SAIT Short Guide on Tax Dispute Resolution Rules
# Table of Contents

1. GLOSSARY OF TERMS  
   2. INTRODUCTION  
     2.1. Background  
     2.2. Tax dispute legislation  
     2.3. Tax Disputes  
     2.4. Complaints to “SSMO” and Tax Ombud  
       2.4.1. “SSMO“  
       2.4.2. Tax Ombud  
     2.5. Transitional arrangements  
       2.5.1. General  
       2.5.2. Use of new procedures  
       2.5.3. Time periods  
       2.5.4. TAA transitional provisions  
   3. GENERAL PROVISIONS  
     3.1. Delivery rules  
       3.1.2. Delivery in terms of “old rules“ and law  
       3.1.3. Delivery in terms of “new rules“ and law  
     3.2. Index and pagination of documents  
     3.3. Extension of time periods  
     3.4. Test cases  
   4. REASONS FOR ASSESSMENT  
     4.1. Requesting reasons for an assessment  
     4.2. “Adequate reasons“  
     4.3. Formal requirements  
     4.4. Time periods  
     4.5. Failure to comply  
   5. OBJECTIONS  
     5.1. General  
     5.2. Limitation on appeal  
     5.3. Formalities  
     5.4. Time periods  
     5.5. Failure to comply  
     5.6. SARS request for substantiating documents  
     5.7. Decision on objection
6. APPEALS

6.1. Notice of appeal
   6.1.1. Formalities
   6.1.2. Time periods
   6.1.3. Failure to comply

6.2. Alternative dispute resolution
   6.2.1. Formalities
   6.2.2. Pre-ADR proceedings
   6.2.3. ADR proceedings
   6.2.4. Termination of ADR proceedings

6.3. Appeals to tax board
   6.3.1. General
   6.3.2. Trial
   6.3.3. Decision
   6.3.4. Referral to tax court

6.4. Appeals to tax court
   6.4.1. General
   6.4.2. Prehearing statements
   6.4.3. Discovery
   6.4.4. Set down
   6.4.5. Pre-trial conference
   6.4.6. Trial
   6.4.7. Costs
   6.4.8. Notice of appeal to higher court
1. GLOSSARY OF TERMS

To assist the user of this guide, we have indicated the terms below as used in the main text in ““ to indicate that such word has a specific meaning which should be sought below to properly understand the context of the guide and the relevant statements made therein”.

“Commencement date” means 11 July 2014. However, see also the discussion on the transitional arrangements and application of the “new rules” to ongoing matters.

“CSARS” means the Commissioner of the South African Revenue Service

“Date of assessment” means per section 1 TAA, in the case of an assessment by SARS, the date of issue of the assessment or in the case of a self-assessment by the taxpayer (1) the date that the return is submitted or (2) if no return is required the date that the last payment of the tax for the tax period or (3) if no payment, the effective date

“Day” means a business day as defined in section 1 of the TAA and constitutes a day other than Saturday, Sunday or public holiday and, for the purpose of complying with the periods allowed in Chapter 9 (i.e. Dispute resolution), excludes the days between 15 December of each year and 16 January the following year

“Deliver” & “Delivered” means as set out in part 3.1. depending on whether the “old rules” or “new rules”, as discussed herein, apply.

“Dispute” means as discussed in 2.1 below

“New rules” means the dispute resolution rules promulgated in terms of section 103 of the Tax Administration Act 28 of 2011 (GG 37819 11 Jul 2014)

“Old rules” means the rules promulgated under section 107A of the Income Tax Act 58 of 1962 as repealed by section 269(1) of the Tax Administration Act 28 of 2011 on commencement of the “new rules”

“Sign” or “signed” means a written signature or an electronic “signature”.

“SSMO” means the SARS Service Monitoring Office

“SSO” means a Senior SARS official as defined in section 1 read with section 6(3) of the TAA

“TAA” means the Tax Administration Act 28 of 2011

“tax Act” means an act that has to be administered by the Commissioner of SARS and is listed in Schedule 1 to the South African Revenue Services Act
2. INTRODUCTION

2.1. Background

Like any other form of law, tax law creates many disputes, but being a very specific form of law with its own technical language, these disputes are most often heard in the first instance in forums created by law specifically for this purpose. As these forums are created by law they are, unlike other courts with inherent jurisdiction, limited in jurisdiction and powers to what the empowering law permits. Notwithstanding this limited jurisdiction and power, the High Court has affirmed that a matter which is not only a question of law must first be heard in the tax court before the matter can proceed before a higher court.

The origin and occurrence of these disputes were well explained at the inaugural speech of the Gauteng Tax Court at SARS’ Large Business Centre as follows:

When Adam Smith wrote his seminal work “An Inquiry into and the Nature and Causes of Wealth of Nations” in 1776 he identified as one of the maxims with regard to taxes in general that there should be certainty regarding the time, manner and quantity of tax to be paid. As those of you involved in the world of tax will confirm, the everyday reality shows that absolute certainty regarding the precise quantum of tax payable is often quite elusive – it is often the subject of intense debate between the SARS and taxpayers.

A standard textbook on Income Tax tells us simply that:

“Income tax, like all taxes, is imposed by legislative enactment ... the parameters of a taxpayer’s liability to income tax are laid down in the Income Tax Act as interpreted by the courts“.

If it was only that easy! Or if only it was that easy!

The truth is that ordinary everyday language remains the vehicle of the Legislature’s communication with the taxpaying public regarding the individual’s tax obligations. A further reality is that fiscal legislation is often directed at highly complicated transactions found in the modern commercial world.

In this regard a standard work on the Interpretation of Statutes points out:

“It is difficult to express ideas in words with complete accuracy; and the more complex the idea the greater the difficulty. The law has to regulate an intricate and sophisticated society. Axiomatically this requires complicated laws involving language of a fair degree of sophistication, which compounds the difficulties inherent in the process of statutory interpretation...”

The purpose of this guide is to provide some guidance on the application of the legal framework which was specifically created to deal with disputes arising from tax matters which include the “new rules”. Due to the specific facts and circumstances applying to each dispute, this guide will not address every conceivable eventuality but rather provide a roadmap of considerations and the law that would apply in such instance, in order for you to consider the best manner in advising your clients.

2.2. Tax dispute legislation

Tax disputes are mainly addressed in the forums created for such disputes. To understand which tax disputes would be addressed, it is important to know which legislation applies. The “new rules”, together with other legislation, provide the basic framework within which specific disputes arising from a tax matter can be addressed in these forums. This legislation includes the following:
• SARS & Tax Ombud escalation processes (as communicated from time to time);
• the TAA;
• the relevant tax Act (i.e. Income Tax Act 58 of 1962, VAT Act 90 of 1991 etc.);
• the “New rules”; and
• the Electronic Communication rules (promulgated under section 255 TAA GG 37940 25 Aug 14).

It is therefore important to note the interaction and various remedies in these various legislative instruments that may apply to a dispute. For example where SARS has assessed a taxpayer but he or she did not receive the assessment, then the first remedy to address the defective delivery would be in section 253(3) of the TAA and not necessarily in the rules, notwithstanding that it deals with a dispute in process, namely an objection that is specifically dealt with in the rules.

2.3. Tax Disputes

The SARS is mandated to efficiently and effectively collect revenue from taxpayers in terms of the various acts that it administers. To collect such revenue, a liability for a specific tax and period must be imposed on the taxpayer or on any other person on which such obligation is imposed, which is done through an “assessment”. An “assessment” is defined as:

“the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS”.

Therefore by definition, the liability imposed on the taxpayer or any such other person is not only done through the actions of SARS but can also be self-imposed by the taxpayer.

The “tax liability” is not defined but “tax” to which the liability relates is defined to include:

“a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other monies imposed under a tax Act”.

The scope of the liability is therefore not just limited to the liability for taxes and any penalties or interest thereon but will extend to any “monies imposed”, such as provisional tax, which is not a proper tax but rather a prepayment of the normal income tax liability.

