Taxing Times Survey 2023

The purpose of the survey is to assess the recent encounters of corporate taxpayers with the South African Revenue Service, focusing on both significant achievements and potential areas that could be enhanced.

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Contents

Definitions

BEPS	Base Erosion and Profit Shifting
CbC	Country-by-Country reporting
CIT	Corporate Income Tax
CSARS	Commissioner of the South African Revenue Services
IT14SD	Income Tax Supplementary Declaration
ITA	Income Tax Act, No.58 of 1962
LB&I	Large Business and International Division
MAP	Mutual Agreement Processes
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OTO	Office of the Tax Ombud
PAYE	Pay-As-You-Earn
PwC	PricewaterhouseCoopers Tax Services (Pty) Ltd
SAIT	South African Institute of Taxation
SARS	South African Revenue Service
TAA	Tax Administration Act No. 28 of 2011 (as amended)
TCDR	The Tax Controversy & Dispute Resolution division of PwC
TP	Transfer Pricing
USP	Understatement Penalty
VAT	Value-Added Tax
VAT201	Value-Added Tax Return
VDP	Voluntary Disclosure Programme

Introduction

The goal of the annual Taxing Times Survey is to assess corporate taxpayers' interactions with SARS, to identify the organisation's strong points and to highlight the areas of SARS' processes that require improvement. There has never been a more critical time for us to assess how organisations and their tax functions are operating, responding to and coping with SARS audits, debt collection processes, VDP's, as well as overall service delivery, given SARS' drive to improve voluntary compliance and regain taxpayer trust.

This report aligns with PwC's *New Equation*, which focuses on helping organisations to build trust with their stakeholders in order to create sustained outcomes.

Our latest edition, which is the sixth in the annual series, was conducted during the months of May to July 2023. A total of 182 corporate taxpayers participated in this year's survey, the results of which are discussed in this report below.

Since the publication of our first report in 2018, the tax environment has changed. Part of SARS' restructuring included the appointment of three deputy commissioners (in 2023). The deployment of resources (including the appointment of more staff and technology) to revive SARS in 2021, and advancements in the enforcement field are among these developments. To cut down on the number of people who are obligated to file yearly income tax returns, SARS has expanded the implementation of automated assessments for Personal Income Taxpayers. SARS is attempting to automate as many procedures as possible. It is firmly addressing defaulting taxpayers, and we have observed several media reports in which SARS notifies non-compliant taxpayers that they will face administrative penalties for submitting tax returns late.

In SARS' Strategic Plan[1], the organisation announced its Vision 2024 which is to build "a smart modern SARS, with unquestionable integrity, trusted and admired". This has also translated into a clear strategic intent that follows international best practices and has culminated in SARS' nine strategic objectives which are to:

1. Provide clarity and **certainty** for taxpayers and traders of their obligations;
2. Make it **easy** for taxpayers and traders to comply with their obligations;
3. **Detect** taxpayers and traders who do not comply, and make non-compliance hard and costly;
4. Develop a **high** performing, **diverse, agile, engaged** and **evolved** workforce;
5. Increase and expand the use of **data** within a comprehensive knowledge management framework to ensure integrity, derive insight and improve outcomes;
6. Modernise our systems to provide **digital** and **streamlined** online services;
7. Demonstrate effective resource stewardship to ensure efficiency and effectiveness in delivering quality outcomes and performance excellence;
8. Work with and through stakeholders to improve the tax ecosystem;
9. Build **public trust** and **confidence** in the tax administration system.
10. The 2023 survey results have been analysed with SARS' key strategic objectives in mind.

1 Updated 11 May 2023.

Key developments at SARS since August 2022

September 2022

- SARS no longer requires a company to submit the IT14SD. This requirement was replaced by a SARS letter requesting specific, relevant documents for purposes of conducting a verification of taxpayers' affairs.
- SARS published a draft Interpretation Note named "The Value-Added Tax Treatment of Debt Collection" that was released for public comment.

November 2022

- SARS announced that it had made provision for the VDP to be permanently available to a qualifying individual, company or trust that seeks to voluntarily disclose and regularise their tax affairs.

February 2023

- The Minister of Finance announced in his budget speech that tax collections are expected to be R1,69 trillion.
- The Minister of Finance proposed that Practice Notes 31 (Interest Paid on Moneys Borrowed) and 37 (Deduction of Fees Paid to Accountants, Bookkeepers and Tax Consultants for the Completion of Income Tax Returns) should be withdrawn. But this announcement was postponed until 1 March 2024.

March 2023

- SARS published the addresses at which a document or notice must be delivered, or a request must be made during dispute processes specifically, rule 2(1)(c)(ii), 2(1)(c)(iii) and rule 3(1) of the rules promulgated in terms of section 103 of the TAA in the Government Gazette.
- SARS updated the rules promulgated under section 103 of the TAA, with one of the major changes being an extended period to submit an objection from 30 days to 80 days.

April 2023

- SARS updated the guide on SARS' online query system.
- SARS appointed a new service provider for VAT Refund Administration to provide services from 1 April 2023.
- SARS introduced internal system changes to streamline the efiling dispute process.

May 2023

- New publication of Interpretation Note 129 relating to the Understatement penalty: Meaning of "maximum tax rate applicable to the taxpayer".

June 2023

- SARS Commissioner Edward Kieswetter, announced the appointment of three Deputy Commissioners to strengthen his executive team within SARS. The deputy commissioners are:
  - Mr Johnstone Makhubu: Taxpayer Engagement and Operations
  - Mr Carl Scholtz: Enterprise Strategy, Enablement and Modernisation
  - Ms Bridgitte Backman: Corporate and Enterprise Services
- SARS published an External Guide: "How to submit a request for reduced assessment (RRA01) via efiling".
- SARS updated the External Guide "Guide to submit a dispute via efiling".

July 2023

- The SARS "Online Query System" was revamped to include a new feature called the Tax Return Status Dashboard providing taxpayers, Registered Representatives and Tax Practitioners with a visual status of the progress of Personal Income Tax returns in terms of submission, verification/audit and refund processing.
- SARS updated its core systems on efiling to accommodate the assessed loss calculations in terms of section 20 of the ITA as well as to update source code descriptions where applicable. Other administrative changes were also made to the system.

August 2023

- SARS published a "Guide to the Voluntary Disclosure Programme".

September 2023

- SARS issued its latest SARS Service Charter whereby it commits to increase the use of data to improve integrity, derive insight and improve outcomes.

About the survey and its objectives

In The Wealth of Nations (1776), Adam Smith[2] argued that taxation should follow the four principles of **fairness, certainty, convenience** and **efficiency**.

Fairness means that, taxation should be compatible with taxpayers' conditions, including their ability to pay in line with personal and family needs. Certainty means that taxpayers are clearly informed about why and how taxes are levied (Smith, 1776). Convenience relates to the ease of compliance for taxpayers: how simple is the process for collecting or paying taxes? Finally, efficiency touches on the collection of taxes: basically, the administration of tax collection should not negatively affect the allocation and use of resources in the economy, and certainly should not cost more than the taxes themselves.

These four principles of Smith still underline the objectives of efficient tax administration globally.

The primary goal of this study is to evaluate corporate taxpayers' interactions and experiences with SARS. The survey results provide a useful platform for discussion with SARS about ways to enhance stakeholder interactions while also enhancing public trust, efficiency, and confidence in the tax administration system.

SARS has increasingly taken a keen interest in the findings of our survey, the results of which are shared with SARS annually, prior to the release of this report. The pre-release engagement with SARS is valuable in that better insights into both the successes and challenges of dealing with SARS is obtained and communicated to the organisation for consideration.

Many of the survey's questions directly address SARS' nine strategic objectives, which are crucial for both the organisation's reconstruction and the successful and efficient collection of taxes. This survey aims to serve as an assessment on how efficiently SARS is achieving its objectives. The findings outlined in this report represent the percentage of participants who provided an answer to a specific question. Some questions were not applicable to all participants.

As with the previous year, this year's survey was streamlined and the questions focused on four key areas:

- The audit process:
  - Corporate income tax
  - VAT
  - Transfer Pricing
- The debt management process
- The VDP process
- SARS' service delivery

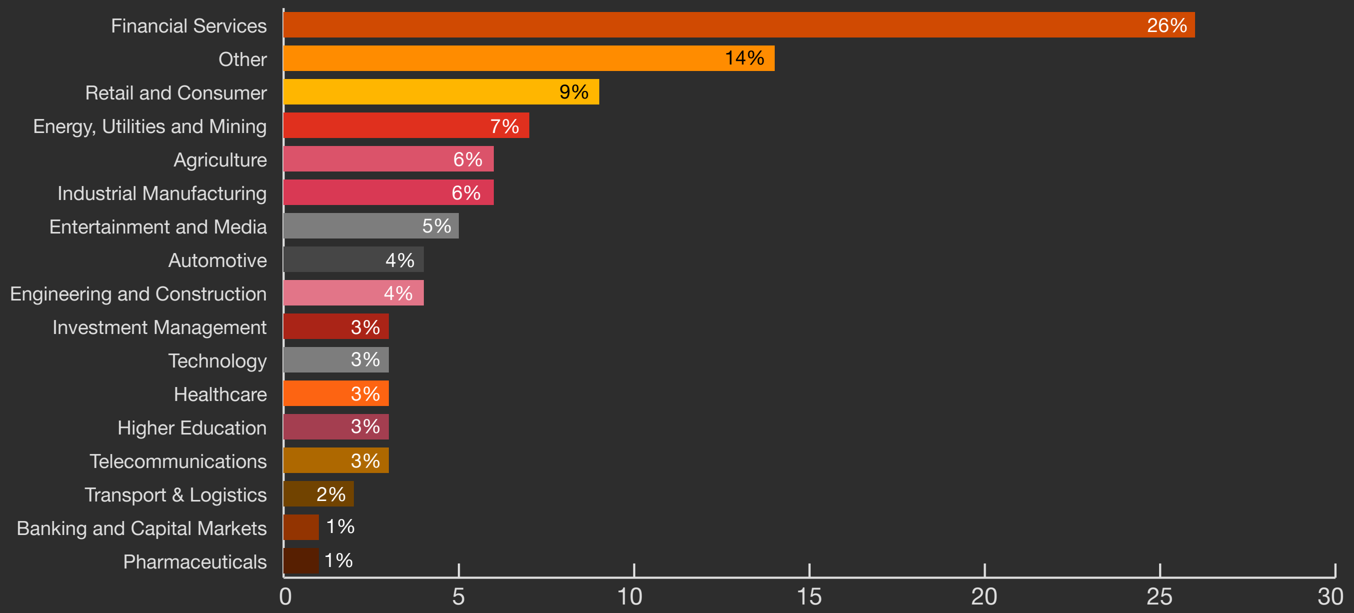
The report includes the questions from the survey, with the outcomes and provides an analysis of the data.

