

**Tax Administration Act, 28 of 2011**  
**New Dispute Resolution Rules under s 103 of the Act**

**Draft 2 for Public Comment**

**Explanatory note:**

1. This draft notice proposes the promulgation of the rules in terms of section 103 of the Tax Administration Act, 2011, prescribing the procedures to be followed in lodging an objection and appeal against an assessment or a decision subject to objection and appeal referred to in section 104(2), procedures for alternative dispute resolution, the conduct and hearing of appeals before a Tax Board or Tax Court and transitional rules.
2. This draft is published for a second round of public comment and incorporates changes to the first draft for public comment (comments were due by 22 March 2013), resulting from:
  - a. the public comments on the first draft accepted by SARS; and
  - b. further internal discussion and review.
3. The changes are mostly reflected as insertions for ease of reading. Minor or technical changes are not reflected.
4. It was determined that some of the new rules would require amendments to certain provisions of the Tax Administration Act, 2011. These amendments will be proposed in the Tax Administration Laws Amendment Bill, 2013, which has been published for public comment.
5. A response document to the comments on these rules will be issued in due course.
6. All comments on this draft must be submitted to Ms A Collins at [acollins@sars.gov.za](mailto:acollins@sars.gov.za) before or on **19 July 2013**.

**SOUTH AFRICAN REVENUE SERVICE**

**R. No.**

**? 2013**

**RULES PROMULGATED UNDER SECTION 103 OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011), PRESCRIBING THE PROCEDURES TO BE FOLLOWED IN LODGING AN OBJECTION AND APPEAL AGAINST AN ASSESSMENT OR A DECISION SUBJECT TO OBJECTION AND APPEAL REFERRED TO IN SECTION 104(2) OF THAT ACT, PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION, THE CONDUCT AND HEARING OF APPEALS, APPLICATION ON NOTICE BEFORE A TAX COURT AND TRANSITIONAL RULES**

In terms of section 103 of the Tax Administration Act, 2011, I, Pravin Jamnadas Gordhan, the Minister of Finance, after consultation with the Minister of Justice and Constitutional Development, hereby prescribe in the Schedule hereto, the rules governing the procedures to lodge an objection and appeal against an assessment or decision under Chapter 9 of the Act, the procedures for alternative dispute resolution and the conduct and hearing of appeals before a Tax Board or Tax Court.

**PJ GORDHAN**

**MINISTER OF FINANCE**

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**Part A**  
**General provisions**

**1. Definitions**

In these rules, unless the context indicates otherwise, a term which is assigned a meaning in the Act, has the meaning so assigned, and the following terms have the following meaning:

**“appellant”** means a taxpayer who has noted an appeal under section 107 of the Act against an assessment as defined in these rules;

**“assessment”** includes, for purposes of these rules, a decision referred to in section 104(2) of the Act;

**“clerk”** means the clerk of the tax board appointed under section 112 of the Act;

**“day”** means a “business day” as defined in section 1 of the Act ;

**“deliver”** means to issue, give, send or serve a document under these rules, 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 or 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—

(i) handing it to SARS, the clerk or the registrar;

(ii) sending it to SARS, the clerk or the registrar by registered post;

(iii) sending it to SARS, the clerk or the registrar by electronic means to an email address or telefax number; or

(iv) if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, submitting it through the SARS electronic filing service.

**“document”** means a document as defined in the Act, and includes—

(a) an agreement between the parties under these rules, whether in draft or otherwise;

(b) a request or application under these rules; and

(c) a notice required under these rules;

“electronic filing page” has the meaning assigned in the rules for electronic communications issued under section 255 of the Act;

“grounds of assessment”, for purposes of these rules, include any—

- (a) grounds for a proposed assessment referred to in section 42(2)(a) of the Act;
- (b) grounds of assessment referred to in section 42(6) of the Act;
- (c) grounds of assessment referred to in section 96(2) of the Act;
- (d) grounds for a decision by SARS not to remit an administrative non-compliance penalty under Part E of Chapter 15 of the Act;
- (e) grounds for a decision by SARS not to remit a substantial understatement penalty under section 223(3) of the Act;
- (f) grounds for a decision referred to in section 104(2) of the Act;
- (g) reasons for assessment provided by SARS under rule 6(5); and
- (h) related correspondence;

**“party”** means—

- (i) for purposes of an objection, the taxpayer or SARS;
- (j) for purposes of an appeal to the tax board or tax court, the appellant or SARS; and
- (k) for purposes of an application under Part F, the applicant or the respondent;

**“parties”** means—

- (a) for purposes of an objection, the taxpayer and SARS;
- (b) for purposes of an appeal to the tax board or tax court, the appellant and SARS; and
- (c) for purposes of an application under Part F, the applicant and the respondent;

**“registrar”** means the registrar of the tax court appointed under section 121 of the Act;

**“SARS electronic filing service”** has the meaning assigned in the rules for electronic communications issued under section 255 of the Act;

**“sign”** or **“signature”** has the meaning assigned in the rules for electronic communication issued under section 255 of the Act where a party—

- (a) uses electronic means to deliver a document at an electronic address provided by the other party, the clerk or the registrar for this purpose; or
- (b) uses a SARS electronic filing service to lodge an objection or note an appeal under these rules;

**“Supreme Court Act”** means the Supreme Court Act, 1959 (Act No. 59 of 1959);

**“the Act”** means the Tax Administration Act, 2011 (Act No. 28 of 2011); and

**“these rules”** means the rules reflected in this Schedule made under section 103 of the Act.

## 2. Prescribed form and manner and date of delivery

(1) A document or notice required to be delivered or given under these rules must be—

- (a) in the form as may be prescribed by the Commissioner under section 103 of the Act;
- (b) in writing and be signed by the relevant party, the party's duly authorised representative, the clerk or the registrar, as the case may be; and
- (c) delivered to the address that—
  - (i) the taxpayer or appellant must use or has selected under these rules;
  - (ii) SARS has specified under these rules or, in any other case, the Commissioner has specified by public notice as the address at which the documents must be delivered to SARS; or
  - (iii) is determined under rule 3 as the address of the clerk or the registrar.

(2) For purposes of these rules, the date of delivery of a document—

- (a) in the case of delivery by SARS, the clerk or the registrar, is regarded as the date of delivery of the document in the manner referred to in the definition of “deliver” in rule 1, but subject to section 253 of the Act; and
- (b) in the case of delivery by the taxpayer, appellant or applicant (other than SARS), is regarded as the date of the receipt of the document by SARS, the clerk or the registrar.

## 3. Office of clerk of tax board and registrar of tax court

(1) The location of the office of the clerk of the tax board and the registrar of the tax court will be determined by a senior SARS official from time to time by public notice.

(2) The office of the clerk and the registrar will be open every Monday to Friday, excluding public holidays, from 08h00 to 16h00.

## 4. Extension of time periods

(1) Except where the extension of a period prescribed under the Act or these rules is otherwise regulated in the Act or these rules, a period may be extended by agreement between—

- (a) the parties;
- (b) a party or the parties and the clerk; or
- (c) a party or the parties and the registrar.

(2) A request for an extension must be delivered to the other party before expiry of the period prescribed under these rules unless the parties agree that the request may be delivered after expiry of the period.

(3) A party who requires an extension of a period may, if the other party or the clerk or the registrar does not agree to a request for an extension of a period, apply to the tax court under Part F for an order under rule 52 which application must be brought within 20 days after delivery of the notice by the other party of not agreeing to a request for an extension or, in any other case, before the expiry of the prescribed period.

(4) If SARS is afforded a discretion under these rules to extend a time period applicable to SARS, SARS must in the notice of the extension state the grounds of the extension.

(5) If a period is extended under this rule by an agreement under subrule (1) or a final order under subrule (3), the period within which a further step of the proceedings under these rules must be taken commences on the day that the extended period ends.

## **5. Index and pagination of documents**

(1) In all proceedings before the tax board and tax court, all documents filed under these rules must be—

- (a) if drafted under these rules, divided into paragraphs numbered consecutively;
- (b) paginated by the party who seeks to put them before the tax board or tax court; and
- (c) as far as practical, arranged in chronological order.