A “tax dispute” in the general sense is not defined in the TAA but a definition for the purposes of settlement is found in Chapter 9 dealing with dispute resolution. It defines a “dispute” as:

“a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law, which arises pursuant to the issue of an assessment or the making of a decision”

The definition does not apply to all “decisions” but only those listed in section 104(2) which includes certain decisions listed in the underlying tax Act namely:

• A decision listed in section 3(4) of the Income Tax Act;
• A decision listed in section 32 of the Value Added Tax Act;
• A decision in section 9(3) of the Securities Transfer Tax Act;

Though this definition is comprehensive, it leaves out an important matter regarding disputes with SARS, namely the manner in which a liability is imposed which in recent case law has shown to affect even the main tax liability and the fairness of such liability imposed.

Therefore a tax dispute for the purposes of this guide is represented by the definition of “dispute”
listed above but would also include the manner in which SARS imposes a tax liability to the extent that the rules will apply to such dispute. Note that not all disputes with SARS can be addressed by the “new rules” and in certain instances other mechanisms would have to be employed to resolve a matter which in certain instance may include the “SSMO”, Tax Ombud or even the High Court.

2.4. Complaints to “SSMO” and Tax Ombud

The high court has inherent jurisdiction to deal with matters brought before it but it will only deal with a tax matter to the extent that it is not specifically to be dealt with by the tax court. However, to minimise the cost of litigation, SARS have implemented various mechanisms, including internal mechanisms to deal with tax disputes which are administrative in nature and may in some instances be a quicker and more cost effective manner in resolving disputes.

2.4.1. “SSMO”

The “SSMO” was established in 2002 and is the first point of call to escalate a matter for which the taxpayer has received no satisfactory resolution from SARS within a reasonable time after lodging a complaint with SARS. The taxpayer must however ensure that he has logged the complaint with the SARS and received a reference number, before approaching the SSMO. The following service related disputes will be addressed by the “SSMO”:

- Delays in processing returns, decision making and the correction of administrative mistakes,
- Failure to provide reasons for making an adjustment to a return,
- Failure to respond to queries, objections, and appeals, and
- The conduct and attitude of SARS staff.

Note that many of the matters listed can also directly relate to an assessment or decision issued by SARS and should therefore not be excluded as an alternative or additional dispute resolution mechanism, for example, where SARS made a calculation mistake. However, some matters, for example, the conduct or attitude of SARS staff, may facilitate a quicker resolution of the dispute under the “new rules” but will not directly address the merits of the dispute which should still be dealt with in terms of the “new rules”.

The “SSMO” can be contacted by the following means:

Postal address: P O Box 11616, Pretoria, 0028
Telephone:0860 12 12 16
Facsimile:012 6706906
Email:ssmo@sars.gov.za
Physical address: A-Block, First Floor, Hatfield Gardens, 333 Grosvenor Road, Hatfield, Pretoria

In short, the information that should be submitted to the “SSMO” is the following:

- Your name and contact details,
- Your tax reference number or identity number, if it is available,
- Details of your complaint.
- The Service request number obtained from the branch office or contact centre

2.4.2. Tax Ombud

Once the taxpayer has exhausted all internal remedies available to him or her, as well as escalated the matter to the “SSMO”, then he or she will be able to lodge a complaint with the Tax Ombud.
The internal remedy requirement is not necessary if “compelling circumstances” exist.

2.4.2.1. “Compelling circumstances”

The Oxford Dictionary defines “compelling” as:

“Not able to be refuted”; or
“Overwhelming”

The TAA does not leave the interpretation of what would constitute “compelling circumstances” to its mere grammatical interpretation but lists factors that the Tax Ombud must consider, when determining if the circumstances are compelling. These factors are listed as:

• If the request raises systemic issues;
• Exhausting the complaints resolution mechanisms will cause undue hardship to the requester;
• Exhausting the complaints resolution mechanisms is unlikely to produce a result within a period of time that the Tax Ombud considers reasonable.

What is unclear, is if after consideration, none of the factors apply but the circumstances under which the complaint is lodged remain unrefuted or overwhelming, whether the Tax Ombud can still accept the complaint? It would not be difficult for a taxpayer or tax practitioner to bring a serious and genuine complaint under the ambit of these factors and therefore to avoid any debate thereon, an application directly to the Tax Ombud should, where possible, seek to argue why the merits of the facts fall within the ambit of these factors.

2.4.2.2. Formalities and scope

Matters to be raised with the Tax Ombud are limited to a service matter, procedural matter or administrative matter. Further limitations are imposed in that the matter may not constitute a review of:

• Legislation & policy;
• SARS policy or practice generally prevailing unless one of the three scope matters
• Matters subject to objection and appeal except if it is an administrative matter in respect thereof; Matters before a court or a decision of court.

The Tax Ombud allows for personal interviews and consultations as well but requires an appointment for such meetings which request should be in writing. The Tax Ombud can be contacted by the following means:

Phone: 0800 662 837 or (+27) 12 431-9105
Fax: (+ 27) 12- 452-5013
Email: complaints@taxombud.gov.za
Postal Address: PO Box 12314; Hatfield; 0028
Physical address: IParioli building, Block A3, Ground Floor; 1166 Park Street (Between Jan Shoba/old Duncan & Grosvenor Streets), Hatfield, Pretoria, 0157)

The complaint form (OTO01) should be completed and can then be submitted to the above contact address, alternatively it can be completed online on the Tax Ombud webpage (http://www.taxombud.gov.za/docs/complaint-form.pdf).

The Tax Ombud is compelled to review a complaint and can only refuse to do so if prohibited by
the enabling legislation. However where the matter cannot be reviewed by the Tax Ombud the complainant will be notified with reasons for such decision. Similar to any SARS decision, such decision can also be taken on review to the High Court as no other remedy is provided for in the TAA.

2.4.2.3. Historical matters

The coming into being of the Tax Ombud on 1 October 2012 and his subsequent appointment from 1 October 2013 however does not mean that the first Tax Ombud can review all matters.

The first Tax Ombud may not review a matter that arose more than one year before the day on which he was appointed, unless the Minister of Finance requests him to do so.

What may be a subject of contention is the question as to when a matter arose? The matter in issue would be a service matter, procedural matter or administrative matter, which matter seemingly arises from the application of the provisions of a tax Act by SARS. The timing therefore seems tied to when SARS applied the provisions of a tax Act which resulted in the service or procedural or administrative matter and not necessarily when the taxpayer raised a complaint against such matter. However as there can be no service, procedural or administrative matter without a complaint against how SARS applied the provisions of a tax Act, it is arguable that it is the date of the complaint by the taxpayer that would determine whether a matter arose before or after 1 October 2012 and not the date of the action or non-action by the SARS official in applying the provisions of a tax Act.

2.5. Transitional arrangements

2.5.1. General

The “new rules” commenced on the 11th July 2014 and the taxpayer should, prior to commencing any proceeding in terms of the “new rules” determine whether the new or “old rules” should be applied. It should also be determined whether, in respect of proceedings or actions taken before the commencement date of the “new rules”, whether the taxpayer would suffer a prejudice if compelled to use the “new rules”.

As a general point of departure, rule 66(1) makes the application of the “new rules” applicable to all acts or proceedings taken, occurring or instituted before the commencement date and those actions, including court matters, must be completed under the “new rules” as if instituted under them.

To facilitate this general retrospective application, rule 66(3) deems a document to have been “delivered” by the taxpayer, appellant, SARS, clerk or registrar in terms of the “old rules”, as having been delivered under the “new rules”, as from the date that the document was issued or delivered under the “old rules”. Furthermore, SARS, also in terms of rule 66(4), now becomes entitled to file a reply to the taxpayer’s grounds of appeal, if before the commencement of the “new rules”:

- the appeal has not been heard; and
- the taxpayer has filed its grounds of appeal.

