

EXTERNAL GUIDE

ACCESS TO AUDIT FILES

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1 PURPOSE

- The purpose of this document is to assist taxpayers and their statutory auditors in understanding their rights and obligations in relation to SARS requesting access to the audit files.

2 INTRODUCTION

- In 1998, the South African Institute of Chartered Accountants (SAICA) issued a Circular Minute 5/98 which stipulated the procedures agreed with SARS when requesting access to audit workings. This Circular was subsequently withdrawn.
- The Independent Regulatory Board for Auditors (IRBA) published a guide on “Access to Audit Working Papers” in October 2010 after consulting with SARS. This IRBA Guide was compiled before the promulgation of the Tax Administration Act, No. 28 of 2011 (TAA) and is therefore outdated.
- The concern has been raised with SARS that the calling for audit files should not be a routine request during every tax audit as this could inhibit frank and open discussions between the client and its statutory auditor.
- It is not the intention of SARS to place strain on the relationship between the taxpayer and its auditor, therefore it is considered necessary to provide assurance and guidance on this subject.

3 WHY WOULD SARS CALL FOR AUDIT FILES

3.1 STATUTORY AUDIT VS TAX AUDIT:

- The aim of a statutory audit is to express an opinion on the financial statements as a whole. The opinion only provides reasonable assurance and is issued for the use of all interested parties, including SARS.
- The aim of a tax audit is to determine if the taxpayer has complied with the relevant legislation administered by SARS. The tax auditor does not express an opinion, but rather makes a determination as to the correctness of a declaration. These tax audits are normally based on risk(s) identified in a specific declaration made by a taxpayer. The financial statements are an important source of supporting evidence for declarations made by taxpayers.
- Despite the different objectives of statutory auditors and tax auditors, both audits should be of a high standard and be conducted effectively and efficiently. In both audits sufficient and appropriate audit evidence must be gathered to support the opinion/determination of the auditor.

3.2 SARS'S MANDATE:

- The aim of a tax audit is to determine if the taxpayer i.e. the client of the statutory auditor has complied with the relevant tax/customs legislation. The tax auditor does not determine if the audit work done by the statutory auditor is sufficient, correct or whether the statutory auditor came to the correct conclusion.

- In terms of section 46 of the TAA, SARS can only request relevant material i.e. access to audit files, for purposes of the administration of a tax Act.
- In the process of administration of a tax Act, SARS may consider it necessary to gain an understanding of the taxpayer's operating environment in order to focus its audit efforts. This can be obtained from the audit file of the statutory auditor.
- Furthermore, in circumstances where the taxpayer's declaration is incomplete or insufficient, or the taxpayer or independent third parties are unable to provide SARS with the information required, access to the statutory auditor's audit file could be considered necessary in order to ensure sufficient and appropriate audit evidence is gathered to support the assessment by the tax auditor.
- Lastly, in instances where the taxpayer withholds information, SARS might deem it necessary to obtain the information it needs from the statutory auditor's audit file.
- It is not SARS's mandate to investigate whether statutory auditors have adhered to the IRBA Code of Professional Conduct of Registered Auditors or the Auditing Profession Act, 2005. That is the role of IRBA. Therefore it would never be SARS's intention to request access to the statutory auditor's audit files in order to discredit the statutory auditor. Such a request would not be for the purposes of administration of a tax Act, and would therefore be unlawful.
- However in terms of section 241 of the TAA, if an intentional or negligent act of a person governed by controlling body, results in a taxpayer avoiding or unduly postponing performing an obligation contained in a tax Act, SARS may report that person to the controlling body. In addition, if a person governed by a controlling body conducts himself/herself in a manner that exposes the professional to disciplinary action being taken by the controlling body, SARS may report that professional to the controlling body.

4 THE RIGHT OF SARS TO CALL FOR AUDIT FILES

- In terms of section 46 of the TAA, SARS may for the purposes of administration of a tax Act, require the taxpayer or another person to submit relevant material within a reasonable period. Relevant material includes information, documents or things that in the opinion of SARS are foreseeably relevant for the administration of a tax Act. As explained above, access to the audit file of the statutory auditor would only be requested where it is considered necessary for purposes of administration of a tax Act.
- There is no general restriction on SARS requiring information contained in an audit file. However SARS respects the unique relationship between the taxpayer and its statutory auditors; and therefore undertakes not to call for audit files as a matter of routine or without obtaining approval from a senior official. Policies and procedures have been put in place within SARS to govern such requests. Any concerns with such a request should be taken up with the senior management at SARS, who would have had approved the request.
- It is a criminal offence to refuse or neglect to supply relevant material requested by SARS without just cause.
- Legal professional privilege does not apply to statutory auditors.
- This Guide does not apply if SARS conducts an inquiry or a search and seizure.