(2) All documents must be accompanied by an index that corresponds with the sequence of the paginated documents and the index must contain sufficient information to enable the tax board or tax court to identify every document without having to refer to the document itself.

(3) If additional documents are filed after the index has been completed, the party who files additional documents must paginate them following the method of original pagination, and compile a supplementary index describing the additional documents.

(4) Unless the parties agree otherwise, the party who produces the paginated documents and index must make the number of copies specified by the clerk or the registrar of the original and any supplementary documents, as well as the related index, and deliver a copy to the clerk or registrar and to the other party.

## **Part B**

### **Reasons for assessment, objection, appeal and test cases**

#### **6. Reasons for assessment**

(1) A taxpayer who is aggrieved by an assessment may, prior to lodging an objection, request SARS to provide the reasons for the assessment required to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7.

(2) The request must—

- (a) be made in the prescribed form;
- (b) specify an address at which the taxpayer will accept delivery of the reasons; and
- (c) be delivered to SARS within 30 days from the date of assessment.

(3) The period within which the reasons must be requested by the taxpayer may be extended by SARS for a period not exceeding 45 days if a SARS official is satisfied that reasonable grounds exist for the delay in complying with that period.

(4) Where in the opinion of a SARS official the reasons required to enable the taxpayer to formulate an objection have been provided, SARS must, within 30 days after delivery of the request, notify the taxpayer accordingly which notice must refer to the documents wherein the reasons were provided.

(5) Where in the opinion of a SARS official the reasons required to enable the taxpayer to formulate an objection have not been provided, SARS must provide the reasons within 45 days after delivery of the request for reasons.

(6) The period for providing the reasons may be extended by SARS if a SARS official is satisfied that more time is required by SARS to provide reasons due to exceptional circumstances, the complexity of the matter or the principle or the amount involved.

(7) An extension under subrule (6) may not be extended for a period exceeding 45 days and SARS must deliver a notice of the extension to the taxpayer before expiry of the 45 day period referred to in subrule (5).

(8) If subsequent to delivery of a notice under subrule (4) or the provision of reasons by SARS under this rule the taxpayer is not able to formulate the objection, the taxpayer may apply to the tax court under Part F for an order under rule 52 which application must be brought within 20 days after delivery of a notice under subrule (4) or delivery of reasons under this rule.

## 7. Objection against assessment

(1) A taxpayer who may object to an assessment under section 104 of the Act, must deliver a notice of objection within 30 days after—

- (a) delivery of a notice under rule 6(4) or the reasons requested under rule 6; or
- (b) where the taxpayer has not requested reasons, the date of assessment.

(2) A taxpayer who lodges an objection to an assessment must—

- (a) complete the prescribed form in full;
- (b) specify the grounds of the objection in detail including—
  - (i) the part or specific amount of the disputed assessment objected to; and
  - (ii) which of the grounds of assessment are disputed;
- (c) if a SARS electronic filing service is not used, specify an address at which the taxpayer will accept delivery of SARS's decision in respect of the objection as well as all other documents that may be delivered under these rules;
- (d) sign the prescribed form or ensure that the prescribed form is signed by the taxpayer's duly authorised representative; and
- (e) deliver, within the 30 day period referred to in subrule (1), the completed form at the address specified in the assessment or, where no address is specified, the address specified under rule 2.

(3) The taxpayer may apply to SARS under section 104(4) of the Act for an extension of the period for objection before expiry of the 30 day period referred to in subrule (1) above.

(4) Where a taxpayer delivers an objection that does not comply with the requirements of subrule (2) (a), (b), (d) or (e), SARS may regard the objection as invalid and must, if SARS is in possession of the current address of the taxpayer, notify the taxpayer accordingly and state the ground for invalidity in the notice within 20 days of delivery of the invalid objection.

(5) A taxpayer who receives a notice of invalidity under subrule (4) may within 20 days of delivery of the notice submit a new objection.

(6) If the taxpayer fails to submit a new objection within the 20 day period under subrule (5), the taxpayer may thereafter only submit a new objection together with an application to SARS for an extension of the period for objection under section 104(4) of the Act.

## **8. Request for supporting documents after objection lodged**

(1) Within 30 days after delivery of an objection, SARS may require a taxpayer to produce the supporting documents necessary to decide the objection.

(2) The taxpayer must deliver the documents within 30 days after delivery of the notice under subrule (1).

(3) If reasonable grounds for an extension are submitted by the taxpayer, SARS may extend the period under subrule (2) for a period not exceeding 20 days.

## **9. Decision on objection**

(1) SARS must notify the taxpayer of the allowance or disallowance of the objection under section 106(2) of the Act within—

(a) 60 days after delivery of the taxpayer's objection; or

(b) where SARS requested supporting documents under rule 8, 45 days after —

(i) delivery of the requested documents; or

(ii) if the documents were not delivered, the expiry of the period within which the documents must be delivered.

(2) SARS may extend a period referred to in subrule (1) for a further period not exceeding 45 days if, in the opinion of a senior SARS official, more time is required to take a decision on the objection due to exceptional circumstances, the complexity of the matter or the principle or the amount involved.

(3) If a period is extended under subrule (2), the official must, before expiry of the period referred to in subrule (1), inform the taxpayer that the official will decide on the objection within a longer period.

## **10. Appeal against assessment**

(1) A taxpayer who wishes to appeal against the assessment to the tax board or tax court under section 107 of the Act must deliver a notice of appeal in the prescribed form and manner within 30 days after delivery of the notice of disallowance of the objection under rule 9 or the extended period under section 107(2) of the Act.

(2) A notice of appeal must—

(a) be made in the prescribed form;

- (b) if a SARS electronic filing service is used, specify an address at which the appellant will accept delivery of documents when the SARS electronic filing service is no longer available for the further progress of the appeal;
- (c) specify in detail—
  - (i) in respect of which grounds of the objection referred to in rule 7 the taxpayer is appealing;
  - (ii) the grounds for disputing the basis of the decision to disallow the objection under section 106(5) of the Act; and
  - (iii) any new ground on which the taxpayer is appealing;
- (d) be signed by the taxpayer or the taxpayer’s duly authorised representative; and
- (e) indicate whether or not the taxpayer wishes to make use of the alternative dispute resolution procedures referred to in Part C, should these procedures be available.
  - (3) The taxpayer may not appeal on a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to under rule 7.
  - (4) If the taxpayer in the notice of appeal relies on a ground not raised in the objection under rule 7, the taxpayer must produce any related document requested by SARS in order to decide on the further progress of the appeal.

## **11. Appeal to tax board or court**

- (1) Where—
  - (a) the provisions of section 109(1) of the Act apply, the appeal must be dealt with by the tax board under Part D; and
  - (b) the chairperson of the tax board directs an appeal to the tax court under section 109(5) or the provisions of section 117 of the Act apply, the appeal must be dealt with by the tax court under Part E.
- (2) If no alternative dispute resolution procedures under Part C are pursued, the appellant must—
  - (a) if the appeal is to be dealt with by the tax board, within 35 days of delivery of the notice of appeal request the clerk to set the matter down before the tax board under rule 26; or
  - (b) if the appeal is to be dealt with by the tax court, deliver the statement under rule 31.

## 12. Test cases

(1) A senior SARS official must upon designating an objection or appeal as a test case or staying a similar objection or appeal by reason of a designation under section 106(6) of the Act, inform the taxpayers or appellants accordingly by notice before—

- (a) the objection is decided under rule 9;
- (b) if the appeal is to be dealt with by the tax board, a decision by the chairperson of the tax board is given under section 114 of the Act; or
- (c) if the appeal is to be dealt with by the tax court, the appeal is heard by the tax court.

(2) The notice must set out—

- (a) the number of and common issues involved in the objections or appeals that the test case is likely to be determinative of;
- (b) the question of law or fact or both law and fact that, subject to the augmentation thereof under rule 34, constitute the issues to be determined by the test case; and
- (c) the importance of the test case to the administration of the relevant tax Act.

