

## **SOUTH AFRICAN REVENUE SERVICE**

**R. No. 467**

**1 April 2003**

### **RULES PROMULGATED UNDER SECTION 107A OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), PRESCRIBING THE PROCEDURES TO BE OBSERVED IN LODGING OBJECTIONS AND NOTING APPEALS AGAINST ASSESSMENTS, PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION AND THE CONDUCT AND HEARING OF APPEALS BEFORE A TAX COURT**

The Minister of Finance has under section 107A of the Income Tax Act, 1962 (Act No. 58 of 1962), after consultation with the Minister for Justice and Constitutional Development, made the rules in the Schedule prescribing the procedures to be observed in lodging objections and noting appeals against assessments, the procedures for alternative dispute resolution and the conduct and hearing of appeals before a Tax Court.

These rules apply with effect from 1 April 2003 in respect of all assessments issued, objections lodged or appeals noted on or after that date.

Part B of the Regulations contained in Government Notice R.105 in *Gazette* No. 1011 of 22 January 1965, is hereby repealed to the extent that these rules in terms of Part C apply in respect of any objection or appeal .

**T. A. MANUEL, MP**  
**MINISTER OF FINANCE**

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**RULES PRESCRIBING THE PROCEDURES TO BE OBSERVED IN LODGING OBJECTIONS AND NOTING APPEALS AGAINST ASSESSMENTS, THE PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION AND THE CONDUCT AND HEARING OF APPEALS BEFORE A TAX COURT**

*Part A:*

*Objections, Appeals and Alternative Dispute Resolution*

***Definitions***

1. (1) In these rules, any meaning ascribed to any word or expression in the Act, shall bear the meaning so ascribed and, unless the context otherwise indicates, —

“Board” means the tax board established by section 83A of the Act;

“Court” means the tax court established by section 83 of the Act;

“day” means a day as contemplated in section 83(23) of the Act;

“deliver” means—

- (a) handing the relevant document to the relevant person;
- (b) sending the relevant document to the relevant person by registered post;
- (c) telefaxing the relevant document to the relevant person;
- (d) transmitting the relevant document to the relevant person by electronic means; or
- (e) any other means of service authorised by the Court consisting of the President of the Court sitting alone:

Provided that in the case of paragraphs (c) and (d), the original, signed document must be handed to that person or sent by registered post to that person within ten days of it being so telefaxed or transmitted by electronic means;

“documents” means documents as defined in section 74(1) of the Act;

“information” means information as defined in section 74(1) of the Act;

“Registrar” means the Registrar of the Court appointed in terms of section 83(20) of the Act and includes any other person authorised to act in the place of the Registrar;

“SARS” means the South African Revenue Service as established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“taxpayer” means a taxpayer as defined in section 1 of the Act and includes, for purposes of these rules, any person chargeable with any tax, levy, duty, charge or other amount imposed in terms of any other Act administered by the Commissioner;

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

“things” means things as defined in section 74(1) of the Act.

### ***Office of Registrar***

2.(1) The location of the office of the Registrar will be determined by the Commissioner from time to time and particulars thereof must be published for general information in the *Gazette*.

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

### ***Reasons for assessment***

3. (1)(a) Any taxpayer who is aggrieved by any assessment may by written notice delivered to the Commissioner within 30 days after the date of the assessment, request the Commissioner to furnish reasons for the assessment. The written notice must specify the address at which the taxpayer will accept notice and delivery of such reasons and all documents in terms of the proceedings contemplated in rule 26.

(b) Upon request by the taxpayer, the period prescribed in paragraph (a) may be extended by the Commissioner for a period of not more than 60 days where the Commissioner is satisfied that reasonable grounds exist for the delay in complying with that period.

(2) Where in the opinion of the Commissioner adequate reasons have already been provided, the Commissioner must, within 30 days after receipt of the notice contemplated in subrule (1), notify the taxpayer accordingly in writing which notice must refer to the documents wherein such reasons were provided.

(3) Where in the opinion of the Commissioner adequate reasons have not yet been provided, the Commissioner must provide written reasons for the assessment within 60 days after receipt of the notice contemplated in subrule (1): Provided that where in the opinion of the Commissioner more time is required due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, the Commissioner must, before expiry of that 60 day period, inform the taxpayer that written reasons will be provided not later than 45 days after the date of expiry of that first 60 day period.

## **Objection**

4. A taxpayer who is aggrieved by an assessment may object to an assessment, which objection must—

- (a) be in such form as may be prescribed by the Commissioner in terms of section 65 of the Act;
- (b) be in writing specifying in detail the grounds upon which it is made;
- (c) specify an address at which the taxpayer will accept notice and delivery of the Commissioner's decision in respect of such objection and all documents in terms of the proceedings contemplated in rule 26;
- (d) be signed by the taxpayer: Provided that where the taxpayer is unable to personally sign the objection, the person signing on behalf of the taxpayer must state in an annexure to the objection—
  - (i) the reason why the taxpayer is unable to sign the objection;
  - (ii) that he or she has the necessary power of attorney to sign on behalf of the taxpayer; and
  - (iii) that the taxpayer is aware of the objection and agrees with the grounds thereof; and
- (e) be delivered to the Commissioner at the address specified in the assessment for this purpose, within 30 days after—
  - (i) in the case where the taxpayer has requested reasons under rule 3, either the date of the notice by the Commissioner that adequate reasons have been provided or the date that reasons were furnished by the Commissioner, as the case may be; or
  - (ii) in any other case, the date of the assessment.

## **Commissioner's decision**

5.(1)(a) Where a taxpayer delivers an objection that does not comply with the requirements of rule 4(a), (b), (c) or (d), the Commissioner may inform the taxpayer by notice within 60 days that he or she does not accept it as a valid objection: Provided that the taxpayer may within ten days of such notice submit an amended objection.

(b) Where the taxpayer has failed to deliver his or her objection at the address specified in the assessment for this purpose, as required by rule 4(e), the document delivered in terms of rule 4 will be deemed to be invalid.

(2)(a) Where the Commissioner is satisfied that the taxpayer has not furnished all the information, documents or things required to decide on the taxpayer's objection, the Commissioner must, not later than 60 days after receipt of the objection, notify the taxpayer accordingly and request him or her in writing to deliver the information, documents or things as specified in that notice.

(b) The taxpayer must, within 60 days after the date of the notice contemplated in subrule (2)(a), deliver all information, documents or things requested in that notice and as specified in that notice to the Commissioner.