5 WHAT CAN THE TAXPAYER/STATUTORY AUDITOR EXPECT WHEN AUDIT FILES ARE CALLED FOR

5.1 WHEN CAN THE AUDIT FILES BE CALLED FOR?

- The circumstances and facts of each case will be considered before making a request for access to audit files.
- SARS will generally exhaust all options to request relevant material from the taxpayer directly. However, SARS is not precluded from requesting the same relevant material from the statutory auditor.

5.2 HOW WILL THE AUDIT FILES BE REQUESTED?

- SARS will give notice to the statutory auditor in writing of a request to access the audit files and SARS will give a reasonable time within which such information should be submitted.
- Any request for access to audit files will be subject to approval by a senior official.

5.3 CONFIDENTIALITY

- There is a general duty on current and ex SARS employees and every person contracted by SARS, to preserve the secrecy of taxpayer information and not to disclose taxpayer information to a person who is not a SARS official. All SARS officials, including persons contracted by SARS, are obliged to take an oath of secrecy.
- The consequences of contravening the secrecy provisions are severe, as any disclosure by a SARS official contrary to the secrecy provisions would be unlawful. The official could be liable for criminal prosecution as well as civil action against him/her and SARS.
- The duty to preserve secrecy of taxpayer information does not prohibit a SARS official from disclosing taxpayer information when required by specific legislation.

5.4 HOW ARE AUDIT FILES MADE AVAILABLE?

- The audit files can be made available as follows:
 - Make the original audit files available for inspection;
 - Provide copies of the audit files to SARS;
 - Provide the audit files in electronic format;
 - Other.
- Where the original audit files are made available for inspection at premises outside of SARS, then:
 - The SARS tax auditors must produce identity cards. The identity of the SARS tax auditor can be verified by contacting the telephone number provided on the card.
 - Where the SARS tax auditor makes photocopies, the photocopy cost can be recovered from SARS.

- Where copies of the audit files are made available, these can either be delivered to the SARS tax auditor or arrangements can be made with the SARS tax auditor to collect them.
- Where the audit files are made available in electronic format:
 - The SARS tax auditor can view such electronic audit files at the premises of the taxpayer/statutory auditor on computer(s) provided by the taxpayer/statutory auditor provided that the computer(s) made available have the necessary software installed to enable the viewing of the electronic file;
 - Where it is considered necessary to obtain downloads of the electronic audit files, the SARS tax auditor will make prior arrangement with the statutory auditor and a specialist with the required computer skills from SARS will assist with obtaining the download.
- Any other means of making the audit files available can be done by arrangement with the relevant SARS official.

6 RIGHT OF THE TAXPAYER/STATUTORY AUDITOR WHEN AUDIT FILES ARE CALLED FOR

- The statutory auditor has the right to inform the taxpayer of the request received from SARS.
- Where the client of the statutory auditor claims legal professional privilege over certain documents, the statutory auditor can remove such documents but must inform SARS accordingly. SARS will then follow the prescribed process as per section 42A of the TAA where SARS disagrees with the existence of legal professional privilege.
- The TAA requires that the records, books of account or documents relevant to the audit must be retained until the audit, objection or appeal is finalised.

7 DEFINITIONS AND ACRONYMS

Audit file	One or more folders of storage media, in physical or electronic form, containing the records that comprise the audit documentation for a specific engagement. As per International Standards of Auditing (ISA230: Audit Documentation)
Audit documentation	The record of audit procedures performed, relevant audit evidence obtained, and conclusions the auditor reached. Terms such as “working papers” or “work papers” are also used. As per International Standards of Auditing (ISA230: Audit Documentation)
Audit evidence	Information used by the auditor in arriving at the conclusions on which the auditor’s opinion is based. Audit evidence includes both information contained in the accounting records underlying the financial statements and other information. As per International Standards of Auditing (ISA230: Audit Documentation)
Accounting records	The records of ignition accounting entries and supporting records, such as checks and records of electronic fund transfers, invoices, contracts, the general and subsidiary ledgers, journal entries and other adjustments to the financial statements that are not reflected in journal entries and records such as work sheets and spreadsheets supporting cost allocations, computations, reconciliations and disclosures. As per International Standards of Auditing (ISA230: Audit Documentation)

Controlling body	Means a body established, whether voluntary or under law, with power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession (section 239 of the TAA)
IRBA	Independent Regulatory Board for Auditors
Relevant material	As defined per section 1 of the TAA. Means any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act as referred to in section 3 of the TAA
SAICA	South African Institute of Chartered Accountants
SARS	South African Revenue Service
TAA	Tax Administration Act No. 28 of 2011

DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest SARS branch
- Contact your own registered tax practitioner
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 7277
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).