

Tax Administration Act, 28 of 2011

Rules on Electronic Communication under section 255 of the Act

Draft 1 for Public Comment

Explanatory Note:

1. This draft notice proposes the promulgation of the rules in terms of section 255 of the Tax Administration Act, 2011, prescribing the rules for electronic communication.
2. All comments on this draft must be submitted to Ms A Veary at aveary@sars.gov.za before or on **14 February 2014**.

SOUTH AFRICAN REVENUE SERVICE

R. No.

2014

RULES OF ELECTRONIC COMMUNICATION PROMULGATED IN TERMS OF SECTION 255(1) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

I, Ivan Pillay, Acting Commissioner for the South African Revenue Service, hereby prescribe, in the Schedule hereto, the rules for electronic communication in terms of section 255(1) of the Tax Administration Act, 2011 (Act No. 28 of 2011).

I PILLAY

ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

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SCHEDULE

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, if in single quotation marks, have the following meanings—

‘access code’ means a series of numeric characters, alphabetic characters, symbols or a combination of the aforementioned, associated with an individual ‘user ID’;

‘addressee’ means a person who is intended by the ‘originator’ to receive an ‘e-mail’, but not a person acting as an ‘intermediary’ in respect of that ‘e-mail’;

‘automated transaction’ means an electronic transaction conducted or performed, in whole or in part, by means of ‘data messages’, in which the conduct or message of one or both parties is not reviewed by a natural person in the ordinary course of such natural person’s business or employment;

‘data’ means electronic representations of information in any form;

‘data message’ means ‘data’ generated, sent, received or stored by electronic means and includes a stored record;

‘destructive element’ means a back door, Trojan horse, worm, virus or other software function, method, routine, sub-routine or code intended or designed to—

- (a) permit access to or the use of an ‘information system’ of SARS by an unauthorised person; or
- (b) disable, damage, erase, disrupt, corrupt, impair or otherwise interfere in the operation of an ‘information system’ or ‘data’ of SARS;

‘digital signature’ has the meaning assigned to an ‘electronic signature’;

‘domain name’ means a series of numeric characters, alphabetic characters or a combination of the aforementioned, which designates a registered or assigned ‘web site’ on the ‘Internet’;

‘electronic address’ means a series of numeric characters, alphabetic characters, symbols or a combination of the aforementioned, which identifies a destination for an ‘electronic communication’;

‘electronic communication’ means a communication by means of ‘data messages’;

‘Electronic Communications and Transactions Act’ means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

‘electronic communicator’ means a person who—

- (a) as part of the particulars provided under Chapter 3 of the Act, provided an ‘electronic address’;
- (b) is obliged or has elected an ‘electronic address’ under the rules for dispute resolution issued under section 103 of the Act; or
- (c) elects to communicate with SARS in electronic format;

‘electronic filing page’ means a secure ‘data message’ which—

- (a) is created by a ‘SARS electronic filing service’ within the ‘information systems’ of SARS;
- (b) is accessible from the ‘SARS web site’, through the use of a ‘registered user’s’ ‘user ID’ and ‘access code’; and
- (c) contains the ‘electronic filing transactions’ of that ‘registered user’;

‘electronic filing transaction’ means an ‘electronic communication’, generated through the use of a ‘SARS electronic filing service’ by—

- (a) a ‘registered user’, including by means of—
 - (i) electronically completing and submitting to SARS a return, the completion and submission of which is supported by a ‘SARS electronic filing service’;
 - (ii) submitting to SARS documents in support of the aforementioned return; or
 - (iii) making payments to SARS;
- (b) SARS, including by means of issuing to the ‘registered user’ a notice of assessment made by SARS;
- (c) a registered tax practitioner who is a ‘registered user’ duly authorised by a taxpayer and on behalf of that taxpayer, including by means of—
 - (i) completing and submitting a return;
 - (ii) submitting documents in support of a return;
 - (iii) receiving a notice of assessment made by SARS; or
 - (iv) making payments to SARS; or
- (d) any of the aforementioned persons by means of receiving or submitting any other ‘electronic communications’ available on a ‘SARS electronic filing service’;

