

Understatement penalty in terms of the Tax Administration Act – a critical analysis of the interpretation of a *bona fide* inadvertent error

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SUMMARY

The Tax Administration Act stipulates that in the instance of an understatement by the taxpayer, an understatement penalty must be levied by the South African Revenue Service (SARS) for each shortfall in relation to each understatement, unless the understatement is due to a *bona fide* inadvertent error. The term “*bona fide* inadvertent error” is only used in the context of an understatement penalty. This term is, however, not defined in the Tax Administration Act, any other tax act, or the Interpretation Act. Initially, when the term was first introduced into the Tax Administration Act in 2013, certain factors that need to be considered in the context of factual errors and in the case of a legal interpretive error were listed in the Draft Memorandum on the Objects of the Tax Administration Laws Amendment Bill of 2013. However, the final version of the Memorandum on the Objects of the Tax Administration Laws Amendment Bill of 2013 did not include examples of what would constitute a *bona fide* inadvertent error when SARS must consider whether or not to impose an understatement penalty, but it stated that guidance will be developed in this regard.

Subsequently, during 2016, judgement was delivered in Income Tax Case (ITC) 1890 and the court held that a *bona fide* inadvertent error is “an innocent misstatement by a taxpayer on his or her return, resulting in an understatement, while acting in good faith and without the intention to deceive”. Thereafter, during 2018, SARS issued guidance in respect of the use of the term “*bona fide* inadvertent error” in the context of understatement penalties. SARS concluded that “the only errors that may fall within the *bona fide* inadvertent class are typographical mistakes – but only properly involuntary ones”, and further clarified that a lack of reasonable care will also not be excused.

There is a conflicting view between the court in ITC 1890 and the guidance provided by SARS. It is, however, important that clear-cut guidance be provided regarding what would constitute a “*bona fide* inadvertent error”, as this would absolve the taxpayer from an understatement penalty.

1 Introduction

Taxpayers would naturally wish to avoid having to pay penalties, in addition to income tax imposed. Compliance with laws and regulations is therefore required. However, the law acknowledges specific circumstances where non-compliance may not automatically result in a penalty. The South African Revenue Service (SARS) must levy an understatement penalty in terms of the Tax Administration Act 28 of 2011 (hereafter referred to as the TAA) in the event of an understatement¹ by a taxpayer, unless the understatement is due to a *bona fide* inadvertent error.² None of the items listed in section 102(1)(a) to (f) of the TAA, however, places the burden of proof on the taxpayer to demonstrate that the understatement was due to a *bona fide* inadvertent error. The burden of proving the facts on which the imposition of an understatement penalty under chapter 16 of the TAA is based, rests on SARS.³

Due to the burden of proof being on SARS to corroborate the facts on which the imposition of the understatement penalty is based, SARS must therefore first identify the understatement by the taxpayer, and secondly, before the imposition of the understatement penalty, determine whether or not the understatement is due to a *bona fide* inadvertent error, before the understatement penalty can be levied by SARS. Van Zyl is of the view that this is an “implied” burden of proof that rests upon SARS and that the specific facts and circumstances that resulted in the understatement by the taxpayer must be taken into account by SARS, based on a balance of probabilities.⁴

Previously, before the enactment of the TAA, additional tax could be levied in terms of section 76,⁵ of the Income Tax Act 58 of 1962, as amended (hereafter referred to as the ITA). The additional tax was levied, as a starting point, at 200% and reduced to an appropriate level if extenuating circumstances existed for SARS to be taken into account.⁶ Due to the subjectivity involved in the determination of this additional tax, it resulted in taxpayers with similar circumstances being levied different levels of additional tax.⁷ SARS’s discretion was, however, limited by the introduction of the new understatement penalty regime,

1 An “understatement”, as defined in s 222(1) of the TAA, refers to any prejudice to SARS or the *fiscus* as a result of the failure to submit a return as required, an omission from a return, an incorrect statement in a return, the failure to pay the correct amount of tax if no return is required, or an impermissible avoidance arrangement.

2 S 222(1) of the TAA.

3 S 102(2) of the TAA.

4 Van Zyl “The new understatement penalty regime: a sharp ‘sword?’” 2014 *Journal of Economic and Financial Sciences* 909.

