

7 October 2014

The SARS Language Policy Reference Group
South African Revenue Service
271 Veale Street
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BY E-MAIL: LANGUAGE@SARS.GOV.ZA

Dear Reader

RE: CALL FOR COMMENT: USE OF OFFICIAL LANGUAGES ACT (12/2012): DRAFT LANGUAGE POLICY

Thank you for the opportunity to contribute commentary on the South African Revenue Service Draft Language Policy issued in terms of section 4(2)(h) of the Use of Official Languages Act (No. 12 of 2012).

Set out below, is the consolidated commentary developed from both an internal review of the provisions as well as from consultations with members, stakeholders and industry. The commentary reflects the collective view of members, stakeholders and the industry role players consulted.

1 LANGUAGE OF RETURNS (paragraph 5(ii) and 6(i))

Problem statement:

A tax return incorporates the main compliance mechanism that a taxpayer has to adhere to. Paragraph 6(i) of the regulations indicates that the income tax return for individuals (i.e. ITR12) will be available in all 11 official languages through the SARS Contact Centre self-service option. With SARS' migration of the compliance function to the eFiling system, it is unclear why these forms in other official languages are not available on eFiling as it is clear that SARS has already translated these forms and that the expectation that the ITR12 forms be made available in all 11 languages in electronic form is a reasonable expectation. Paragraph 5(ii) should be amended accordingly.

Proposed solution / recommendation:

Paragraph 5(ii) and 6(i) of the regulations should be amended to ensure that the ITR12 form on eFiling be made available in all 11 official languages or at the very least, the four languages selected for official use.

2. REQUEST TO PROVIDE INTERPRETATION SERVICES (paragraph 6(iv))

Problem statement:

Paragraph 6(iv) of the regulations states that all proceedings and hearings will be in English unless there is a request for translation services. Neither the Tax Administration Act (No. 28 of 2011) (hereinafter “TAA”), nor the current dispute resolution rules promulgated in terms of section 103 of the TAA, provide a mechanism describing how a translator should be requested and when in respect of any of these proceedings

Proposed solution/recommendation

The regulations should identify specific proceedings where specific requests can be made, stating when, how and to whom the request should be made. A general request procedure should also be stated where it does not fall within the specified proceedings identified.

3 SCOPE OF THE APPLICATION OF SECTION 4(2)(B) OF THE USE OF OFFICIAL LANGUAGES ACT (NO. 12 OF 2012) (HEREINAFTER “ACT”) (paragraph 5(i)&(iv))

Problem statement:

It is unclear on what basis it is interpreted that the requirement of a minimum of three official languages that government will use, as provided in section 4(2)(b) of the Act, is limited to using English and only the other languages for marketing material. It is submitted that the reference to “will use” in section 4(2)(b) of the Act clearly means that the selected languages should have general use and not limited use as proposed in the draft regulations.

Proposed solution/recommendation

The draft regulations should provide for a more automatic general use of the nominated languages such as in eFiling and dispute or enquiry proceedings. It is submitted that the current proposal does not meet the requirement set in the Act as to the scope of use of the selected official languages.

4 COMPLIANCE OF PARAGRAPH 5(iii) WITH THE ACT (paragraph 5(iii))

Problem statement

There is a risk that paragraph 5(iii) of the draft regulations is in contravention of section 4(2)(b) of the Act which requires SARS to use at least three official languages. In addition to this concern, section 33 of the TAA would also only allow SARS to request a translation of information if the information is not in one of the 11 official languages of the Republic. Whether SARS would be at liberty to refuse to accept a document that is not in one of the nominated languages for a particular province is yet to be seen.

The current draft regulations seem to totally disregard the objects of the Act as set out in section 2 namely:

- Regulate and monitor the use of official languages by government;
- Promote parity of esteem and equity treatment of official languages;
- Facilitate equitable access to services and information of national government; and
- Promote good language management by government.

The Act already imposes a reasonability criterion by limiting the obligation to only three of the eleven official languages. It is unclear how the draft regulations achieve any of the above objects, except in respect of English.

Proposed solution / recommendation:

As a minimum compliance with the Act, the regulations should expressly permit taxpayers to correspond with SARS in the official language as elected by SARS for that region, which we would assume were determined based on SARS' capabilities to render services in these languages.

5 REQUEST FOR TRANSLATED INFORMATION (paragraph 5(v))

Problem statement:

Paragraph 5(v) of the draft regulations affords a taxpayer the right to request from SARS published or written information that is not available in a specific official language to be provided in such language by giving notice.

This instruction and right is very vague. It does not specify to whom at SARS the request should be made, in what format, which published documents may be requested and the timeframe for SARS to accept or reject the request. In respect of the latter, no mechanism for an acceptance and rejection notification is provided nor for reasons for the decision.

These requests should be dealt with from a central point similar to PAIA requests to ensure the process is not too vague and uncertain so as to discourage the furtherance of language development within SARS and in SARS' engagement with the public.

Proposed solution / recommendation:

It is proposed that SARS provides a central or regional contact for submissions to facilitate requests. Furthermore, due to the vague nature of the documents in question and the variety of documents that may exist, an acceptance or rejection procedure, with reasons, should be provided for.

6 COMPLAINTS (paragraph 9)

Problem statement:

Paragraph 9 of the draft regulations merely states that complaints should be addressed to CSARS. This in our view does not properly provide for a complaints mechanism as required in the Act.

Proposed solution / recommendation:

In this regard the regulations should clearly indicate a physical and electronic address to which the complaints can be sent and a contact number where complainants can follow up the complaints lodged. It should also be confirmed whether this is an administrative matter that falls within the ambit of the Tax Ombud, which should then be expressly stated in the regulations.

Please do not hesitate to contact us should you have any enquiries or require further discussion on our comments.

Yours sincerely,

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