(3) The taxpayers or appellants may within 30 days of delivery of the notice, deliver a notice—

- (a) opposing the decision that an objection or appeal is designated as a test case;
- (b) opposing the decision that an objection or appeal is stayed pending the final determination of a test case on a similar objection or appeal before the tax court; or
- (c) if the objection or appeal is to be stayed, requesting a right of participation in the test case,

which notice must set out the grounds of opposition or for participation, as the case may be.

(4) If no notice under subrule (3) is received by SARS, the designation of the test case or suspension of the objection or appeal by reason of the designation is regarded as final.

(5) Within 30 days after receipt of the notice under subrule (3) a senior SARS official may—

- (a) withdraw the decision to select the objection or appeal as test case or to stay the objection or appeal pending the outcome of a test case;
- (b) agree that a taxpayer or appellant requesting participation may do so; or
- (c) apply to the tax court under Part F for an order under rule 52—
  - (i) that the objection or appeal be selected as test case;

- (ii) that the objection or appeal be stayed pending the determination of the test case;
- (iii) if in dispute, what are the issues that will be determined in the test case; or
- (iv) that the taxpayer or appellant requesting participation should not be allowed to do so.

(6) The stay of an objection or appeal terminates on the date of the—

- (a) expiry of the 30 day period prescribed under subrule (5), if a taxpayer or appellant has delivered a notice under subrule (3) and the senior SARS official has not within the 30 day period withdrawn the decision under subrule (5)(a) or made an application under subrule (5)(c);
- (b) delivery of the notice by the official that the decision has been withdrawn under subrule (5)(a);
- (c) agreement between the taxpayer or appellant and the official that the stay of the objection or appeal is terminated; or
- (d) dismissal by the tax court, or higher court dealing with an appeal against the judgment of the tax court, of an application by the official under subsection (5)(c).

(7) For the period during which an objection or appeal is stayed under section 106(6)(b) of the Act—

- (a) a period prescribed under these rules (other than under this rule) in relation to the objection or appeal, does not apply; and
- (b) if the staying of an objection or appeal terminates, a period prescribed under these rules is treated as if the period was extended by the same period that the suspension of the objection or appeal was in effect.

(8) Proceedings in an objection or appeal under these rules which have been instituted but not determined by the tax board, tax court or any other court of law are stayed with effect from delivery of the notice under subrule (1) until the stay of an objection or appeal is terminated under subrule (6).

(9) A test case designated under section 106(6) of the Act must be heard by the tax court.

(10) For purposes of a cost order by the tax court, or higher court dealing with an appeal against the judgment of the tax court, in a test case designated under section 106(6) of the Act, the appellants in the test case include:

- (a) the appellant whose appeal was selected as the test case; and
- (b) a taxpayer or appellant who participated in the test case.

(11) In the event that a tax court under section 130 of the Act, or a higher court dealing with an appeal against the judgment of the tax court in the test case, awards costs and—

- (a) SARS is substantially successful in a test case, the appellants in the test case will be responsible for the legal costs of the appellant whose appeal was selected as the test case on the proportionate basis as may be determined by the tax court; or
- (b) the appellants are substantially successful in a test case, SARS will be liable for the legal costs of the appellants.

### **Part C**

#### ***Alternative dispute resolution***

#### **13. Notice of alternative dispute resolution**

(1) If the appellant has in a notice of appeal indicated a willingness to participate in alternative dispute resolution proceedings under this Part in an attempt to resolve the dispute, SARS must inform the appellant by notice within 30 days of receipt of the notice of appeal whether or not the matter is appropriate for alternative dispute resolution.

(2) If the appellant has not indicated in the notice of appeal that the appellant wishes to make use of alternative dispute resolution under this Part, but SARS is satisfied that the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures referred to in this Part—

- (a) SARS must inform the appellant accordingly by notice within 30 days of receipt of the notice of appeal; and
- (b) the appellant must within 30 days of delivery of the notice by SARS deliver a notice stating whether or not the appellant agrees thereto.

(3) An appellant who requests alternative dispute resolution under subrule (1) or agrees thereto under subrule (2), is regarded as having accepted the terms of alternative dispute resolution set out in this Part.

#### **14. Reservation of rights**

(1) The parties participate in alternative dispute resolution proceedings under this Part with full reservation of their respective rights in terms of the procedures referred to in the other Parts of these rules.

(2) Subject to rule 22(3)(c), any representations made or documents submitted in the course of the alternative dispute resolution proceedings will be without prejudice.

## **15. Period of alternative dispute resolution**

(1) The period within which the alternative dispute resolution proceedings under this rule is conducted commences on the date of delivery of the notice by SARS under rule 13(1) or the notice by the appellant under rule 13(2)(b), and ends on the date the proceedings are resolved under rule 23 or 24 or terminated under rule 25.

(2) The period referred to in subrule (1) interrupts the periods prescribed for purposes of proceedings under rule 12 and Parts D, E and F of these rules.

(3) The parties must finalise the alternative dispute resolution proceedings within 90 days after the commencement date referred to in subrule (1).

## **16. Appointment of facilitator**

(1) Unless the parties otherwise agree, a senior SARS official may appoint any person, including a person employed by SARS, to facilitate the alternative dispute resolution proceedings under this Part within 15 days after the commencement date of the proceedings under rule 15(1) and give notice thereof to the appellant and the SARS official involved in the proceedings.

(2) A person appointed as a facilitator must be a person of good standing who has appropriate experience and must comply with the duties under rule 17.

(3) A senior SARS official may at the request of a party, remove a facilitator from the list of facilitators at any time for misconduct, incapacity, incompetence or non-compliance with the duties under rule 17.

(4) A senior SARS official may not remove a facilitator once the facilitator has commenced with the proceedings, save at the request of the facilitator or by agreement between the parties.

(5) A senior SARS official may request a party to submit evaluations of the facilitation process, including an assessment of the facilitator, which evaluations are regarded as SARS confidential information.

## **17. Conduct of facilitator**

A person appointed to facilitate the proceedings under this Part has a duty to—

- (a) act within the prescripts of the proceedings under this Part and the law;
- (b) seek a fair, equitable and legal resolution of the dispute between the appellant and SARS;
- (c) build the integrity, fairness and efficacy of the alternative dispute resolution process;
- (d) be independent and impartial;
- (e) conduct himself or herself with honesty, integrity and with courtesy to all parties;
- (f) act in good faith;
- (g) decline an appointment or obtain technical assistance when a case is outside the field of competence of the facilitator; and
- (h) attempt to bring the dispute to an expeditious conclusion.

#### **18. Conflict of interest of facilitator**

(1) A facilitator will not solely on account of his or her liability to tax and, if applicable, employment by SARS be regarded as having a personal interest or a conflict of interest in proceedings in which he or she is appointed to facilitate.

(2) A facilitator must withdraw from the proceedings as soon as the facilitator becomes aware of a conflict of interest which may give rise to bias which the facilitator may experience with the matter concerned or other circumstances that may affect the facilitator's ability to remain objective for the duration of the proceedings.

(3) Either party may ask for withdrawal of the facilitator on the basis of conflict of interest or other indications of bias.

#### **19. Determination and termination of proceedings by facilitator**

(1) The facilitator must, after consulting the appellant and the SARS official involved in the alternative dispute resolution proceedings—

- (a) within 20 days of the facilitator's appointment, determine a place, date and time at which the parties must convene the alternative dispute resolution meeting and notify the parties accordingly in writing; and
- (b) if required, notify each party in writing which written submissions or any other document should be furnished or exchanged and when the submissions or documents are required.

(2) The facilitator may summarily terminate the proceedings without prior notice—

- (a) if a party fails to attend the meeting;
- (b) if a party fails to carry out a request under subrule (1)(b);

- (c) if of the opinion that the dispute cannot be resolved through such proceedings; or
- (d) for any other appropriate reason.

## **20. Proceedings before facilitator**

(1) The alternative dispute resolution proceedings before the facilitator must be conducted in accordance with the procedures set out in this Part.

(2) A facilitator is not required to record the proceedings and the proceedings may not be electronically recorded.