2.5.2. Use of new procedures

Rule 67 applies in respect of disputes that have not been decided before the “commencement date”, a party to a dispute (i.e. both SARS and the taxpayer) may use any procedure in the “new rules” as long as such procedure is in sequence after the last action taken by either parties or the
time period for the previous rule.

2.5.3. Time periods

The completion and running of time periods in the transitional period is dealt with in rule 68 and as a general rule does not extend time periods that expire for the “commencement date”. Due to the change in time period between the “old rules” and the “new rules”, for the transition, a time period for a procedure which ends only after the “commencement date” will expire as determined under the “old rules” and any procedure under the “new rules” thereafter will be determined from the day after such expiry date.

2.5.4. TAA transitional provisions

When considering a dispute in terms of the new rules which pertains to either a historical period before the commencement date of either the “new rules” or the TAA, or in respect of a dispute engaged in before such dates, the prejudice, if any, of applying the “new rules” or not being able to apply any historical remedy should be considered. In this regard the taxpayer’s entrenched rights in the transitional provisions should also be considered, which in some instances includes additional remedies.

3. GENERAL PROVISIONS

3.1. Delivery rules

When applying the “new rules” it is important to understand the concept of “delivery” and how it is to be effected by either SARS or the taxpayer as the manner and timing of delivery can be compelled or deemed. As tax practitioner, you should furthermore consider which of the forms of delivery will pose a challenge, for example, where the taxpayer holds his own eFiling profile or it is held by another tax practitioner who will continue to do the tax compliance and you are compelled to respond on eFiling. Also determine how accessible your client is for accepting and sending documents to both you and SARS as you would have to cater for this in your strategy and planning of the dispute. Non-compliance with the formalities of delivery will in many instances result in no document legally being received or sent which can have catastrophic implications for the taxpayer.

The differences between “delivery” between the “old rules” and “new rules” should be understood to ensure that taxpayers comply therewith and understand what SARS is required to comply with. In respect of the transitional rules, taxpayers should ensure that the application of the delivery rules in terms of the “new rules” do not prejudice the action or proceedings conducted before the “commencement date”.

3.1.2. Delivery in terms of “old rules” and law

To understand how the new law in respect of the delivery requirement has changed, it is prudent to understand what the old law required. Firstly the concept of “deliver” in rule 1 of the “old rules” pertaining to objection and appeal processes was separated from the standard delivery rules in section 106 of the Income Tax Act as it had a separate definition which did not cross reference.

The general delivery provision in section 106 did not deal with delivery by the taxpayer but merely provided for delivery by SARS which included the following:
- Personal delivery by hand
- Left with an adult at last known address
- Sent by registered or any other kind of post
- Transmission by electronic means to last known electronic address;
- If a company, delivered as above to the public officer or the company.

There was a deemed receipt rule but importantly, this did not apply where criminal proceedings were instituted due to the failure to do something in terms of a form or notice that was to be delivered, in such instances, only registered or certified post applied. Furthermore, where a taxpayer could satisfy SARS that the document was not received, such document could be withdrawn by SARS and reissued.

When it came to dispute resolution, more stringent provisions applied to both SARS and the taxpayer and also no distinction was made between the parties in dispute as to the formalities of delivery. Rule 1 of the "old rules" defined "deliver" to mean:

- Handing the document to the relevant person
- Sending it by registered post
- Telefax the document
- Transmit the document by electronic means
- Any other means of service authorised by the Tax court. Provided where the document is sent by telefax or electronically, a signed document must also be hand delivered or sent by registered post within ten days.

No deemed delivery rule applied and both SARS and the taxpayer would have to prove delivering in terms of the above methods if this came into dispute.

### 3.1.3. Delivery in terms of “new rules” and law

The new law and “new rules” have become a lot more complex, which in part is recognition that delivery in a modern society has become a complex legal formality. The new law therefore addresses the delivery requirement from both the taxpayer and SARS, dealing with delivery methods, timing and receipt of acknowledgement for various forms of delivery.

A further reason for the apparent complexity is that it is not separated as before, but now cross referenced to other bodies of law. It furthermore now specifically distinguishes between the delivery obligations of taxpayers and those of SARS, deals with more forms of delivery and also specifically deals with legal receipt for some forms of delivery. On closer inspection it does however seem that many of the delivery requirements have remained the same, though in respect of electronic communications, substantial changes have been made.

The new law is mainly contained in the TAA, the “new rules“ and the ECT rules. For those of you who do plan on utilising the services of the high court for tax disputes, delivery of documents to court would then be prescribed by the Uniform Rules of the High Court. Where a delivery method is compelled, be aware of it and its risks. For example if a notice of assessment is received on eFiling and the taxpayer submits a notice of objection through eFiling, SARS may (rule 1 definition of “deliver paragraph (b) of the dispute rules) deliver a document, namely the disallowance of the objection, by posting it on eFiling without having to notify the taxpayer by any other means. Furthermore the taxpayer will then be deemed to have received it or have effective knowledge thereof unless it is proven otherwise. In general, delivery for electronic communications occur when it enters the information system of SARS or the taxpayer and is capable of retrieval by the recipient party.
Rule 1 defines “deliver” as follows:
Means to issue, give, send or serve a document to the address specified for this purpose under these rules, in the following manner:
(a) By SARS, the clerk or the registrar, in the manner referred to in section 251 and 252 of the Act, except the use of ordinary post
(b) By SARS, if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, by posting it on the electronic filing page of the taxpayer or appellant; or
(c) By the taxpayer or appellant, by
(d) Handing it to SARS, the clerk or registrar;
(e) Sending it to SARS, the clerk or registrar by registered post;
(f) Sending it to SARS, the clerk or registrar by electronic means to an email address or telefax number; or
(g) If the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, submitting it through the SARS electronic filing service.

Section 251 (i.e. persons other than companies) and section 252 (i.e. companies) contain similar provisions to the “old rules” namely:

• Handing it to the taxpayer or public officer of a company
• Leaving it with a person over 16 years apparently residing or working at the last known residence or place of business per section 247 TAA
• Sent by post to the person, public officer or companies last known address or place of business
• Sending it to the last known electronic address including email or telefax.

There is also no special rule in respect of criminal matters, so where SARS now sends a request for delivery of a document by eFiling or ordinary post then the taxpayer can still be criminally prosecuted for his or her failure to send the document. For example a person who is requested to submit relevant information in terms of section 46 of the TAA and fails or neglects to do so has committed a criminal offence in terms of section 234(h)(i) of the TAA notwithstanding that SARS sent the request via eFiling or ordinary post as SARS does not need to prove receipt or effective knowledge of the request.

Delivery of documents to the tax board and tax court must be made to the following contact addresses:

Tax Court

Name of Section
Physical Address for Service
Contact Details
Office of the Registrar: Tax Court
Chief Registrar: Tax Court
Mrs Marisa McKenzie
Office of the Registrar: Tax Court
First Floor
Khanyisa Building
271 Bronkhorst Street
Nieuw Muckleneuk
0181
Fax
Email
(+2712) 422 5012
RegistrarTaxCourt@sars.gov.za
Tax Board

SARS Region
Physical Address for Service
Contact Details
Contact Person
Position
Fax / Email
Limpopo, North West, and
Mpumalanga
SARS - Legal Delivery, Support & Partnership (LDS&P)
40 Landdros Maree Street Polokwane
0699

Michelle Chokoe

Clerk of the Tax Board
Fax (+27) 86 575 2630
Email MChokoe@sars.gov.za
Gauteng North
SARS - Legal Delivery, Support & Partnership (LDS&P)
Riverwalk Office Park
Matroosberg Road
Pretoria
0001

Zanele Madonsela

Clerk of the Tax Board
Fax (+27) 10 208 3067
Email ZMadonsela@sars.gov.za
Gauteng South
SARS - Legal Delivery, Support & Partnership (LDS&P)
Alberton Campus
Saint Austell Road
New Redruth
Alberton
1450

