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The Memorandum on the Objects of Tax Administration Laws Amendment Bill, 2015 recognises that too many of SARS’s resources are spent on information entitlement disputes, as opposed to conducting an audit within the prescribed period for additional assessments. This leaves insufficient time to ensure that SARS has all relevant information at its disposal to make an accurate assessment. The Memorandum recognises that the failure to provide information or that information entitlement disputes are often tactical or even vexatious, given the fact that taxpayers, particularly large corporates, are very much aware of the period within which SARS must finalise the audit and issue additional assessments.

As a result of the tactics employed by taxpayers to frustrate the audit process undertaken by SARS, section 99 of the Tax Administration Act 28 of 2011 "Period of limitations for issuance of assessments" has been amended in terms of the Tax Administration Laws Amendment Act 23 of 2015, promulgated on 8 January 2016.

The position prior to amendment: SARS was not permitted to make an assessment three years after the date of the original assessment, or five years in the case of self-assessment (such as VAT and PAYE). The only exception being that the prescription period would not apply in circumstances where the full amount of tax chargeable was not assessed correctly by SARS due to fraud, misrepresentation or the non-disclosure of material facts. This left SARS with little recourse in circumstances described in the Memorandum.

The position after the amendment: SARS may now extend the prescription period by a period approximate to a delay arising from the failure by the taxpayer to provide all relevant material requested under section 46 of the TAA; or a delay arising from the resolution of any dispute pertaining to information entitlement including legal proceedings. Although not explicitly referred to in the legislation, information entitlement disputes denote disputes where the taxpayer claims legal professional privilege in terms of section 64 and/or advocates the relevance aspect in terms of section 46.

The amendment seems to have the desired effect by discouraging taxpayers from resorting to methods of frustrating the course of an audit. However the converse has not been thoroughly examined as yet. Could SARS exhaust the taxpayers' resources by requesting volumes of
documents in a scatter gun approach when it is evident that it has not identified what it is looking for in the audit process?

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