2 Smith, A., 1776. An Inquiry into the Nature and Causes of The Wealth of Nations. s.l.:Random House, Inc.

Participant profile

Industries represented

Figure 1: Which industries participated in the survey?



Source: PwC analysis

Participants in this year's survey represent 16 industries. As is the case in previous years, the Financial Services industry attracted the highest participation rate (26%) followed by 'Other' (14%), Retail and Consumer industries (9%), Energy, Utilities and Mining (7%), Agriculture (6%) and Industrial Manufacturing (6%).

The audit process - overview

Chapter 5 of the TAA deals with 'gathering information' SARS may select a taxpayer for inspection, verification, or audit (on either a random or risk basis). Once a taxpayer files its tax return, an original assessment is usually automatically issued. The original assessment reflects what the taxpayer declared in its tax return. Following the original assessment, SARS may select the taxpayer for verification and/or an audit (in some cases, such as transfer pricing, SARS may firstly conduct a risk review which precedes an audit).

The TAA does not define or set out the verification process, but the SARS website describes a verification as follows:

"Verification is a face-value verification of the information declared by the taxpayer on the declaration or in a return. This involves a comparison of this information against third party data gathered by SARS from various sources, the financial and accounting records and/or other supporting documents provided by taxpayers to ensure that the declaration/return is a fair and accurate representation of the taxpayer's tax position. Once you have submitted your declaration/return, your declaration/return could be selected for verification."[3]

By contrast, an audit involves the reviewing of the financial and accounting records, as well as the supporting information of the taxpayer, aiming to establish the accuracy of the taxpayer's tax reporting to SARS. In instances where the taxpayer hasn't submitted a declaration or a return, this process transforms into an inquiry to ascertain whether the taxpayer's behaviour aligns with the regulations outlined in the pertinent tax laws.[4]

3 SARS, 2023, What steps should I take if I am selected for an audit?, https://www.sars.gov.za/individuals/what-if-i-do-not-agree/being-audited-or-selected-for-verification/#:~:text=An%20audit%20is%20only%20deemed,timelines%20stipulated%20in%20the%20Notification https://www.sars.gov.za/individuals/what-if-i-do-not-agree/being-audited-or-selected-for-verification/#:~:text=An%20audit%20is%20only%20deemed,timelines%20stipulated%20in%20the%20Notification.

4 SARS, 2023, What steps should I take if I am selected for an audit?, https://www.sars.gov.za/individuals/what-if-i-do-not-agree/being-audited-or-selected-for-verification/#:~:text=An%20audit%20is%20only%20deemed,timelines%20stipulated%20in%20the%20Notification.

In either the verification or audit procedures, SARS has the authority to ask for specific financial and accounting records, along with any supporting documentation, from the taxpayer or any third party (such as banks, clients, suppliers and/or any other institutions). This is done to establish the accuracy of the taxpayer's tax declarations to SARS.

Corporate income tax

Likelihood of being selected for verification

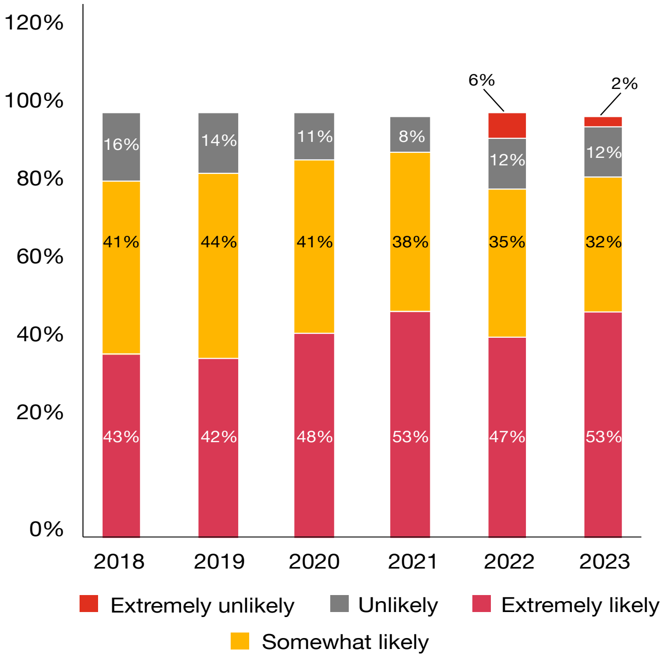
SARS holds the authority to choose any taxpayer for verification to ensure effective tax administration, whether due to potential risks or other reasons.[5] PwC tested corporate taxpayers' perception of the chances of being selected for a verification after they submitted their annual corporate tax returns.

The 2023 results indicate that 53% of participants believe it is **extremely likely** that they will be selected for verification, compared to 47% in 2022. This shows an increase in the perception of participants on the likelihood of being selected for a CIT verification in comparison to the prior year's results.

Considering that this year 53% of participants indicated that they are extremely likely to be selected for verification and 32% stated that they are somewhat likely to be selected, it appears that SARS' selection criteria (whether it be random or based on risk) is wide. Given the increased volumes of verifications being conducted by SARS, the question begs - does SARS have sufficient resources to conduct the verification process adequately and to consider if each taxpayer's information has been submitted properly? In the questions that followed in the survey, PwC asked participants to indicate the time period that it takes (in their experience) for SARS to complete a verification.

5 SARS, 2023, What if I do not agree/being audited or selected for verification?, https://www.sars.gov.za/individuals/what-if-i-do-not-agree/being-audited-or-selected-for-verification/.

Figure 2: How likely is SARS to verify your company after the submission of an annual Income Tax return?



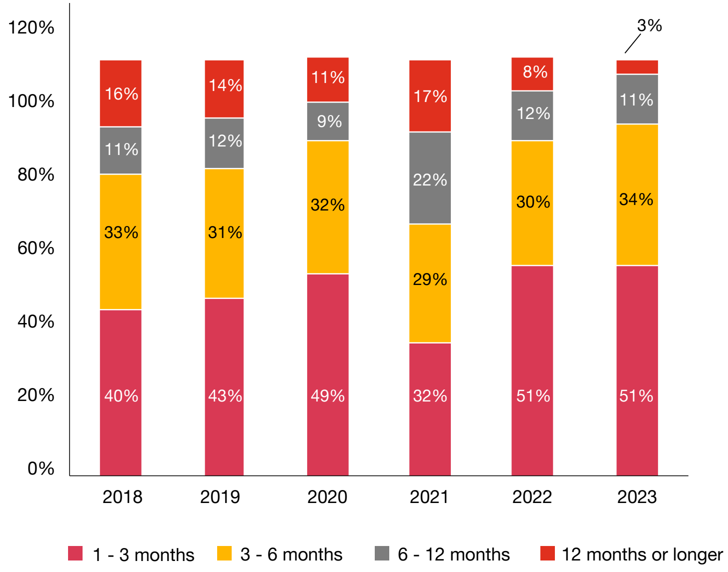
Source: PwC analysis of results for 2023

Time taken to finalise a verification process

Equivalent to last year's results, 51% of participants indicated that their CIT verifications take between one and three months to complete. 34% of participants indicated that their CIT verification takes between three and six months to finalise, which is an improvement from last year's 30% (2021: 29%). Looking at a six-month timeframe 85% of verifications are completed within such a time frame, which SARS will most likely agree is too long. The results also indicate that fewer participants (3%) are experiencing an extended turnaround time on finalisation of the verification process of '12 months or longer' in comparison to 2022 (8%), 2021 (17%) and 2020 (11%). This shows a tremendous improvement in long drawn-out verifications by SARS.

Seeing as a verification is a mere face-value and broad level review of a return, verifications should be concluded swiftly. We remain hopeful that the time periods in this regard are shortened even more in the year to come.

Figure 3: In your experience, how long does it typically take SARS to complete the verification of a return (not referring to an audit)?



Source: PwC analysis of results for 2023

Time taken to finalise an audit

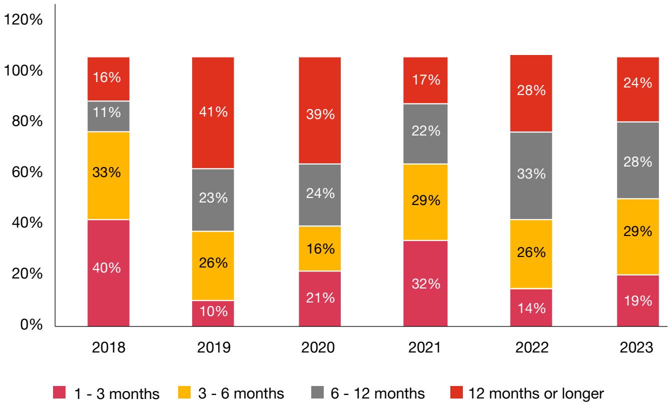
PwC requested the participants to indicate their experiences with SARS' audits. This question specifically focused on the turnaround time for SARS to finalise an audit.