(c) The Commissioner may extend the period in subrule (2)(b) by not more than 30 days, where the Commissioner is satisfied that reasonable grounds exist on which the taxpayer is not able to deliver the information, documents or things specified by the Commissioner within that period and the taxpayer has, before expiry of that period, requested the Commissioner in writing that the period be extended, stating the grounds for the failure to provide such information, documents or things within that period.

(3) The Commissioner must on receipt of the objection contemplated in rule 4, or the information contemplated in subrule (2), alter the assessment or disallow the objection in accordance with section 81(4) of the Act, reduce the assessment in accordance with section 79A of the Act or withdraw the assessment in accordance with section 79B of the Act, and must, subject to subrule (4), notify the taxpayer of his or her decision in writing—

- (a) in the case where the Commissioner requested information under subrule (2), within 60 days after receipt of that information; or
- (b) in any other case, within 90 days after the date of receipt of the taxpayer's objection in terms of rule 4 or amended objection in terms of the proviso to subrule (1)(a), as the case may be.

(4) Where, in the opinion of the Commissioner, more time is required due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, the Commissioner must, before expiry of the period prescribed by subrule (3), inform the taxpayer that he or she will decide on the objection within such longer period which—

- (a) in the case of subrule (3)(a), may not exceed 60 days; or
- (b) in the case of subrule (3)(b), may not exceed 90 days.

## ***Notice of appeal***

6. (1) Any taxpayer entitled to object to an assessment and who is dissatisfied with the decision of the Commissioner in terms of section 81(4) of the Act, may appeal against that decision.

(2) A taxpayer who wishes to appeal must, within 30 days after the date of the notice informing him or her of the decision of the Commissioner in terms of section 81(4) of the Act, deliver to the Commissioner a notice of appeal which must be in such form as may be prescribed by the Commissioner in terms of section 65 of the Act and be signed by the taxpayer or his or her representative.

(3) In the taxpayer's notice of appeal in terms of subrule (2), he or she—

- (a) must indicate in respect of which of the grounds specified in his or her objection in terms of rule 4 he or she is appealing; and
- (b) may indicate that he or she wishes to make use of the alternative dispute resolution procedures contemplated in rule 7, should these procedures be available.

## ***Alternative Dispute Resolution***

### *Access*

7. (1) Where—

- (a) the taxpayer has indicated in his or her notice of appeal that he or she wishes to make use of alternative dispute resolution, the Commissioner must inform the taxpayer by notice within 20 days of receipt of the notice of appeal whether or not he or she is of the opinion that the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures contemplated in this rule; or
- (b) the taxpayer has not indicated in his or her notice of appeal that he or she wishes to make use of alternative dispute resolution, and the Commissioner is of the opinion that the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures contemplated in this rule, he or she must inform the taxpayer accordingly by notice within ten days of receipt of the notice of appeal, and the taxpayer must deliver a notice stating whether or not he or she agrees thereto within ten days of the date of the notice by the Commissioner.



### *Terms and agreement on alternative dispute resolution*

(2)(a) The terms governing the alternative dispute resolution proceedings are set out in Schedule A to these rules.

(b) Where the Commissioner and the taxpayer agree to alternative dispute resolution as contemplated in subrule (1), a dispute may be resolved in accordance with the alternative dispute resolution procedures contemplated in this rule, which will only take place if the taxpayer accepts the terms set out in Schedule A.

### *Period of dispute resolution*

(3)(a) The period within which the alternative dispute resolution proceedings in terms of this rule is conducted commences 20 days after the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6, and ends on the date of termination of the proceedings in the manner provided for in the terms governing the alternative dispute resolution procedures.

(b) The period contemplated in subrule (3)(a) interrupts the periods applicable for purposes of the procedures contemplated in rules 8 to 29 hereafter.

(c) The parties must finalise the alternative dispute resolution proceedings not later than 90 days after the date of receipt by the Commissioner of the notice of appeal, or such further period as the Commissioner may agree to.

### *The facilitator*

(4)(a) The Commissioner may appoint any person, including a person employed by SARS, to facilitate the proceedings in terms of this rule.

(b) Any person appointed to facilitate the proceedings in terms of this rule will be bound to the code of ethics set out in Schedule B to these rules.

(c) The person appointed to facilitate the proceedings in terms of this rule may, if the Commissioner and the taxpayer agree thereto at the commencement of the proceedings, be requested to make a recommendation at the conclusion of the proceedings if no agreement or settlement as contemplated in subrule (7)(a) or (7)(b) below is ultimately reached between the parties, which recommendation will be admissible during any subsequent proceedings including court proceedings.

## *Proceedings*

(5)(a) The proceedings in terms of this rule will be conducted in accordance with the terms set out in Schedule A.

(b) During the proceedings contemplated in this rule, the taxpayer or his or her representative taxpayer :

- (i) may be accompanied by any representative of his or her choice; and
- (ii) must be personally present unless the facilitator, in exceptional circumstances, allows the taxpayer or his or her representative taxpayer to be represented in their absence by a representative of their choice.

## *Reservation of rights*

(6)(a) The taxpayer and the Commissioner may participate in the proceedings contemplated in this rule with full reservation of their respective rights in terms of the procedures contemplated in rules 8 to 29.

(b) Subject to section 4 of the Act and subrule (4)(c), the proceedings in terms of this rule shall not be one of record, and any representation made or document tendered in the course of the proceedings—

- (i) is made or tendered without prejudice; and
- (ii) may not be tendered in any subsequent proceedings as evidence by any other party, except:
  - (aa) with the knowledge and consent of the party who made the representation or tendered the document during the proceedings in terms of this rule;
  - (bb) where such representation or document is already known to, or in the possession of, that party; or
  - (cc) where such representation or document is obtained by that party otherwise than in terms of the proceedings in terms of this rule.

(c) No person may—

- (i) subject to the circumstances listed in paragraph (b)(ii)(aa) to (cc) above, subpoena any 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; or

- (ii) subpoena the facilitator of the alternative dispute resolution proceedings to compel disclosure of any representation made or document tendered in the course of the proceedings.

#### *Agreement or settlement*

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

(b) Where—

- (i) the Commissioner and the taxpayer are, despite all reasonable efforts, unable to resolve the dispute as contemplated in paragraph (a); and
- (ii) the Commissioner personally or any person designated by the Commissioner for purposes of the regulations issued under section 107B of the Act, is of the opinion that the circumstances of the matter comply with the requirements contemplated in those regulations,

the parties may attempt to settle the matter in accordance with those regulations within the process contemplated in this rule.