5 S 76 of the ITA was deleted and replaced by chapter 16 of the TAA with effect from 1 October 2012.

6 Croome & Olivier *Tax Administration* (2015) 474.

7 Croome & Olivier 474.

as set out in chapter 16 of the TAA, which is designed to ensure consistent treatment of taxpayers in similar circumstances.⁸

The SARS Short Guide to the Tax Administration Act (hereafter referred to as the SARS Short Guide)⁹ lists the following three interpretive rules that must be considered in the context of the interpretation of provisions:

- Firstly, when interpreting the provisions of the TAA, a term that is defined in another tax act¹⁰ will have the meaning as set out in that tax act, unless the context in the TAA indicates otherwise;
- Secondly, when interpreting the provisions of a tax act, a term that is defined in the TAA will have the meaning as set out in the TAA, unless the context in the tax act indicates otherwise; and
- Lastly, the tax act prevails in an instance where there is an inconsistency between the TAA and another tax act.¹¹

It may also be necessary to take into account the effect of the Interpretation Act 33 of 1957 (hereafter referred to as the Interpretation Act) when interpreting the provisions of the TAA.¹² The provisions of the Interpretation Act apply to the interpretation of every law in force in South Africa, unless the context indicates otherwise.¹³ The relevant context of the TAA thus needs to be considered in this case.

The TAA defines certain words or phrases (indicated in double quotation marks in section 1) that deal with more general definitions. Furthermore, chapter-specific definitions (indicated in single quotation marks) appear in the first section of the chapters of the TAA. Chapter definitions give meaning to certain words or terms that relate to a specific chapter.

The term “*bona fide* inadvertent error” is only used in the context of an understatement penalty in section 222(1) of the TAA. This term, however, is not defined in the TAA, any other tax act, or the Interpretation Act. When the term was first introduced into the legislation, certain factors to be considered in the context of factual errors and in the case of a legal interpretive error were listed in the Draft Memorandum on the Objects of the Tax Administration Laws Amendment Bill of 2013 (hereafter referred to as the Draft Memorandum).¹⁴ National Treasury, however, removed all these

8 National Treasury *Memorandum on the Objects of the Tax Administration Bill* (2011) 198.

9 SARS *Short Guide to the Tax Administration Act, 2011 (Act No 28 of 2011) (Version 3)* 6.

10 “Tax act”, as defined in s 1 of the TAA, refers to the TAA or an act, or portion of an act, referred to in s 4 of the SARS Act, excluding customs and excise legislation. It therefore includes the following: the ITA, the Value-Added Tax (VAT) Act, the Estate Duty Act 45 of 1955, and the Transfer Duty Act 40 of 1949.

11 SARS *supra*.

12 Croome & Olivier 29.

13 S 1 of the Interpretation Act.

examples from the final version of the Memorandum on the Objects of the Tax Administration Laws Amendment Bill of 2013 and stated that SARS would develop guidance, for the use of taxpayers and SARS officials, when an understatement will not result in the imposition of an understatement penalty.¹⁵

Subsequently, on 4 November 2016, judgement was delivered in Income Tax Case 1890 (hereafter referred to as ITC 1890),¹⁶ which dealt with, *inter alia*, the imposition of an understatement penalty. Boqwana J considered the dictionary meaning of a *bona fide* inadvertent error. The court held that a *bona fide* inadvertent error is “an innocent misstatement by a taxpayer on his or her return, resulting in an understatement, while acting in good faith and without the intention to deceive”.¹⁷ The judgement resulted in the understatement penalty not being imposed as Boqwana J was of the view that the understatement was as a result of a *bona fide* inadvertent error.

Only thereafter, in 2018, SARS issued guidance in respect of the use of the term “*bona fide* inadvertent error” in the context of understatement penalties.¹⁸ SARS concluded in the guidance that “the only errors that may fall within the *bona fide* inadvertent class are typographical mistakes – but only properly involuntary ones”, and it further clarified that a lack of reasonable care would also not be excused.¹⁹

2 Problem statement and research objective

The research objective of this article is to critically analyse the interpretation of a *bona fide* inadvertent error. The discussion commences with an analysis of the reason for the introduction of this term in the context of an understatement penalty in section 222(1) of the TAA and the examples contained in the Draft Memorandum. This is an important discussion to consider, as it was never the intention that an understatement penalty must be levied where the understatement is due to a *bona fide* mistake.²⁰ Secondly, case law that deals with a *bona fide* inadvertent error will be considered. This will be analysed in order to determine which factors were considered in judgements in this regard. Thirdly, the guidance issued by SARS will be critically analysed. This analysis will also consider the comments from recognised controlling bodies (hereafter referred to as RCBs) on the SARS Guide to Understatement Penalties (hereafter referred to as the SARS Guide). The

14 National Treasury *Draft Memorandum on the Objects of the Tax Administration Laws Amendment Bill* (2013) 12-13.

15 National Treasury *Memorandum on the Objects of the Tax Administration Laws Amendment Bill* (2013) 40.

16 79 SATC 62.

