



# **ACCESS TO AUDIT FILES**

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## **1 PURPOSE**

- a) This guide assists taxpayers and their registered auditors in understanding:
  - i) SARS's right to request access to audit files when conducting a tax audit;
  - ii) Their rights and obligations in relation to SARS's request to access audit files;
  - iii) What to expect from SARS when access is requested to audit files.

### **1.1 Background**

- a) 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 working papers. This Circular was subsequently withdrawn.
- b) The Independent Regulatory Board for Auditors (IRBA) published a guide on "Access to Audit Working Papers" in October 2010.
- c) With the promulgation of the Tax Administration Act No. 28 of 2011 (TAA) in October 2012, the 2010 IRBA Guide became outdated. As a result, SARS published "GEN-AU-14-G01 - Guide on Access to Audit Files – External Guide" (SARS's Guide) in December 2016.
- d) In June 2018 IRBA issued a "Revised Guide for Registered Auditors on Access to Working Papers" (IRBA's Guide) after consulting SARS.

## **2 SCOPE**

- a) This guide applies when access to audit files are requested when a tax audit is conducted by SARS.
- b) This guide does not apply to Customs and Excise related demands for books, accounts or documents.

## **3 WHY WOULD SARS CALL FOR AUDIT FILES**

### **3.1 Statutory Audit vs Tax Audit**

- a) 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 stakeholders, including SARS.
- b) The aim of a tax audit is to determine if the taxpayer has correctly declared their tax position. The tax auditor does not express an opinion. The selection for a tax audit is made in terms of section 40 of the TAA and can include being selected on a risk or random basis.
- c) Despite the different objectives of the statutory audit and tax audits, 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**

- a) It is SARS's mandate to collect revenue for the Republic of South Africa. In executing SARS's mandate, it is necessary to conduct tax audits where risk is identified.
- b) When conducting a tax audit, the audited financial statements are an important source of supporting evidence for declarations made by taxpayers. To determine the correctness of the tax position taken by the taxpayer, the tax auditor must consider the financial statements.
- c) In terms of section 46(1) of the TAA, SARS can only request relevant material for purposes of the administration of a tax Act.
  - i) Per section 3(2) of the TAA, the administration of a tax Act means *inter alia* to:

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- A) Obtain full information in relation to anything that may affect the liability of a person for tax in respect of a previous, current or future tax period;
  - B) Ascertain whether a person has filed or submitted correct returns, information or documents in compliance with the provisions of a tax Act;
  - C) Determine the tax liability of a person for tax; or
  - D) Enforce SARS's powers and duties under a tax Act to ensure that an obligation imposed by or under a tax Act is complied with; *etc.*
- ii) In the process of administration of a tax Act, SARS may consider it necessary to gain an understanding of the taxpayer's operating environment to focus its audit efforts. This can be obtained from the audit file of the registered auditor.
  - iii) Furthermore, in circumstances where the taxpayer's declaration is considered to be incomplete or insufficient, or the taxpayer or independent third parties are unable to provide SARS with the information required, access to the registered auditor's audit file could be considered necessary to ensure sufficient and appropriate audit evidence is gathered to support a decision to be made by the tax auditor in the administration of a tax Act.
  - iv) Lastly, in instances where the taxpayer withholds information, SARS might deem it necessary to obtain the information it needs from the registered auditor's audit file.
  - v) Section 46(3) of the TAA however limits a request for relevant material from a person other than the taxpayer to material maintained or kept or that should reasonably be maintained or kept by the person in relation to the taxpayer.
- d) It is not the mandate of SARS to:
- i) Determine if the audit work done by the registered auditor is sufficient, correct or whether the registered auditor came to the correct conclusion.
  - ii) Investigate whether registered auditors have adhered to the IRBA Code of Professional Conduct of Registered Auditors or the Auditing Profession Act No. 26 of 2005.
- e) It is within the mandate of IRBA to monitor the compliance by registered auditors and discipline them for any breach. Therefore, it would never be SARS's intention to request access to the registered auditor's audit files to discredit the registered auditor. Such a request would not be for the purposes of administration of a tax Act and would therefore be unlawful.
- f) It must be noted that in terms of section 241 of the TAA, if an intentional or negligent act of a person, like a registered auditor, governed by controlling body, like IRBA, 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.

### **3.3 SARS's Undertaking**

- a) Concerns by registered auditors that open and frank discussions with their client will be inhibited if SARS should call for audit files as a routine request during every tax audit, is noted.
- b) It is not the intention of SARS to place strain on the relationship between the taxpayer and the registered auditor.
- c) SARS undertakes to:
  - i) Respect the unique relationship between the taxpayer and the registered auditor;
  - ii) Not call for audit files as a matter of routine;
  - iii) Only call for access to audit files after due consideration of the circumstances and facts of each case after approval by a relevant senior official at SARS.
- d) Policies and procedures are in place within SARS to govern requests for access to audit files of registered auditors. Any concerns with such requests should be taken up with the relevant senior official at SARS who approved the request.