19% participants indicated that a CIT audit is finalised within one to three months which is a 5% improvement compared to 2022 (14%). An additional 3% of participants indicated that their audits are finalised within three to six months. On the contrary, some of the participants indicated that audits take more than 12 months for SARS to finalise an audit; these participants decreased from 28% (2022) to 24% (2023).

A possible reason for the swifter finalisation of audits may be attributable to the interpretation notes and guides to assist taxpayers in correctly declaring their tax affairs, thereby avoiding protracted audit processes. Another reason may be that SARS' recruitment drive to employ specialist skills has yielded results.

Even though 8% of participants indicated that the audit process was finalised quicker than in 2022, it should be noted that compared to 2021, 61% of participants indicated in 2021 that an audit was finalised within six months compared to 2023's 48%. This may be due to the capacity constraints of staff members of SARS with the necessary knowledge to finalise complex audits. Whatever the reason, a delay in audit finalisation can result in additional costs and uncertainty for taxpayers which is an area that SARS should seek to avoid.

Figure 4: In your experience, how long does it take SARS to complete an audit (usually done post verification audit)?



Source: PwC analysis of the results for 2023

Issuing of progress reports

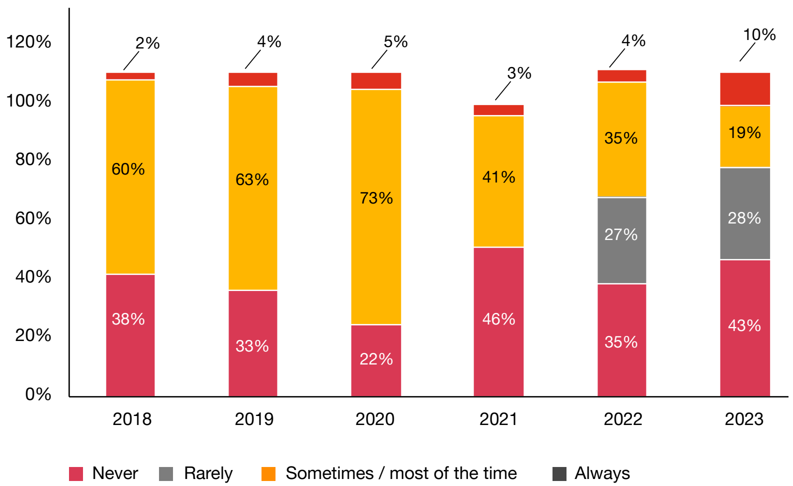
Public Notice 788 (issued 1 October 2012) read with section 42(1) of the TAA compels SARS to issue progress reports every **90 calendar days**. The purpose of this report is to keep the taxpayer informed during the audit process. Such a report should include a description of the current scope of the audit, the stage of completion of the audit and relevant materials still outstanding from the taxpayer. Whilst progress reports are issued by SARS during an audit (as opposed to a verification), it should be noted that, the issuing of progress reports is a legislative duty upon SARS.

Participants were asked whether a progress report was sent every 90 days during the last audit. The participants indicated the following:

- Always – 10% (2023), 4% (2022), 3% (2021), this is an increase in comparison with the previous years;
- Sometimes/most of the time – 19% (2023), 35% (2022), 41% (2021), the participants indicated a decline in this regard; which is an indication that lesser progress reports were sent to taxpayers.

In our experience progress reports are mostly templates, with no substance which gives little indication of the progress of the audit. The survey results are concerning, especially considering that progress reports form part of SARS' duties to uphold section 33 of the Constitution which provides for fair procedural action by a public body.

Figure 5: During your last audit, did SARS send progress reports (every 90 calendar days) during the audit process?



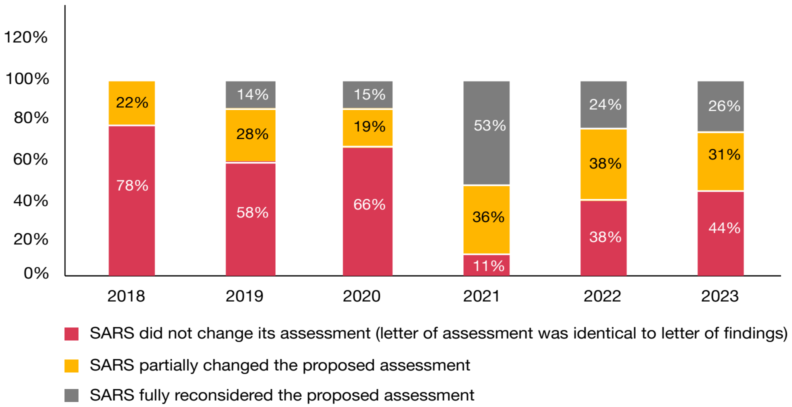
Source: PwC analysis of the results of 2023

Audit Findings Letter

In terms of section 42 of the TAA, SARS is obliged to deliver a Letter of Audit Findings, setting out SARS’ factual and legal grounds for its proposed assessment once the audit is finalised. The taxpayer, in turn, has the right to respond to the Letter of Audit Findings (usually within 21 days) outlining its representations (legal, technical or administratively/procedurally, etc) of its tax position, by either agreeing or disagreeing or partially agreeing or disagreeing with SARS’ findings. SARS must consider these representations in full before issuing assessments.

26% participants indicated that SARS fully reconsidered its basis/proposed assessment compared to 24% in 2022. This year 44% of participants indicated that SARS **did not** reconsider its basis/proposed assessment. This is an increase from the 38% reported in 2022 (and 11% reported in 2021).

Figure 6: If you responded to a letter of audit findings from SARS, did SARS reconsider its basis or proposed assessments?



Source: PwC analysis of results for 2023

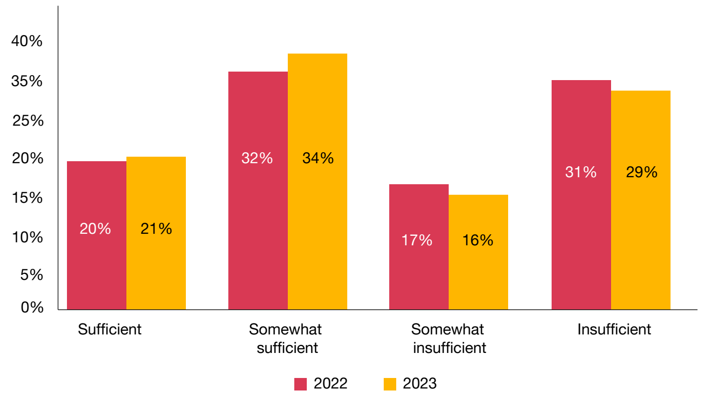
Letter of Assessment

After SARS has reviewed and considered the taxpayer’s response to the Letter of Audit findings, SARS must provide the taxpayer with a Letter of Assessment/Finalisation of Audit Letter. The Letter of Assessment should include the grounds of assessment, as well as the amounts of the assessment or indicate if no adjustments were made. The grounds of assessment must include the basis of the adjustment(s) and SARS must outline the factual and legal grounds upon which it relies for the imposition of understatement penalties. Again, this obligation ensures fair treatment towards taxpayers and should enable a taxpayer to understand SARS’ reasoning in raising its assessments.

The grounds of assessment should also place a taxpayer in a position to either accept or object to the assessment.

In this year’s survey 21% of participants indicated that SARS provided ‘sufficient’ grounds to understand the basis for the assessment raised compared to 20% in 2022. 34% of participants indicated that the grounds of assessment as set out by SARS were ‘somewhat sufficient’ compared to 2022’s 32%. In aggregate, 55% of participants indicated that SARS provided sufficient explanations (grounds) to understand the basis for the assessment raised (2022: 52%). 45% of participants indicated that SARS supplied either ‘somewhat insufficient’ or ‘insufficient’ grounds to understand the basis of the assessment.

Figure 7: If you were audited by SARS in the past year, did SARS’ finalisation of the audit letter provide sufficient explanations (grounds) to understand the basis for the assessment raised by SARS?



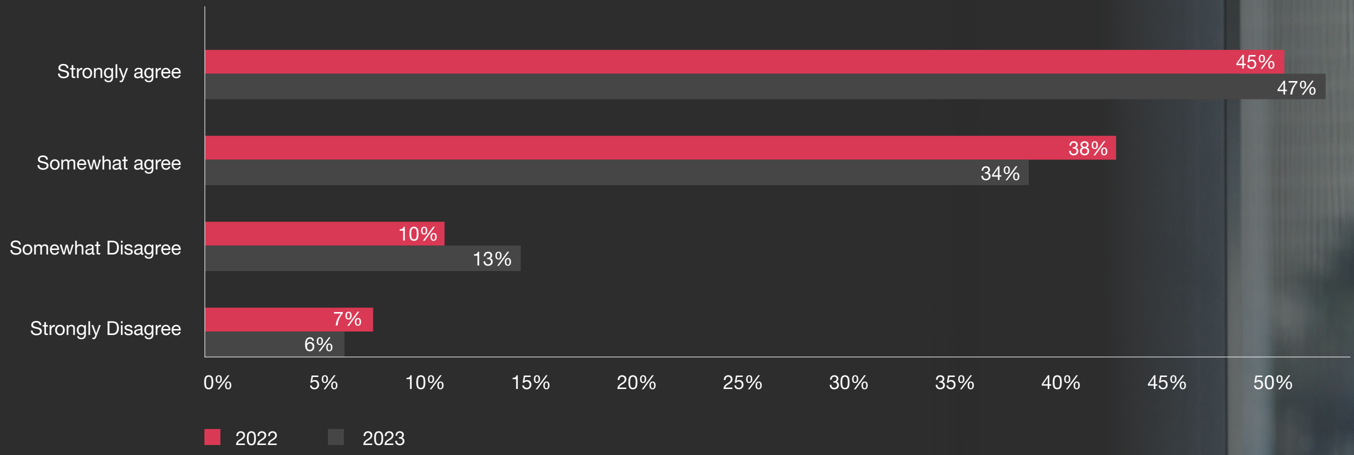
Source: PwC analysis of results for 2023

Understatement penalties

SARS needs to ensure that the percentage of the penalty imposed matches the appropriate behavioural category as outlined in section 223 of the TAA. The Letter of Assessment must make clear reference to whether SARS has raised USP’s and under which category of behaviour. The onus rests upon SARS to prove that the taxpayer’s behaviour justifies the imposition of the USP imposed.