(c) Where an agreement contemplated in paragraph (a) or a settlement contemplated in paragraph (b) is concluded, the Commissioner must issue an assessment to give effect to that agreement or settlement, as the case may be, within a period of 60 days after the date of the conclusion thereof.

(d) Where the proceedings are terminated in the manner provided for in the terms governing the alternative dispute resolution procedures, the taxpayer will, unless he or she informs the Commissioner otherwise, be deemed to pursue his or her appeal in the manner contemplated in rules 8 to 29.

#### *Reporting requirements*

(8)(a) Any agreement in terms of subrule (7)(a) whereby a dispute which is subject to the procedures in terms of this rule is resolved in whole or in part, must be reported internally in the manner as may be required by the Commissioner.

(b) Any settlement of a dispute in terms of subrule (7)(b) in accordance with the regulations issued in terms of section 107B of the Act, must be reported in the manner prescribed by the Minister of Finance in those regulations.

### ***Appeal to Board or Court***

8.(1) Where the provisions of section 83A of the Act apply, the matter will be dealt with by the Board.

(2) The Commissioner must give written notice of the time and place appointed for the hearing of the appeal before the Board, which notice must be delivered to the taxpayer not later than 40 days after receipt of the notice of appeal or termination of alternative dispute resolution proceedings, but at least 21 days before the hearing of the appeal in accordance with the provisions of section 83A(7)(b) of the Act.

(3)(a) The Chairperson of the Board contemplated in section 83A(3) of the Act, must furnish his or her decision to the clerk of the Board contemplated in section 83A(5) of the Act, within 30 days of the hearing of the appeal.

(b) The clerk must by notice in writing furnish the Commissioner and the appellant with a copy of the Board's decision within ten days of the receipt of the decision.

(4) The provisions of rules 9 to 29 apply in respect of any appeal to be heard by the Court.

### ***Limitation of issues in dispute***

9. (1) Where the Commissioner and the taxpayer agree that it will be beneficial to attempt to limit the issues in dispute for purposes of the anticipated litigation, the Commissioner may arrange to meet with the taxpayer which meeting may be held at any office of SARS or any other venue as agreed to by the parties, within 90 days after—

(a) where the alternative dispute resolution procedures were followed in terms of rule 7, the date of termination of the alternative dispute resolution proceedings as contemplated in rule 7(3);

(b) where the matter was heard by the Board—

(i) the date of receipt by the Commissioner of a notice by the taxpayer in terms of section 83A(13)(a); or

(ii) the date of the delivery by the Commissioner of a notice in terms of section 83A(13)(b); or

(c) in any other case, the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6.

(2) The Commissioner must within 15 days after the meeting contemplated in subrule (1), prepare and deliver to the taxpayer a minute recording—

(a) the facts that are common cause;

(b) the facts that are in dispute; and

(c) the issues the Court is required to decide on:

Provided that where the taxpayer does not agree with the content of the minute, he or she must deliver an additional minute within ten days of the date of the delivery of the minute by the Commissioner recording the facts and issues contemplated in paragraphs (a) to (c) and indicate exactly in what aspects he or she disagrees with the Commissioner's minute.

### ***Statement of grounds of assessment***

**10.** (1) The Commissioner must deliver to the taxpayer a statement of the grounds of assessment—

(a) where a meeting was held between the Commissioner and the taxpayer as contemplated in rule 9, within 60 days after the last set of minutes of that meeting was delivered by the Commissioner or the taxpayer, as the case may be;

(b) where no meeting was held as contemplated in paragraph (a), within 90 days after—

(i) where the alternative dispute resolution procedures were followed in terms of rule 7, the date of termination of the alternative dispute resolution proceedings as contemplated in rule 7(3);

(ii) where the matter was heard by the Board—

(aa) the date of receipt by the Commissioner of a notice by the taxpayer in terms of section 83A(13)(a); or

(bb) the date of the delivery by the Commissioner of a notice in terms of section 83A(13)(b); or

(iii) in any other case, the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6.

(2) Where more time is in the opinion of the Commissioner required due to exceptional circumstances, the complexity of the matter or the principle or amount involved, the Commissioner must, before expiry of the period contemplated in subrule (1)(a) or (b),

inform the taxpayer that he or she will deliver the statement of the grounds of assessment within such longer period which may not exceed—

- (a) in the case of subrule (1)(a), 60 days; or
- (b) in the case of subrule (1)(b), 90 days.

(3) The statement of the grounds of assessment must be in writing and be signed by the Commissioner or his or her representative and must be divided into paragraphs—

- (a) setting out a clear and concise statement of the grounds upon which the taxpayer's objection is disallowed ; and
- (b) stating the material facts and legal grounds upon which the Commissioner relies for such disallowance.

### ***Statement of grounds of appeal***

**11.** (1) The taxpayer (hereinafter referred to as “the appellant”) must, within 60 days after the delivery by the Commissioner of the statement of the grounds of assessment, deliver to the Commissioner a statement of the grounds of appeal.

(2) The statement must be in writing and be signed by the appellant or his or her representative and must be divided into paragraphs—

- (a) setting out a clear and concise statement of the grounds upon which the appellant appeals;
- (b) stating the material facts and legal grounds upon which the appellant relies for such appeal; and
- (c) stating which of the facts and legal grounds alleged in the statement of the grounds of assessment are admitted and which of those facts and legal grounds are denied.

### ***Issues in appeal***

**12.** The issues in any appeal to the Court will be those defined in the statement of the grounds of assessment read with the statement of the grounds of appeal.

***Amendments of statement of grounds of assessment or statement of grounds of appeal***

**13.** (1) The Commissioner and the appellant may agree in writing to the amendment of the statement of the grounds of assessment or the statement of grounds of appeal or both.

(2) The Court, consisting of the President sitting alone, may, on application on notice grant leave to amend the statement of the grounds of assessment or the statement of grounds of appeal, subject to such orders as to postponement and costs as the Court deems appropriate.

***Discovery of documents, information or things***

**14.** (1) The Commissioner and the appellant may, within 20 days after delivery of the statement of the grounds of appeal contemplated in rule 11, deliver a notice to the other party requesting him or her to make discovery on oath of all documents, information or things relating to the issues in appeal as contemplated in rule 12.