Gina Mackenzie

Clerk of the Tax Board
Fax (+27) 86 612 1643
Email gmackenzie@sars.gov.za
Gauteng Central 1
SARS - Legal Delivery, Support & Partnership (LDS&P)
Megawatt Park - LBC Office
Maxwell Drive
Sunninghill

Tshifhiwa Dau

Clerk of the Tax Board
Fax (+27) 86 513 1758
Email TDau@sars.gov.za
Gauteng Central 2
SARS - Legal Delivery, Support & Partnership (LDS&P)
Megawatt Park - LBC Office
Maxwell Drive
Sunninghill
Sibongile Ngema

Clerk of the Tax Board
Fax (+27) 11 602 4265
Email SNgema@sars.gov.za
TCEI matters
SARS - Legal Delivery, Support & Partnership (LDS&P)
Megawatt Park - LBC Office
Maxwell Drive
Sunninghill
Refilwe Makhafola
Coordinator
Fax (+27) 86 611 3615
Email Rmakhafola@sars.gov.za
Cape Town
SARS - Legal Delivery, Support & Partnership (LDS&P)
18th Floor
Sanlam Building
Project 166
22 Hans Strydom Avenue
Cape Town
8001

Evelyn Banda

Clerk of the Tax Board
Fax (+27) 10 208 1961
Email EBanda1@sars.gov.za
Durban
SARS - Legal Delivery, Support & Partnership (LDS&P)
7th Floor
Albany House
61/62 Margaret Mncadi Avenue (previously Victoria Embankment)
Durban
4001

Kim Dean

Clerk of the Tax Board
Fax (+27) 86 617 7595
Email KDean@sars.gov.za
Free State
SARS - Legal Delivery, Support & Partnership (LDS&P)
Fedsure Building
49 Charlotte Maxeke Street
Bloemfontein
9301

Fransie Smith

Clerk of the Tax Board
Fax (+27) 501 3201
Email FSmith@sars.gov.za
Eastern Cape
SARS - Legal Delivery, Support & Partnership (LDS&P)
Revenue Building
Cnr St Mary’s Terrace & Whytes Road
Central
Port Elizabeth
6001
Documents in tax court litigation that must also be sent to SARS as party must be sent to:

**SARS: Tax court**

<table>
<thead>
<tr>
<th>Name of Section</th>
<th>Physical Address for Service</th>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Court Litigation</td>
<td>First Floor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Khanyisa Building</td>
<td></td>
</tr>
<tr>
<td></td>
<td>271 Bronkhorst Street</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nieuw Muckleneuk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0181</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Email</td>
<td></td>
</tr>
<tr>
<td></td>
<td><a href="mailto:taxcourtlitigation@sars.gov.za">taxcourtlitigation@sars.gov.za</a></td>
<td></td>
</tr>
</tbody>
</table>

Where High Court litigation is instituted against SARS the relevant notices and documents must be sent to:

**SARS: High Court**

<table>
<thead>
<tr>
<th>SARS Region</th>
<th>Physical Address for service</th>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head Office</td>
<td>Gauteng North</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gauteng Central</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gauteng South</td>
<td></td>
</tr>
<tr>
<td></td>
<td>LBC matters</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TCEI matters</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SARS - High Court Litigation Unit, Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1st Floor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Khanyisa Building</td>
<td></td>
</tr>
<tr>
<td></td>
<td>271 Bronkhorst Street</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nieuw Muckleneuk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>0181</td>
<td></td>
</tr>
</tbody>
</table>

**Zweli Nyikiza**

Administrative Assistant, High Court Litigation Unit
Tel (+27) 12 422 6963
Fax (+27) 10 208 2092
Email HighCourtLitigation@sars.gov.za

The various forms of delivery by the taxpayer are discussed in more detail below.
3.1.3.1. Written response to letters from SARS

A written letter received by post from SARS will usually indicate who the sender is or at least the sending office. A response method may be prescribed in such letter which should then be followed or may be prescribed by law. Where no specific address applies, the taxpayer can respond by delivering the response letter by hand or registered mail to a specified SARS branch if so required or any SARS branch if a specific branch is not specified or required. The taxpayer and his or her tax number as well as the applicable period to which the letter relates should be clearly indicated to ensure that SARS knows in respect of which taxpayer the documents are received.

This response may include responses to letters of findings, request for reasons after a notice of assessment is received and requests for suspension of payment.

For letters delivered by post the registered post slip is proof of delivery. For delivery by hand, a stamp or signature would suffice but it is also advised that the receiving SARS official complete a full name and surname should any dispute arise and that person’s identity needs to be determined. It is also best practice that where multiple documents are submitted that they are specified separately and the person acknowledges receipt by initialling after the description of each document.

The date of delivery is the date of receipt by SARS which for hand delivered documents will be the actual date. For letters sent by registered post the time of delivery remains date of receipt by SARS. However it is unclear when receipt by SARS occurs due to the deeming provision in section 253(1) TAA (i.e. time it would have been received in the ordinary post). It may therefore be advisable for taxpayers to contact the SARS Call Centre to confirm receipt or the relevant post office to confirm whether SARS collected or received the letter and when.

3.1.3.2. Response to SARS email by email

Responses to email, can without another method being required or specified, be done via an email response. In this regard it is again always advisable to note the taxpayer and its tax no. in every correspondence.

In respect of email the parties can agree a method of acknowledgement or through a SARS communication whether automated or not (i.e. email return receipt) or through the taxpayer’s conduct that it has been received, such as a later correspondence referring to it. It is very important to note that no delivery of an email will be deemed to have occurred if an acknowledgement of receipt is not received though it does not seem that such acknowledgement changes the time of delivery.

Time of delivery remains date of receipt which for electronic communications is the date it enters SARS’ information system and is capable of being retrieved and is not the date the SARS recipient reads or opens the email.

3.1.3.3. Taxpayer response on electronic filing service

Correspondence on electronic filing service may or may not require using such system as a compulsory method and in some instance it may not even be available, such as to do a request for reasons. Correspondence can take the form of a prepopulated document or as an attachment to be uploaded. Here the tax practitioner should again plan how correspondence will occur on the electronic filing service, especially where he or she does not control the profile. The relevant approval of all correspondence should also be obtained. Delivery occurs once it is correctly submitted on the electronic filing service for processing as is deemed to be received at the usual
place of business of SARS or the taxpayer.

Practical concerns do exist for acknowledgement of receipt procedures for electronic filing services as the taxpayer has no control over the system or the maintenance of its content. This is a matter that has been escalated to SARS head office so that this functionality can be added, similar to the printed payment confirmation. In the mean time you would have to accept the risk. For important documents, do a print screen to a word document once submitted and save it to the client file.

Time of delivery is receipt by SARS which for electronic filing services is when the complete transaction enters SARS’ information system and is correctly submitted by the registered user in order to be processed in the appropriate SARS electronic filing service.

Here you should be careful to ensure that you correctly adhere to the requirements of the filing system to prevent failed delivery. For example the Efiling system only accepts certain document formats of a certain size and in certain formats can only read some of the data (for example it can only access the first worksheet in an excel document). It is understood that if a batch of documents contain a single incompatible format the whole batch will not be accessible by SARS. In such instance no delivery would have occurred by the taxpayer.

### 3.2. Index and pagination of documents

Historically, the requirement to index and paginate documents that are to be put in front of the presiding officer was limited to the tax court. Tax board proceedings were a lot less formal and additional documents could merely be handed to the presiding officer or SARS, unless the presiding officer had prescribed otherwise.

However, this is not the case anymore and formal drafting and filing requirements now apply to proceedings in both the tax board and tax court. All documents that are required to be delivered under the rules, which includes original submissions (i.e. drafted in terms of the rules) and supporting documents, must be:

- If drafted under the rules, must be divided into paragraphs numbered consecutively
- Must be paginated (both original submissions and supporting documents); and
- As far as possible arranged in chronological order (i.e. by date).