Similar to the previous year’s survey results 47% (45% in 2022) of participants indicated that they ‘Strongly Agree’ that SARS is aggressive when levying USP’s. 34% (38% in 2022) of participants indicated that they ‘Somewhat agree’ that SARS is aggressive in raising USP’s. Only 6% indicated that they ‘Strongly disagree’.

Figure 8: Do you perceive SARS as being aggressive in raising an 'understatement penalty' in terms of the table in section 223 of the TAA in relation to the particular behaviour that they deem a corporate taxpayer to be guilty of?



Source: PwC analysis of results for 2023

Debt management process

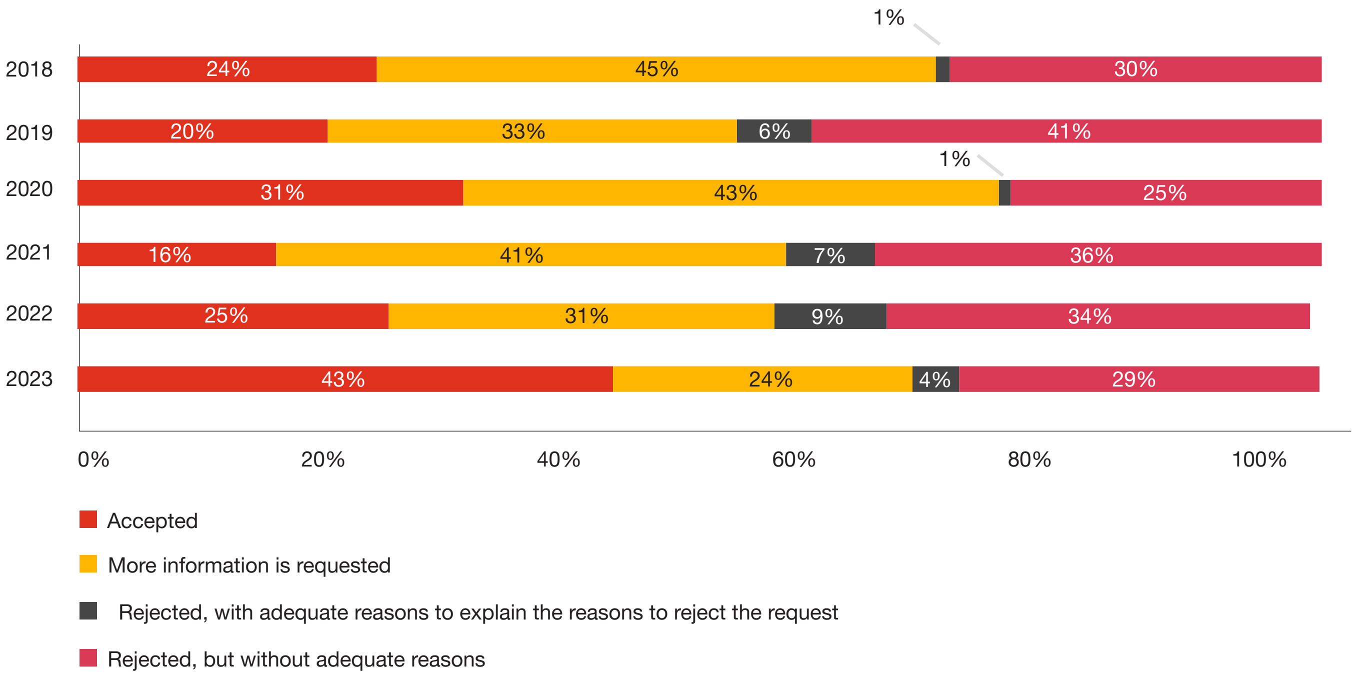
SARS' debt management function runs parallel to the dispute resolution process. Raising a dispute through an objection or appeal does not automatically suspend a taxpayer's obligation to pay the liability as reflected in SARS assessment (the "pay now argue later"-rule). Section 164 of the TAA provides some relief in that a request for suspension of payment may be made by a qualifying taxpayer where an amount is in dispute with SARS.

Response to suspension of payment requests

In this year's survey, 43% of participants reported that their request for suspension of payment was accepted. This is an 18% increase from last year's 25% (16% in 2021).

29% of participants indicated that SARS has rejected their request for suspension **without adequate reasons**. This year we saw an improvement from the previous year's results (2021: 34% and 2020: 36%).

Figure 9: When you submitted a 'suspension of payment' request (section 164 of the TAA) to SARS, pending a dispute, what response did you receive from SARS? The suspension of payment is…



Source: PwC analysis of results for 2023

Requests for reduced assessment

Section 93 of the TAA sets out the circumstances where SARS may make a reduced assessment.

SARS may make a reduced assessment:

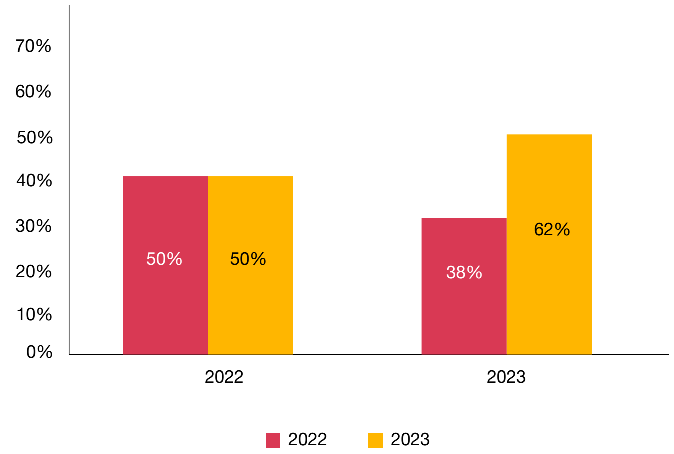
- Where the taxpayer successfully disputed the assessment under Chapter 9 of the TAA (Dispute Resolution);
- Where it is necessary to give effect to a settlement or a judgement pursuant to an appeal where there is no right to further appeal (Part F and E Chapter 9);
- Where there is a readily apparent undisputed error in the assessment by SARS or the return of the taxpayer; or
- Where a senior official of SARS is satisfied that the assessment was based on: the failure to submit a return, the submission of an incorrect return by a third party or an employer, a processing error by SARS; or an assessment was based on a return that a person unauthorised by the taxpayer fraudulently submitted.

SARS may reduce an assessment even though no objection has been lodged or an appeal noted. A reduced assessment will always be in the favour of the taxpayer.

However, a request for a reduced assessment may cause significant disputes as, SARS tends to interpret a 'readily apparent" *error* very narrowly compared to how a taxpayer might understand and interpret the legislation.

This year's findings indicate that 62% of participants have been successful with a reduced assessment application and have been able to convince SARS that an error was indeed a "*readily apparent undisputed error*" compared to last year's 50%.

Figure 10: Have you been successful with a 'reduced assessment' application (section 93 of the TAA) and, accordingly, been able to convince SARS of a 'readily apparent and undisputed error'?



Source: PwC analysis of results for 2023

Value-added tax

The payment of VAT refunds may pose a risk to SARS due to dishonest taxpayers who cause unauthorised VAT refunds to be paid by SARS. Therefore, to SARS, the VAT verification process is critical to ensure that VAT vendors declare VAT output correctly and claim input VAT only when allowed.

However, for honest VAT vendors, these refunds have a crucial impact on their cash flow and the delays in the payment of refunds due to SARS' verification process can have a significant impact on these VAT vendors and businesses. Effective tax management therefore strikes a balance between the rights of taxpayers and SARS.

