

FEEDBACK SUMMARY – 8 December 2016

GENERAL

SAICA draft and submit from time to time *ad hoc* submissions relating to legislative and systemic issues being experienced by members to National Treasury, South African Revenue Service (“SARS”) and other stakeholders (internal and external). Such submissions, followed by interactive meetings represent an opportunity for National Treasury, SARS and other stakeholders to obtain further information on a matter from the public and discussions and views expressed. Such meetings/discussions do not represent an undertaking by SARS, National Treasury or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summaries should be seen in the above context as merely attempts to inform SAICA members of the submissions and meetings/discussions as well as any proposals that were made during such submissions and meetings/discussions.

FEEDBACK

IMPROVEMENT REQUIRED FOR ADR PROCESS

SUBMISSION FOLLOWED BY MEETING WITH SARS

22 November 2016

Below are the undertakings by SARS to address the practical difficulties, noted by SAICA in its [submission](#), which taxpayers are encountering with the Alternative Dispute Resolution (“ADR”) process as agreed to in the meeting held at SARS on 22 November 2016.

1. Appointment of facilitator

SARS advised that no amendment will be made to the TAA Rules as the appointment of the facilitator is at the discretion of a senior SARS official and SARS wish to minimise the time spent on the ADR proceedings.

SARS will, however, consider the request to make taxpayers part of the appointment process of the facilitator to a limited extent.

In addition, a SARS official may make the list of potential facilitators for a particular case available to the taxpayer upon such a request.



2. Recommendation by facilitator

SARS is of the view that the TAA Rules are clear on the implication of a recommendation request, i.e. the facilitator's recommendation may be taken into consideration in determining a tax court cost order.

3. Role assumed by facilitator

SARS noted that the role of a facilitator should generally be an active one during the ADR process. The degree of participation by a facilitator may, however, be dependent on the facilitator's personality and the open communications between the parties to resolve a dispute.

4. Temporary impasse

SARS advised that an impasse is considered to be an exception to the rule. The facilitator understands the responsibility bestowed upon him/her and no issue should arise where both parties are serious about resolving the dispute during the ADR process.

SARS noted that an ADR Senior Manager, may be contacted to deal with such temporary impasse.

5. Role of Committees

The Committees are acute in ensuring a more consistent outcome given the magnitude of cases referred for ADR. The Committees functions include (but are not limited to) deciding upon an outcome or providing guidance to an ADR process.

The current structure within which the Committees operate ensures that disputes may be dealt with within the prescribed 90 days' time frame.

6. Agreement versus settlement agreement

SARS agrees that, in practice, consideration should be provided on an agreement relating to the principles of the dispute (i.e. rule 23 of the TAA Rules), rather than just agreeing to a settlement.

Possible reasons for not referring first to rule 23 may be that a SARS representative confirmed, for example, the technical grounds of an assessment and foresee that no rule 23 agreement will be reached. Given the limited time for an ADR meeting, the SARS representative focuses rather on a discussion of the merits of a settlement agreement.

SARS agrees with the submission that the settlement amount should be imposed on a taxpayer's assessment without reflecting an adjustment/liability under another tax Act provision. SARS however also noted that in order to provide credibility of the



negotiations, a relationship should be drawn between the settlement amount and assessment amounts. The aforesaid should be discussed during the ADR proceedings.

7. Specific expertise required

SARS confirmed that its in-house expertise is consulted on a regular basis during the ADR proceedings of various cases. The Committees may also request assistance from an experienced SARS personnel in making a decision.

8. Implementation of a biannual meeting between SARS Legal & Policy and Stakeholders

SARS will take the request for such a meeting between SARS Legal & Policy and Stakeholders up with other broader stakeholders, whereafter communication will be provided.

9. Statistics for disputes and ADR

SAICA noted that the ADRs are not published in any of SARS' Annual Reports or Strategic documents. SARS advised that SAICA's request to publish such statistics, including the average time frames to complete the ADR process, will be considered.

10. Education and training of facilitators

SARS committed to embark on a training programme for facilitators as soon as possible. Various training options will be considered, including internal courses as well as mediation training by law societies.