17 ITC 1890 79 SATC 62 (2016) 45.

18 SARS *Guide to Understatement Penalties (Issue 1 and 2)* 2018.

19 SARS *supra*.

20 Croome & Olivier 476.

purpose of this analysis is to determine which factors were considered by SARS, as this document constitutes guidance issued for use by taxpayers and SARS officials. Finally, the conclusion will consider the guidance given in case law and by SARS, in order to determine whether or not SARS's interpretation of a *bona fide* inadvertent error is too narrow and whether further guidance is required.

3 *Bona fide* inadvertent error

3 1 Background

The TAA contains provisions that deal with understatement penalties in chapter 16, and these were introduced with effect from 1 October 2012. Prior to this date, the administrative provisions, dealing with, *inter alia*, penalties, were duplicated in the various acts administered by the Commissioner.²¹ The then Minister of Finance, Trevor Manuel, stated in the 2005 Budget Speech²² that the purpose²³ of the TAA was to consolidate certain generic administrative provisions, as these provisions were duplicated in different tax acts.²⁴

The new provisions that deal with the imposition of an understatement penalty are set out in sections 221 to 224 of the TAA.²⁵ An understatement is specifically defined for purposes of chapter 16 and refers to any prejudice to SARS or the *fiscus* as a result of failure to submit a return required under a tax act or by the Commissioner; an omission from a return; an incorrect statement in a return; if no return is required, the failure to pay the correct amount of tax;²⁶ or an impermissible

21 The legislation administered by the Commissioner is set out in schedule 1 of the SARS Act 34 of 1997.

22 Dated 23 February 2005.

23 2005 Budget Review chapter 4 (Revenue trends and tax proposals) 98.

24 The TAA consolidates the general administrative provisions of the Transfer Duty Act 40 of 1949, the Estate Duty Act 45 of 1955, the ITA 58 of 1962, the VAT Act 89 of 1991, the Skills Development Levies Act 9 of 1999, the Unemployment Insurance Contributions Act 4 of 2002, the Diamond Export Levy (Administration) Act 14 of 2007, the Securities Transfer Tax Administration Act 26 of 2007, and the Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008, as set out in the Memorandum on the Objects of the Tax Administration Bill of 2011.

25 Chapter 16 part A (imposition of understatement penalty) of the TAA.

26 "Tax" is defined (for purposes of chapter 16) in s 221 of the TAA and refers to "tax" as defined in s 1 (which includes a tax, duty, levy, royalty, fee, contribution, penalty, interest, and any other moneys imposed under a tax act), excluding a penalty and interest.

avoidance arrangement.^{27, 28}

Where there is an understatement (as defined) by the taxpayer, an understatement penalty must be levied by SARS for each shortfall in relation to each understatement, unless the understatement is due to a *bona fide* inadvertent error.²⁹ If the taxpayer is guilty of an understatement, this results in an amount that must be paid in addition to the tax payable for the relevant tax period.³⁰ The percentage of the penalty is determined by SARS by way of using the understatement penalty percentage table,³¹ which takes into account the type of behaviour or degree of culpability involved, as follows:

1	2	3	4	5	6
Item	Behaviour	Standard case	If obstructive, or if it is a repeat case	Voluntary disclosure after notification of audit or criminal investigation	Voluntary disclosure before notification of audit or criminal investigation
(i)	"Substantial understatement"	10 %	20 %	5 %	0 %
(ii)	Reasonable care not taken in completing return	25 %	50 %	15 %	0 %
(iii)	No reasonable grounds for "tax position" taken	50 %	75 %	25 %	0 %
(iv)	"Impermissible avoidance arrangement"	75 %	100 %	35 %	0 %
(v)	Gross negligence	100 %	125 %	50 %	5 %
(vi)	Intentional tax evasion	150 %	200 %	75 %	10 %

27 "Impermissible avoidance arrangement" is defined (for purposes of chapter 16) in s 221 of the TAA and refers to an arrangement in respect of which part IIA of chapter III of the ITA is applied and includes, for purposes of chapter 16, any transaction, operation, scheme, or agreement in respect of which s 73 of the VAT Act or any other general anti-avoidance provision under a tax act is applied.

