

# HOW TO RESPOND TO A PAYE AUDIT AND REVIEW?

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## BALANCE OF TAXPAYER'S RIGHTS: THE TAX ADMINISTRATION ACT NO 28 OF 2011 (TAA)

Balance of power: SARS + TAXPAYER

Promote 'just administrative action' in an attempt to broaden the tax base

Discretionary Investigative powers vested in SARS limited to an extent - these powers must align with the Promotion of Administrative Justice Act No 3 of 2000 (PAJA) AND must retain the element of legality as envisaged in the Constitution - *Pharmaceutical Manufacturers Association of SA*



PAJA has overriding effect on the TAA...  
Abuse by SARS of its statutory powers for ulterior purposes is therefore reviewable

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## THE AUDIT PROCESS AS ENVISAGED IN SECTION 40 OF THE TAA

Chapter 5 (Part A) of the TAA prescribes general rules for:

- Inspection
- Verification
- Audit; and
- Criminal Investigation

**S40.** SARS may select a person for inspection, verification or audit on the basis of any consideration that is relevant for the **proper administration** of a Tax Act.

**S40.** The selection may be done on a **random or risk** basis.

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## THE AUDIT PROCESS AS ENVISAGED IN SECTION 40 OF THE TAA

**S41.** A SARS official must be authorized by a senior SARS official to conduct audit or criminal investigations.

**S42.** SARS is required to keep the taxpayer informed in the manner prescribed regarding the stage of completion of the audit.

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## THE AUDIT PROCESS



Supporting documentation should be maintained onsite for a period of 5 years

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## THE AUDIT PROCESS...

- Issue of a SARS PAYE Review Questionnaire for completion
- Who should complete the questionnaire?
  - Responsible for system and process - **PAYROLL**
  - Responsible for payments made outside of payroll - **FINANCE**
  - Responsible for policies and procedures - **HUMAN RESOURCES**
- Responses/supporting documentation must contain evidence of:
  - **Separation of duties / checks and balances** (one person does not audit and check his or her own homework)! Preparer/Reviewer of payroll
  - **Standard operating procedures (SOPs)** are embedded in watertight policy documentation
  - **Employees' tax handbook** - details the payroll process and tax treatment in respect of specific elements of pay



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## THE AUDIT PROCESS...

- Response to the Questionnaire should also include explanation, for example:
  - Expatriate payrolls - an explanation of the tax policy
  - The source data (hypothetical tax etc.)
  - An analysis of the foreign (home country payslip data)

### **Applicable legislation subject to audit:**

- Section 1 of the Income Tax Act, No. 58 of 1962 (“ITA”) dealing with the ‘gross income’ definition
  - Paragraph (c) - services rendered
  - Paragraph (d) - termination/voluntary payments
  - Paragraph (i) - fringe benefits - Seventh Schedule
- Fourth Schedule to the ITA
- Seventh Schedule to the ITA



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## TYPICAL AUDIT AREAS OF FOCUS

**Travel allowances:** section 8(1) of the ITA

- who qualifies to structure an allowance?
- Is it a term and condition of an employee's employment to utilise his or her personal vehicle for business reasons?

**Travel Allowance Policy:**

- how is the quantum of the allowance determined? Is a travel allowance calculator being used?

**Travel reimbursements:** section 8(1) of the ITA

- how is this managed in the payroll software?
- are there parameters included such that the relevant triggers are included to correctly map source codes?

**NB: proposal to subject taxable travel reimbursements to monthly employees' tax withholding**



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## TYPICAL AUDIT AREAS OF FOCUS

### **Subsistence allowances: Section 8(1) of the ITA**

- Does the company have a Business Travel Policy document?
- How is the quantum of a subsistence allowance determined?
- Is the allowance provided over and above package or does it form part of the salary package?
- What is the internal process to approve subsistence claims?

### **Pension/Provident Funds: Paragraph 12D of the Seventh Schedule**

- Are contribution percentages linked on payroll in accordance with the Fund Rules?
- Is the quantum of the fringe benefit correct in the case of Defined Benefit Funds? Are there contribution certificates on file?

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## TYPICAL AUDIT AREAS OF FOCUS

### Cellular phones: Employer-provided - Paragraph 4(a) and (bA) of the Seventh Schedule

- Does the company have a Cellular Phone policy that specifies the requirements for employees to qualify for use of an employer-provided cellular phone?
- Where the asset is used mainly for business purposes, is the private use thereof being monitored?
- Is the maximum limits determined in accordance with the category of employment?

### Disposal of old/used cellular phones:

- Where old/second hand handsets are disposed of to employees, is the fringe benefit determined on this based on the market value of the respective handsets and the consideration paid by the employee?