~~(3) During the proceedings the facilitator may request or allow a party to present evidence, including leading witnesses, and such proceedings must comply with the rules of evidence.~~

(3) During the proceedings the appellant, if a natural person or if a representative taxpayer within the meaning of section 153 of the Act, must be personally present and may be accompanied by a representative of the appellant's choice.

(4) The facilitator, in exceptional circumstances, may allow the appellant to be represented in the appellant's absence by a representative of the appellant's choice.

(5) The meeting before the facilitator may be—

- (a) concluded at the instance of the facilitator or if the parties so agree; and
- (b) if both parties and the facilitator agree, resumed at the place, date or time determined by the facilitator.

(6) At the conclusion of the meeting the facilitator must record in writing—

- (a) the issues which were resolved;
- (b) the issues upon which agreement or settlement could not be reached; and
- (c) any other point which the facilitator considers necessary.

(7) The facilitator must deliver the report under subrule (6) to the taxpayer and SARS within 10 days of the cessation of the proceedings.

## **21. Recommendation by facilitator**

(1) SARS, the appellant and the facilitator may agree at the commencement of the proceedings that, if no agreement or settlement is ultimately reached between the parties, the facilitator may make a written recommendation at the conclusion of the proceedings.

(2) The facilitator must deliver the recommendation to the parties with 30 days after the termination of the proceedings under rule 25 unless the parties agree to an extension of this period.

(3) A recommendation by a facilitator will not be admissible during any subsequent proceedings including court proceedings unless it is required by the tax court for purposes of deciding costs under section 130 of the Act.

## **22. Confidentiality of proceedings**

(1) Representations made or documents tendered to the facilitator in confidence by a party during the course of the facilitation should be kept by the facilitator in confidence and not be disclosed to the other party except with the consent of the party that disclosed the information.

(2) A facilitator who is not a SARS official will be regarded as such for purposes of Chapter 6 of the Act.

(3) The proceedings under this rule will not be one of record, and any representation made or document tendered in the course of the proceedings—

- (a) is subject to the confidentiality provisions of Chapter 6 of the Act;
- (b) is made or tendered without prejudice; and
- (c) may not be tendered in any subsequent proceedings as evidence by a party, except—
  - (i) with the knowledge and consent of the party who made the representation or tendered the document;
  - (ii) if such representation or document is already known to, or in the possession of, that party;
  - (iii) if such representation or document is obtained by the party otherwise than under the proceedings in terms of this rule; or
  - (iv) if a senior SARS official is satisfied that the representation or document is fraudulent.

(4) No person may—

- (a) subject to the circumstances listed in subrule (3)(c), subpoena a person involved in the alternative dispute resolution proceedings in whatever capacity to compel disclosure of any representation made or document tendered in the course of the proceedings;
- (b) subpoena the facilitator to compel disclosure of any representation made or document tendered in the course of the proceedings in any other proceedings; or
- (c) subpoena the facilitator during or after termination of the proceedings under rule 25 to explain or defend a recommendation made under rule 21.

### **23. Resolution of dispute by agreement**

(1) A dispute which is subject to the procedures under this rule, may be resolved by agreement whereby a party accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.

(2) An agreement under this rule—

- (a) must be recorded in writing and signed by the appellant and the SARS official duly authorised to do so;
- (b) must relate to the appeal as a whole, including costs;
- (c) if not all issues in dispute were resolved, stipulate those areas in dispute—
  - (i) that are resolved; and
  - (ii) that could not be resolved and on which the appellant may continue the appeal to the tax board or tax court;
- (d) may be made an order of court either with the consent of both parties, or on application to the tax court by a party under Part F; and
- (e) must be reported internally in SARS in the manner as may be required by the Commissioner.

(3) Where an agreement is concluded, SARS must issue an assessment to give effect to the agreement within a period of 45 days after the date of the last signing of the agreement.

(4) If the appellant wishes to pursue the appeal on the unresolved issues to the tax board or tax court, the appellant must deliver a notice to this effect to the clerk or registrar, as the case may be, within 15 days of the date of the agreement.

### **24. Resolution of dispute by settlement**

(1) Where the parties are, despite all reasonable efforts, unable to resolve the dispute under rule 23, the parties may attempt to settle the matter in accordance with Part F of Chapter 9 of the Act.

(2) A settlement under Part F of Chapter 9 of the Act pursuant to proceedings under this Part—

- (a) must be recorded in writing and signed by the appellant and the SARS official duly authorised to do so;
- (b) must relate to the appeal as a whole, including costs;
- (c) if not all issues in dispute were settled, stipulate those areas in dispute—

- (i) that are resolved; and
  - (ii) that could not be resolved and on which the appellant may continue the appeal to the tax board or tax court;
- (d) may be made an order of court either with the consent of both parties, or on application to the tax court by a party under Part F; and
- (e) must be reported in the manner referred to in section 149 of the Act.

(3) Where a settlement is concluded, SARS must issue the assessment referred to in section 150 of the Act to give effect to the settlement within a period of 45 days after the date of the last signature of the settlement.

(4) If the appellant wishes to pursue the appeal on the unresolved issues to the tax board or tax court, the appellant must deliver a notice to this effect to the clerk or registrar, as the case may be, within 15 days of the date of the settlement.

## **25. Termination of proceedings**

(1) The alternative dispute resolution proceedings are terminated on the day after the expiry of the 90 day period under rule 15, unless the parties agreed that this period may be extended.

(2) Before expiry of the 90 day period under rule 15 or any extension thereof, if no agreement under rule 23 or settlement under rule 24 is concluded, the alternative dispute resolution proceedings are terminated on the date that—

- (a) the facilitator terminates the proceedings under rule 19;
- (b) the parties so agree; or
- (c) a party delivers a notice of termination to the other party.

(3) If alternative dispute resolution proceedings are terminated under this rule, the appellant must—

- (a) if the appeal is to be dealt with by the tax board, within 20 days of delivery of the notice of appeal request the clerk to set the matter down before the tax board under rule 26; or
- (b) if the appeal is to be dealt with by the tax court, deliver the statement under rule 31.

**Part D**  
**Procedures of tax board**

**26. Set down of appeal before tax board**

(1) The clerk must set an appeal down before the tax board within 30 days after receipt of—

- (a) a notice by the appellant under rule 11(2)(a), 23(4), 24(4) or 25(3);
- (b) a decision by the chairperson to condone non-appearance before the tax board under rule 30; or
- (c) an order by the tax court to condone non-appearance before the tax board under rule 53.

(2) The clerk in his or her **sole** discretion may allocate a date for the hearing.

(3) The clerk must give the parties written notice of the date, time and place for the hearing of the appeal at least 20 days before the hearing.

**27. Subpoenas and dossier to tax board**

(1) At the request of either party, or if a tax board directs, a subpoena may be issued by the clerk requiring a person to—

- (a) attend the hearing of the appeal for the purpose of giving evidence in connection with an appeal; and
- (b) produce any specified document which may be in that person's possession or under that person's control and which is relevant to the issues in appeal.

(2) The rules of the Magistrate's Courts Act, 1944 (Act No. 32 of 1944), governing the service of subpoenas in civil matters in that court will apply in respect of subpoenas issued under this rule.

(3) A witness or document subpoenaed must be relevant to the issues in appeal evident from the grounds of assessment, notice of objection, notice of disallowance of objection and notice of appeal, and if the clerk is satisfied that a request for a subpoena by a party constitutes an abuse of process, the clerk must inform the party to apply to the tax board for the issue of the subpoena.

(4) At least 10 days before the hearing of the appeal or as otherwise agreed between the parties, the clerk must prepare and deliver a dossier to the chairperson and the parties containing copies of—

- (a) all returns by the appellant relevant to the tax period in issue;
  - (b) all assessments relevant to the appeal;
  - (c) all documents relevant to a request for reasons for the assessment under rule 6;
  - (d) the notice of objection under rule 7 and documents, if any, provided under rule 8;
  - (e) the notice of disallowance of the objection under rule 9;
  - (f) the notice of appeal under rule 10; and
  - (g) any order by the tax court under Part F relating to the appeal.
- (5) The dossier must be prepared in accordance with the requirements of rule 5.