28 "Understatement" is defined (for purposes of chapter 16) in s 221 of the TAA.

29 The wording "unless the 'understatement' results from a *bona fide* inadvertent error" was inserted in s 222(1) of the TAA by way of an amendment in terms of the Tax Administration Laws Amendment Act 2013 in Government Gazette 37236 of 16 January 2014 (deemed to have come into operation on 1 October 2012) at 46.

30 S 222(1) of the TAA.

31 S 223 of the TAA.

In the 2013 Budget Review, the then Minister of Finance, Pravin Gordhan, announced that the understatement penalty provisions will be refined and relief will be provided for *bona fide* inadvertent errors.³² SARS indicated during a workshop held to discuss the TAA amendments that it was never intended that the understatement penalty must be levied where the taxpayer made a *bona fide* mistake.³³ The Draft Memorandum³⁴ explained that a SARS official will generally consider the circumstances in which the error was made, as well as other factors, in order to determine whether the understatement resulted from a *bona fide* inadvertent error.

The examples listed were as follows:

“In the context of factual errors –

- if the standard of care taken by the taxpayer in completing the return is commensurate with the taxpayer's knowledge, education, experience and skill and the care a reasonable person in the same circumstances would have exercised;
- the size or quantum, nature and frequency of the error;
- whether a similar error was made in a return submitted during the preceding years; or
- in the case of an arithmetical error, whether the taxpayer had procedures in place to detect arithmetical errors.

In the case of a legal interpretive error, whether –

- the relevant provision of a tax act is generally regarded as complex;
- the taxpayer took steps to understand it including following available explanatory material or making reasonable enquiries; or
- the taxpayer relied on information that, although incorrect or misleading, came from reputable sources and a reasonable person in the same circumstances would be likely to find the relevant information complex.”³⁵

The final version of the Memorandum on the Objects of the Tax Administration Laws Amendment Bill of 2013, however, did not include the abovementioned examples of what would constitute a *bona fide* inadvertent error when SARS must consider whether or not to impose an understatement penalty in terms of section 222(1) of the TAA. It was stated that the reason for the omission of the abovementioned examples from the final version was “due to the broad range of possible errors” and that it “has the potential to inadvertently exclude deserving cases and include underserving cases” if the term “*bona fide* inadvertent error” is defined for purposes of section 222(1) of the TAA.³⁶ It further stated that SARS will develop guidance in this regard, which taxpayers and SARS officials can use to determine whether the understatement is due to a *bona fide* inadvertent error. The SARS Short Guide has, to date, not

32 2013 Budget Review chapter 4 (revenue trends and tax proposals) 63.

33 Croome & Olivier 476.

34 Dated 2 July 2013.

35 National Treasury 12-13.

36 National Treasury *supra* 14.

provided any guidance regarding this matter.³⁷ SARS, however, only issued guidance, five years since the announcement was made in 2013 that guidance will be provided, in the Guide to Understatement Penalties, which was issued on 29 March 2018 (first issue) and 18 April 2018 (second issue). The guidance issued by SARS is discussed in further detail in point 3.3.

3.2 Case law

To date, ITC 1890³⁸ is the only South African case that has considered the meaning of a “*bona fide* inadvertent error”, which is not defined in the TAA, any other tax act, or the Interpretation Act, with judgement being delivered by Boqwana J in the Cape Town Tax Court on 4 November 2016. In this matter, between ABC Holdings (Pty) Ltd (hereafter referred to as the taxpayer) and the Commissioner for SARS (hereafter referred to as the Commissioner), the issue was whether the taxpayer was entitled to claim a deductible allowance for future expenditure in terms of section 24C of the ITA in respect of the 2011 year of assessment. The Commissioner conducted an audit on the taxpayer during January 2014, whereby the taxpayer was notified that it incorrectly claimed the section 24C allowance. In addition, the Commissioner levied an understatement penalty in terms of section 222 of the TAA. Sections 222 and 223 of the TAA were under scrutiny, and Boqwana J had to consider whether the Commissioner was correct to levy a 10% understatement penalty in respect of a “substantial understatement” (as defined). The taxpayer, however, submitted that it could have never made a substantial understatement and, if the appeal was refused, it asked that the court must excuse it from paying the penalty, as the alleged understatement resulted from a *bona fide* inadvertent error. This was due to the taxpayer submitting that it had acted on tax advice received from Prof T by way of a tax opinion. Boqwana J had to determine whether the taxpayer’s acting on tax advice received by way of a tax opinion constituted a *bona fide* inadvertent error, which would result in the penalty being remitted.