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## TYPICAL AUDIT AREAS OF FOCUS

### **Tax return preparation fees: Expatriates (mainly)**

- Is the cost of the tax return preparation fee borne on behalf of an employee/expat included in taxable income as a fringe benefit? (applicable 2016 onwards)

### **Policies of Insurance: Paragraph 12C of the Seventh Schedule**

- Policies such as disability insurance (other than policies that are employment related i.e. Workmens' Compensation) - are these included for fringe benefit tax purposes?
- Are standalone unapproved policies included?

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## TYPICAL AUDIT AREAS OF FOCUS

**Equity awards:** Section 8C of the ITA / Paragraph 11A of the Fourth Schedule

- Does the company have a Policy in place aligned with the Equity Plan rules?
- Evidence of vestings and the tax treatment thereof - are tax directives on file?

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## TYPICAL AUDIT AREAS OF FOCUS

### **Bursaries/Study Assistance:** Section 10q of the ITA

- Does the Company have a Study Assistance Policy in place?
- How are passes tracked/noted to payroll when repayment is required?

### **Low/No interest loans:** Seventh Schedule to the ITA

- Does the Company provide loans/casual loans to employees above an amount of R 3000?
- Is there a Staff Loan Policy document in place?
- In the case of loans > R 3000, is the fringe benefit calculation in accordance with the official rate of interest and the interest charged?

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## TYPICAL AUDIT AREAS OF FOCUS

### Relocation: Section 10(1)(nB) of the ITA

- Does the Company have a Relocation Policy document in place?
- How is the tax-free allowance determined i.e. basic salary or full package?
- **NB: This discretion has fallen away w/e/f 1 March 2016**

### Travel facility: Paragraph 10(2)(a) of the Seventh Schedule

- Does the Company have a policy in place that assists with commutation of staff to drop off zones/to their homes?
- Is the fringe benefit tax consequences considered in this regard?

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## TYPICAL AUDIT AREAS OF FOCUS

### Employment Tax Incentive:

- Supporting documentation/contracts/ID documentation.
- Confirmation that the qualifying criteria is met in all cases and that claims have not been inflated.



## TYPICAL AUDIT AREAS OF FOCUS

Retirement funds	Use of employer provided cellular phone	Free or cheap services (staff discounts (holiday accommodation) /overseas trips/flights/ free parking facilities)
Group Life Policy	Use of employer provided accommodation	Discounts from service providers by arrangement with the employer
Income Protection Policy	Right of use of an asset - electronic equipment	Club membership (e.g. golf club / gym membership)
Accidental Death & Disability Policy	Long-term incentive scheme (shares)	Discounts from service providers by arrangement with the employer
Funeral benefit	Long service awards	Recreational facilities (e.g. mobile health spa)
Medical aid / Medical Services	Non-monetary gifts and awards (e.g. gift vouchers)	Payment of employees' debt (e.g. settlement of employees' tax liability)
Travel allowances	Low interest loans (restricted to financial service providers)	Bursaries/Study assistance
Use of motor vehicle	Acquisition of an asset less than actual value (e.g. cellular phones/ motor vehicles/laptops)	Subsistence allowances / reimbursements
Travel concessions (industry specific)	Meal refreshments / meal refreshment vouchers (meals provided in an employer canteen)	Relocation benefits

## TYPICAL AUDIT AREAS OF FOCUS

Pension including retirement and disability benefits	Payment of employees' debt (in respect of awards/gifts)
Medical aid	Use of employer provided cellular phone
Travel allowances	Acquisition of an asset less than actual value (e.g. cellular phones)
Travel concessions	Bursaries
Relocation benefits	Club membership (phased out)
Subsistence allowances / reimbursements	Low interest loans (phased out)
Gain share scheme	
Long-term incentive scheme	
Long service awards	
Non-monetary gifts and awards (e.g. gift vouchers)	

## TYPICAL AUDIT AREAS OF FOCUS

Cost of Living Allowance - COLA (Goods & Services Differential)	Free or Cheap Accommodation	Destination services - ongoing
Foreign service premium	Utilities (electricity & water )	Tax return preparation / assistance
Hardship allowance/Country allowance	Furniture allowance	Pet relocation
Spouse allowance (e.g. seeking employment/study assistance)	Security costs	
Spouse training allowance	Driver	
School Fees / Kindergarten costs	Use of Company Car	
Relocation benefits (look see visits)	Home leave trips	
Language lessons	Travel allowance	
Cross cultural training	Branch allowance	
Medical examinations / Visas	Forex rate differential	
Storage costs	Share incentive awards	
Auto disposition allowance	Insurance (household/emergency/medical assistance / insurance e.g. BUPA)	
Loss on sale of residence	Tax equalization / tax protection	



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