## **28. Procedures in tax board**

(1) Sections 122, 123, 124, 126, 127, 128 and 129 of the Act apply, with the necessary changes, to the tax board and the chairperson.

(2) A party must present all evidence, including leading witnesses, on which the party's case is based and must adhere to the rules of evidence.

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

(4) The clerk must as required under section 114(3) of the Act deliver of a copy of the tax board's decision to both parties within 10 days of receipt of the decision.

(5) If no referral of the appeal to the tax court is requested under rule 29, SARS must, if required, issue the assessment to give effect to the decision of the tax board within a period of 45 days after delivery of a copy of the tax board's decision by the clerk.

## **29. Referral of appeal from tax board to tax court**

(1) A party requiring an appeal to be referred to the tax court for a *de novo* hearing under section 115 of the Act must deliver a notice to the clerk requesting the referral and deliver a copy thereof to the other party.

(2) The referral notice must be delivered within the 21 day period prescribed under that section or the period extended under this rule—

- (a) after delivery by the clerk of the tax board's decision under rule 28(4) or decision to extend the period under subrule (5);
- (b) after delivery by the registrar of the tax court's decision to extend the period under rule 53; or
- (c) the expiry of the 60 day period within which the chairperson must deliver the decision under section 114(2) of the Act.

(3) If the party seeking the referral is unable to deliver the notice within the prescribed period, the party may within the 21 day period prescribed under section 115 deliver a request for an extension by the chairperson under section 115(1) of the Act, to the clerk setting out the grounds for the extension or delay.

(4) The clerk must within 10 days of receipt of the request, deliver the request to the relevant chairperson and a copy thereof to the other party.

(5) The chairperson must determine whether good cause exists for the extension and must make a decision within 15 days of receipt of the request and inform the clerk accordingly, and the clerk must notify the parties within 10 days of delivery of the decision of the chairperson.

(6) If a party is dissatisfied with the decision of the chairperson, that party may, within 15 days of delivery of the chairperson's decision, apply to the tax court under Part F for an order under rule 53.

### **30. Reasons for non-appearance at tax board hearing**

(1) If the chairperson confirms an assessment under section 113(9) of the Act or allows an appeal under section 113(11), a party who failed to appear at the hearing of the board may provide reasons for the non-appearance and request that the chairperson withdraws the tax board's decision.

(2) The request must set out the reasons for the non-appearance and must be delivered to the clerk within 10 days after—

- (a) if the tax board decided the matter on the day of the hearing when the party failed to appear, the date of the hearing;
- (b) if the tax board decided the matter after the day of the hearing, the date of delivery of a copy of the tax board's decision; or
- (c) in any other case, the date that the party becomes aware of the tax board's decision.

(3) The clerk must, within 10 days of receipt of the request deliver the application to the chairperson and a copy thereof to the other party.

(4) The chairperson must determine whether the party's non-appearance is due to sound reasons and must make a decision within 15 days of receipt of the request and inform the clerk accordingly.

(5) The clerk must deliver the chairperson's decision to the parties within 10 days of receipt of the decision.

(6) If a party is dissatisfied with the decision of the chairperson, that party may, within 15 days of delivery of the chairperson's decision, apply to the tax court under Part F for an order under rule 53.

**Part E**  
**Procedures of tax court**

**31. Statement of grounds of appeal**

(1) The appellant must deliver a statement of the grounds of appeal to SARS within 45 days after—

- (a) the date of an agreement under rule 23 or settlement under rule 24 in terms of which the parties agreed on the unresolved issues that the appellant may continue on appeal to the tax court;
- (b) the date of termination of alternative dispute resolution proceedings under rule 25;
- (c) if the matter was decided by the tax board, delivery of the notice by a party of the *de novo* referral of the appeal to the tax court under rule 29; or
- (d) in any other case, the date of delivery of the notice of appeal by the appellant under rule 10.

(2) The statement must set out —

- (a) a clear and concise statement of the grounds upon which the appellant appeals; and
- (b) the material facts and the the applicable law upon which the appellant relies for the appeal.

(3) The appellant may not include in the statement a ground of appeal that constitutes a new objection against a part or amount of the disputed assessment not objected to under rule 7.

**32. Statement of grounds of opposing appeal**

(1) SARS must after delivery of the statement of the grounds of appeal under rule 31, deliver to the appellant a statement of the grounds of opposing the appeal within—

- (a) where the appellant was requested to make discovery under rule 35(1), 35 days after the appellant has discovered the required documents; or
- (b) where the appellant was not requested to make discovery under rule 35(1), 45 days after delivery of the statement under rule 31.

(2) The statement of the grounds of opposing the appeal must set out—

- (a) a clear and concise statement of the grounds upon which the appellant's appeal is opposed;
- (b) the material facts and the applicable law upon which SARS relies; and
- (c) which of the facts or the applicable law set out in the statement of the grounds of appeal under rule 31 are admitted and which of those facts or applicable law are denied.

(3) SARS may not include in the statement a ground that constitutes a novation of the factual or legal basis of the disputed assessment.

### **33. Reply to statement of grounds of opposing appeal**

(1) The appellant may after delivery of the statement of grounds of opposing the appeal under rule 32 deliver a reply to the statement within—

- (a) where SARS was requested to make discovery under rule 35(2), 15 days after the appellant has discovered the required documents; or
- (b) where SARS was not requested to make discovery under rule 35(2), 20 days after delivery of the statement under rule 31(2).

(2) The reply to the statement of grounds of opposing the appeal must set out a clear and concise reply to any new grounds, material facts or applicable law set out in the statement of the grounds of opposing the appeal.

### **34. Issues in appeal**

The issues in an appeal to the tax court will be those contained in the statement of the grounds of appeal read with the statement of the grounds of opposing the appeal and, if any, the reply to the grounds of opposing the appeal.

### **35. Amendments of statements**

(1) The parties may agree that a statement under rule 31, 32 or 33 be amended.

(2) If the other party does not agree to the amendment, the party who requires an amendment may apply to the tax court under Part F for an order under rule 52.

### **36. Discovery of documents**

(1) SARS may, within 10 days after delivery of the statement under rule 31, deliver a notice of discovery to the appellant requesting the appellant to make discovery on oath of

any document material to a ground of appeal not set out in the notice of objection under rule 7 or the notice of appeal under rule 10, to the extent that such document is required by SARS to formulate its grounds of opposing the appeal under rule 32.

(2) The appellant may, within 10 days after delivery of the statement under rule 32 deliver a notice of discovery to SARS requesting SARS to make discovery on oath of any document material to a ground of opposing the appeal not set out in the reasons for the assessment or the basis of the disallowance of the objection under rule 9, to the extent such document is required by the appellant to formulate its grounds of reply under rule 33.

(3) A party may, within 15 days after delivery of the statement under rule 32 or 33, as the case may be, deliver a notice of discovery to the other party requesting that party to—

- (a) make discovery on oath of all documents relating to the issues in appeal as referred to in rule 34; and
- (b) if required and reasonable, produce specified documents in a specified manner, including electronically.

(4) A party to whom a notice of discovery has been delivered, must make discovery on oath of all documents relating to the new ground of appeal, the new ground of opposing the appeal or the issues in appeal, as the case may be, within 20 days after delivery of the discovery notice, specifying separately—

- (a) the documents in or under the party's possession or control, or in or under the control of that party's agent;
- (b) the documents which were previously in the party's possession or control, or under the control of the party's agent, but which are no longer in the party's possession or control or that of the party's agent; and
- (c) the documents in respect of which the party has a valid objection to produce.

(5) After delivery of the documents under subrule (4), the production or inspection of the documents must take place at a venue and in a manner that the parties agree on.

(6) If either party believes that, in addition to the documents disclosed, there are other documents in possession of the other party that may be relevant to the new ground of appeal, the new ground of opposing the appeal or the issues in appeal, as the case may be, that have not been discovered, then that party may give notice of further discovery within 10 days of the discovery under subrule (4), or of the inspection of the documents under subrule (5), to that other party requiring the other party to within 10 days—

- (a) make the further documents available for inspection; or

(b) state under oath that the documents requested are not in that party's possession, in which event the party must state their whereabouts, if known.