(2)(a) Any party to whom a notice to discover has been delivered, must make discovery on oath of all documents, information or things relating to any matter in the appeal within 40 days after delivery by that party of that notice, specifying separately—

- (i) the documents, information or things in his or her possession or control, or that of his or her agent;
- (ii) the documents, information or things which were previously in his or her possession or control, or that of his or her agent, but which is no longer so in his or her possession or control or that of his agent; and
- (iii) the documents, information or things in respect of which he or she has a valid objection to produce.

(b) The production or inspection of the documents, information or things takes place at a venue and in a manner as may be agreed between the parties.

(3) If either party believes that there are, in addition to the documents, information or things so disclosed, other documents, information or things which may be relevant to any matter in question in possession of the other party, that party may give notice within ten days of the production or inspection of the documents, information or things in terms or subrule (2)(b) to that other party requiring him or her to make such documents, information or things available for inspection, or to state under oath within ten days that those

documents, information or things are not in his or her possession, in which event he or she must state their whereabouts, if known to him or her.

(4) Any document, information or thing not disclosed may not, save with the leave of the Court granted on such terms as it deems appropriate, be used for any purpose at the appeal by the party who is obliged but failed to disclose it, provided that any other party may use such document, information or thing.

### ***Notice of expert witness***

**15.** Neither party may, save with the leave of the Court or consent of the other party, call any person as a witness to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received, unless that party has—

- (a) not less than 30 days before the hearing of the appeal delivered notice to the other party and the Registrar of his or her 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 such expert's opinions and his or her reasons therefor.

### ***Pre-trial conference***

**16.(1)** The Commissioner must arrange for a pre-trial conference to be held—

- (a) where either party was requested to make discovery, within 60 days after all parties who were so requested have delivered their discovery notices; or
- (b) where neither party delivered a notice requesting the other party to make discovery, within 60 days after receipt by the Commissioner of the statement of the grounds of appeal.

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

- (a) the extent to which sufficient discovery has been made by both parties, the exchange of documents, information or things and the preparation of a paginated bundle of documentation in chronological order;
- (b) the manner in which evidence is to be dealt with, including any agreement on the status of any document, information or thing and whether any document,



information or thing or parts thereof, will serve as evidence of what they purport to be;

- (c) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent;
- (d) the necessity of any inspection *in loco*;
- (e) the resolution of any preliminary points that either party intends to take;
- (f) expert evidence;
- (g) any other means by which the proceedings may be shortened;
- (h) an estimate of the time required for the hearing; and
- (i) any means by which the dispute may be resolved or settled.

(3) This conference must take place at any office of SARS or any other venue to be agreed between the parties.

(4) The Commissioner must within ten days of the conclusion of the pre-trial conference contemplated in subrule (1), prepare and deliver a minute dealing with the matters set out in subrule (2): Provided that where the appellant does not agree with the content of the minute, he or she must deliver his or her minute to the Commissioner with ten days of the date of the delivery of the minute by the Commissioner.

### ***Date of hearing***

17. (1) After delivery of the pre-trial conference minute in terms of rule 16(4), the Commissioner must arrange a date for the hearing of the appeal and inform the Registrar accordingly.

(2) The Registrar must deliver to the appellant and to the Commissioner a written notice of the time and place appointed for the hearing of the appeal at least 40 days before the hearing of the appeal, or such shortened period as may be agreed between the parties.

### ***Dossier***

18.(1) At least 30 days before the hearing of the appeal or as otherwise agreed between the parties in consequence of an agreement in terms of rule 17(2), the Commissioner must deliver to the appellant and the Registrar a dossier containing copies of—

- (a) all returns by the appellant relevant to the year of assessment in issue;
- (b) all assessments issued by the Commissioner relevant to the issues in appeal contemplated in rule 12;

- (c) where applicable, the notice requesting the Commissioner to furnish reasons for the assessment or the decision contemplated in rule 3(1);
  - (d) where applicable, the Commissioner's notice or reasons contemplated in rule 3(2) and (3);
  - (e) the appellant's objection to the assessment in terms of the Act;
  - (f) the notice of appeal in terms of the Act;
  - (g) where applicable, the minutes of the meeting to limit the issues in dispute contemplated in rule 9(2);
  - (h) where applicable, the statement of the grounds of assessment contemplated in rule 10;
  - (i) where applicable, the statement of grounds of appeal contemplated in rule 11; and
  - (j) any order by the Court in terms of rule 13(2) or 26 or both.
- (2) The dossier must be prepared in accordance with the requirements of rule 25.
- (3) The Registrar must deliver copies of the dossier to the Court at least 20 days before the hearing of the appeal or, in consequence of the agreement contemplated in subrule (1), as soon as is reasonably possible after receipt of the dossier from the Commissioner.

### ***Places at which Court sits***

- 19.**(1) The Judge President or the President of the Division of the High Court having jurisdiction in the area in which the Court will sit must determine the place and the times of the sittings of the Court by arrangement with the Registrar.
- (2) Every appeal must be heard and determined by the Court in the area determined in terms of subrule (1), which is nearest to the residence or principal place of business of the appellant: Provided that the Commissioner may, in the absence of the consent of the appellant, on reasonable grounds and with due notice to the appellant, request the Judge President or President of the High Court having jurisdiction in any other area that the appeal be heard by a Court in such other area.

### ***Procedures not covered by Act and Rules***

- 20.** (1) Save as is otherwise provided in these rules, the rules issued in terms of section 43 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply in respect of the general practice and procedure of the Court in so far as such rules are applicable.

(2) In the case of any procedural dispute during any proceedings in terms of the Act and the rules, except for rule 7, the President of the Court alone must decide on the procedures to be followed.

### ***Subpoenas***

21.(1) At the request of either party or by the directions of the Court, a subpoena may be issued by the Registrar requiring any person to attend the hearing of the appeal for the purpose of giving evidence in connection with any appeal, and such subpoena may require the person summoned to produce any book, document, information or thing which may be in his or her possession or under his or her control and which is relevant to the issues in dispute contemplated in rule 12.

(2) The rules issued in terms of section 43 of the Supreme Court Act, 1959, governing the service of subpoenas in civil matters in the High Court will *mutatis mutandis* apply in respect of subpoenas issued under this rule.

### ***Procedures in Court***

22.(1) At the hearing of the appeal, the proceedings are commenced by the appellant unless the Commissioner takes a point *in limine*.