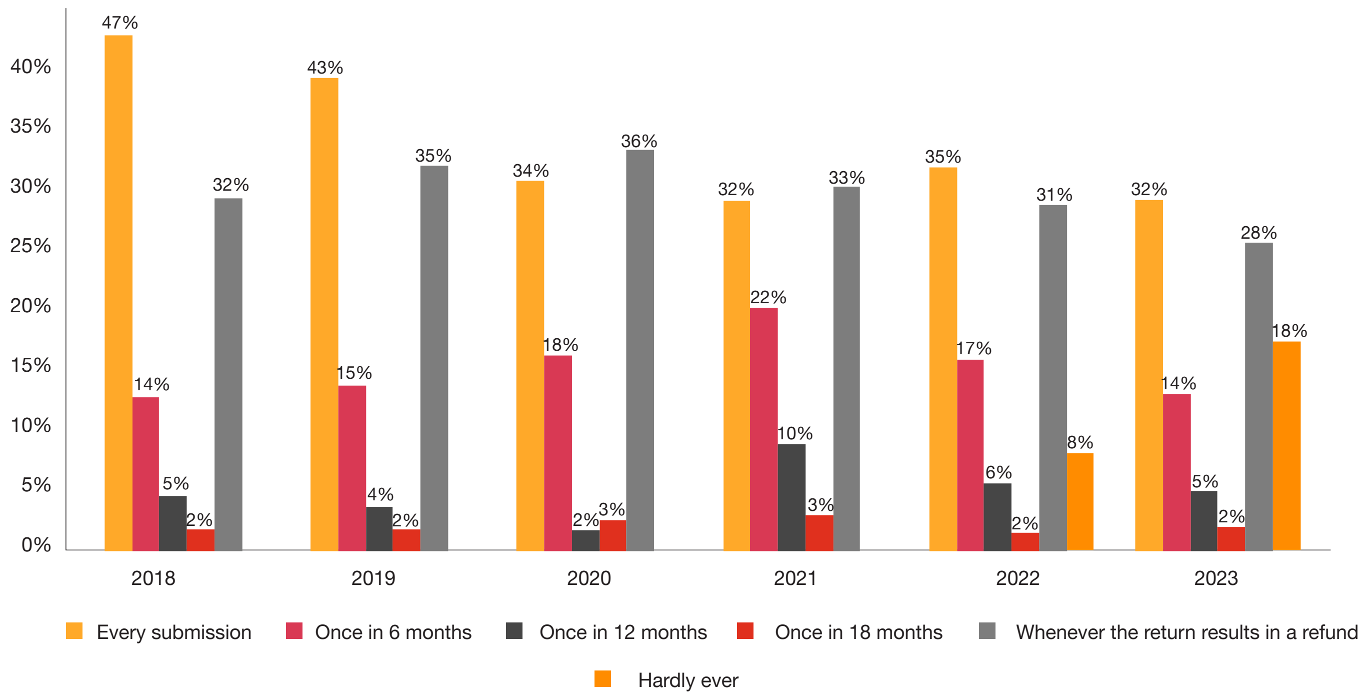
Selection for VAT201 verification

In 2023, 32% (2022, 35%) of participants reported being selected for verification every time they submit a VAT201 return, while 28% (2022, 31%) indicated they were selected for verification whenever the return results in a refund.

Based on this year's findings, we can see that there has been a consistent drop in the number of VAT returns selected for verification. 10% more participants than in 2022 indicated that are hardly ever selected for a verification.

SARS has in the past few years reported an increased reliance on third-party data, which may have an impact on the statistics we noted during this year's survey. There is a possibility that artificial intelligence used in SARS' risk engine may be more sensitive to changes, which will inevitably result in an increase in the number of verifications performed.

Figure 11: How often do your VAT201 returns get verified?

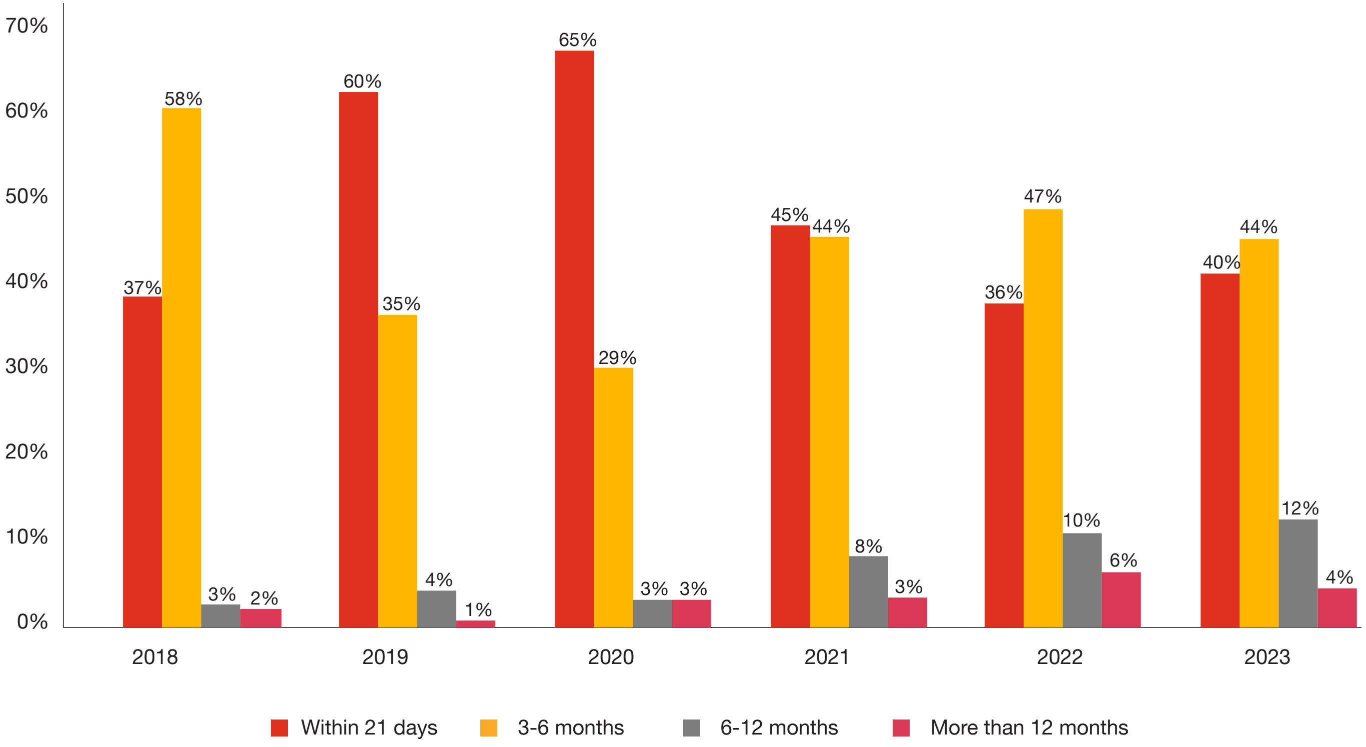


Source: PwC analysis of results for 2023

VAT verifications

The results of this survey show an improved turnaround time for the finalisation of VAT verifications compared to previous years. 40% of participants said their verifications were completed within 21 days, a 4% increase from 36% last year. Only 4% of participants indicated that their verifications took more than 12 months to complete compared to last year's 6%.

Figure 12: When submitting documentation in support of a VAT verification, how quickly does SARS finalise the verification?



Source: PwC analysis of results for 2023

Payment of VAT refunds

A VAT refund is an amount of VAT that is payable by SARS to a VAT vendor where the total amount of VAT charged on the acquisition of goods exceeds the total VAT charged (whether it be at standard rate or zero-rate) on the supply of goods or services for a tax period; or when a vendor has made an erroneous overpayment.

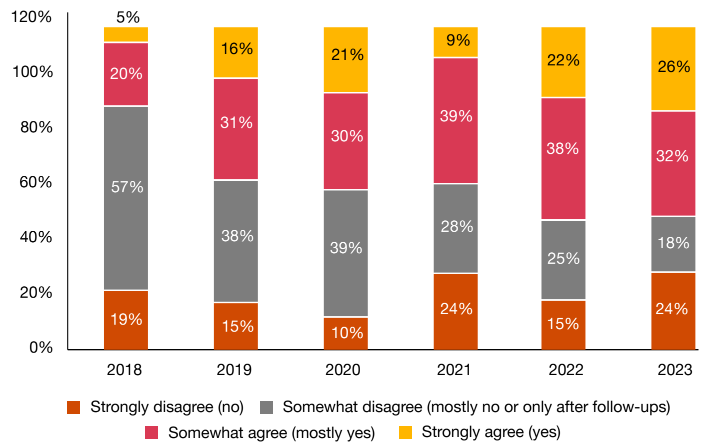
According to SARS' website[6], SARS may withhold a refund until:

- SARS is satisfied that an incomplete or defective return does not affect the refund amount;
- the vendor provided banking details; or
- a verification, inspection or audit of the refund has been finalised, unless acceptable security has been provided.

We requested participants to indicate what their experience was with regard to the timeframe in which SARS pays out refunds. The graph illustrates instances where SARS has released a refund within 21 days (26%) and instances where SARS **do not make payment of refunds** within 21 days or only after follow-up enquiries from taxpayers (18%).

We do however note an increase in instances where SARS pays refunds within 21 days, compared to previous years' findings (2022:22% and 2021:9%).

Figure 13: Did your VAT refund get paid within 21 days from submitting a return or receiving a notice from SARS indicating that a VAT verification has been completed?



Source: PwC analysis of results for 2023

6 SARS, 2023, VAT refunds for vendors, https://www.sars.gov.za/types-of-tax/value-added-tax/vat-refunds-for-vendors/.

Transfer pricing

The BEPS action plan was adopted by the OECD and G20 countries in 2013, which included South Africa, to address the mismatches across numerous countries' tax systems.[7] The BEPS project established the framework for development of CbC reporting. Multinational entities are required to report on their operations in each nation in which they operate under CbC reporting. These reports will allow revenue authorities to examine transfer pricing concerns in the respective nations.[8]

Since October 2017, SARS (as is the case on a global scale) has increased its focus on audits and reviews of transfer pricing risks, and we anticipate that this trend will continue. On 17 January 2023, SARS released an interpretation note titled "Determination of the taxable income of certain persons from international transactions: intra-group loans". The purpose of this interpretation note is to provide taxpayers with guidance on the application of the arm's length principle in the context of intra-group loans.

In practice it has been clear that SARS has placed a lot of focus on transfer pricing in the past few years. Transactions and group structures that fall within the ambit of transfer pricing are generally very complex and each case should be considered on its own unique facts. Audits of this nature are technical and therefore require more time to finalise.