All documents must further also have an index that corresponds to the chronological order and in which the documents can be readily identified with references to the document itself. Where additional documents are filed in the tax board or tax court after the index was completed and submitted, the party filing the additional documents must paginate according to the original pagination and provide a supplementary index.

Unless the parties agree otherwise, the person producing the documents and index must make as many copies as specified by the clerk of the tax board or registrar of the tax court and together with those copies provide a copy to the clerk or registrar and the other party. Where a document is delivered electronically it must comply with the rules for electronic communication issued under section 255 of the TAA.

### 3.3. Extension of time periods

Rule 4 provides that where the “new rules” or Chapter 9 TAA does not regulate the specific extension sought in terms of a period in the rules, the parties, namely either the taxpayer, SARS or the registrar, may agree to an extension. A request for extension must be delivered to the other part before expiry of the relevant period unless the parties agree, otherwise and where SARS has
a discretion to grant an extension, the grounds of such extension must be stated. If they cannot agree, the party seeking relief could still approach the tax court to condone the non-compliance or extend the relevant period. The further steps in the proceedings will then commence not from the original expiry date but on the expiry date of the extension.

3.4. Test cases

A “SSO” may designate a specific objection or appeal as a test case and stay all similar objections and appeals in the manner prescribed in the “new rules”. The “SSO” must inform the taxpayer by notice of such designation as test case or staying of proceedings before the objection is decided, the chairperson of the tax board has made a decision or the tax court has heard the matter. The notice to the taxpayer must set out the common issues involved, the questions of law or fact that the test case will determine and the importance of the test case in the administration of the relevant tax Act.

A taxpayer who receives a notice of either being designated a test case or that its case is stayed pending a test case may oppose such notice by providing a notice with 30 days with grounds of such opposition or a notice requesting participation in a test case where the case was stayed. If no notice is received by SARS the determination remains final.

Where an opposing or participation notice was delivered by the taxpayer, SARS must within 30 days of such notice withdraw the decision, agree to the request for participation or apply to the tax court for an order confirming the decision of the test case, staying of another case or preventing participation.

Where a taxpayers appeal or objection was stayed as a result of a test case, such deferral terminates on the date that:

- The taxpayer has opposed or requested participation and SARS have not withdrawn the decision or applied to court within the 30 day period;
- SARS delivers a notice withdrawing the decision
- Agreement between SARS and the taxpayer to terminate the stay of proceedings, or
- Dismissal by the tax court or a higher court of SARS application for the decision where it was opposed by the taxpayer.

A taxpayer can also approach the tax court on notice for an order that the judgement in a test case is not determinative of the matters in dispute in the taxpayer’s objection or appeal and that such taxpayer may proceed with its objection or appeal.

4. REASONS FOR ASSESSMENT

4.1. Requesting reasons for an assessment

Rule 6 allows the taxpayer who is aggrieved by an assessment to lodge a request with SARS to provide reasons for the assessment required to enable the taxpayer to formulate an objection. The requirement as to the sufficiency of the reasons is colloquially referred to as adequate reasons based on the Constitutional mandate imposed on SARS to act in a specific manner. Importantly, this request must be done prior to lodging an objection.
4.2. “Adequate reasons”

Historically this rule was aligned to the wording of the constitutional obligation, namely “adequate reasons”, but has been amended in the “new rules to the requirement that it should merely be sufficient to enable the formulation of an objection. Reasons should not be requested in all instances but only where the taxpayer does not have sufficient reasons to formulate an objection that complies with rule 7. Rule 7 requires that detailed grounds should be stated in respect of:

- The part or specific amount of the disputed assessment
- Which of the grounds of assessment are disputed; and
- The documents required to substantiate the grounds of objection not previously provided to SARS.

As the rule 7 objection is a response to the grounds of assessment the tax practitioner must ensure that reasons were provided in respect of the required aspects of a valid assessment. It is submitted that the lawfulness requirement has remained the same and therefore SARS is still required to furnish the taxpayer with the following, namely:

1. that the SARS decision maker should set out its understanding of the relevant law,
2. any findings of fact on which SARS’ conclusions depend must be stated and
3. the reasoning process which led to those conclusions must be disclosed

The most contentious of these is the third requirement which may be argued is not a requirement. However it is submitted that it would be impossible to formulate a detailed objection to the disputed assessment if the SARS rationale as to why the specific law applies to the stated finding of facts is not explained to the taxpayer. It is only at such point that the taxpayer can determine whether he agrees or not and even if he does not agree the taxpayer understands why the decision went against him.

The tax practitioner will therefore have to ensure that reasons as required are available from the various correspondences received from SARS.

4.3. Formal requirements

Rule 6(2) requires that the request for reasons must:

- be in the prescribed form and manner
- specify an address at which the taxpayer will accept delivery of the reasons; and
- be “delivered” to SARS within 30 “days” from the “date of assessment”.

4.4. Time periods

The timing of the right to request reasons in terms of rule 6 is triggered by the issuance of the notice of assessment and the request must be made before the objection is submitted. The old rule 3 merely required that the request be sent within 30 days of the assessment and did not prescribe that it must be before the objection is lodged. The 30 day maximum period is however retained.

The time periods applicable to the submission and response for the request for reasons is as follows:

For the taxpayer to submit a request:
• 30 “days” for submission from the “date of assessment”
• Rule 4 extension for an agreed period, up to a maximum of 45 days, if agreed with SARS prior to the expiry of the 30 days.

For the SARS to respond to request:

Adequate reasons given
• 30 “days” from delivery of request by taxpayer if SARS are of the opinion that adequate reasons have been provided
• Rule 4 extension for an agreed period if agreed with taxpayer prior to the expiry of the 30 days.

Inadequate reasons given
• 45 “days” from delivery of the request by taxpayer if SARS are of the opinion that further reasons must be provided. This period may be extended by SARS in exceptional circumstances by up to another 45 “days” if SARS notifies the taxpayer of the extension before expiry of the 45 days.

4.5. Failure to comply

Where the “new rules” or Chapter 9 of the TAA do not provide for the extension of a period to comply with a procedure, rule 4 allows the parties or a party and the clerk/registrar to agree to an extended period if requested before expiry of the period. However, where a party has failed to request extension in the time allowed in rule 4, such party can apply to the tax court in terms of rule 52(1), on good cause shown, to extend the period as the court may decide.

Rule 6 does not provide for the extension of the time period to submit the request for reasons and therefore rule 4 applies. The taxpayer can therefore before the expiry of the 30 days request an extension from SARS who can mutually agree thereto or if they do not, apply to the court under rule 52 on good cause shown to extend such period.

Rule 52(2)(a) also allows the taxpayer to apply to the tax court, where SARS has failed to provide adequate reasons as required in rule 6, to compel SARS to provide reasons to the taxpayer, within such time as the court allows, as the court regards as adequate for the taxpayer to formulate an objection.

Alternatively, where a defaulting party (i.e. SARS) has not complied with a period or obligation under the “new rules” the other party may in terms of rule 56 give the other party notice that it has 15 days to remedy the default and if it fails to comply the party will apply to the tax court for a final order under section 129(2).

The tax court may make a final order under section 129(2) or make an order that the defaulting party comply in such time as the court considers appropriate.

5. OBJECTIONS

5.1. General

Once the taxpayer has determined whether he is entitled or able to object to the assessment or decision, he or she may proceed with the objection. “Grounds of objection” are the taxpayer’s response to the grounds of assessment as to why he does not agree with either a fact, the law, the
rationale of the conclusion or a decision taken by SARS. You must therefore clearly understand the grounds of assessment to identify which part thereof is disputed and why.

Only then will you be able to meet the minimum detail requirement in rule 7(2)(b)) of specifying the part or specified amount in dispute, which grounds of assessment are disputed and which documents are required to substantiate the grounds of objection that has not previously been delivered to SARS, though you would need to refer to the ones already submitted as well.

5.2. Limitation on appeal

If you do not properly argue the matter on behalf of the taxpayer in the objection, it is now expressly determined that on appeal the taxpayer may not raise a new objection though he may only raise a new ground in respect of a stated objection.