(2) The appellant or the person appearing on his or her behalf, must present all evidence, including any witnesses, on which his or her appeal may be founded and must adhere to the rules of evidence.

(3) After the case on the part of the appellant has been heard, the Commissioner must in like manner produce all evidence, including any witnesses, where required, in support of the assessment.

(4) At the conclusion of the evidence, the appellant or the person appearing on his or her behalf, and thereafter the Commissioner, may be heard in argument.

(5) The appellant or the person appearing on his or her behalf may reply to any new points raised in the argument presented by the Commissioner or to any other points with the leave of the President of the Court.

(6) The Court must determine the matter in dispute or reserve its decision until a later date.

(7) Where the decision is so reserved, the judgment must be delivered by the President of the Court in the manner he deems fit.

(8) The hearing of an appeal may be adjourned by the Court from time to time to any time and place that the Court deems convenient.

(9) The Registrar must by notice in writing deliver the written judgment of the Court to the Commissioner and the appellant or any person nominated by him or her within 15 days of the receipt thereof.

(10) If neither the appellant nor anyone authorised to appear on his or her behalf appears before the Court at the time and place appointed for the hearing of an appeal, the Court may, upon the request of the Commissioner and upon proof that the prescribed notice of the sitting of the Court has been sent to the appellant or his or her representative, decide the appeal as contemplated in section 83(13) of the Act, unless any question of law arises, in which case the Court may call upon the Commissioner for argument in support of the assessment before giving its decision.

(11) If neither the Commissioner nor anyone authorised to appear on his or her behalf appears before the Court at the time and place appointed for the hearing of an appeal, the Court may, upon the request of the appellant and upon proof that the prescribed notice of the sitting of the Court has been sent to the Commissioner, decide the appeal as contemplated in section 83(13) of the Act, unless any question of law arises, in which case the Court may call upon the appellant for argument in support of the objection before giving its decision.

### ***Withdrawal or concession of appeal***

**23.**(1) The appeal may, at any time before it has been set down for hearing as contemplated in rule 17(2), be—

- (a) withdrawn by the appellant;
- (b) conceded by the Commissioner;
- (c) resolved by an agreement as contemplated in rule 7(7)(a), read with rule 7(7)(c) and 7(8); or
- (d) settled as contemplated in rule 7(7)(b), read with rule 7(7)(c) and 7(8).

(2) Where an appeal has been set down for hearing as contemplated in rule 17(2) or is part-heard—

- (a) it may only be withdrawn by the appellant or conceded by the Commissioner with the consent of the other party, or with leave of the Court consisting of the President of the Court sitting alone, in which event—

- (i) the party who wishes to withdraw or concede an appeal as contemplated above, must deliver a notice of withdrawal or concession to the other party and the Registrar and may include in that notice a consent to pay costs, which consent will have the effect of an order of the Court for those costs; or
  - (ii) if no consent to pay costs is included in the notice referred to in subrule (2)(a)(i), the other party may apply for an order for costs—
    - (aa) where the appeal has been set down for hearing as contemplated in rule 17(2) but not yet heard by the Court, to the Court by application on notice in the manner contemplated in Part B; or
    - (bb) where the matter is part-heard, to the Court consisting of the President of the Court sitting alone.
- (b) any agreement as contemplated in rule 7(7)(a) or any settlement as contemplated in rule 7(7)(b)—
- (i) must relate to the appeal as a whole, including costs; and
  - (ii) may, by consent between the parties or by application by any party on notice in the manner contemplated in Part B, be made an order of the Court.

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

**24.**(1) Where the Commissioner and the appellant agree to postpone the hearing of the appeal which has been set down for hearing as contemplated in rule 17(2), or to have that appeal removed from such roll, the party initiating the proceedings must notify the Registrar thereof in writing.

(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 Court sitting alone.

### ***Pagination of documents***

**25.**(1) In all proceedings before the Court, the documents that are filed with the Court must be paginated by the party who seeks to put them before the Court and, as far as practical, all the documents must be arranged in chronological order.

(2) All documents must be accompanied by an index and documents filed with the Court must be paginated in accordance with this index, which must contain sufficient information

to enable the Court to identify every document without having to refer to the document itself.

(3) Where additional documents are filed after the index has been completed, those additional documents must be paginated following the original pagination and a supplementary index must be filed listing the additional documents.

***Extension of prescribed periods, condonation and non-compliance with rules***

**26.**(1) (a) Any decision by the Commissioner in the exercise of his or her discretion under rules 3(1)(b), 3(2), 3(3), 5(1) and 5(2)(c) will be subject to objection and appeal, and may notwithstanding the procedures contemplated in rules 6 to 18 be brought before the Court by application on notice.

(b) The Court may upon application on notice under this subrule and on good cause shown, in respect of a decision by the Commissioner under:

- (i) rule 3(1)(b) or 5(2)(c), make an order extending the period prescribed therein;
- (ii) rule 3(2) or 3(3), make an order remitting the matter for reconsideration by the Commissioner with or without directions to provide such reasons as in the opinion of the Court are adequate; or
- (iii) rule 5(1), make an order declaring that any objection deemed to be invalid by the Commissioner shall be valid.

(2) Any period contemplated in rules 5 and 8 to 18 may be extended by agreement between the parties and in the absence of any agreement, the Court may upon application on notice and on good cause shown, make an order extending any period prescribed by these rules or fixed or extended by an order of the Court on such terms as the Court deems appropriate.

(3) The Court may order that any period contemplated in rules 5 and 8 to 18 be extended, notwithstanding the fact that the application for extension is made after expiry of the relevant period.

(4) The Court may upon application on notice and on good cause shown, condone any non-compliance with these rules.

(5) Where either party fails to comply with any requirement contained in these rules the Court may, upon application on notice by the other party, order the defaulting party to comply with that requirement within such time as the Court deems appropriate.

(6) Where the defaulting party fails to comply with an order made in terms of subrule (1) or (5), the Court may, upon application on notice by the other party—

- (a) where the defaulting party is the taxpayer, make an order that the assessment against which the taxpayer has objected is confirmed, in which case the assessment shall be final and conclusive;
  - (b) where the defaulting party is the Commissioner, make an order that the objection is allowed and that the Commissioner must alter the assessment in accordance with the objection; or
  - (c) make such other order as the Court deems appropriate.
- (7) In addition to any order in terms of subrules (1) to (5), the Court may make any order as to costs as the Court deems appropriate.
- (8) For purposes of this rule, any reference to “Court” means the President of the Court sitting alone.