Additionally, SARS stated on 1 April 2022 that the initiative to develop and apply transfer pricing audit skills was interrupted when the then Large Business Centre was dismantled under previous leadership; and the transfer-pricing audit teams were dispersed. Under the previous management, SARS' positive cooperative arrangements with other tax jurisdictions were also drained. For a time, SARS' ability to tackle transfer pricing and BEPS risks was almost completely neutralised. SARS has reported a steady improvement of its internal capacities in this area.

7 SARS, 2023, Country-by-Country(CbC), https://www.sars.gov.za/types-of-tax/corporate-income-tax/country-by-countrycbc/.

8 SARS, 2023, Country-by-Country(CbC), https://www.sars.gov.za/types-of-tax/corporate-income-tax/country-by-countrycbc/.

In the context of transfer pricing, multinationals should assess their transfer pricing policies, properly document transactions/decisions, and be audit-file ready to avoid costly and resource-intensive SARS investigations that could result in unnecessary conflicts. Taxpayers who conduct cross-border transactions must have supporting documents readily available in the case of a transfer pricing audit.

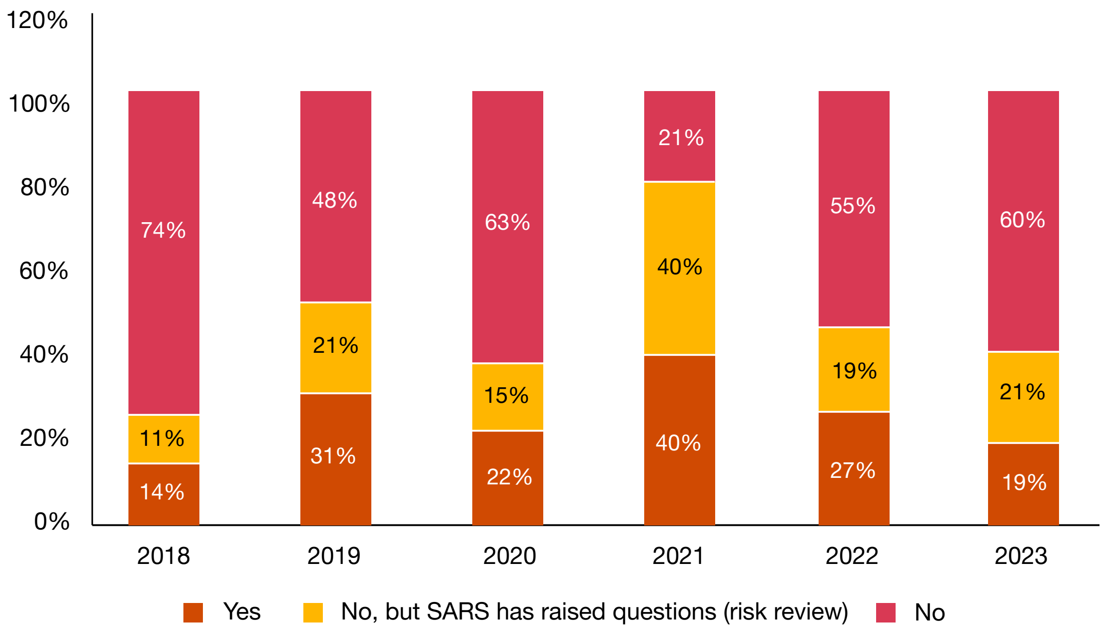
Company transfer pricing policy

In this year's survey 40% of participating companies indicated that they conduct cross-border transactions where transfer pricing would be applicable. This is a slight increase from the previous year's 35% but remains low in comparison with 2020's 86%.

Frequency of transfer pricing audits

This year, 19% of participants reported being selected for a transfer pricing audit. This figure has decreased from 27% in 2022. Although 21% of participants said that they were **not chosen for an audit**, SARS raised some questions in the form of a preliminary risk assessment, up from 19% last year.

Figure 14: Have you been subjected to a SARS audit relating to transfer pricing?



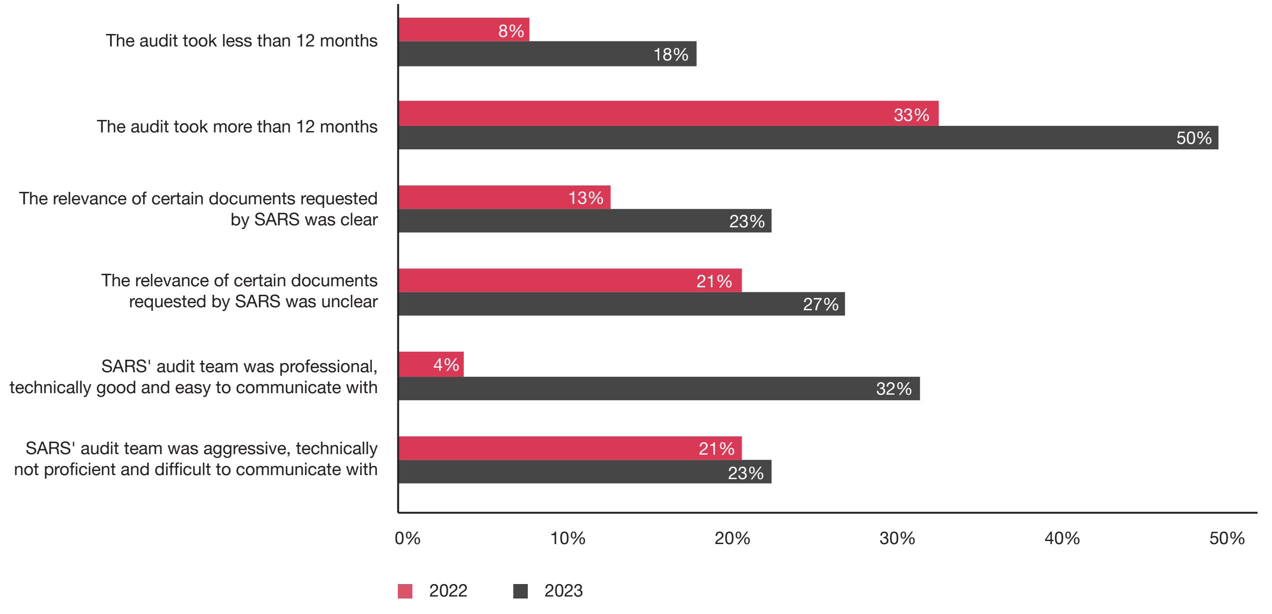
Source: PwC analysis of results for 2023

Experience of transfer pricing audits

This year, 18% of participants indicated that SARS took less than 12 months to complete the transfer pricing audit. This is a 10% improvement from the previous year's 8%. It is however concerning that 50% (33% in 2022) of participants indicated that SARS took more than 12 months to finalise the transfer pricing audit. 32% of participants did not indicate the period on how long SARS took to finalise the audit as part of the options available to share their experience with SARS's transfer pricing audit process.

Participants indicated a reduction in audit time (10% improvement), professionalism of the team (28% improvement) and documents requested were clear (10% improvement). This indicates that the taxpayer's experience with transfer pricing audits has overall improved.

Figure 15: If your company has been subjected to a transfer pricing audit, what was your experience? (select all that apply)



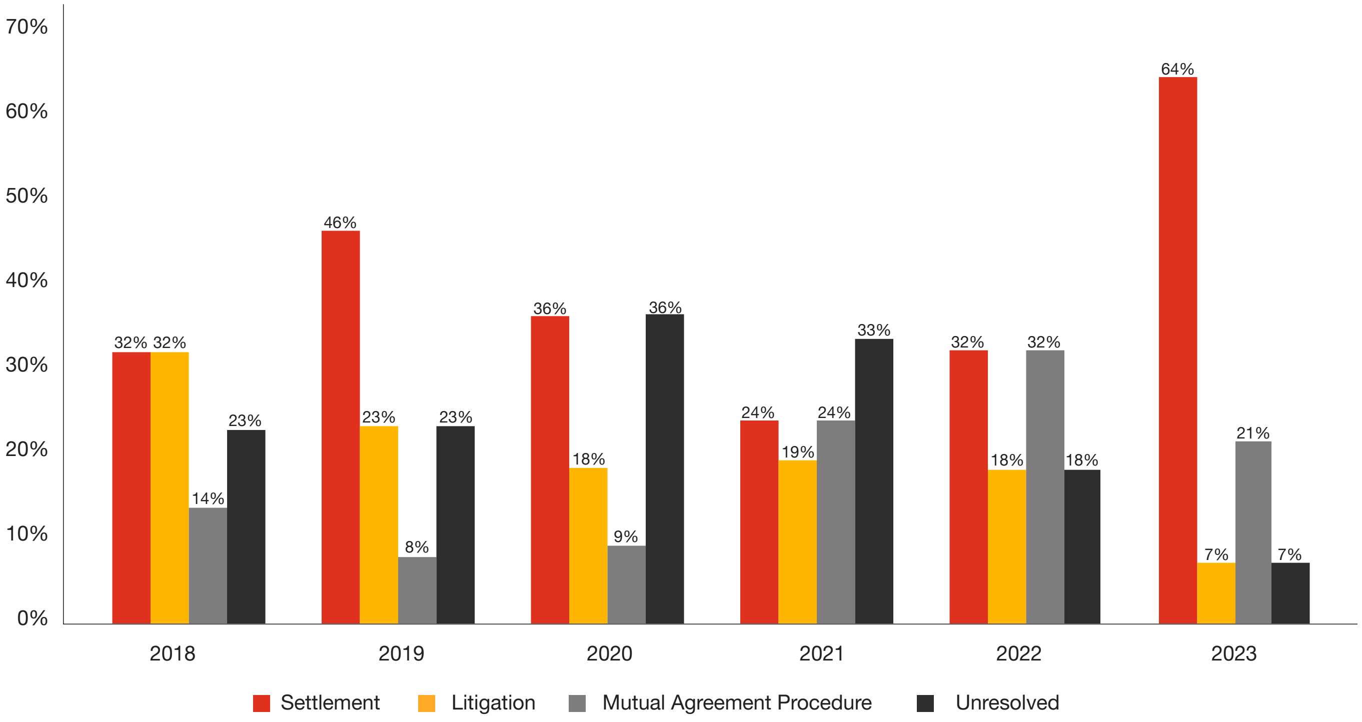
Source: PwC analysis of results for 2023

Transfer pricing assessments

This year's survey results indicated that transfer pricing disputes appear to be continuing to migrate away from hearings in court, towards settlement processes. The decrease in litigation could be indicative of an improved climate for settlements and parties' reluctance to go to court over transfer pricing disputes, or it could be an indication that neither party wants to pursue transfer pricing matters in court because they are highly technical, complex and expensive.