‘electronic signature’ means ‘data’ attached to, incorporated in, or logically associated with other data and which is intended by the ‘registered user’ or ‘electronic communicator’ to serve as a signature and must, for purposes of a ‘SARS electronic filing service’, include—

- (a) the ‘user ID’ and ‘access code’ of the user; and
- (b) the date and time that the ‘electronic filing transaction’ was received by the ‘information system’ of SARS;

‘e-mail’ means electronic mail, a ‘data message’ used or intended to be used as a mail message between the ‘originator’ and ‘addressee’ in an ‘electronic communication’;

‘home page’ means the primary entry point ‘web page’ or ‘web site’;

‘information system’ means a system for generating, sending, receiving, storing, displaying or otherwise processing ‘data messages’;

‘intermediary’ means a person who, on behalf of another person sends, receives or stores a particular ‘data message’ or provides other services in respect to that message;

‘Internet’ means the interconnected system of networks that connects computers around the world using the ‘TCP/IP’ and includes future versions thereof;

‘originator’ means a person by whom, or on whose behalf, an ‘e-mail’ purports to have been sent or generated prior to storage, if any, but does not include a person acting as an ‘intermediary’ with respect to that ‘e-mail’;

‘registered user’ means a person registered under rule 4;

‘SARS electronic filing service’ means secure ‘Internet’ based software applications where SARS and ‘registered users’ can generate and exchange ‘electronic filing transactions’;

‘SARS web site’ means the secure location in the ‘information system’ of SARS which contains and from which a ‘SARS electronic filing service’ is accessible;

‘TCP/IP’ means the Transmission Control Protocol/Internet Protocol used by an ‘information system’ to connect to the ‘Internet’;

‘the Act’ means the Tax Administration Act, 2011 (Act No. 28 of 2011);

‘user ID’ means the unique identification—

- (a) created under rule 3(1) and 3(2); and
 - (b) used by a 'registered user' in order to access the user's 'electronic filing page';
- 'web page'** means a 'data message' on the 'World Wide Web';
- 'web site'** means a location on the 'Internet' containing a 'home page' or 'web page';
- and
- 'World Wide Web'** means an information browsing framework that allows a user to locate and access information stored on a remote computer and to follow references from one computer to related information on another computer.

2. Provision of 'SARS electronic filing service'

(1) A person who is required or enabled to submit a return in electronic format must do so in the manner prescribed in these rules.

(2) SARS must provide a secure and reliable 'SARS electronic filing service' for purposes of enabling a person to submit a return in electronic form.

- (3) A 'SARS electronic filing service' must—
- (a) provide the 'registered user' with the ability to—
 - (i) create a 'user ID' and 'access code';
 - (ii) use the user ID and access code to access, conclude, receive and read 'electronic filing transactions' on the user's 'electronic filing page'; and
 - (iii) cancel the user's 'SARS electronic filing service'; and
 - (b) ensure that all 'electronic filing transactions' on a user's 'electronic filing page' remain complete and unaltered except for the addition of endorsements and changes which arise in the normal course of communication, storage and display, for the period required by the Act.

- (4) A 'SARS electronic filing service' may—
- (a) provide a person the ability to—
 - (i) authorise a registered tax practitioner, who is a 'registered user', to perform a 'electronic filing transaction' on behalf of the taxpayer; or
 - (ii) terminate the tax practitioner's authority over the tax affairs of that 'registered user';
 - (b) provide a tax practitioner, who is a 'registered user', the ability to terminate the

- authority provided by the taxpayer; and
- (c) limit the amount of 'data' that can be submitted by the 'registered user' on the 'electronic filing page'.

