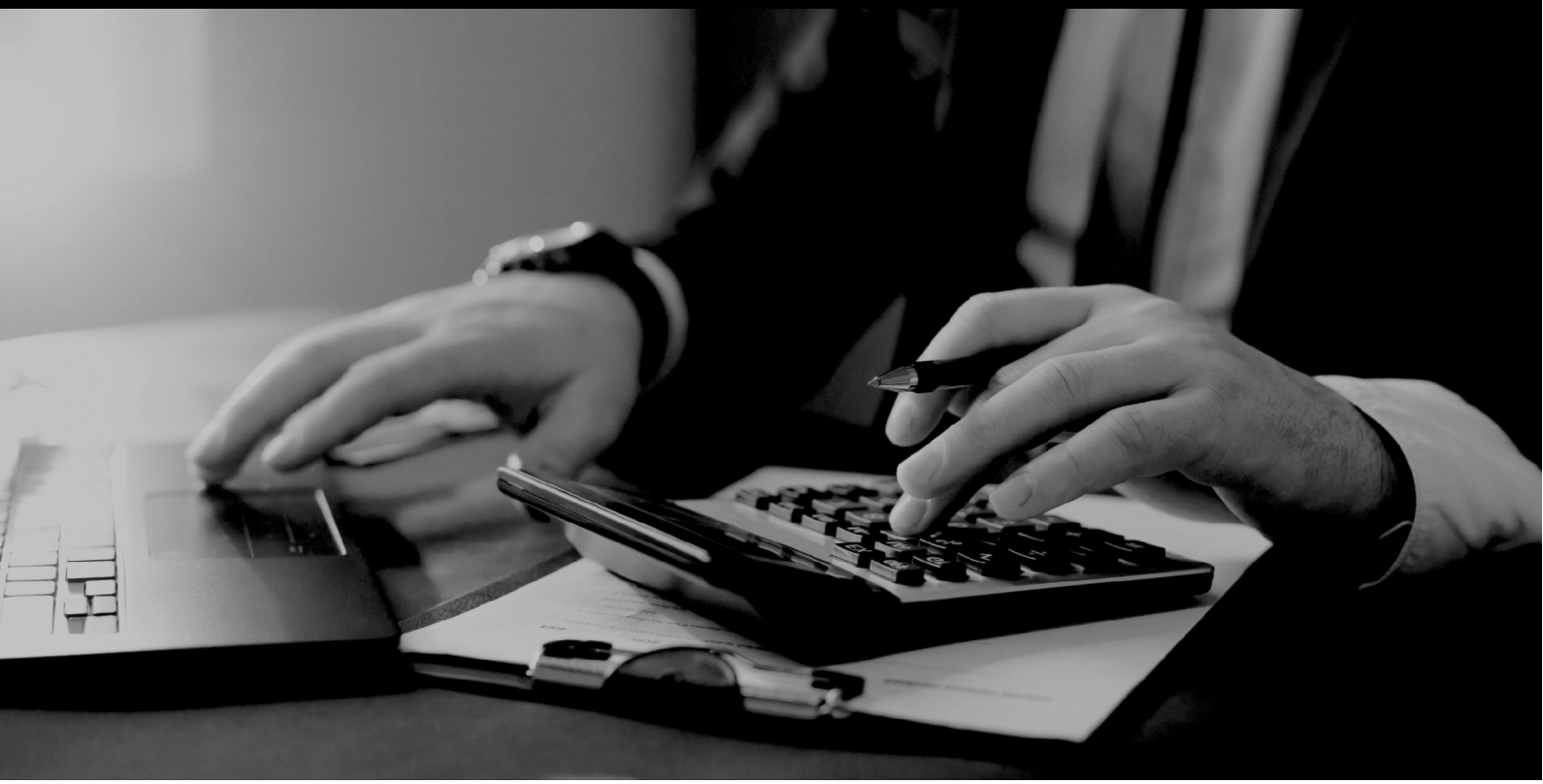
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TAX

Why is a taxpayer's right to be kept informed applicable only to an audit and not to a verification?

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By Ernest Mazansky, Director, Werksmans Tax (Proprietary) Limited

Introduction

As many taxpayers can testify with painful memories, SARS has the power to gather information under Chapter 5 of the Tax Administration Act, 2011 (the Act). This is with a view to being selected by SARS for an inspection, verification or audit, as stated under section 40 of the Act.

The courts have confirmed that there is a difference between a verification and an audit. SARS's view is that a verification is a very high level process in which the taxpayer is requested to supply supporting documentation in respect of amounts included in a tax return, for example, interest earned or tax deductible donations made.