There has been a significant decline in the number of unresolved transfer pricing audits from 18% in 2022 to 7% in 2023. This indicates that settlements as a mechanism for the resolution of transfer pricing audits are on the rise, moving to 64% in 2023 from 32% in 2022.

Figure 16: If you received a transfer pricing assessment, how was it resolved?



Source: PwC analysis of results for 2023

Voluntary Disclosure Programme

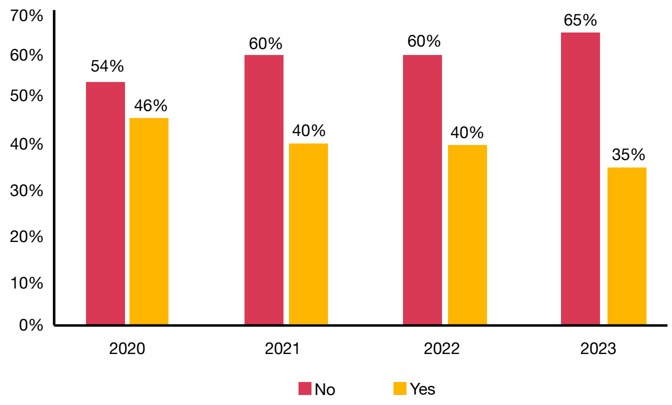
In terms of the TAA, SARS has made provision for taxpayers to voluntarily disclose defaults or understatements in prior years and make full disclosure of their tax affairs to SARS. The VDP is also a tool which enables taxpayers to ensure that their historic tax records are accurate. Not only does the VDP grant protection to taxpayers against criminal investigation and certain penalties, but it is also a valuable means of revenue collection for SARS. SARS' operations now include VDPs as a permanent part of the process.

In April 2023, the Commissioner announced, in its revenue collection speech, that SARS had finalised 1,540 VDP applications which contributed to R3.5b in revenue.

VDP applications

This year, 35% of survey participants said they had made use of the VDP process compared to the previous year's 40%.

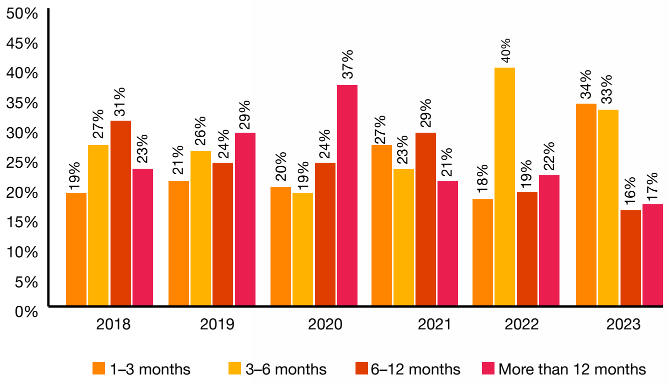
Figure 17: Have you ever made use of the Voluntary Disclosure Programme ("VDP")?



Source: PwC analysis of results for 2023

On a positive note, 34% of participants reported that their VDP application was finalised within 1-3 months, which indicates an increase in the turnaround time to process a VDP application from last year's 18%. There was also a slight decrease in the VDP applications that took longer than 12 months to finalise.

Figure 18: What is the current turnaround time for a VDP application to be finalised?



Source: PwC analysis of results for 2023

VDP applications denied

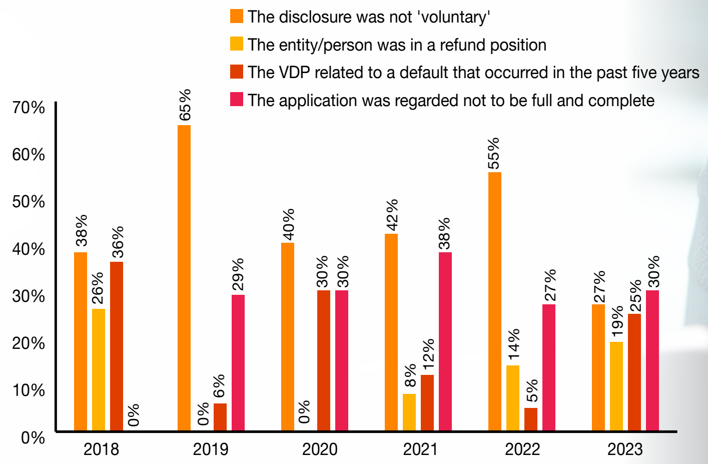
Section 227 of the TAA provides for the requirements for a valid voluntary disclosure. The requirements for a valid voluntary disclosure are:

- the disclosure must be voluntary;
- the disclosure is full and complete in all material respects;
- the disclosure must involve a default which has not occurred within five years of the disclosure of a similar default;
- the disclosure involves a behaviour referred to in column 2 of the understatement penalty percentage table in section 223 of the TAA;
- the disclosure would not result in a refund due by SARS; and
- the disclosure is made in the prescribed form and manner.

This year, 27% participants indicated that SARS declined their application due to it not being 'voluntary' compared to last year's 55%. This may be an indication of taxpayers' improved understanding of the VDP legislation, for example, by ensuring that there are no audits on the relevant tax types before commencing a VDP application. This may also be an indication that SARS does not take an overly narrow approach when considering the voluntary nature of a VDP application. With the recent publication of SARS' VDP Guide, we are hopeful that taxpayers will have a better understanding of the VDP process and requirements for a valid voluntary disclosure going forward.

25% of participants indicated that their VDP application was declined on the basis that the defaults related to a similar default that occurred in the past five years (2021:5%). This may demonstrate that the taxpayer did not realise the full impact of the initial VDP application with the true intention of correcting their tax position.

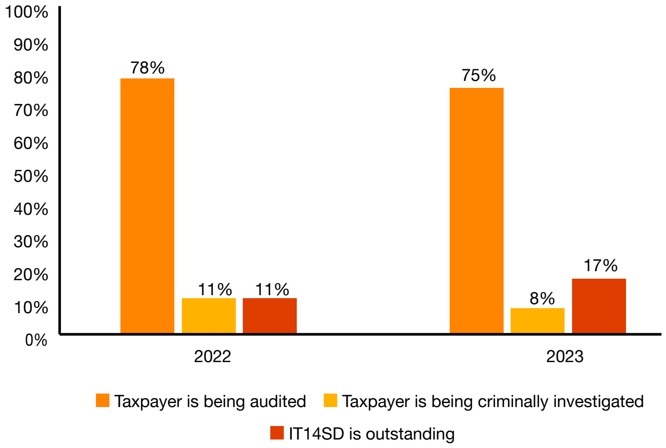
Figure 19: When a VDP application is denied, what do you find is the most likely reason given?



Source: PwC analysis of results for 2023

Of the participants that indicated that their VDP application was denied based on not being voluntary, 75% indicated that it was due to the taxpayer being subject to an audit and 17% indicated that it was due to the taxpayer's IT14SD being outstanding. We are eager to observe whether SARS' announcement to discontinue IT14SD in August 2022 will impact on the success rate of taxpayers electing to take the VDP route, in future.

Figure 20: If the VDP was denied on the basis of not being voluntary, what is the most common reason given?



Source: PwC analysis of results for 2023

Value of VDP relief

The majority of participants (88%) who made use of the VDP stated that they 'somewhat agree' or 'agree' that the VDP assisted their company in declaring its defaults properly and thereby correcting assessments and avoiding understatement penalties, while only 5% 'strongly disagree'. These results suggest that VDP indeed results in voluntary compliance on the part of taxpayers.