3. 'User ID' and 'access code'

- (1) A 'user ID' and 'access code' must be—
 - (a) uniquely linked to the 'registered user';
 - (b) capable of identifying only that user; and
 - (c) based on the relevant material provided by the user under rule 4(1)(a).
- (2) The 'registered user' must—
 - (a) only gain 'access' to a 'SARS electronic filing service' by using the user's own 'user ID' and 'access code';
 - (b) ensure that adequate measures have been introduced and exercise reasonable care to retain control over and confidentiality of the user ID and access code;
 - (c) prevent disclosure of the user ID and access code to an unauthorised person and may not under any circumstances—
 - (i) share an access code with anyone, verbally or otherwise, including a SARS official; or
 - (ii) store an access code as a 'data message'.
- (3) If the 'user ID' or 'access code' have been compromised or is suspected of being compromised in any manner, the 'registered user' must inform SARS accordingly and must reset the 'access code' without delay.
- (4) The applicant for a 'SARS electronic filing service' or a 'registered user' who is required to change the user's 'access code', must create an 'access code' that cannot be easily surmised.

4. 'SARS Electronic filing service' registration

- (1) For purposes of utilising a 'SARS electronic filing service', a person must—
 - (a) apply for registration on the 'SARS web site' and provide SARS with the

- particulars and documents as SARS may require for the registration;
- (b) create and secure the person's own 'user ID' and 'access code' in compliance with the security requirements of rule 3; and
 - (c) accept and abide by the general conditions of use set out in these rules.
- (2) SARS must—
- (a) confirm the 'SARS electronic filing service' activation if the particulars supplied are complete and valid; or
 - (b) notify the person to re-submit correct particulars if any of the particulars supplied are incomplete or invalid.
- (3) Subject to subrule (4), SARS may refuse an application for registration or, cancel or suspend a registration for a specified period if the person applying for registration—
- (a) contravenes or fails to comply with the requirements for registration contained in these rules or with the conditions or obligations imposed by SARS;
 - (b) misuses or abuses the 'SARS web site' or a 'SARS electronic filing service' in the manner referred to in these rules; or
 - (c) has, during the preceding five years, been convicted for an offence under Chapter XIII of the Electronic Communications and Transactions Act.
- (4) Upon cancellation or suspension, a SARS official must provide reasonable—
- (a) grounds for the cancellation or suspension; and
 - (b) opportunity for the 'registered user' to respond and make representations as to why the registration should be reinstated.
- (5) When SARS cancels or suspends the registration, the cancellation or suspension will take effect from the day on which the notice is delivered to the 'registered user'.
- (6) Upon registration and while using a 'SARS electronic filing service', a 'registered user'—
- (a) may not leave an 'electronic filing page' unattended once accessed;
 - (b) will be held accountable for all activities and 'electronic filing transactions' performed using the 'user ID' and 'access code'; and

(c) must take all reasonable steps to ensure that the content of all documents submitted electronically to SARS are true and correct and comply in all respects with the provisions of these rules or a tax Act.

(7) Where an 'electronic communication' is received by SARS from the 'registered user' authenticated by the 'user ID' and 'access code', the communication must be taken by SARS to have been communicated by the user.

5. 'SARS web site'

(1) A 'SARS electronic filing service' is available on the 'SARS web site'.

(2) A person who accesses the 'SARS web site' must, prior to registering for a 'SARS electronic filing service', be satisfied that the content available from and through the web site meets the person's individual requirements.

(3) The 'SARS web site' may contain links to third party 'web sites'—

(a) for which SARS receives no financial benefit;

(b) which are outside of the control of SARS with regards to content, updates, links or changes to the 'web sites'; and

(c) the content of which is neither attributable to nor endorsed by SARS.

(4) A person who accesses and uses the 'SARS web site' must report untrue, inaccurate, defamatory, illegal, infringing or harmful content available on the web site to SARS and SARS must correct or remove the content or part thereof where SARS determines that the content is untrue, inaccurate, defamatory, illegal, infringing or harmful.

6. Intellectual Property

(1) All intellectual property in the 'SARS web site' and a 'SARS electronic filing service' is either the property of or licenced to SARS and is therefore protected by both the laws of the Republic of South Africa and international laws pertaining to intellectual property rights.

