

26 June 2018

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181
Attention: Adele Collins
Via email: acollins@sars.gov.za

**RE: COMMENTS ON THE DRAFT DISPUTE RESOLUTION RULES UNDER SECTION 103 of
THE TAX ADMINISTRATION ACT**

Herewith follows our comments from the SAIT Tax Administration Technical Work Group on the draft dispute resolution Rules under section 103 of the Tax Administration Act No. 28 of 2011 (“TAA”).

We appreciate the opportunity to participate in the process and would welcome further dialogue.

Yours sincerely,

Elle-Sarah Rossato

Vice-chair of the Tax Administration Technical Work Group

Rule 2: Prescribed form and manner and date of delivery

It would seem that the rules create unequal treatment for SARS versus the taxpayer in that there are different rules in respect of delivery by for either party – see in this regard Rule 2(2).

Rule 4: Extension of time periods

We refer to the amendment that the time periods may be shortened and not only extended. The necessary consequential changes should in this respect then also be made, for example, the heading of rule 4 should be amended.

Rule 7: Objection against assessment

General comment

Taxpayers should be informed of the SARS process followed in considering an objection and should have the right to make oral representation to the committee considering the objection to ensure that the correct version of their submission is indeed made to the correct governance committee of SARS.

Rule 7(1): Delivery of notice of objection

We welcome the increase of the time period for delivery of a notice of objection from 30 to 60 days as it will provide some relief. We are, however, of the view that this period should be at least 90 days and that the period by which SARS can give further extension based on reasonable circumstances (before exceptional circumstances need to exist) should also be at least 90 days. In this regard it should be borne in mind that the bar for exceptional circumstances has been lifted and is consequently interpreted very narrowly and therefore seldom met. Given that SARS has three years from the date of assessment before an assessment prescribes, we are of the view that the period for the taxpayer to lodge objection should also be three years.

Rule 7(6): Notice of an invalid objection

Currently Rule 7(5), which is proposed to be deleted, allows taxpayers who receive a notice of an invalid objection to submit a new objection within 20 days without applying for an extension under section 104(4). The proposed Rule 7(6) requires the taxpayer to apply for an extension if he is out of time. We are of the view that the 20-day grace period should rather be retained. Removing it may result in many taxpayers missing the deadlines for submitting a new objection. We also note that, in practice, SARS often issues notices of invalid objection instead of notices of disallowance of objection or request for substantiating documents. SARS should develop procedures to prevent this and provide taxpayers with a mechanism to address this without going to court.

Rule 9: Decision on objection

There should be measure/sanctions to compel SARS if it fails to adhere to the periods to communicate a decision on an objection within 60 days. Similar to how a taxpayer has to request condonation when it misses the deadline within which to lodge an objection, a remedy should be afforded to taxpayers in the Rules. This would be in an effort to deter SARS from disregarding timelines. This will be a more cost-effective remedy than instituting judicial review or obtaining an interdict against SARS.

Rule 16: Appointment of facilitator

We are of the view that it is very important that the facilitator for alternative dispute resolution (ADR) proceedings has the necessary experience, knowledge, skills and independence to be effective in this role. If the facilitator is well-equipped to facilitate the proceedings it should assist in conducting effective ADR proceedings and possible resolutions. We query whether the rules are sufficiently specific in this regard and also mindful of the continual changing of “hats” between the facilitator and SARS representative as they deem fit. We also query whether the list of independent ADR facilitators should not be published to the public in the interest of transparency.

Rule 20: Proceedings before facilitator

We submit that it should not be necessary for the taxpayer (natural person or representative taxpayer) to be personally present at ADR proceedings. The taxpayer should be allowed to be represented by a representative of choice under Power of Attorney even if exceptional circumstances do not exist.

Rule 44: Procedures in tax court

Rule 44(5) provides that a tax court may reserve its judgment until a later date. The Rule however does not provide a timeframe within which reserved judgment can be handed down. The Judicial Skills Training for Regional Court indicated to judicial officers that the salutary principle in relation to reserved judgments is that it must not be delayed or reserved for an unreasonably long period. The Supreme Court of Appeal practice with reserved judgments is that all judgments must be delivered at the end of the term. Given the quantum involved with some tax matters, and the likelihood of the principles in dispute affecting other tax years, it is important to have a timeframe within which judgment is handed down so as to get finality on a matter.

General comments

Time periods

There does not seem to be adequate remedies for taxpayers where SARS officials do not comply with the time periods listed in the Dispute Resolution Rules. This could result in the dispute being unnecessarily drawn out and costly (in terms of time and money). We query whether taxpayers should not have the right to automatically apply to compel SARS to comply with the rules (without having to resort to Rule 56).

END