(7) A document not disclosed pursuant to a notice of discovery under subrule (4) or (6) may not, unless the tax court in the interest of justice otherwise directs, be used for any purpose at the appeal by the party who failed to make disclosure, but the other party may use such document.

(8) A document referred to in subrule (7) does not include a document specifically prepared to assist the court in understanding the case of the relevant party and which is not presented as evidence in the appeal.

### **37. Notice of expert witness**

Neither party may, save with the leave of the tax court or if the parties so agree, call a person as a witness to give evidence as an expert, unless that party has—

- (a) not less than 30 days before the hearing of the appeal delivered a notice to the other party and the registrar of the party's intention to do so; and
- (b) not less than 20 days before the hearing of the appeal delivered to the other party and the registrar a summary of the expert's opinions and the relevance thereof to the issues in appeal under rule 34.

### **38. Pre-trial conference**

(1) SARS must arrange for a pre-trial conference to be held by not later than 60 days before the hearing of the appeal.

(2) During the pre-trial conference the parties must attempt to reach consensus on—

- (a) what facts are common cause and what facts are in dispute;
- (b) the resolution of preliminary points that either party intends to take;
- (c) the sufficiency of the discovery process;
- (d) the preparation of a paginated bundle of documents;
- (e) the manner in which evidence is to be dealt with, including an agreement on the status of a document and if a document or a part thereof, will serve as evidence of what it purports to be;
- (f) whether evidence on affidavit will be admitted and the waiver of the right of a party to cross-examine the deponent;
- (g) expert witnesses and the evidence to be given in an expert capacity;

- (h) the necessity of an inspection *in loco*;
  - (i) an estimate of the time required for the hearing and any means by which the proceedings may be shortened; and
  - (j) if the dispute could be resolved or settled in whole or in part.
- (3) This conference may take place at a venue agreed between the parties.
- (4) **SARS** must within 10 days of the conclusion of the pre-trial conference prepare and deliver to the appellant a minute setting out the parties' discussion and an agreement reached in respect of each matter referred to subrule (2).
- (5) Where the appellant does not agree with the content of the minute, the appellant must, within 10 days of delivery of the minute by **SARS**, deliver a differentiating minute to **SARS** setting out with which statements in the minute by SARS the appellant does not agree and why.

### **39. Set down of appeal for hearing before tax court**

(1) The appellant must apply to the registrar to allocate a date for the hearing of the appeal within 30 days after delivery of SARS's statement of grounds of appeal under rule 32 or the appellant's reply under rule 33, as the case may be, and give notice thereof to SARS.

(2) If the appellant fails to apply for the date within the period prescribed under subrule (1), SARS must apply for a date for the hearing within 30 days after the expiry of the period prescribed under subrule (1).

(3) The registrar in his or her sole discretion may allocate a date for the hearing.

(5) The registrar must deliver to the parties a written notice of the time and place appointed for the hearing of the appeal at least 80 days before the hearing of the appeal.

### **40. Dossier to tax court**

(1) At least 30 days before the hearing of the appeal, or as otherwise agreed between the parties, SARS must deliver to the appellant and the registrar a dossier containing copies, where applicable, of—

- (a) all returns by the appellant relevant to the year of assessment in issue;
- (b) all assessments and grounds of assessment by SARS relevant to the issues in appeal;
- (c) the appellant's notice of objection against the assessment;
- (d) SARS's notice of disallowance of the objection;

- (e) the appellant's notice of appeal;
- (f) the appellant's statement of grounds of appeal;
- (g) SARS's statement of grounds of opposing the appeal;
- (h) the appellant's reply to SARS's statement of grounds of opposing the appeal, if any;
- (i) SARS's minute of the pre-trial conference and, if any, the appellant's differentiating minute;
- (j) any request for a referral from a tax board decision to the tax court under rule 29; and
- (k) any order by the tax court under Part F or a higher court in an interlocutory application or application on a procedural matter relating to the objection or the appeal.

(2) The dossier must be prepared in accordance with the requirements of rule 5.

(3) The registrar must deliver copies of the dossier to the tax court at least 20 days before the hearing of the appeal.

#### **41. Places at which tax court sits**

(1) The Judge-President of the Division of the High Court with jurisdiction in the area where a tax court has been established under section 116 of the Act, must—

- (a) determine the place and the times of the sittings of the tax court in that area by arrangement with the registrar under section 117(2) of the Act; and
- (b) allocate a judge or an acting judge of the High Court as the president of the tax court for each sitting.

(2) The tax court established in the area which is nearest to the residence or principal place of business of the appellant must hear and determine an appeal or application under Part F by the appellant, unless—

- (a) the parties agree that the appeal or application be heard by a tax court sitting in another area; or
- (b) the tax court, on application by a party under Part F, orders that the appeal or application be heard and disposed of in that tax court if—
  - (i) there are reasonable grounds to determine the matter in that tax court; and
  - (ii) approved by the Judge-President of the Division of the High Court with jurisdiction in the area where that tax court sits.

#### **42. Procedures not covered by Act and rules**

(1) If these rules do not provide for a procedure in the tax court, then the most appropriate rule contained in the uniform rules of the High Court issued under section 43 of the Supreme Court Act and the extent consistent with the Act and these rules, may be utilised by a party or the tax court.

(2) A dispute that arises during an appeal or application under Part F concerning the use of a rule under subrule (1) must be dealt with by the president of the tax court as a matter of law under section 118(3) of the Act.

#### **43. Subpoena of witnesses to tax court**

(1) At the request of either party, or if a tax court directs, a subpoena may be issued by the registrar requiring a person to attend the hearing of the appeal for the purpose of giving evidence in connection with an appeal.

(2) The subpoena may require the person subpoenaed to produce any specified document which may be in that person's possession or under that person's control and which is relevant to the issues in appeal.

(3) A witness or document subpoenaed must be relevant to the issues in appeal under rule 34, and if the registrar is satisfied that a request for a subpoena by a party constitutes an abuse of process, the registrar must inform the party to apply to the tax court for the issue of the subpoena.

(4) The uniform rules of the High Court issued under section 43 of the Supreme Court Act governing the service of subpoenas in civil matters in the high court will apply in respect of subpoenas issued under this rule.

#### **44. Procedures in tax court**

(1) At the hearing of the appeal, the proceedings are commenced by the appellant unless—

(a) the only issue in dispute is the facts upon which an understatement penalty is imposed by SARS under section 222(1) of the Act; or

(b) SARS takes a point *in limine*.

(2) A party—

(a) must present all evidence, including leading witnesses, on which the party's case is based and must adhere to the rules of evidence; and

(b) may present a document specifically prepared to assist the court in understanding the case of the party and which is not presented as evidence in the appeal.

(3) At the conclusion of the evidence, the parties may be heard in argument and the party heard first may reply to new points raised in the argument presented by the other party or to other points with the leave of the president of the tax court.

(4) The hearing of an appeal may be adjourned by the president of the tax court from time to time to a time and place that the tax court deems convenient.

(5) The tax court may reserve its decision until a later date and where the decision is reserved, the judgment must be delivered by the president of the tax court in the manner considered fit.

(6) The registrar must by notice deliver the written judgment of the tax court to the parties within 10 days of delivery thereof.

(7) If a party or a person authorised to appear on the party's behalf fails to appear before the tax court at the time and place appointed for the hearing of the appeal, the tax court may decide the appeal under section 129(2) of the Act upon—

(a) the request of the party that does appear; and

(b) proof that the prescribed notice of the sitting of the tax court has been delivered to the absent party or absent party's representative,

unless a question of law arises, in which case the tax court may call upon the party that does appear for argument.

#### **45. Postponement or removal of case from roll**

(1) If the parties agree to postpone the hearing of the appeal that has been set down for hearing, or to have that appeal removed from the tax court's roll, the party initiating the proceedings must notify the registrar thereof.

(2) An application by a party to postpone or remove an appeal from the roll, which is opposed by the other party, may be heard and determined by the president of the tax court in the manner referred to in section 118(3) of the Act and the president may make an appropriate cost order under section 130(3) of the Act.

