

SOUTH AFRICAN REVENUE SERVICE

No.

20146

DRAFT RULES FOR ELECTRONIC COMMUNICATION PRESCRIBED UNDER SECTION 255(1) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)

I, Thomas Swabihi Moyane, 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.

This public notice replaces, with effect from its date of publication, Notice 644 published in Government Gazette No. 37940, dated 25 August 2014.

TS MOYANE

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

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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 meanings—

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

‘access control’ means tools and protocols, including cryptography, used to identify and authenticate a person and control the method and extent of that person’s interaction with records, premises and information systems;

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

‘data message’ means data generated, sent, received or stored by electronic means;

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

‘electronic address’ means a series of numeric characters, alphabetic characters, symbols or a combination thereof, which identifies a destination, including the electronic filing page of a registered user, for an electronic communication;

‘electronic communication’ means a communication by means of a data message and includes a document required under a tax Act;

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

‘electronic communicator’ means a person that—

- (a) is a registered user; or
- (b) is obliged to or has elected to communicate with SARS in electronic form;

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

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

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

- (a) a return, the submission of which is supported by a SARS electronic filing service;
- (b) a document in support of the return;
- (c) a communication in relation to payment made to SARS;
- (d) a notice of assessment issued by SARS; and
- (e) any other electronic communication that is capable of generation and delivery in a SARS electronic filing service;

‘electronic signature’, in relation to—

- (a) an electronic communicator, excluding a registered user, means data attached to, incorporated in, or logically associated with other data which is intended by the electronic communicator to serve as a signature; or
- (b) a registered user means—
 - (i) the user ID and access code of the user; and
 - (ii) the date and time that the electronic filing transaction was received by the information system of SARS;

‘information system’ means a system for generating, sending, receiving, storing, displaying, or otherwise processing a data message, including a database or a storage medium;

‘intermediary’ means a service provider who, on behalf of another person sends, receives or stores a data messages or who provides other services with regard to such a messages or the information system of that person;

‘MISS’ means the Minimum Information Security Standards issued under Chapter 5, Part II, regulation B.1 of the Public Service Regulations published as GNR. 1 of 5 January 2001 in Government Gazette No. 21951;

‘record’ means information or a document in the form of a data message;

‘registered user’ means a person, including a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, registered under rule 5;

‘SARS electronic filing service’ means a software application, available on a SARS web site, which enables SARS and a registered users to generate and deliver electronic filing transactions;

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

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

‘user ID’ means the unique identification—

- (a) created in compliance with the requirements of rule 6; and
- (b) used by a registered user in order to access the user’s electronic filing page.

2. General

(1) An electronic communicator must submit a returns or generate and deliver ~~notices, a~~ documents or other communications in electronic form as provided for in these rules.

(2) An electronic communication and a storage medium containing an electronic communication submitted to SARS~~document in electronic form~~ must be capable of being accepted by the computers or equipment forming part of the information system of SARS.

(3) Whenever an electronic communicator uses the services of an intermediary in order to send, receive, store, log or process an electronic communications with SARS, the communicator is liable for every act or omission by the intermediary as if the act or omission was the act or omission of the communicator.

3. Delivery and receipt 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—

- (a) through a communication from a SARS official or the communicator pertaining to that communication, whether automated or otherwise; or
- (b) by conduct that indicates that the communication has been received.

(2) Delivery of an—

- (a) electronic communication, excluding an electronic filing transaction, is regarded

to occur when the complete communication—

- (i) enters the information system of SARS, the electronic communicator or the intermediary of the communicator; and
 - (ii) is capable of being retrieved and processed by SARS or the communicator; and
- (b) electronic filing transaction is regarded to occur when the complete transaction enters the information system of SARS and—
- (i) is correctly submitted by the registered user in order to be processed in the appropriate SARS electronic filing service; or
 - (ii) is correctly submitted by SARS to the electronic filing page of the registered user.

(3) Except for an electronic filing transaction, if an acknowledgement of receipt for the electronic communication in accordance with subrule (1) is not received, the communication must be regarded as not delivered.

(4) If an electronic communication is delivered in accordance with this rule, the communication is regarded as sent from and delivered to the usual place of business or residence of SARS or the electronic communicator.

(5) Where an electronic communication is delivered to SARS from the electronic address of an electronic communicator the communication is regarded as sent by the communicator personally.

4. Provision of SARS electronic filing services

(1) SARS must provide effective, secure and reliable SARS electronic filing services.

- (2) A SARS electronic filing service must—
- (a) provide a 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, deliver, receive and read electronic filing transactions on the user's electronic filing page;
 - (iii) nominate an alternative electronic address to which the SARS electronic filing service must deliver a notification of the submission of an electronic

filing transaction by SARS to the registered user's electronic filing page;
and

- (iv) 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 an endorsement ~~and~~ or a change which arises in the normal course of communication, storage and display, for the period required by a tax Act.
- (3) A SARS electronic filing service may—
 - (a) provide a taxpayer with the ability to—
 - (i) authorise a registered user, who is a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, to perform an electronic filing transaction on behalf of the taxpayer; and
 - (ii) at any time thereafter, terminate such authority;
 - (b) provide the registered user, authorised under paragraph (a)(i), with 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.