To ensure that you do object to all the matters in dispute and will formulate proper grounds you must be sure that you have identified all the “grounds of assessment“, which may include earlier letters of finding or decisions not to remit, to each matter in dispute.

5.3. Formalities

Rule 7(2) states the minimum formal requirements which the objection has to comply with to constitute a valid objection which is:

• Complete the prescribed form in full;
• Specify the grounds of objection in detail including: the part of specific amount of the disputed assessment objected to;
• which of the grounds of assessment are disputed; and
• the documents required to substantiate the objection that the taxpayer has not previously provided to SARS.
• if a SARS electronic filing system is not used the taxpayer must specify a physical address where the taxpayer will accept delivery of all further documents from SARS;
• the prescribed form must be “signed” by the taxpayer or his duly authorised representative; and
• the taxpayer must “deliver”, within the 30 “day” period, the completed form at the address specified in the assessment or where no address is specified the address in rule 2.

5.4. Time periods

In terms of rule 7(1) the objection must be “delivered“ to SARS by the taxpayer within 30 “days“:

• If reasons were requested under rule 6, as calculated from the day after “delivery“ of a notice by SARS either that the reasons were adequate or a notice containing the further reasons as requested by the taxpayer; or
• If no reasons were requested, as calculated from the “date of assessment“.

Where a taxpayer requires more time to finalise the objection, a “SSO“ may extend the time period if he or she is satisfied that reasonable grounds for the delay exist. Such extension shall however not be more than 21 days, unless the “SSO“ is satisfied that exceptional circumstances exist.

The “SSO“ is prohibited from providing extension if:
• more than 3 years have lapsed since the “date of assessment” or “decision”; or
• the grounds of assessment are based wholly or mainly on a change in a practice generally prevailing which applied on the “date of the assessment” or “decision”.

The decision not to extend the time period for lodging an objection is in itself an “assessment” for the purposes of the new rules separate from merits of the tax dispute against which the taxpayer may object. The taxpayer can also approach the tax court for an order to extend the relevant period.

5.5. Failure to comply

Where a taxpayer delivers an objection that fails to comply with the formalities in rule 7(2), SARS may regard the objection as invalid. However SARS must then within 30 days of submission of the invalid objection notify the taxpayer that the objection is invalid and state the ground of invalidity. This requirement only has to be met if the taxpayer submitted the invalid objection on SARS electronic filing service, provided an address for return of documents as required in rule 2(c) or SARS is in possession of the current address of the taxpayer. If none of these apply SARS is under no obligation to send such notice of invalidity.

The taxpayer will then have 20 days from the date of “delivery” by SARS of the notice of invalidity to submit a new objection that corrects the previous ground of invalidity. This period applies automatically and the taxpayer will not have to request extension. Where the taxpayer fails to submit within the 20 days a new objection or such new objection is also invalid, the assessment will become final unless the taxpayer can secure an extension for submission of the objection in terms of section 104(4). On refusal for such extension the taxpayer may again either object to such decision or approach the tax court. Where the taxpayer contests SARS’ decision that the initial or subsequent objection was invalid, an application can be made to the tax court for an order of validity of such objection. However no right of objection exists against such determination.

Where SARS has not sent the relevant notice of invalidity as required and treated the assessment as final in terms of section 100 TAA, the taxpayer can deliver a notice to SARS informing them that the taxpayer intend to apply to tax court for an order either in terms of section 129(2) TAA or an order compelling SARS to issue the notice of invalidity.

5.6. SARS request for substantiating documents

SARS may within 30 “days” of delivery of the objection by the taxpayer request the taxpayer to provide additional substantiating documents to decide the objection. The taxpayer must deliver the documents within 30 days of this notice or where reasonable grounds exist may request extension prior to the 30 days expiring, however such extension may not exceed 20 days.

5.7. Decision on objection

SARS must decide on the objection and the basis of such decision within:

• 60 “days” after delivery of the taxpayers objection; or
• Where documents were requested in terms of rule 8, 45 “days” after delivery of the documents or expiry of the 30 days to provide such documents.

The notice containing the decision must state the basis of the decision and the summary of the procedures to appeal. SARS may extend this period by a maximum of 45 days if a SSO is of the opinion that more time is required, whereupon a notice of extension must be sent before expiry of the 60 “days”.

22
Where SARS fails to provide a decision in terms of rule 9 in the relevant time period or does not provide the basis for such decision, the taxpayer may approach the tax court for an order under section 129(2) TAA or the tax court may compel SARS to issue such decision. Once an unfavourable decision is obtained the taxpayer would have to consider whether the matter should proceed on appeal. As an alternative, a complaint can also be submitted in terms of SARS’ internal complaints resolution mechanism, where after the matter can be referred to the Tax Ombud.

6. APPEALS
6.1. Notice of appeal

Once the taxpayer has decided to appeal against the disallowance of the objection or part of the objection, the matter will proceed to appeal to the tax board or tax court.

6.1.1. Formalities

Rule 10(2) requires that the notice of appeal must:

- Be in the prescribed form
- If a SARS electronic filing service is used, specify an address at which the appellant will accept delivery of documents where such service is no longer available to progress the appeal
- Specify in detail:
  - The grounds of objection in rule 7 the taxpayer is appealing
  - The grounds for disputing the basis of disallowance as stated in the notice of disallowance; and
  - Any new ground on which the taxpayer is appealing;
- Be signed by the taxpayer or his duly authorised representative; and
- Indicate whether the taxpayer wishes to make use of ADR

6.1.1.1. Prescribed form

Two different notice of appeal forms exist namely the NOA form and the older ADR2. If the wrong form is used SARS will deem the appeal as invalid (rule 10(2)(a)). If the appeal is in respect of individual income tax or corporate income tax, including penalties and interest, the NOA form must be used. Where the appeal is in respect of an admin penalty for which a RFR01 remittance form was submitted, this can also be done on the NOA form. These forms must be completed in full and in respect of all the disputed amounts to prevent that a matter on appeal is not heard in the tax board or court.

6.1.1.2. Specify address

Currently the SARS electronic filing service only seems to apply up until the completion of the notice of appeal and all subsequent correspondence between the parties will be by post or email. It is therefore important to consider which address will be specified for this purpose, namely that of the taxpayer or the representative, the latter being either the tax practitioner or legal counsel.

6.1.1.3. Details

Rule 10(2)(c) specifies the minimum content that the appeal grounds must have. Firstly, the taxpayer must state which of the grounds of objection it is taking on appeal. Secondly the taxpayer must state grounds for disputing the basis of the disallowance by SARS. In
effect the taxpayer must state why the basis of disallowance are incorrect. This will also require that the taxpayer determine whether the grounds of assessment and grounds of disallowance are the same. Where they are not the same, two questions arise, namely do the disallowance grounds constitute a new basis for assessment and secondly does the taxpayer have sufficient reasons to properly specify in detail grounds for disputing the basis of the decision. Section 107(4) states that if a decision or assessment is altered in terms of the disallowance then it is the altered decision against which is appealed.

The third matter that must be stated is any new ground of appeal. However the taxpayer is barred from raising a new objection except if SARS has raised a new basis of assessment requiring a new assessment. Where a new ground of objection is raised, SARS may within 15 days after delivery of the notice of appeal request further substantiating documents from the taxpayer to decide the further progress of the appeal, which documents must then be delivered with 15 days after such request notice by the taxpayer.

6.1.1.4. Signed

The form must be signed by the taxpayer or their representative. Note that “signature” in the electronic rules for registered eFiling users includes the user ID and access code of the user, therefore by submitting the form on eFiling on behalf of the taxpayer, the tax practitioner is deemed to have signed the document on behalf of the taxpayer to whom the profile belongs and will have to attach the relevant power of attorney.

6.1.1.5. ADR election

The taxpayer must elect whether he or she will want to engage in ADR. Where the taxpayer has not so elected, SARS can still depending on the facts make an offer to settle the matter by way of ADR.