The Oxford Dictionary was quoted in the judgment, having considered the origin of the word “*bona fide*”, which is Latin and literally means “with good faith”, and also refers to “genuine”, “real”, and “without intention to deceive”.³⁹ The word “inadvertent” is defined as “not resulting from” or “achieved through deliberate planning”.⁴⁰ The Merriam-Webster Online Dictionary was also consulted for synonyms for the word “inadvertent”, which were quoted as “accidental”, “unintentional”, “unintended”, “unpremeditated”, “unplanned”, and “unwitting”.⁴¹ The Oxford Dictionary defines “error” as “a mistake”,

37 The SARS Short Guide 2018.

38 ITC 1890 *supra* 17.

39 ITC 1890 *supra* para 44.

40 ITC 1890 *supra* para 44.

41 ITC 1890 *supra* para 44.

with synonyms quoted as “the state or condition of being wrong in conduct or judgement”.⁴² Based on the above dictionary meaning analysis of the words “*bona fide* inadvertent error”, Boqwana J concluded that it must mean that the term refers to “an innocent misstatement by a taxpayer on his or her return, resulting in an understatement, while acting in good faith and without the intention to deceive”.⁴³ In this case, Boqwana J was of the view that the taxpayer “acted in good faith with no intention to deceive”.⁴⁴

3 3 The South African Revenue Service’s (SARS) Guide to Understatement Penalties

The SARS Guide is a general guide on the understatement penalties.⁴⁵ As mentioned in the preface of the SARS Guide, it is not an “official publication”⁴⁶ and it therefore does not create a practice generally prevailing.⁴⁷

The SARS Guide refers to the English Oxford Living Dictionaries for the ordinary definition of the terms “error” and “inadvertent”. It defines an error as “a mistake”, and the words “fallacy”, “misconception”, and “delusion” are listed as synonyms.⁴⁸ It further defines the word “inadvertent” as “not resulting from or achieved through deliberate planning”, and lists the following words as synonyms: “unintentional, accidental, unpremeditated, unmeant, uncalculated, unthinking, unwitting, and involuntary”.⁴⁹ The SARS Guide further explains that the understatement must be the result of an “unintentional default, an accidental omission, an unplanned statement, and involuntary failure to pay the correct tax, and an unpremeditated impermissible avoidance arrangement”.⁵⁰ The English Oxford Living Dictionaries further defines “*bona fide*” as “genuine” and “real” and lists the following as synonyms: “authentic, true, actual, legitimate, valid and proper”.

The SARS Guide states that even though in ITC 1890 the court added the words “with good faith” and “without intention to deceive” to the definition of “*bona fide*”, the SARS Guide is of the view that the court “lost sight of the fact that an error cannot have good or bad faith, and cannot have the intention to deceive”.⁵¹ The SARS Guide further explains in

42 ITC 1890 *supra* para 44.

43 ITC 1890 *supra* para 45.

44 ITC 1890 *supra* para 48.

45 Chapter 16 of the TAA.

46 “Official publication” is defined in s 1 of the TAA and refers to a binding general ruling, interpretation note, practice note, or public notice issued by a senior SARS official or the Commissioner.

47 A “practice generally prevailing”, as described in s 5 of the TAA, refers to a practice set out in an official publication regarding the application or interpretation of a tax act.

48 SARS *supra* 15.

49 SARS *supra* 15.

50 SARS *supra* 15.

51 SARS *supra* 15.

footnote 70 that this is one of the reasons why SARS disagrees with the judgment. The SARS Guide is therefore of the view that the “trigger” must be *bona fide* inadvertent, and not the person who made it.⁵²

The SARS Guide further explains that an inadvertent error refers to an error that “does not result from deliberate planning”, and that a *bona fide* inadvertent error refers to an error that “genuinely does not result from deliberate planning”.⁵³ It emphasises the point that the “lack of deliberate planning” must relate to the error, which in turn refers to “the default, omission, incorrect statement, failure to pay the correct tax, or impermissible avoidance arrangement must be genuinely involuntarily”.⁵⁴