#### **46. Withdrawal or concession of appeal or application**

(1) If at any time before it has been set down under rule 39 an appeal or application under Part F is withdrawn by the appellant or conceded by SARS under section 107 of the

Act, notice of the withdrawal or concession, whichever is applicable, must be given to the other party.

(2) If an appeal or application has been set down for hearing under rule 39, or is part-heard, and the appellant withdraws or SARS concedes the appeal or application, the relevant party must—

- (a) deliver a notice of withdrawal or concession, whichever is applicable, to the other party and to the registrar; and
- (b) in such notice, indicate whether or not the party consents to pay the costs of the other party.

(3) If a notice of withdrawal or concession is delivered after the appeal or application has been set down for hearing without a consent to pay the other party's costs, the aggrieved party may apply under Part F for costs under section 130(1)(e) of the Act which application may be dealt with by the president of the tax court in the manner referred to in section 118(3) of the Act.

#### **47. Costs**

(1) Where the tax court makes an order as to costs or if a consent to pay costs is made by a party under these rules, at the request of a party, the registrar may—

- (a) perform the functions and duties of a taxing master; or
- (b) at the request of the tax court or the party, appoint any other person to act as taxing master on such terms and for such period as the registrar considers appropriate.

(2) The registrar must be satisfied that the person appointed by the registrar to act as taxing master is suitably qualified or experienced to perform the functions and duties of a taxing master.

(3) A party may apply to the tax court under Part F for reconsideration of items or portions of items in the bill of costs taxed by the registrar or the person appointed to act as taxing master and an order under rule 52(7).

(4) The fees, charges and rates to be allowed by the tax court are, as far as applicable, those fixed by the tariff of fees and charges in cases heard before the Division of the High Court within which area of jurisdiction the tax court sits.

#### **48. Witness fees**

(1) A witness in proceedings before the tax court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister for Justice and Constitutional Development and published under section 42 of the Supreme Court Act by public notice.

(2) Despite subrule (1), a tax court may, at the request of a party, order that no allowances or only a portion of the prescribed allowances be paid to a witness.

#### **49. Request for recordings**

(1) If the appellant requires from the registrar under section 134(3) of the Act—

- (a) a transcript of the evidence or part thereof given at the hearing of the appeal; or
- (b) a copy of the recording of the evidence or a part thereof given at the hearing of the appeal for purposes of private transcription,

the appellant must pay to the registrar the costs as prescribed by the Commissioner in a public notice issued under section 134(3) of the Act.

(2) The appellant must pay the costs as follows:

- (a) if a transcript is required, payment must be made within 20 days of delivery of the transcript and the invoice by the registrar; or
- (b) if a copy of the recording of the evidence is required, payment in full must be made upon receipt of the copy and invoice by the registrar.

### ***Part F***

#### ***Applications on notice***

#### **50. Procedures under this Part**

(1) For the purpose of this Part—

- (a) the party bringing the application is the applicant and the party against whom relief is sought is the respondent; and
- (b) a reference to the tax court means the president of the tax court [acting in the manner referred to in section 118\(3\) of the Act.](#)

(2) The rules referred to in Parts A to E and G, to the extent applicable and together with the necessary changes as required by the context, apply to this Part.

(3) A document required to be delivered under this Part must be delivered—

- (a) to the registrar at the address specified by public notice under rule 3;

- (b) to SARS at the address specified under rule 2(1); or
- (c) to the taxpayer or appellant, at the address specified under rule 2(1).

(4) An application under this Part interrupts the periods prescribed for purposes of proceedings under Parts A to E of these rules for the period commencing on the date of delivery of a notice of motion under rule 57 and ending of the date of—

- (a) delivery of a notice of withdrawal of the application by the applicant;
- (b) an agreement between the applicant and respondent to terminate proceedings under this Part; or
- (c) delivery of the judgment of the tax court to the parties.

(5) The tax court hearing an application under this Part may—

- (a) make an order as referred to in this Part, together with any other order it deems fit, including an order as to costs; and
- (b) reserve its decision until a later date and where the decision is reserved, the judgment must be delivered by the president of the tax court in the manner considered fit.

(6) The registrar must by notice deliver the written judgment of the tax court to the applicant and the respondent within 10 days of delivery thereof.

## **51. Application provided for in Act**

(1) An application to the tax court provided for in the Act must, unless otherwise specified, be brought in the manner provided for in this Part.

(2) An interlocutory application relating to an objection or appeal must, unless the tax court before which an appeal is set down otherwise directs, be brought in the manner provided for in this Part.

## **52. Application provided for under rules**

(1) A taxpayer or appellant may apply to a tax court under this Part—

- (a) if SARS fails to provide the reasons under rule 6 for an assessment required to enable the taxpayer to formulate an objection under rule 7, for an order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection;
- (b) if an objection is treated as invalid under rule 7, for an order that the objection is valid;

(c) if the period of time to lodge an objection to an assessment has not been extended under section 104(4) of the Act, for an order extending the period within which an objection must be lodged by a taxpayer subject to the provisions of section 104(5) of the Act; or

(d) if the period of time to lodge an appeal to an assessment has not been extended under section 107(2) of the Act, for an order extending the period within which an appeal must be lodged by an appellant for a period not exceeding 45 days from the date of the order.

(2) A party who failed to obtain an extension of a period by agreement with the other party under rule 4 may apply to the tax court under this Part for an order, on good cause shown—

(a) condoning the non-compliance with the period; and

(b) extending the period for the further period that the tax court deems appropriate.

(3) SARS may for purpose of rule 12 apply to a tax court under this Part for an order—

(a) that an objection or appeal be selected as test case;

(b) that an objection or appeal be stayed pending the determination of the test case; or

(c) whether a taxpayer or appellant requesting participation in the test case should be allowed to do so.

(4) A party to an agreement under rule 23 or a settlement under rule 24 pursuant to alternative dispute resolution proceedings under Part C, may apply to a tax court under this Part for an order that—

(a) the agreement or settlement be made an order of court; or

(b) if SARS fails to issue the assessment to give effect to an agreement or settlement within the period prescribed under rule 23(3) or 24(3), as the case may be, SARS must issue the assessment.

(5) A party who failed to deliver a statement as and when required under rule 31, 32 or 33, may apply to the tax court under this Part for an order condoning the failure to deliver the statement and the determination of a further period within which the statement may be delivered.

(6) A party seeking an amendment of a statement under rule 35, may apply to the tax court under this Part for an appropriate order, including an order concerning a postponement of the hearing.

(7) A party may apply to the tax court under this Part for an order as to whether items or portions of items in the bill of costs taxed under rule 47 may be allowed, reduced or disallowed.

### **53. Application against decision by chairperson of tax board**

(1) A party may, despite the procedures set out in Part D, apply to a tax court against a decision by a chairperson of a tax board that concerns—

- (a) the non-appearance of a person at a hearing of the tax board under section 113(13) of the Act; or
- (b) the extension of the period within which a request to refer a tax board decision to the tax court under section 115 of the Act must be made.

(2) A party may apply to the tax court to may make an order—

- (a) condoning a party's non-appearance at a tax board hearing; or
- (b) allowing a party's request for extension of the referral of the appeal to the tax court.

### **54. Application for withdrawal of chairperson of tax board**

(1) An application for the withdrawal of a chairperson of the tax board under section 111(7) of the Act may be made to—

- (a) that chairperson before or during the hearing of the appeal by the tax board; or
- (b) if the application made to that chairperson was refused, the tax court in the manner provided for in this Part.

(2) For purpose of the application to the tax court by the applicant, the chairperson must postpone the hearing *sine die*.

(3) The tax court to which an application is made may order the withdrawal of the chairperson if satisfied that there—

- (a) is a conflict of interest on the part of the chairperson that may reasonably be regarded as giving rise to bias which the chairperson may experience with the case concerned; or
  - (b) are other circumstances that may reasonably be regarded as giving rise to bias and affect the chairperson's ability to remain objective for the duration of the case,
- together with any other order it deems fit, including an order as to costs.