6.1.2. Time periods

The notice of appeal must be “delivered” to SARS within 30 days after receipt of the notice of disallowance of the objection as issued in terms of rule 8. Where the taxpayer has requested extension of the period to submit the notice prior to expiry of the period, then it must be submitted on the last day of such extended period. An SSO may only extend such period by 21 days if reasonable grounds exist and by 45 days if exceptional grounds exist.

6.1.3. Failure to comply

Where the taxpayer has not complied with the formalities, SARS may treat the notice of appeal as invalid and the assessment final. No similar provision to rule 52(2)(b) is contained in the rules to have the tax court overrule a decision of invalidity.

Where the taxpayer is late with the submission of the notice of appeal, the parties may agree to the acceptance of a request for extension after expiry of the original time period. However such extension remains subject to the extension limitations imposed. Should SARS refuse to extend the time period or condone the late request for extension, the taxpayer can approach the tax court on good cause shown to condone the non-compliance and provide a reasonable period of extension or to provide extension where SARS has refused to do so.

6.2. Alternative dispute resolution

6.2.1. Formalities
A dispute can prior to hearing in the tax board or tax court be resolved by ADR. If the taxpayer wishes to engage in ADR he may elect to do so on the NOA or ADR2 form. SARS may accept election by sending a notice within 30 days of receipt of the notice to appeal. Where the taxpayer has not elected ADR, SARS may still within 30 days from the appeal notice send a request for ADR to the taxpayer who then has 30 days to accept or reject the request.

The ADR proceedings commence once SARS sends notice of their acceptance or the taxpayer sends notice of SARS’ invite as the case may be. ADR must then be completed within 90 days of commencement unless the parties agree to an extension. In practice, taxpayers should be warned not to agree to an open ended extension but to a stated extension, subject to agreement to another extension as the rules do not provide for a maximum extension period. An open ended extension may unnecessarily delay the finalisation of the proceedings which should in principle be expedient.

6.2.2. Pre-ADR proceedings

The taxpayer must apply for permission to have a representative at ADR and SARS must agree to such terms. This can be done either once SARS sends a notice accepting the ADR or with the reply by the taxpayer accepting SARS ‘invite to ADR.

The parties must also agree to make use of the facilitator as the appointment of the facilitator is not automatic. However the process to appoint the facilitator only occurs within 15 days after ADR commences and the facilitator then has 20 days to determine a place and time.

Where a facilitator may be advisable is where the taxpayer cannot attend the proceedings, such as an expat in a different time zone, as only a facilitator can agree to the proceedings in the taxpayer’s absence. It is also useful to have a facilitator who then is obligated to record the matters in dispute, and what is not resolved. This is useful if you are to brief legal counsel only after ADR.

The last reason for a facilitator is where the party’s feel the other is being unreasonable to such extent that costs in court may be an issue. The parties can then at commencement of the proceedings agree that the facilitator make a recommendation at the end of the proceedings. Though these recommendations are not binding it may be used to argue for costs by either party. The recommendation is delivered 30 days after termination of ADR unless the parties agree to an extension.

6.2.3. ADR proceedings

The ADR process is on a non-prejudice basis and no electronic recordings may be made of the meetings. Documents tendered by the taxpayer may not be used in other proceedings unless agreed to or if fraudulent and documents tendered to the facilitator in confidence may not be disclosed without the parties consent.

Where there is a facilitator, he or she will determine which written submissions or other documents should be furnished or exchanged. Where no facilitator was appointed, the parties will by agreement determine the date, time and place of the proceedings and which documents have to be furnished or submissions exchanged.

The result of an ADR is that settlement is reached by the acceptance of the other party’s facts or interpretation of law which will be indicated in the written ADR agreement reached and SARS has to issue an assessment to give effect to this agreement within 45 days of its conclusion.

However not all the matters need to be settled and a dispute can be partly resolved in ADR. The parties can also during ADR decide to rather settle the matter under Part F of Chapter 9 of the TAA.
This route would be preferable if both parties would not want to go to court but do not accept the other party’s interpretation of the law or facts which is not a requirement for settlement proceedings. The matter must however be appropriate for settlement as required in section 146 TAA.

Section 145 TAA sets out the circumstances when it would not be appropriate for SARS to settle the dispute on this basis such as being in respect of fraud or contrary to law. On settlement, SARS must within 45 days issue an amended assessment in terms of section 150 TAA. Both facts for and against settlement must be considered before a settlement offer as alternative is considered by the taxpayer.

6.2.4. Termination of ADR proceedings

The proceedings can be terminated by either party giving notice, the facilitator if the dispute cannot be resolved or the parties fail to attend or automatically by the expiry of the 90 day period. The matter will then proceed to be set down for hearing.

6.3. Appeals to tax board

6.3.1. General

The tax board is established by law and consist of a chairman who must be a legal professional selected from a panel of persons identified by the Minister and is not a court of record. An accountant member or commercial member may also be appointed to assist the chairman on request of either parties or the chairman. The tax board is convened by the clerk of the tax board who also decides the time and place of the hearing and must give the parties 20 days’ notice before the commencement of the proceedings. The clerk will also prepare the dossier as complying with rule 5, containing all the required documents and such dossier will be sent to the parties at least 10 days before the hearing. Either party can also request the clerk to subpoena any witness or a document relevant to the matters on appeal. Such subpoenas must comply with the Rules applying in the Magistrates Court.

The taxpayer must set down the matter by notice to the clerk:

- If no ADR was pursued, within 35 days after delivery of the notice of appeal If ADR was pursued but certain matters remain to be appealed, within 15 days after the date of the ADR agreement
- If settlement under Chapter 9 TAA was pursued during ADR but certain matters remain to be appealed, 15 days after the date of the settlement agreement; or
- If ADR proceedings were pursued but terminated, within 20 days of the date of termination.

If the taxpayer fails to set down the matter, SARS may apply for a judgement in terms of rule 56. The clerk of the tax board will within 30 days of receipt of the notice set down the matter.

6.3.2. Trial

The chairperson determines the procedures to be followed to the extent not prescribed by the rules. The chairman may formulate the issues in appeal.

The taxpayer must appear in person if a natural person or by the representative taxpayer if a juristic person. A third party who prepared the return involved in the assessment or decision in appeal may also appear on the taxpayer’s behalf. Should the taxpayer wish to have another person appear on his behalf he would have to request permission with his notice of appeal or such further
period as may be allowed by the chairperson. Where neither the taxpayer nor his representative appear at the proceedings, the chairperson, on request by SARS and on presentation of proof of the notice of sitting can confirm the assessment. The taxpayer would in such instance not have a right to appeal to the tax court. The same would follow if SARS does not appear at the proceedings.

At the conclusion of evidence, the parties may be heard in argument.

6.3.3. Decision

The tax board after hearing the matter must then decide on the matter. The chairperson must within 60 “days” prepare a written statement of such decision that includes the findings of fact and reasons for the decision. The clerk must then within 10 days after receipt of the decision send a copy to both parties. If no further appeal follows, SARS must within 45 “days” of delivery of the decision issue an amended assessment.

6.3.4. Referral to tax court

If either party is dissatisfied with the Chairpersons decision or the chairperson fails to give a decision within the 60 days period, then either party may within 21 days from the notice of the decision or the expiry of the 60 day period, deliver a notice to the clerk and a copy to the other party that the matter be referred to the tax court.

Where the 21 day period cannot be met, the party seeking to appeal must within such 21 day period submit an extension request to the clerk who must within 10 days submit it to the chairperson. The chairperson must make a decision within 15 days and such decision must be delivered to the parties within 10 days.

6.4. Appeals to tax court

6.4.1. General

The tax court is established by law by proclamation by the President and is a court of record but not a public court. The tax court consists of a judge of the High Court, an accountant member and a commercial member. If the president of the tax court or either parties so request, the commercial member can be a specialist in a particular field. Where a matter is a question of law only or an interlocutory in nature, the matter may be heard by the president of the tax board sitting alone.

