

Verification vs tax audits - Sars must give notice of both

It's that time of the year.... When we all have the tedious task of gathering documentation and tax certificates and ensuring we are compliant with Sars. But once it's done, it is a huge weight off individuals and companies' shoulders. Which is why receiving notification from Sars to say they are conducting a 'verification' or a 'tax audit' on your returns is the last thing you want to hear. The Commissioner can request these at any time in terms of the Tax Administrative Act (TAA), so it's imperative to have all your documents and to differentiate between these two terms.



Tax attorney, Schalk Pletse, one of the panel of experts for Tax Risk Underwriting Managers

What you need to know

The powers are given to Sars by virtue of, amongst others, the Tax Administration Act (TAA). Section 40 specifically states, 'Sars may select a person for inspection, verification or tax audit on the basis of any consideration relevant for the proper administration of the Tax Act, including on a random or a risk assessment basis.' Which is why it's imperative you know the rules governing verification and tax audits.

What is verification?

Verification is very detailed. The word verification means, 'the action of demonstrating or proving to be true or legitimate by means of evidence or testimony, formal assertion of the truth, demonstration of truth or correction by facts or circumstances.' Sars conducts this by investigating and inspecting documentation or comparison of data.

The majority of taxpayers are, in fact, being verified.

From a practical point of view, it is when Sars sends notice either to you or your tax advisor:

- Questioning a particular item that might have appeared on your tax return
- Verifying whether or not that particular number is correct
- Requesting certain vouchers, invoices or receipts.

If Sars comes back and accepts everything as it is, and there is no further questioning the verification is simply what we understand it to be - a verification. But if Sars need to conduct a process in terms of which they determine whether tax returns have been correctly submitted or not, as a verification aims to do, does this not in essence fall under the definition of the concept of a 'tax audit'?

Do Sars have to send a notice of verification?

Sars' position is that if you undergo verification and they don't adjust your assessment they don't have to keep you informed or send a *letter of findings*. Sars is saying, 'if we term the document or notice we send you as a verification, that's not a tax audit and therefore it doesn't matter what we do, we don't have to send you this notice.'

In terms of the TAA it can therefore be said, strictly speaking, that Sars need not send a notice of verification. However, in terms of the Promotion of Administrative Justice Act (PAJA), a Sars official must give notice of any administrative action it takes. A verification meets the requirements of an administrative action as defined in the Act. It is therefore argued that a notice is required. This issue or 'anomaly' is yet to be tested by our courts.

Is a tax audit any different?

A tax audit is defined as follows: 'It is the official examination of accounts with verification by reference to witnesses and vouchers.'

It is an examination of the financial and accounting records and/or the supporting documents of the taxpayer to determine whether the taxpayer has correctly declared his/her tax position to Sars.

“ Where the taxpayer has not made a declaration or filed a return, it is an investigation regarding whether the taxpayer's actions comply with the provisions of the relevant tax legislation. ”

This is where Sars must again follow procedure and issue the taxpayer a *letter of findings*, outlining the reasons for the tax audit as set out in section 42 of the TAA. According to Melanie le Roux, MD of GreatSoft Financial Services, this is not the case as they are finding that Sars is not following this procedure with taxpayers.

Sars is required to follow a due process when they engage a taxpayer for a tax audit:

- A notification of tax audit and an opportunity to reply
- To keep the taxpayer informed during the tax audit process and the potential adjustments
- Once a tax audit has been conducted, they are obliged to provide the taxpayer with a *letter of findings* and provide adequate explanatory reasons why they wish to make a potential adjustment
- They have to give the taxpayer 21 business days to respond prior to issuing the new additional assessment.

The inevitable result of a Sars tax audit in most cases, is that an additional assessment is issued, and an additional tax liability is created for which the taxpayer is legally responsible. The 'new liability' often includes penalties, sometimes as

high as 200% of the new tax debt. Which is why taxpayers need experts, specialising in tax disputes and audits.

“And this is where tax risk insurance steps in,” says tax attorney, Schalk Pieterse, one of the panel of experts for Tax Risk Underwriting Managers. “If you find yourself in a position where they have amended your assessment without issuing a *letter of findings*, then you would definitely fall under the policy and that policy will pay for any legal representation. This includes the taxpayers’ existing accounting representation that you need and require, in order to reverse the unlawful and invalid conduct of Sars in changing your assessment without issuing a *letter of findings* first. It is happening regularly, that additional or even estimated assessments are issued without Sars having followed section 42 proceedings. That then invalidates the assessment and the taxpayer must enforce their rights to challenge the same.”

It’s complicated

“If you’re confused, don’t feel alone,” says Le Roux. “The different legal and internal remedies available to you as a taxpayer are set out in the different tax laws, the Constitution and even the common law. It’s unrealistic to expect you to know these, never mind police them. Generally speaking, tax accountants are not tax law experts, which is a very different and specialised skills set. This is where tax attorneys would support tax accountants.”

Whether it is an internal desk audit, or an in-depth audit in more high-level risk cases, it’s a stressful, time-consuming and onerous task. Not to mention expensive. Your accountant / tax consultant (or tax attorney if necessary) will need to collate information and follow the strict procedural rules. A task which requires time, experience and special expertise.

From the very outset of a tax audit, it is extremely important that you are aware of your rights and to let Sars know that. You are protected by the Tax Administration Act (TAA), the Promotion of Administrative Justice Act (PAJA) and the Constitution. Which means you need proper (and complicated) scrutiny measures during the tax audit and dispute process. The man in the street can hardly be expected to know all these laws, which is why it is a good idea to take out an insurance policy to have the necessary heavy weights in your corner during a tax audit and dispute. [Click here find out how.](#)

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