An audit, on the other hand, is a much more intensive and intrusive process designed to establish whether there has been an understatement of taxable income that ought to be corrected.

Often the outcome of an audit and a verification are the same, ie an additional assessment is raised imposing further tax, together with interest and possibly penalties, but the route taken by SARS is different, and the rights of the taxpayer are not comparable.

The audit process

The starting point is section 46 of the Act wherein SARS is given the power to request the taxpayer (or any other person, such as the taxpayer's bank) to submit "relevant material" that SARS requires for the purpose of its processes.

The relevant material must be supplied within the time specified in the request, for example, 21 calendar days, and generally SARS will readily grant an extension if requested.

The request for relevant material generally precedes an audit, and in this regard section 42 of the Act – headed "Keeping the taxpayer informed" – requires SARS to provide the taxpayer with a notice of commencement of an audit, as well as regular reports indicating the stage of completion of the audit.

After completion SARS must, if potential adjustments have been identified, provide the taxpayer with a document setting out the outcome of the audit and the grounds for the proposed assessment. The taxpayer is given 21 business days to respond in writing (though, once again, SARS is generally amenable to extensions).

Following the receipt of the taxpayer's response SARS will, if not satisfied with the response in whole or in part, provide the taxpayer with a statement of grounds for the assessment. This is typically done in the form of a comprehensive letter issued by SARS on the same date as the additional assessment is raised.

Thereafter, the taxpayer has the opportunity to object to the assessment and, if necessary, appeal to the Tax Court.

The verification

Unfortunately, the procedure in the case of a verification is much less structured, with less protections given to the taxpayer. Typically a computer-generated request for verification and supporting documents is issued to the taxpayer, usually very shortly after the return has been filed and assessed.

Upon receipt of the documentation supplied it is possible that SARS will issue a request for relevant material, ie further documentation and information relating to matters in the return (and usually triggered by an examination of the documentation already supplied). The expression "relevant material" is defined in section 1 of the Act to mean "any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax Act …". And it is not uncommon that, in the course of such request for relevant material, legal submissions are requested from the taxpayer, as opposed merely to supply documentation and explanations (and this occurs in preparation for an audit as well).

Having complied with the request, SARS will either issue a letter advising that no adjustments to the assessment will be issued, or, if adjustments are required, the taxpayer will simply receive the additional assessment. And the grounds for assessment are usually set out in the notice of assessment itself and are generally limited to a few cryptic words (a common ground being "burden of proof not discharged" that could cover a multitude of sins). It is here that there is a stark difference between an audit and a verification. If SARS is of a mind to issue an additional assessment there is no obligation upon them, as is the case with an audit, to issue an outcome letter and give the taxpayer the opportunity to comment thereon and advance additional facts or legal argument as to why an additional assessment should not be issued. There is simply the receipt of the additional assessment with the cryptic grounds given, and thereafter the taxpayer's only remedy is to raise an objection.

The taxpayer is, as is the case with an audit, entitled to request reasons for the assessment if the taxpayer is not satisfied with the purported grounds given. The extent to which SARS provides adequate responses largely depends upon the office dealing with the matter. In the case of taxpayers on charge at the Large Business Centre, the response is generally reasonably comprehensive, though not necessarily entirely acceptable. In the case of taxpayers on charge with one of the branches, the responses are usually not much better than that contained in the additional assessment.

And unfortunately, unlike in the case of an audit where one is dealing with an identified individual at SARS, in the case of a verification by one of the branches there is no identified "warm body" that one can communicate directly with, and any attempt at corresponding requires that emails or telephone calls be directed to the general Contact Centre, which is a call centre, and the responses are often unsatisfactory, if received at all.

Conclusion

From the above, it can be seen that the outcome of an audit and a verification is exactly the same, ie either SARS accepts the explanations given or it does not, and in the latter case an additional assessment is raised. And it is not necessarily the case that with audits large amounts are involved, whereas with verifications the amounts tend to be small. Additional assessments in relation to verifications could run into tens or even hundreds of millions of rand. And it will be clearly seen that the taxpayer is at a distinct disadvantage in the case of a verification, because there is no obligation to keep the taxpayer informed; nor is there an obligation upon SARS, before issuing the additional assessment, to advise the taxpayer of SARS's intention and to invite comment thereon.

Frankly, I cannot see why, at the very least, SARS should not be obliged under a verification, before issuing the additional assessment, to set out its intention and reasons, and give the taxpayer the opportunity to respond.



Ernest Mazansky

Director, Werksmans Tax (Proprietary) Limited

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