5. SARS electronic filing service registration

- (1) For purposes of utilising a SARS electronic filing service, a person must—
 - (a) apply for registration as a registered user on a SARS web site and provide SARS with the particulars or ~~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 the SARS electronic filing service; 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 or documents supplied are complete and valid; or
 - (b) notify the person to re-submit correct particulars or documents if any ~~of the~~

particulars supplied are incomplete or invalid.

(3) SARS may refuse an application for registration or cancel or suspend a registration for a specified period, if the person applying for registration contravenes or fails to comply with the requirements for registration contained in these rules.

(4) When SARS cancels or suspends the registration, the cancellation or suspension will take effect from the day on which the notice thereof is delivered to the registered user.

(5) Upon registration and while using a SARS electronic filing service, a registered user is liable for all activities and electronic filing transactions performed using that user ID and access code.

6. User ID and access code

(1) A user ID and access code must be—

- (a) uniquely linked to a registered user; and
- (b) capable of identifying only that user.

(2) The registered user—

- (a) must gain access to a SARS electronic filing service by using only that user's own user ID and access code;
- (b) must ensure that adequate measures have been introduced, and must continually exercise utmost care, to retain control over and confidentiality of the user ID and access code;
- (c) must prevent disclosure of the user ID and access code to an unauthorised person; and
- (d) may not under any circumstances share an access code in any manner with anyone, including a SARS official.

(3) If the user ID or access code has 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) An applicant for a SARS electronic filing service or a registered user who is required to change an access code must create a code that meets the minimum security requirements of the SARS electronic filing service and cannot

easily be surmised.

7. Electronic signature

(1) Other than 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 by means of an electronic signature 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) capable of being accepted by the computers or equipment forming part of the information system of SARS; and
- (d) reliable and appropriate for the purpose for which the information was communicated.

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

8. Security

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

(2) To prevent unauthorised access to, tampering with or destruction of records and to protect the authenticity, confidentiality and integrity of such records, SARS must—

- (a) conduct the background checks as may be authorised by a senior SARS official in order to screen persons who have access to records and the information systems of SARS;
- (b) contractually bind a person contracted or engaged by SARS to non-disclosure, secrecy and compliance with all security measures within SARS and establish

civil liability in the event of a breach of such contractual obligations;

(c) conduct regular confidentiality, information security and data safeguarding awareness training to all persons who have access to records and the information systems of SARS;

(d) use file formats and access controls that will enable access to the records for the duration of the periods that records are retained under rule 9(6);

(e) provide for and apply appropriate security measures when records are created, received, accessed, used, transmitted, stored and destroyed, including—

(i) access control that is aligned to and up to date with the restrictions contained in rule 9(5) and that captures relevant information about the creation, receipt, access, movement and changes to records, premises and information systems, as applicable, and keeps such information for the periods that records are retained under rule 9(6);

(ii) access control and information system management, maintenance, monitoring and testing to identify, prevent and combat risks and vulnerabilities;

(iii) measures to ensure record and information system recovery in the event of an incident; and

(iv) record disposal measures that are verified, controlled, secure, confidential to prevent reconstruction of records so disposed.

~~(2)~~(3) A person who obtains information regarding another person or information that the person obtaining the information reasonably believes 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 destroy or remove 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.

9. Record retention ~~by an electronic communicator~~

(1) An electronic communicator must keep records of all electronic communications—

- (a) that must be retained under a tax Act;
- (b) in compliance with—
 - (i) section 16 of the Electronic Communications and Transactions Act; and
 - (ii) the electronic form of record keeping prescribed in the public notice issued under section 30(1)(b) of the Act; and
- (c) for the period and for the purpose required by a tax Act.

(2) SARS will retain records in accordance with these rules.

(3) SARS must ensure that it employs and maintains suitable information systems and record retention schedules to govern the retention of records.

(4) SARS must classify, retain and dispose of its records in accordance with the guidelines provided in the MISS and must, at a minimum, classify and retain records as 'confidential'.

(5) SARS must ensure that access to records is restricted, on a need-to-know basis, to SARS officials or persons who—

(a) are employed, contracted or engaged by SARS;

(b) have a clearance commensurate to the classification of the record; and

(c) have under oath or solemn declaration undertaken to comply with the requirements of Chapter 6 of the Act.

(6) SARS may destroy records after five years from the date of assessment unless such records are relevant to an audit or investigation under Chapter 5 of the Act or an objection or appeal against an assessment or decision under section 104(2) of the Act, in which case SARS must retain such records until the audit or investigation is concluded or the assessment or decision becomes final.

~~(2)~~(7) An electronic communication made by SARS or an electronic communicator in the ordinary course of business is on its production in proceedings under a tax Act admissible in evidence against a person and rebuttable proof of the facts therein contained.

~~(3)~~(8) Where a copy or printout of, or an extract from, the communication

referred to in subrule (7) is used, such copy, printout or extract must be certified to be correct by SARS or the representative taxpayer of the communicator.

~~(4)~~(9) The certification by the representative taxpayer of the communicator under subrule (8) must include the information particulars specified in rules 3 to 6 of the public notice issued under section 30(1)(b) of the Act.

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