

# MAY SARS RAISE AN ASSESSMENT AFTER 5 YEARS ?

## THE LAW

### Tax Administration Act No.28 of 2011 Section 29 – Duty to keep records

In terms of Section 29(2) of the Tax Administration Act No.28 of 2011, the requirements to keep records, books of account or documents for a tax period apply to a person who -

(a) has submitted a return for the tax period;

In terms of Section 29(3), records, books of account or documents need not be retained by the person described in -

(a) subsection (2)(a), after a period of five years from the date of the submission of the return.

### Tax Administration Act No.28 of 2011 Section 99 – Period of limitations for issuance of assessments

In terms of Section 99(1) of the TAA, an assessment may not be made-

- (a) three years after the date of assessment of an original assessment by SARS;
- (b) in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment –
  - i. by way of self-assessment by the taxpayer; or

ii. if no return is received, by SARS.

### In terms of Section 99(2) of the TAA, Subsection(1) does not apply to the extent that –

- (b) in the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to –
  - i. fraud;
  - ii. intentional or negligent misrepresentation;
  - iii. intentional or negligent non-disclosure of material facts, or
  - iv. failure to submit a return.



## APPLICATION OF THE LAW

Section 29(3) mentions a person as prescribed in section 29(2)(a), who does not need to retain documentation after a period of five years.

Section 29(2)(a) refers to a person who 'submitted a return for a tax period'.

The 5-year period therefore applies to a Municipality, who submitted returns more than 5 years ago.

Furthermore, Section 99 of the TAA also prohibits SARS from raising an assessment for a period older than 5 years, except in the case of fraud, intentional or negligent misrepresentation, intentional or negligent non-disclosure of material facts, or failure to submit a return.

It should be noted that Section 29(2)(b) refers to a person who "is required to submit a return for the tax period and has not submitted a return for the tax period".

In this exception, the 5-year period does not apply to someone who is required to submit a return, but has not.



## IN CONCLUSION

If any of the conditions mentioned in Section 99(2) are applicable to the Vendor, SARS has the right to issue and additional assessment. They will therefore require certain documentation.

However, in the case where Section 29 applies, you may inform SARS that you are only required to keep supporting documents for a period of 5 years.



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