(2) A person who accesses and uses the 'SARS web site' or a 'SARS electronic filing service' may—

- (a) not do anything that infringes or may infringe intellectual property rights and must comply with all laws applicable to intellectual property;
- (b) view, download and print the content of the web site for the exclusive purposes of accessing and using the web site and filing service; or
- (c) quote from the content available on the web site only if the content is correctly quoted, placed in inverted commas and attributed to SARS.

(3) No person may use the trade name 'SARS' as an element of a domain name or sub-domain name.

7. Other 'electronic communications' between SARS and other persons

(1) A 'electronic communicator' must issue, give, send or serve notices, documents or other communication in an electronic format as provided in these rules.

(2) A document in electronic format, required to be completed and delivered under the rules for dispute resolution issued under section 103 of the Act must be capable of—

- (a) delivery in the form prescribed under section 103 of the Act;
- (b) being signed by means of an 'electronic signature' in compliance with these rules and the rules for dispute resolution; and
- (c) being accepted by the computers or equipment forming part of the 'information system' of SARS.

8. Formation of an 'electronic communication'

(1) Where an 'electronic communicator' and a SARS official have not agreed that an acknowledgment of receipt for a communication be given in a particular form or by a particular method, an acknowledgement may be given through a—

- (a) communication from a SARS official pertaining to that communication excluding an 'automated transaction';
- (b) communication from the communicator pertaining to that communication, whether an 'automated transaction' or otherwise; or

(c) conduct by SARS or the communicator to indicate that the communication has been received.

(2) The time of receipt of an 'electronic communication' must be when—

(a) the communication referred to in subrule (1)(a) and (1)(b) enters the 'information system' of SARS or the 'electronic communicator'; or

(b) the conduct referred to in subrule (1)(c) is reasonably regarded as coming to the attention of SARS or the communicator.

(3) Unless an acknowledgement of receipt for an 'electronic communication' has been received, the communication must be deemed not to have been sent.

(4) An 'electronic communication' is regarded as sent from and received at SARS or the 'electronic communicator's' usual place of business or residence.

9. Consequences of 'electronic communications'

(1) Where an 'electronic communication' is received by SARS from the 'electronic address' provided by an 'electronic communicator'—

(a) the communication must be taken by SARS to have been sent by the communicator or the duly authorised representative of the communicator personally; and

(b) the communicator is liable for all liabilities and obligations emanating from the communication, whether or not it is evidenced by an 'electronic signature'.

(2) An 'electronic communicator' must take all steps reasonably necessary to ensure that all 'electronic communications' are complete, accurate and secure against alteration during the course of transmission.

(3) Where an 'electronic communication' is identified or capable of being identified as compromised it must be re-transmitted by the 'electronic communicator' as soon as reasonably possible.

(4) Whenever an 'electronic communicator' uses the services of an 'intermediary' in order to transmit, log or process 'electronic communications', the communicator is liable towards SARS in respect of every act or omission by the intermediary as if the act or omission was the act or omission of the communicator.

10. 'Electronic signature'

(1) A person who uses an 'electronic signature' in compliance with these rules agrees that the signature must have the same force and effect as if it was affixed to a document required under a tax Act.

(2) A 'registered user' who submits a return or other document by way of a 'SARS electronic filing service' under these rules is regarded as having attached a valid 'electronic signature' to that return.

(3) In addition to the use of a 'user ID' and 'access code' for the signing of 'electronic filing transactions', if a provision of a tax Act requires a document to be signed by or on behalf of an 'electronic communicator', that signing may be effected if the 'electronic signature' is—

- (a) uniquely linked to the signatory;
- (b) capable of identifying the signatory and indicating the signatory's approval of the information communicated;
- (c) created using means that the signatory can maintain under the signatory's sole control;
- (d) linked to the 'data' to which it relates in such a manner that a subsequent change of the data is detectable;
- (e) capable of being accepted by the computers or equipment forming part of the 'information system' of SARS; and
- (f) reliable and appropriate for the purpose for which the information was communicated having regard to all the relevant circumstances at the time the signature was used.