The taxpayer or the taxpayer’s representative (i.e. not representative taxpayer) may appear at the hearing and no formal right of appearance is required. On request of either party the registrar may issue a subpoena for a person to attend the hearing to give evidence or produce a document under his control that is relevant to the appeal. The Rules of the High Court apply in respect of the issuance of subpoenas. Where an expert witness is to be called, the party calling the witness must give at least 30 days’ notice before the hearing of his intention to do so and at least 20 days before the hearing deliver to the registrar and other party a summary of the expert’s opinions and the relevance to the hearing.

6.4.2. Prehearing statements

SARS must deliver within 45 days a statement of grounds of assessment and grounds opposing appeal after delivery of:
After delivery of the additional documents on grounds not raised in objection per rule 10(5);
If ADR was followed after the taxpayer has delivered a notice of intention to proceed to the tax court on the unresolved matters or after termination of ADR the taxpayer has given notice to SARS that it intends to appeal to the tax court;
If the matter was decided by the tax board then after the referral notice was delivered; or
Any other case after the rule 10 notice of appeal was filed by the taxpayer.

If the taxpayer fails to notify the registrar after ADR, the SARS may apply for a default judgement in terms of rule 56. The statement must set out in a clear and concise manner:

- The consolidated grounds of the disputed assessment
- Which of the legal grounds or facts in the rule 10 statement are admitted or opposed;
- The material facts and legal grounds upon which SARS relies
- SARS may include an amended ground of assessment as long as it is not a novation of the whole of the factual or legal basis of the disputed assessment requiring a revised assessment.
- The taxpayer must deliver a statement of grounds of appeal within 45 days of:
  - The taxpayer providing documents requested by SARS where a request for discovery was made under rule 36(1);
  - The delivery of the statement of grounds of assessment by SARS under rule 31.
- The statement must clearly and concisely set out:
  - The grounds of appeal
  - Which facts or legal grounds in SARS rule 31 statement are admitted and which are opposed
  - The material facts and legal grounds upon which the taxpayer relies for the appeal and those relied on opposing SARS’ rule31 statement.
  - The taxpayer may not include a new objection not raised in the rule 7 objection but may include a new ground of objection.
  - SARS may then deliver a reply to the statement of grounds of appeal and the reply may be delivered within:
    - 15 days after the documents requested by the taxpayer in the rule 36(2) discovery has been delivered by SARS; or
    - 20 days after delivery of the taxpayer’s statement of grounds of appeal under rule 32.

6.4.3. Discovery

Discovery can take place within 10 days after a new ground is raised in the rule 31 statement, within 10 days after a new ground in the rule 32 statement or general discovery within 15 days after the rule 32 or 33 statement related to the matters in appeal per rule 34.
A party to whom a discovery notice has been sent must make discovery under oath of all documents relating to the pre-trial conference or the issues in appeal per rule 34 within 20 days of the notice specifying separately:

- The documents under the parties control or under its agents control
- The documents which were previously under its or its agents control but which it no longer possesses
- The documents which the party has a valid objection to produce.

Any document not disclosed pursuant to a notice of discovery may not, unless the tax court believes it to be in the interest of justice, be used for any purpose at the appeal by the party who failed to disclose it, notwithstanding that the other party may use it.

6.4.4. Set down
The taxpayer must apply to the registrar to allocate a date for the hearing within 30 days after delivery of the taxpayers rule 32 statement of grounds of appeal or SARS’ rule 33 statement of reply, and give notice to SARS of such set down.

If the taxpayer fails to set down the hearing, SARS must apply for a hearing date within 30 days after the taxpayer’s period to do so has expired. The registrar at his or her discretion will allocate a date for the hearing and deliver a written notice to the parties of the time and place at least 80 days before the hearing.

An appeal may be postponed or removed from the roll by agreement between the parties with the initiating party having to notify the registrar. Where the postponement or removal is opposed, the matter may be heard by the president of the tax court as per section 118(3) TAA and he may make a cost order per section 130(3) TAA in that respect. A party to the case may before the rule 39 set down has been filed, withdraw or concede the matter and notice of such concession or withdrawal must be given to the other party also indicating if costs are conceded.

6.4.5. Pre-trial conference

SARS must arrange a pre-trial conference at least 60 days before the hearing. During the pre-trial conference the parties must attempt to reach consensus on:

- Common cause facts
- Resolution of preliminary points to be raised
- Sufficiency of disclosure
- Preparation of paginated bundles
- Manner in which evidence is to be dealt with
- Whether evidence on affidavit will be admitted and whether the other party waives the right to cross examine
- Expert witness and the evidence to be given
- The necessity of an onsite inspection
- Estimate of the time required for the hearing
- If the dispute could be settled in whole or in part.
- SARSs must within 10 days of conclusion of the pre-trial prepare and deliver a minute setting out the parties discussions and the agreement reach on each matter listed. Where the taxpayer does not agree with the SARS minute a differing minute must be delivered within 10 days with a statement why he or she does not agree with the SARS minute.
- SARS must at least 30 days before the hearing prepare and deliver a dossier to the taxpayer and registrar containing copies of:
  - All returns of the taxpayer relevant to the year of assessment in dispute
  - All SARS assessments relevant to the issues in appeal
  - The appellants notice of objection
  - The appellants notice of appeal
  - SARSs statements of grounds of assessment and grounds opposing appeal under rule 31
  - The taxpayers statement of grounds of appeal under rule 32
  - SARSs reply under rule 33
  - The minute of the pre-trial conference and any differing minute
  - Any request for referral from the tax board decision under rule 29
  - Any order of the tax court or higher court in an interlocutory application or procedural matter

6.4.6. Trial

The burden of proof in the main lies upon the taxpayer and the tax court will not alter
SARS decision unless the taxpayer meets the onus upon him. However SARS still carries the burden in some instances and therefore cannot adopt an apathetic attitude.

The proceedings are commenced by the appellant unless:

- The only dispute is whether a section 95 TAA estimate assessment is reasonable or the facts on which SARS imposed a section 222 penalty; or
- SARS takes a point in limine.

A party must present all the evidence and lead witness on which the party’s case is based by adhering to the rules of evidence and may present a document specifically to assist the court in understanding the party’s case which is not presented in evidence.

At the conclusion of evidence the parties may be heard in argument and the party heard first (i.e. mainly the taxpayer) may reply to new points raised in the argument presented by the other party or other points with leave from the president of the court.

The tax court can give judgement immediately or reserve its decision to a later date that the president deems fit. The registrar must by notice deliver the written judgement to the parties with 21 days after it was delivered.

6.4.7. Costs

Where the tax court makes an order as to costs the registrar may:

- Perform the functions of a taxing master; or
- At the request of the court or a party, appoint another person as the taxing master for such period as the registrar deem fit

The fees, charges and rates to be allowed by the tax court will be those as affixed before the High Court within the area of jurisdiction in which the tax court sits.

The tax court may in dealing with an appeal, can on application by an aggrieved party grant an order for costs in favour of a party if:

- The SARS grounds of assessment are held to be unreasonable
- The taxpayers grounds of appeal are held to be unreasonable
- The tax board’s decision is substantially confirmed
- The hearing of the appeal was postponed at the insistence of a party
- The appeal is conceded or withdrawn by the other party after the registrar had allocated a date for hearing

6.4.8. Notice of appeal to higher court

An appeal against a tax court decision lies with the high court with the jurisdiction in that area of which the tax court sits or the Supreme Court of Appeal directly if the President of the tax court grants leave in terms of section 135 TAA.

The party intending to appeal must within 21 days after the registrar has provided the tax court decision, lodge with the registrar and notify the other party of the intention to appeal. The notice of intention to appeal must state:

- In which High Court the party intend appealing
• Whether the whole or part of the judgement is to be appealed and the findings of fact or ruling of law to be appealed
• Whether the person requires transcripts of the evidence given at the tax court.