### **Costs**

- 27.**(1) Where the Court makes an order as to costs, or at the request of the Commissioner or the taxpayer where a consent to pay costs was made by the other party in terms of these rules, the Registrar may either perform the functions and duties of a taxing master or, at the request of the Court or any party, appoint any person to act as taxing master on such terms and for such period as the Registrar may determine.
- (2) The person appointed by the Registrar under subrule (1), must in the Registrar’s opinion be fit to perform the functions and duties which are assigned to, or imposed on, a taxing master by these rules.
- (3) The Commissioner or the appellant may apply to the President of the Court sitting alone for reconsideration of any items or portions of items in the bill of costs taxed by the Registrar or the person appointed to act as taxing master, and the President’s decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.
- (4) The fees, charges and rates to be allowed by the Court are, as far as applicable, those fixed by the tariff of fees and charges in cases heard before the Provincial or Local Division of the High Court within whose area of jurisdiction the Court sits.
- (5) In making any such order against an appellant, the Court may require the appellant to pay the costs of the Commissioner as appears to the Court to be right and proper.

### ***Witness fees***

**28.**(1) A witness in any proceedings before the Court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister for Justice and Constitutional Development and published in terms of section 42 of the Supreme Court Act, 1959 (Act No. 59 of 1959), by notice in the *Gazette*.

(2) The Court may, notwithstanding subrule (1), order that no allowances or only a portion of the prescribed allowances be paid to a witness, at the request of any party to the matter before the Court.

### ***Fees payable for transcripts***

**29.** Where any person (other than the Commissioner) has filed with the Registrar a notice of intention to appeal under section 86A(3) of the Act against a decision of the Court, and that person requires a transcript of the evidence, or of a portion of the evidence, given at the hearing of the case by the Court, that person must deposit with the Registrar such sum as in the opinion of the Registrar is sufficient to cover the costs for the transcript, and must pay upon receipt of such transcript the outstanding portion of the fee as determined by the Registrar.

### *Part B:*

### *Applications on Notice*

### ***Definitions***

**B1.** (1) For purposes of the rules in this Part, any meaning ascribed to any word or expression in the Act or Part A shall, unless the context otherwise indicates, bear the meaning so ascribed.

(2) Rules 19, 23 to 25 and 27 of Part A shall, to the extent applicable, apply *mutatis mutandis* to this Part.

(3) Save as is otherwise provided in the rules of this Part, the general practice and procedure of the Court shall be that of the High Court in so far as such practice and procedure are applicable.



### ***Application of Part B***

**B2.** For purposes of the rules in Part A, any application on notice contemplated in those rules must be brought in the manner contemplated in the rules in this Part.

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

**B3.** Every application must be brought on notice of motion which must set out in full the order sought and must be supported by a founding affidavit as to the facts upon which the applicant relies for relief.

### ***Delivery of notice of motion and founding affidavit***

**B4.** Copies of the notice of motion and founding affidavit, and all annexures thereto, must be delivered to the Registrar, and the party against which the relief is claimed (hereafter referred to as the respondent) at the address—

- (a) where the respondent is the Commissioner, specified by him or her for this purpose in the assessment; or
- (b) where the respondent is the taxpayer, specified by him or her for this purpose in any request for reasons in terms of rule 3 of Part A, or his or her objection in terms of rule 4 of Part A, whichever is applicable.

### ***Address and due date***

**B5.** In the notice of motion, the applicant must—

- (a) indicate an address, if different from the address contemplated in rule B4, at which he or she will accept notice and delivery of all documents in such proceedings;
- (b) set forth a day, not less than ten days after delivery thereof to the respondent, on or before which the respondent is required to notify the applicant in writing, whether he or she 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.

***Set-down for hearing where no intention to oppose***

**B6.** If the respondent does not, on or before the day mentioned for that purpose in the notice in terms rule B5(b), notify the applicant of his or her intention to oppose, the applicant may request the Registrar to place the matter on the roll on the date determined by Registrar in terms of rule B5(c).

***Notice of intention to oppose and answering affidavit***

**B7.** If the respondent wishes to oppose the grant of an order sought in the notice of motion, he or she must—

- (a) within the time stated in that notice, give the applicant notice in writing, that he or she intends to oppose the application;
- (b) indicate in that notice contemplated in paragraph (a) an address, if different from the address contemplated in rule B4, at which he or she will accept notice and delivery of all documents in such proceedings; and
- (c) within 15 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents.

***Replying affidavit***

**B8.** (1) Within ten days of delivery of the affidavit and documents referred to in rule B7, the applicant may deliver a replying affidavit.

(2) The Court may in its discretion permit the filing of further affidavits.

***Set-down for hearing where no answering affidavit***

**B9.** Where no answering affidavit is delivered within the period referred to in rule B7(c), the applicant may within five days of the expiry of that period apply to the Registrar to allocate a date for the hearing of the application.

### ***Application for date of hearing***

**B10.** Where an answering affidavit is delivered the applicant may, within five days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in rule B8, apply to the Registrar to allocate a date for the hearing of the application on the first available date suitable to both parties.

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

**B11.**(1) If the applicant fails to apply in terms of rule B10 to the Registrar to allocate a date for the hearing of the application within the periods contemplated therein, the respondent may do so immediately upon the expiry thereof.

(2) Notice in writing of the date allocated by the Registrar shall forthwith be given by the applicant or the respondent, as the case may be, to the other party.

## *Part C:*

### *Transitional Arrangements*

#### ***Definitions***

**C1.** For purposes of the rules in this Part, any meaning ascribed to any word or expression in the Act or Part A shall, unless the context otherwise indicates, bear the meaning so ascribed, and—

(a) “effective date” means 1 April 2003;

(b) “the amendment Act” means the Second Revenue Laws Amendment Act, 2001 (Act No. 60 of 2001).

#### ***Assessment issued before effective date***

**C2.** Where an assessment was issued in terms of the Act before the effective date and no objection against that assessment was lodged before that date—

(a) rule 3 of Part A shall apply only where the request for reasons is delivered to the Commissioner after the effective date and that request is delivered to the Commissioner within the period contemplated in rule 3(1)(a) or (b);

(b) rule 4 of Part A shall only apply to an objection against that assessment, where—

- (i) that objection is lodged within the period prescribed in that rule; or
- (ii) the period of 30 days within which an objection had to be lodged in terms of section 81(1) of the Act, prior to its amendment by the amendment Act, was extended by the Commissioner in terms of section 81(2) of the Act and the last day of that period falls on a date on or after the effective date.