(4) When considering the use of an 'electronic signature' an 'electronic communicator' must specifically consider the level of confidentiality, authenticity, evidentiary weight and 'data' integrity afforded by the signature.

(5) Where, in any civil or criminal proceedings involving the Commissioner or SARS, the question arises whether an 'electronic signature' affixed to an 'electronic communication' to SARS, the clerk of the tax board or the registrar of the tax court was used in the communication with or without the consent and authority of the 'registered user' or 'electronic communicator', it must, in the absence of proof to

the contrary, be assumed that the signature was used with the consent and authority of the user or communicator.

11. Security

(1) No person may interfere with 'data', services (including a 'SARS electronic filing service') or the 'information systems' of SARS in a manner which causes the data, services or information system to be modified, destroyed or otherwise rendered ineffective, including by—

- (a) delivering or attempt to deliver, whether intentionally or negligently, a 'destructive element' to the 'SARS web site', a 'SARS electronic filing service' or the 'information systems' of SARS; or
- (b) developing, distributing or using any device to breach or overcome the security system on the 'SARS web site' or the 'information systems' of SARS.

(2) An 'electronic communicator' may not use an 'electronic communication'—

- (a) to distribute unnecessary 'data messages' or offensive material;
- (b) to actually or potentially overload the 'information systems' of SARS including sending 'e-mail' to all or substantially all personnel of SARS;
- (c) to impersonate another communicator or SARS;
- (d) to send large volumes of non-business related attachments; or
- (e) that includes active animated programs or graphics.

(3) A person who accesses and uses the 'SARS web site' may not, apart from the use of *bona fide* search engine operators and the search facility provided on the web site, use or attempt to use software to search or copy content on the web site for any purposes, without the prior written consent of SARS.

(4) SARS may take whatever action necessary to preserve the security of its 'data', as well as the security and reliable operation of its 'information system', the 'SARS web site' and a 'SARS electronic filing service'.

(5) A person who obtains information regarding another person or information that they reasonably believe is not intended for that person must—

- (a) notify SARS accordingly without delay and disclose the circumstances under

- which the information was obtained;
- (b) follow the processes that SARS prescribes to remove or destroy the information from the 'information system' of the person;
 - (c) not disclose to another person nor retain in any manner or form the information so obtained; and
 - (d) retain the record of the receipt of the information.

12. Record retention by 'registered users' and 'electronic communicators'

(1) A 'registered user' or 'electronic communicator' must keep records of all 'electronic communications' in compliance with section 16 of the 'Electronic Communications and Transactions Act' and the electronic form of record keeping prescribed in the public notice issued under section 30(1)(b) of the Act for the period and for the purpose required by a tax Act.

(2) SARS may at any time require from a 'registered user' or an 'electronic communicator' the production of an original document required to be produced under the provisions of a tax Act.

(3) A 'registered user' must, by means of a 'SARS electronic filing service', in compliance with section 23 of the Act, communicate to SARS within 21 business days any changes in the particulars provided during registration under rule 4(1)(a).

(4) An 'electronic communication' is on its production in proceedings under a tax Act, admissible in evidence against a person and rebuttable proof of the facts contained in that record, copy, printout or extract if—

- (a) made by a 'registered user' or 'electronic communicator' in the ordinary course of business; or
- (b) it is a copy or printout of or an extract from the communication certified to be correct by the representative taxpayer of the user or communicator, which certification must include the particulars specified in the public notice issued under section 30(1)(b) of the Act.

13. Electronic record retention by SARS

(1) A 'SARS electronic filing service' must retain a history of the 'electronic filing transactions' of the 'registered user' for periods required by a tax Act.

(2) SARS must secure information in a method and in a format that ensures the integrity and reliability of the 'data' and ensures that the information can be reproduced when required as permissible evidence in a court of law.