(4) The applicant must within 10 days of delivery of the judgment of the tax court by the registrar under rule 50(6), request the clerk to convene or reconvene, as the case may be, the tax board under rule 26.

## **55. Application for withdrawal of member of tax court**

(1) An application for the withdrawal of a member of the tax court under section 122 of the Act, may be made in the manner provided for in this Part to—

- (a) if the appeal has been set down under rule 39, the tax court where the appeal has been set down; or
- (b) if the appeal has not been set down under rule 39, the tax court where the application is set down under this Part.

(2) If an application for the withdrawal of a member of the tax court is—

- (a) made after the appeal has been set down but before the hearing, the applicant must request the registrar to postpone the hearing of the appeal *sine die*; or
- (b) during the hearing of the appeal, the tax court must postpone the hearing of the appeal *sine die*.

(3) The tax court to which an application is made under this rule may order the withdrawal of the member if satisfied that there—

- (a) is a conflict of interest on the part of the member that may reasonably be regarded as giving rise to bias which the member may experience with the case concerned; or
- (b) are other circumstances that may reasonably be regarded as giving rise to bias and affect the member's ability to remain objective for the duration of the case.

(4) The applicant must within 10 days of delivery of the order of the tax court by the registrar, request the registrar to set the appeal down under rule 39.

(5) If an application for the withdrawal of a member of the tax court is successful, the registrar after receipt of the notice of the applicant requesting set down, must select another person from the panel of members of the tax court established under section 120 of the Act for the hearing of the appeal.

## **56. Application for default judgment in the event of non-compliance with rules**

(1) If a party has failed to comply with a period or obligation prescribed under these rules or an order by the tax court under this Part, the other party may—

- (a) deliver a notice to the defaulting party informing the party of the intention to apply to the tax court for a final order under section 129(2) of the Act in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice; and

(b) if the defaulting party fails to remedy the default within the prescribed period, apply, on notice to the defaulting party, to the tax court for a final order under section 129(2) of the Act.

(2) The tax court may, on hearing the application—

(a) in the absence of good cause shown by the defaulting party for the default in issue make an order under section 129(2) of the Act; or

(b) make an order compelling the defaulting party to comply with the relevant requirement within such time as the court considers appropriate and, if the defaulting party fails to abide by the court's order by the due date, make an order under section 129(2) of the Act without further notice to the defaulting party.

#### **57. Notice of motion and founding affidavit**

(1) Every application must be brought on notice of motion which must set out in full the order sought, be signed by the applicant or the applicant's representative and must be supported by a founding affidavit that contains the facts upon which the applicant relies for relief.

(2) Copies of the notice of motion and founding affidavit, together with all annexures, must be delivered to the registrar and the respondent.

#### **58. Address and due date**

In the notice of motion, the applicant must—

(a) indicate an address, if different from the address referred to in rule 50(3), at which the applicant will accept notice and delivery of all documents in proceedings under this Part;

(b) set forth a day, not less than 10 days after delivery thereof to the respondent, on or before which the respondent is required to notify the applicant, whether the respondent intends to oppose that application; and

(c) state that if no such notification is given, the application will be set down for hearing on the first available day determined by the registrar, being not less than 15 days after service of that notice on the respondent.

## **59. Set down for hearing where no intention to oppose**

(1) If the respondent does not, on or before the day set out in the notice under rule 58(b), deliver to the applicant a notice of intention to oppose the application, the applicant may apply to the registrar to set the matter down.

(2) An application must be heard by a court having jurisdiction within any area in which the appellant resides or carries on business unless the applicant and the Registrar agree that it be heard in another area.

(3) The registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.

## **60. Notice of intention to oppose and answering affidavit**

If the respondent wishes to oppose the grant of an order sought in the notice of motion, the respondent must—

- (a) on or before the day set out in the notice under rule 58(b), deliver to the applicant and the registrar a notice of intention to oppose the application;
- (b) if the respondent is the taxpayer or the appellant, indicate in the notice of intention to oppose an address, if different from the address referred to in rule 50(3), at which the respondent will accept notice and delivery of all documents in proceedings under this Part; and
- (c) within 15 days of notifying the applicant of the intention to oppose the application, deliver an answering affidavit, if any, together with relevant annexures, to the applicant and the registrar.

## **61. Replying affidavit**

(1) Within 10 days of delivery of the respondent's answering affidavit under rule 60(c), the applicant may deliver a replying affidavit to the respondent and the registrar.

(2) The tax court may in its discretion permit further affidavits to be filed.

## **62. Set down for hearing where no answering affidavit**

(1) If no answering affidavit is delivered by the respondent within the period referred to in rule 60(c), the applicant may within five days of the expiry of that period apply to the registrar to set the matter down.

(2) The registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.

### **63. Application for set down by respondent**

(1) If the applicant fails to apply for set down within the period referred to in rule 59 or 62, as the case may be, to the registrar to allocate a date for the application, the respondent may apply to the registrar to allocate a day for the application within 10 days of the expiry of the period referred to in rule 59 or 62.

(2) The registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.

### **64. Judgment by tax court**

(1) The tax court after hearing an application under this Part may reserve its decision until a later date and where the decision is reserved, the judgment must be delivered by the tax court in the manner considered fit.

(2) The registrar must by notice deliver the written judgment of the tax court to the parties, or the clerk of the tax board if appropriate, within 10 days of delivery thereof.

## ***Part G***

### ***Transitional arrangements***

### **65. Definitions**

Any meaning given to a word or expression in the Act and Part A to F must, unless the context otherwise indicates, bear the same meaning in this Part, and—

“**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); and

“**the previous rules**” means the rules promulgated under section 107A of the Income Tax Act and repealed under section 269(1) of the Act with effect from the date that these rules commence.

## **66. Application of rules to prior or continuing action**

(1) Subject to this Part, these rules apply to an act or proceeding taken, occurring or instituted before the commencement date of these rules, but without prejudice to the action taken or proceedings conducted before the commencement date of the comparable provisions of these rules.

(2) A request for reasons, objection, appeal to the tax board or tax court, alternative dispute resolution, settlement discussions, interlocutory application or application in a procedural matter taken or instituted under the previous rules but not completed by the commencement date of these rules, must be continued and concluded under these rules as if taken or instituted under these rules.

(3) A document delivered by the taxpayer, appellant, SARS, clerk or registrar under the previous rules, must be regarded as delivered in terms of the comparable provision of these rules, as from the date that the document was issued or delivered under the previous rules.

(4) If, before the commencement of these rules and before an appeal has been heard by the tax court—

- (a) a statement of grounds of assessment has been delivered by SARS under rule 10 of the previous rules but the statement of grounds of appeal by the taxpayer under rule 11 of the previous rules has not been delivered, the appellant must within 45 days of the commencement of these rules deliver a statement of grounds of appeal under rule 31; or
- (b) a statement of grounds of appeal by the taxpayer under rule 11 of the previous rules has been delivered and the appeal has not been heard by the tax court, the issues in appeal for purposes of rule 34 are regarded as the grounds of assessment under rule 10 of the previous rules read with the statement of the grounds of appeal under rule 11 of the previous rules.

## **67. Applications of new procedures**

A party in a dispute which has not been decided on by a tax board or a tax court before the commencement of these rules may use a procedure provided for in these rules provided that—

- (a) the procedure sought to be used follows in sequence after the last action taken by either of the parties; and

(b) the period contained in the relevant previous rule has not expired, counting from the commencement date of these rules.

## **68. Completion of time periods**

(1) If the period for an application, objection or appeal prescribed under the previous rules had expired before the commencement date of these rules, nothing in these rules may be construed as enabling the application, objection or appeal to be made under these rules by reason only of the fact that a longer period may be prescribed under these rules.

(2) If the previous rules prescribed a period within which a party, clerk or registrar must deliver a document, and that period expires after the commencement date of these rules, the first day of the prescribed period for any further procedures under these rules is regarded as commencing on the day after the last day of that expired period.

(3) If an objection or an appeal could have been lodged before the commencement date of these rules but is lodged after the period prescribed under the previous rules, an application for the condonation of the late lodging of the objection or appeal must be considered under these rules.