***Objection lodged before effective date***

**C3.** (1) Where an objection against an assessment was lodged before the effective date and—

- (a) no notice in terms of section 81(4) of the Act was delivered by the Commissioner before that date, rule 5 of Part A shall only apply in respect of that objection where—
  - (i) the objection complies with the requirements of a valid objection as contemplated in section 81(3) of the Act, prior to its amendment by the amendment Act;
  - (ii) the taxpayer delivers a motivated request to the Commissioner that rule 5 of Part A be applicable in respect of the objection; and
  - (iii) the Commissioner, on good cause shown, agrees thereto in writing in which event the date of delivery to the taxpayer of such decision will, for purposes of rule 5(2) – (4) of Part A, be deemed to be the date of the receipt of the objection contemplated in rule 5(2) – (4) of Part A;

or

- (b) a notice in terms of section 81(4) of the Act was delivered by the Commissioner before that date, but no appeal was noted before that date, rule 6 of Part A shall only apply in respect of any appeal against the decision by the Commissioner, where—
  - (i) that appeal is noted within the period prescribed in that rule; or
  - (ii) the period of 30 days within which an appeal had to be noted in terms of section 83(7)(a) of the Act, prior to its amendment by the amendment Act, was extended by the Commissioner in terms of that section and the last day of that period falls on a date on or after the effective date.

(2) Any decision of the Commissioner in terms of subrule (1)(a)(iii) is subject to objection and appeal in the manner contemplated in rule 26(1)(a) of Part A.

***Appeal noted before effective date***

**C4.** (1) Where an appeal was noted in terms of the Act before the effective date and—

(a) that appeal has not been set down for hearing by either the Board or the Court—

(i) the taxpayer may request that the alternative dispute resolution procedures contemplated in rule 7 of Part A be applicable in respect of the dispute and the Commissioner must consider that request in accordance with rule 7(1) of Part A;

(ii) the taxpayer and the Commissioner may agree in writing that all of the procedures contemplated in rules 8 to 29 of Part A and Part B, to the extent applicable, apply in respect of that appeal, which procedures may commence with—

(aa) the meeting to limit the issues in dispute as contemplated in rule 9 of Part A to be held on a date to be agreed between the taxpayer and the Commissioner; or

(bb) where the taxpayer and the Commissioner agree that a meeting contemplated in rule 9(1) of Part A is not required, the delivery by the Commissioner of a statement of the grounds of assessment as contemplated in rule 10 of Part A on a date to be agreed between the taxpayer and the Commissioner; or

(iii) where no agreement contemplated in subparagraph (ii) was reached, the appeal must be—

(aa) placed by the Commissioner before the Court in the manner contemplated in rule 17 of Part A as soon as is reasonably possible; and

(bb) dealt with in the manner contemplated in rules 18 to 29 of Part A and Part B, to the extent applicable; or

(b) that appeal has been set down for hearing by either the Board or the Court but not yet heard by the Board or the Court, rules 8 and 18 to 29 of Part A and Part B, to the extent applicable, must apply in respect of that appeal; or

(c) that appeal is part-heard before the Board or in the Court, rules 8, 19(1) and 20 to 29 of Part A and Part B, to the extent applicable, must apply in respect of that appeal.

(2) For purposes of rule 18 of Part A, the dossier must in addition to any other documents as contemplated in that rule, also contain—

- (a) where the statements contemplated in rules 10 - 11 of Part A have not been delivered, a short statement of case drafted by the Commissioner setting out the issues in appeal based on the grounds of the assessment in issue and the grounds of objection;
- (b) a copy of any agreement contemplated in subrule (1)(a)(ii); and
- (c) copies of all the correspondence relating to the assessment, return, objection and appeal.

## *SCHEDULE A*

### **THE TERMS OF ALTERNATIVE DISPUTE RESOLUTION (“ADR”)**

#### **1. Main Rule**

ADR is only available if these terms are accepted. Both the Commissioner and the taxpayer have to agree to the ADR process, for any agreement or settlement on resolution to have any effect.

#### **2. Who may initiate ADR?**

ADR may be initiated by either the taxpayer in his or her notice of appeal, or the Commissioner subsequent to the receipt of a notice of appeal by the taxpayer.

#### **3. When may a dispute be referred for ADR?**

3.1. The taxpayer can request the referral of a dispute for ADR if his or her objection has been disallowed or his or her assessment has been altered in consequence of the objection by the Commissioner, and the taxpayer is dissatisfied with such decision and wishes to appeal to the Tax Board or Tax Court. The Commissioner may then decide whether or not the matter is appropriate for ADR, and inform the taxpayer accordingly within 20 days after receipt of the notice of appeal wherein ADR is requested.

3.2. If the Commissioner is of the opinion that a matter is appropriate for ADR, then he or she must inform the taxpayer within 10 days of the receipt of the notice of appeal. The taxpayer is then required to notify the Commissioner in writing within 10 days of the date of the notice by the Commissioner, whether he or she agrees to ADR.

#### **4. How?**

A taxpayer whose objection is disallowed or whose assessment in consequence of the objection has been altered by the Commissioner, and who wishes to appeal to the Tax Board or the Tax Court against such decision must:-

- 4.1. complete the form “Notice of Appeal”, indicating “refer to ADR” and sign where provided at the bottom of the notice; and
- 4.2. deliver the completed “Notice of Appeal” form to the address specified in the “Notice of Appeal”.

## **5. When?**

Every notice of appeal with a request for the referral of a dispute for ADR must reach the Commissioner within 30 days of the date of the notice of disallowance or the date of the notice of the alteration of the assessment in consequence of the objection.

## **6. The Facilitator**

6.1. Where the Commissioner or the taxpayer, in terms of paragraph 3, has notified the other party that the dispute may be referred for ADR, the Commissioner must appoint a facilitator to facilitate the ADR process within 15 days after receipt of the notice by the taxpayer that he or she agrees to ADR, or the date of the notice by the Commissioner that a matter is appropriate for ADR. The Commissioner must inform the taxpayer who has been appointed as facilitator.

6.2. The facilitator will, in the normal course, be an appropriately qualified officer of SARS and will be bound by a Code of Conduct.