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## **4 THE RIGHT OF SARS TO CALL FOR AUDIT FILES**

- a) 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 registered auditor would only be requested where it is considered necessary for purposes of administration of a tax Act.
- b) There is no general or specific restriction on SARS requiring information contained in an audit file.
- c) It is a criminal offence to refuse or neglect to supply relevant material requested by SARS without just cause.
- d) Legal professional privilege does not apply to registered auditors in relation to its clients but such privilege may still apply to certain client information held by registered auditors.
- e) This Guide does not apply if SARS conducts an inquiry in terms of Part C of the TAA or a search and seizure in terms of Part D of the TAA.

## **5 RIGHTS AND OBLIGATIONS OF THE TAXPAYER/REGISTERED AUDITOR WHEN AUDIT FILES ARE CALLED FOR**

- a) The registered auditor has the right to inform the taxpayer of the request received from SARS.
- b) Where the client of the registered auditor claims legal professional privilege over certain documents, the registered 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.
- c) 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.
- d) Where the inspection of the audit file is done at the premises of either the taxpayer or the registered auditor, section 49(1) of the TAA requires that the taxpayer/registered auditor must provide reasonable assistance as it is required, including:
  - i) Making appropriate facilities available;
  - ii) Answering queries relating to the audit if so required; and
  - iii) Submitting relevant material as required.
- e) Note that in terms of section 49(2) of the TAA no person may without just cause obstruct a SARS official from carrying out the audit or refuse to give the access or assistance as may be required.

## **6 WHAT CAN THE TAXPAYER/REGISTERED AUDITOR EXPECT WHEN AUDIT FILES ARE CALLED FOR**

### **6.1 When Can the Audit Files be Called for?**

- a) 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 registered auditor.

### **6.2 How Will Access to the Audit Files be Requested?**

- a) SARS will give notice to the registered auditor in writing of a request to access the audit files in terms of section 46(1) read with section 46(3) of the TAA.
- b) A reasonable time will be granted within to prepare a response to the request.

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- c) Any request for access to audit files will be subject to approval by a senior official in SARS.

### **6.3 Confidentiality be Observed**

- a) There is a statutory requirement for both current and former 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.
- b) 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 and/or SARS could be liable to criminal and/or civil prosecution.
- c) The duty to preserve secrecy of taxpayer information does not prohibit a SARS official from disclosing taxpayer information when required by specific legislation.

### **6.4 How Should Audit Files be Made Available to SARS?**

- a) The audit files could be made available to SARS as follows:
  - i) Making the original audit files available for inspection;
  - ii) Providing copies of the audit files to SARS;
  - iii) Providing the audit files in electronic format; or
  - iv) Other arranged means.
- b) Where the original audit files are made available for inspection at a premises outside of SARS, then:
  - i) The SARS tax auditors must produce identity cards;
  - ii) The SARS tax auditors must produce a letter of authorisation from SARS to conduct a field audit, which letter includes the contact details of the senior official at SARS who duly authorised the issuing of this authority;
  - iii) Where the SARS tax auditor makes photocopies at the registered auditor's expense, these costs can be recovered from SARS.
- c) 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.
- d) Where the audit files are made available in electronic format:
  - i) The SARS tax auditor can view such electronic audit files at the premises of the taxpayer/registered auditor on computer(s) provided by the taxpayer/registered auditor. It is further required that the computer(s) made available have the necessary software installed to enable the viewing of the electronic file;
  - ii) Where it is considered necessary to obtain downloads of the electronic audit files, the SARS tax auditor will make prior arrangement with the registered auditor and a specialist with the required computer skills from SARS will assist with obtaining the download.
- e) Any other means of making the audit files available can be done by arrangement with the relevant SARS official.

## **7 REFERENCES**

### **7.1 Legislation**

TYPE OF REFERENCE	REFERENCE
Legislation, Regulations Interpretation	Rules, and Notes Tax Administration Act No. 28 of 2011

TYPE OF REFERENCE	REFERENCE
administered by SARS	
Other Legislation	IRBA Code of Professional Conduct of Registered Auditors; Auditing Profession Act No. 26 of 2005
International Instruments	None

## 7.2 Cross References

DOCUMENT NUMBER	DOCUMENT TITLE
	Revised Guide for Registered Auditors on Access to Working Papers from IRBA (June 2018)
	International Standards of Auditing – ISA230 on Audit Documentation

## 7.3 Reference to Role, Functional Area, or Division

Where an organisational structural change occurs with or without modifications, any reference in this document to a role, functional area or division under the former organisational structure, unless the contrary intention appears, shall be construed to be a reference to that role, functional area or division under the new organisational structure.

## 8 DEFINITIONS AND ACRONYMS

<b>Audit file</b>	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)
<b>Audit documentation</b>	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)
<b>Audit evidence</b>	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)
<b>Accounting records</b>	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)
<b>Controlling body</b>	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)
<b>IRBA</b>	Independent Regulatory Board for Auditors
<b>Registered auditor</b>	An individual or firm registered as an auditor with IRBA.

- a) Link for centralised definitions, acronyms, and abbreviations: [Glossary A-M | South African Revenue Service \(sars.gov.za\)](#).

### 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.

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

- Visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za);
- Make a booking to visit the nearest SARS branch;
- Contact your own tax advisor / tax practitioner;
- If calling from within South Africa, contact the SARS Contact Centre on 0800 00 SARS (7277); or
- If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).