an indication that SARS is:
- Selecting taxpayers without reason and where information is readily available
  - Where there is uncertainty, they default to additional assessments; and
  - The reasons provided are vague.



- 1.2.2. It is common cause that the onus of proving that an amount is not subject to tax is that of the taxpayer. In *CSARS v Pretoria East Motors (Pty) Ltd* ("the Pretoria Motors case") it was confirmed that the taxpayer must show on the preponderance of probability, i.e., on the balance of probability. The onus is not one of proving beyond a reasonable doubt. The Pretoria Motors case further held that SARS cannot merely adopt a passive attitude and that it was bound to set out the grounds of assessment. It was held that the raising of an additional assessment must be based on proper grounds for believing that, in the case of income tax, for believing that there is undeclared income.
- 1.2.3. The Pretoria Motors case confirmed the comments made by the court in *Sepataka v CSARS* ("the Sepataka case") that the powers given to SARS in raising assessments and collecting tax are onerous and *"...is draconian and should therefore be exercised with care, by properly experienced and suitably qualified personnel since it may otherwise be reduced to an arbitrary guesstimate with grave consequences for the taxpayer."*
- 1.2.4. At this stage we believe that the current process does not lead to additional assessments being issued with due care and we humbly submit that the TAA should be amended to clarify this. SAIT has previously made submissions to SARS on this point; we are happy to make the above referred submission available once again.

## **2. Tax refunds within a group of companies**

### **2.1 Background**

- 2.1.1 Paragraph 19(3) of the Fourth Schedule to the Act, governs the imposition of a penalty for the underestimation of provisional tax (i.e. "additional tax") where provisional tax payments are not made timeously or are understated. While the Act provides for penalties and interest in cases of non-compliance, it does not currently provide a mechanism for taxpayers within the same group of companies to offset tax refunds arising in one entity against additional tax liabilities payable by another during the paragraph 19(3) process. Furthermore, sections 190 and 191 of the Tax Administration Act, 2011 ("TAA"), expressly restrict SARS from applying refunds or credits of one taxpayer to the tax liabilities of another, unless specifically provided for in legislation.
- 2.1.2 Although South Africa's corporate tax environment recognizes group structures in specific contexts, for example, controlled foreign company provisions, transfer pricing rules, and certain intra-group rollover relief, income tax remains strictly legal entity based. Each company is treated as a separate taxpayer with its own tax account. As a result, no consolidated or elective group tax filing system exists for income tax purposes. The TAA similarly reinforces this entity based approach, limiting SARS's ability to administratively consolidate tax accounts.
- 2.1.3 In practice, this "silo" approach creates cash-flow inefficiencies within group company structures, especially for groups with numerous subsidiaries and fluctuating profitability across entities.

### **2.2 Legal Nature of the problem**

- 2.2.1 Groups of companies routinely face timing differences between tax refunds due to certain legal entities and provisional tax liabilities or additional tax arising under paragraph 19(3) for others. Under the current framework:



- 2.2.1.1 Tax refunds are processed separately and may only be paid to the specific legal entity to which they relate
- 2.2.1.2 These refunds cannot be offset against tax liabilities of other group members, even where the group is in a net refund position; and
- 2.2.1.3 Provisional tax obligations must be met by each entity individually regardless of the overall tax position of the group.
- 2.2.2 This results in several practical issues:
  - 2.2.2.1 Cash flow pressures - Capital-intensive industries (energy, chemicals, manufacturing, mining) often experience substantial cash demands during operational cycles. The requirement to fund provisional tax or additional tax while simultaneously awaiting refunds elsewhere in the group places unnecessary pressure on working capital.
  - 2.2.2.2 Increased borrowing and liquidity costs - Groups are often required to borrow funds to meet tax obligations while SARS is still processing refunds. This raises the cost of capital and can disincentivize investment.
  - 2.2.2.3 Administrative inefficiencies - SARS must process refunds and liabilities for each taxpayer separately, resulting in a higher volume of transactions, verifications and reconciliations.
  - 2.2.2.4 Slower economic activity - Delays in receiving refunds and liquidity pressure can defer capital commitments, hinder operational decisions, and reduce the overall efficiency of group structures.

## **2.3 Proposal**

- 2.3.1 We propose that SARS implement (through legislative amendment to both the Fourth Schedule and the TAA) a controlled and compliance-driven mechanism to allow the intra-group set-off of verified tax refunds against additional tax liabilities (including paragraph 19(3) liabilities) arising in other entities within the same group. This practice would also align with International benchmarks of tax administration practices which recognise the economic unity of group structures such as for e.g.
  - 2.3.1.1 United Kingdom: The group relief system permits intra-group utilisation of losses, thereby enabling tax efficient offsetting to reduce group-level tax burdens. While not directly equivalent to administrative refund set-off, it illustrates recognition of group economic unity in corporate taxation.
  - 2.3.1.2 Canada: Although income tax filing remains entity based, certain administrative arrangements and group based compliance mechanisms allow improved intra-group tax alignment which demonstrates a more flexible administrative approach.
- 2.3.2 To safeguard tax integrity and ensure that only compliant taxpayers may utilise this mechanism, the following criteria can be considered:
  - 2.3.2.1 Legal entities must form part of a group as defined in section 1 of the Income Tax Act (i.e., a controlling group company holding at least 70% of the equity shares or voting rights in the controlled group company); and
  - 2.3.2.2 All legal entities must be fully tax-compliant, with no outstanding returns or outstanding tax debts (other than those under dispute), unaddressed verification requests, or unresolved compliance issues.



2.3.3 The benefits for Taxpayers would be:

- Improved cash flow and reduced need for external financing.
- More efficient tax management across group entities.
- Enhanced budgeting and liquidity planning as timing mismatches are mitigated.

2.3.4 The benefits for SARS would be:

- Simplified administration through consolidated processing.
- Reduced frequency of refund payments while separate liabilities remain outstanding.
- Encouragement of higher compliance levels, as groups will be incentivized to keep all entities in good standing.

2.3.5 Allowing the set-off of verified tax refunds against additional tax liabilities within a group of companies, particularly during the paragraph 19(3) provisional tax process, would provide meaningful efficiencies to both SARS and taxpayers. It would strengthen cash flow stability, enhance compliance, reduce administrative red-tape, and align South Africa's tax administration practices more closely with international norms.

End.