SARS' service delivery

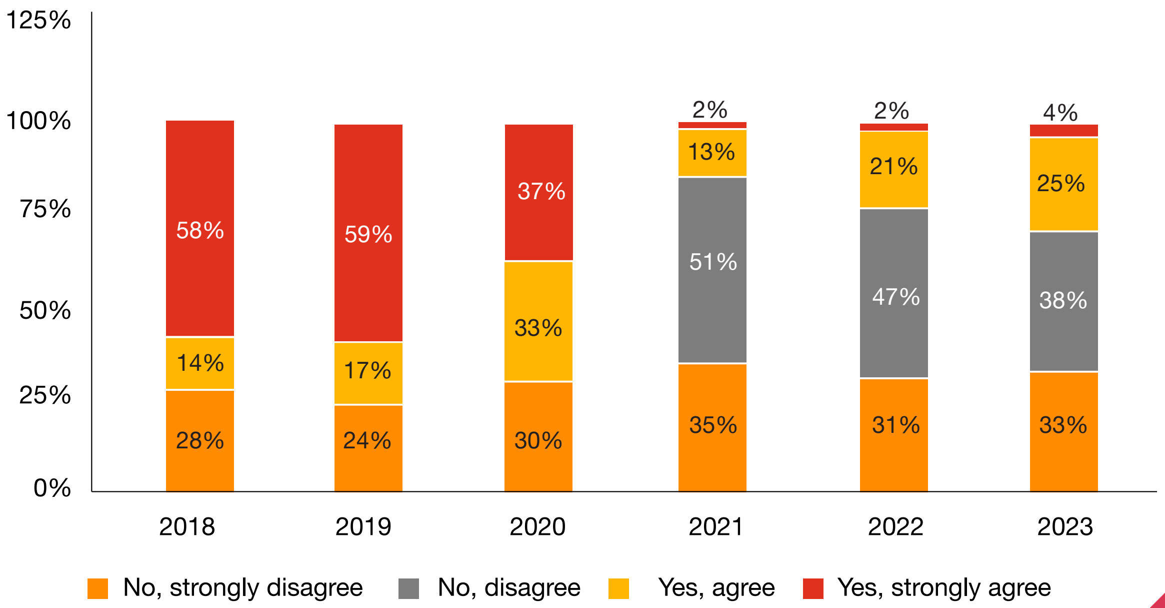
The quality of the service delivered by SARS

We asked participants if they believed that the quality of the service delivered by SARS to taxpayers has improved since the introduction of the SARS Service Charter in 2018. 9% indicated that they 'strongly agree' whilst 44% 'agree'. In aggregate this is a 14% improvement compared to the previous year. 21% 'strongly disagree' with this statement.

SARS' compliance with time periods in general

Figure 21: Similarly to last year, we asked participants if they believed that SARS honours the time periods specified in its Service Charter and the TAA. This question was not specific to any processes undertaken by SARS, but was aimed at determining the general perception of taxpayers regarding SARS' response time. Only 4% indicated that they 'strongly agree' with the proposition that SARS complies with time periods. This is 2% better than what participants indicated in 2022. In aggregate, 71% of participants either 'strongly disagree' or 'disagree' that SARS honours their timelines. This is an improvement from 2022's 77%. Even though the results indicate an improvement, it appears that taxpayers still have a negative perception of their experience with SARS and its turnaround times.

Figure 21: In your perception does SARS comply with the time periods specified in the SARS Service Charter?



Source: PwC analysis of results for 2023

Additional comments received from participants on this segment

- SARS did not offer feedback after multiple attempts of communication.
- It is incredibly challenging to update public officer details on SARS' efiling system.
- SARS respects timelines depending on the nature of the enquiry.
- SARS hardly ever adheres to any deadlines, and when you call for a follow-up, the agents are unaware of the proper deadlines or the requirements under the TAA.
- SARS just disregards all deadlines established in the TAA and the Service Charter with no repercussions.
- One needs to send follow-up emails to SARS to keep them on track.

Compliance with tax obligations

8% of participants 'strongly agree' and 43% of participants 'agree' that it has become easier to comply with their tax obligations. This is, in aggregate, a 6 % improvement from the previous year. This is a positive statement and aligns with SARS' Strategic Plan for 2020/21–2024/25 specifically strategic objective No. 2 i.e. ***making it easier for taxpayers to comply with their tax obligations***.

However, 49% of participants 'disagree' and 'strongly disagree' which suggests that almost half of the participants still find compliance with tax obligations challenging. The findings may imply that taxpayers find SARS' systems/processes too difficult to understand/navigate. SARS should consider establishing an open line of communication with specialists to enable taxpayers to quickly seek assistance with the interpretation and execution of tax legislation. The call-centre also does not appear to be of assistance to taxpayers.

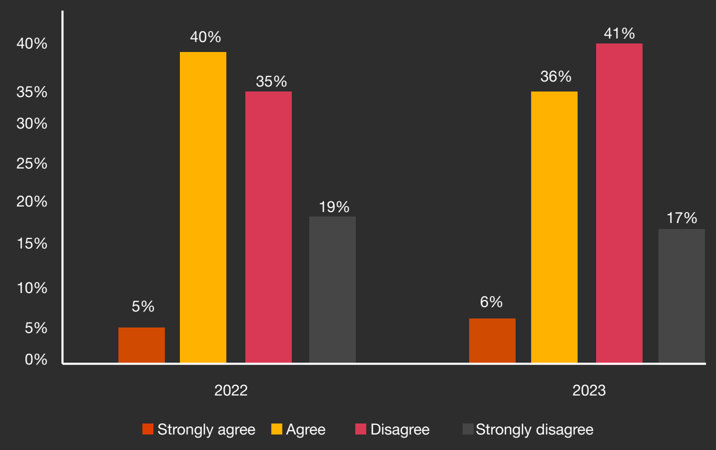
Additional comments received from participants on this segment

- SARS e-filing system makes compliance easier, but tax returns are becoming more complicated, which may result in penalties due to incorrect interpretation of questions.
- Administrative pressure is being applied to taxpayers in order for them to comply.
- A taxpayer is obliged to use online channels that only provide specific results. Cases are not treated individually.
- The amount of audits and requests for information makes it difficult to comply.
- The systems are always changing, sometimes for the better, but it is challenging to stay up to date.

Trust in SARS

We asked participants if their trust in SARS had increased in the last 12 months, and 42% (45% in 2022) said it had, while 58% (54% in 2022) said it had not. This is a critical issue that SARS must address, since rebuilding trust will eventually translate into restored public confidence, increased tax morality and ultimately the payment of tax, which our country sorely needs to fulfil our fiscal budget.

Figure 22: Has your trust in SARS improved in the last year?



Source: PwC analysis of results for 2023

Additional comments received from participants on this segment

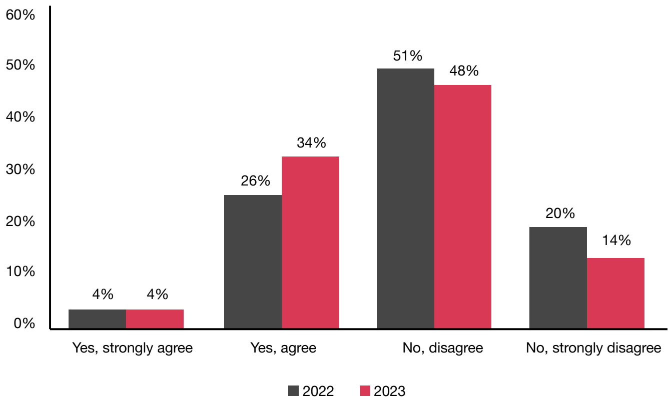
- The lack of SARS' staff knowledge has a massive impact on the trust we have in SARS.
- To some extent, SARS appears to be conducting more operational audits, which is a positive thing.
- Taxpayers believe that SARS' systems have improved, but that the call-centre still needs to be enhanced.

Delivering quality outcomes and performance excellence

62% of participants indicated that **they do not** believe that SARS has improved in delivering quality outcomes and performance excellence over the past 12 months. This is 8% better than the prior year's 70%, but still concerning results.

One of SARS' strategic objectives is to "drive efficient use of resources to deliver quality outcomes and performance excellence." However, it should be highlighted that enhancing quality and performance excellence in SARS is a process that will require time, effort, and dedicated SARS officials. Our view is that SARS' public statements along with the monthly newsletter about SARS' commitment to service excellence and customer centricity is a step in the right direction.

Figure 23: Has SARS improved in delivering quality outcomes and performance excellence?



Source: PwC analysis of results for 2023

Additional comments received from participants on this segment

- Some interactions with SARS have been very beneficial, but basic tasks like changing a public officer's information can be frustrating, if not impossible. It actually depends on the consultant that you work with, so you have to answer this on a case-by-case basis since it changes.
- Depends on the deliverable.
- In recent months, our VAT refunds have frequently been handed out within one week of filing, with no verification required. This demonstrates that SARS is utilising AI technology to accurately flag abnormalities in submissions and to pay out reimbursements when there are no anomalies. They did an excellent job.
- We have not seen/experienced any improvement in the past year. They call more often about reminding us about returns submission but they never call about the status of long outstanding cases.

PwC's Tax Controversy and Dispute Resolution services

Key lessons about the tax controversy life cycle

It is important to fully understand the TAA and SARS policies and procedures and systems to successfully manage a SARS verification/audit (or even regularising a tax position).

When receiving an assessment from SARS, it is crucial to know what steps are available to taxpayers if they do not agree with the assessment. This will ensure that the timelines and requirements prescribed by the TAA are adhered to which will likely produce a positive outcome (if there are valid grounds).

We have also noted that in the past year SARS significantly updated their systems and automated some of the dispute resolution processes. This will ensure that the timeline is adhered to, but may also result in 'system errors'. Only time will tell.

PwC assists clients daily with opinions, tax rulings and compliance as well as ensuring that their audit files are audit ready. The golden thread remains to be proactive in any tax submission made to the authorities, or alternatively to consider the tax position before declaring that position to SARS.

Our team

Our dedicated team of legal and accounting experts is at your disposal to proactively prevent, effectively handle, and appropriately resolve tax audits and conflicts worldwide.

We combine deep technical understanding, local knowledge, strong relationships with government officials, tax litigation experience, and a global perspective to provide you with unrivalled service.

PwC stands ready to offer support in the following areas:

- Engaging with SARS proactively, encompassing aid in tax strategy formulation, expert opinions, advanced tax rulings, binding rulings, and VDP applications.
- Seamlessly overseeing the entirety of tax audits, from inception to conclusion.
- Navigating SARS disputes, including lodging objections and appeals through to the ADR (Alternative Dispute Resolution) process.
- Addressing matters of debt management involving SARS, which involve negotiations in respect of settlements, compromises, and tailored instalment payment options.

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At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 152 countries with over 327,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.