The SARS Guide concludes by stating that the only example of a *bona fide* inadvertent error is a typographical mistake, but only a properly involuntary one.⁵⁵

3 4 Recognised controlling bodies’ (RCB) commentary on the SARS Guide

The South African Institute of Chartered Accountants’ National Tax Committee (hereafter referred to as SAICA) and the South African Institute of Tax Professionals Tax Administration Technical Work Group (hereafter referred to as SAIT), both institutes being RCBs,⁵⁶ submitted their comments on the SARS Draft Guide to Understatement Penalties respectively on 12 February 2018 and 19 February 2018 to SARS. It, however, appears that the following issues regarding part 5, dealing with the meaning of “*bona fide* inadvertent error”, have not yet been addressed in the SARS Guide:

3 4 1 *South African Institute of Chartered Accountants (SAICA)*

Example 14 of the SARS Guide describes the following scenario:

Based on a statement obtained from a charity, the taxpayer filed a return that included a deduction of R2 500 for a donation. It later transpires that the charity’s system developed an error and the deduction should only have been for R1 000. Although clearly a mistake, the incorrect statement is precluded from the ambit of a *bona fide* inadvertent error as the amount was deliberately captured in the return, and a penalty must be imposed. However, none of the listed behaviours in the table encapsulates the cause of the understatement. In fact, the opposite is true – the taxpayer took reasonable care when completing his return (the positive from of item (ii)). He relied on information and documentation that, although incorrect, came from reputable sources. In the absence of other relevant factors, a reasonable person in the same circumstances would likely have acted in a similar

52 SARS *supra* 15.

53 SARS *supra* 16.

54 SARS *supra* 16.

55 SARS *supra* 17.

56 S 240A(1)(d) of the TAA.

fashion. A penalty cannot be imposed, although interest will be payable on the underpaid tax.⁵⁷

The SAICA submission was concerned about the statement in this example that, even though the taxpayer based the deduction on a statement obtained from a charity, it fell outside the ambit of a *bona fide* inadvertent error. The SAICA submission expressed its concern with SARS's view, as it considered that this view may extend the matter to all third-party reports such as banks, medical schemes, employers, etc.⁵⁸ The SAICA submission requested that guidance should be provided in respect of the difference between a "*bona fide* inadvertent error" and "reasonable care not taken", especially in the context of relying on third-party reporting.

3 4 2 South African Institute of Tax Professionals (SAIT)

The SAIT submission highlights the fact that the SARS Guide "explicitly contradicts existing judicial precedent",⁵⁹ in this instance, ITC 1890. The SAIT is of the view that SARS, being an executive authority, should apply the law as it stands, including the precedents provided by the judiciary, where complex matters were the subject of a dispute before the court. Although both SARS and ITC 1890 included a similar analysis of the dictionary meaning of "*bona fide*" and "inadvertent", SARS does not accept the conclusion reached in ITC 1890, which is based on these definitions.⁶⁰

The SAIT submission further expresses the concern that there is insufficient guidance regarding the meaning of the terms "*bona fide*" and "inadvertent". It requested further guidance in respect of these terms, as well as factors that SARS would consider in respect of both terms.

4 Conclusion

The SARS Guide states that an ITC case, such as ITC 1890, is a result of a tax court judgment and is therefore instructive, but has no binding effect. This may be true, but it should be noted that the guidance provided by SARS, in the form of a guide, does not constitute authority either and cannot be regarded as practice generally prevailing (as defined).

It is therefore submitted that the judicial view, as expressed by Boqwana J in ITC 1890, should take preference above the narrow view of SARS when considering the meaning of the term "*bona fide* inadvertent error". Therefore, until further guidance is provided, a *bona fide* inadvertent error, as expressed in ITC 1890, should be regarded as "an innocent misstatement by a taxpayer on his or her return, resulting in an

57 SARS *supra* 18.

58 SAICA Comments on the Draft Guide to Understatement Penalties (2018) 10.

59 SAIT Comments on SARS Draft Guide to Understatement Penalties at 4.2.

60 SAIT Comments on SARS Draft Guide to Understatement Penalties at 4.2.

understatement, while acting in good faith and without the intention to deceive”, and not only properly involuntary typographical mistakes, as viewed by SARS.

Furthermore, it is recommended that the guidance be included as a defined term in the TAA, or, alternatively, documented in the form of an official publication, such as a binding general ruling or an interpretation note, for the guidance to be regarded as practice generally prevailing.