6.3. The facilitator's objective is to seek a fair, equitable and legal resolution of the dispute between the taxpayer and the Commissioner.

6.4. The facilitator cannot make a ruling or decision which binds the Commissioner or the taxpayer, nor may he or she compel the taxpayer and the Commissioner to settle the dispute.

6.5. At the conclusion of the ADR process the facilitator must record the terms of any agreement or settlement reached by the parties, or, if no agreement or settlement is reached, he or she shall record that fact.

6.6. The facilitator has the authority to summarily terminate the process of dispute resolution without prior notice if:-

6.6.1 any person fails to attend the meeting referred to in paragraph 8;

6.6.2 any person fails to carry out a request made in terms of paragraph 7;

6.6.3 he or she is of the opinion that the dispute cannot be resolved;

6.6.4. either of the parties agree that the issues in dispute cannot be reconciled in the resolution process; or

6.6.5 for any other appropriate reason.

## **7. Determining the process**

The facilitator must, after consulting the taxpayer and the officer(s) of SARS responsible for issuing the assessment under dispute:-

7.1. determine the procedure to be adopted in the dispute resolution process;



7.2. determine a place, date and time at which the parties shall convene the ADR meeting; and

7.3. notify each party in writing which written submissions or any other document should be furnished or exchanged (if this is required at all), and when the submissions or documents are required.

## **8. ADR Meeting**

A meeting between the parties to the dispute must be held for the purpose of resolving the dispute by consent, within 20 days of the appointment of the facilitator, or within such further period as the Commissioner and the taxpayer may agree.

## **9. Rules for the ADR Meeting**

9.1. The taxpayer (or the representative taxpayer as contemplated in s 1 of the Act) must be personally present during the ADR meeting and may be accompanied by a representative of his or her choice.

9.2. The facilitator may, in exceptional circumstances, excuse the taxpayer or representative taxpayer from personally attending the meeting in which event they may be represented in their absence by a representative of their choice.

9.3. The meeting must be concluded:-

9.3.1. at the instance of the facilitator; or

9.3.2. after the parties agree that the meeting shall be concluded.

9.4. If both parties and the facilitator agree, the meeting may resume at any other place, date or time (set by the facilitator).

9.5. The parties may for the purpose of resolving an issue in dispute, and only if the facilitator agrees, lead or bring witnesses in the ADR process.

9.6. The facilitator may require either party to produce a witness to give evidence.

9.7. At the conclusion of the meeting the facilitator must record:-

9.7.1. All issues which were resolved (through the ADR process);

9.7.2. Any issue upon which agreement or settlement could not be reached; and

9.7.3. Any other point which the facilitator considers necessary.

9.8. The facilitator must deliver the report to the taxpayer and the Commissioner's designated representative within 10 days of the cessation of the ADR process.

9.9. The facilitator may, if requested at the commencement of the ADR process, make a recommendation at the conclusion of the proceedings if no agreement or settlement is ultimately reached between the parties.

## **10. Reservations of rights**

10.1. The proceedings may not be electronically recorded, and any representations made in the course of the meeting will be without prejudice.

10.2. Any representation made or document tendered in the course of the dispute resolution proceedings may not be tendered in any subsequent proceedings as evidence by any other party, except in the circumstances contemplated in rule 7(6)(b)(ii) of Part A.

10.3. Neither party, except in the circumstances contemplated in rule 7(6)(b)(ii) of Part A, may subpoena any person involved in the alternative dispute procedure in order to compel disclosure of any representation made or documentation produced in the course of the ADR process. The facilitator may not be subpoenaed under any circumstances.

10.4. Any recommendation made by the Facilitator in terms of paragraph 9.9. above, will be admissible during any subsequent proceedings including court proceedings.

## **11. Agreement or Settlement**

11.1. Any agreement or settlement reached between the parties must be recorded in writing and must be signed by the taxpayer and by the Commissioner's designated official.

11.2. Should the parties not resolve all issues in dispute, the agreement or settlement in paragraph 11.1. must stipulate those areas in dispute:

11.2.1. that are resolved; and

11.2.2. that could not be resolved and on which the taxpayer may continue on appeal to the Tax Board or Tax Court.

11.3. Any agreement or settlement reached through the ADR process has no binding effect in respect of any assessments relating to that taxpayer not actually covered by the agreement or settlement, or any other taxpayer.

## **12. Days**

A day means a business day.

## *SCHEDULE B*

### **CODE OF CONDUCT FOR FACILITATOR**

The terms of this Code of Conduct will be binding upon every person appointed as a Facilitator (“the Facilitator”) by the South African Revenue Service (“SARS”) to facilitate the alternative dispute resolution process (“ADR”) as contemplated in rule 7 of the rules promulgated under the provisions of section 107A of the Income Tax Act, 1962 (Act No. 58 of 1962).

#### **1. Professionalism**

Every Facilitator is duty bound to build the integrity, fairness and efficacy of the ADR process and to preserve the independence and impartiality of the Facilitator.

#### **2. Every Facilitator must:-**

- 2.1 Conduct himself or herself with honesty and integrity and with courtesy to all parties;
- 2.2 Act in good faith and with impartiality to all parties;
- 2.3 Either decline on appointment or obtain technical assistance when a case is outside their field of competence;
- 2.4 Duly act within the prescripts of the facilitation process and the law;
- 2.5 Respect time and attempt to bring the dispute to an expeditious conclusion;
- 2.6 Resist the exercise of improper influence from any person outside the facilitation process; and
- 2.7 Continuously seek to upgrade his or her proficiency in the handling of tax disputes, skill and knowledge.

#### **3. Conflict of interest**

- 3.1 A Facilitator must immediately disclose to the parties and to SARS any fact that is likely to either affect his or her impartiality or create the impression that his or her impartiality is effected.
- 3.2 A Facilitator should decline an appointment if a conflict of interest exists that will give rise to bias.

- 3.3 If one of the parties requests the Facilitator to recuse him or herself, the Facilitator may do so if it will facilitate the resolution of the dispute.
- 3.4 SARS may not remove a facilitator once he or she has commenced with the ADR process, save by the request of the Facilitator or by agreement between both parties.

#### **4. Confidentiality**

- 4.1 Information disclosed to the Facilitator in confidence by a party during the course of the facilitation should be kept by facilitators in the strictest confidence and should not be disclosed to the other party unless authority is obtained for such disclosure from the party that disclosed the information.
- 4.2 The proceedings and outcome of all processes and related documentation will remain confidential, unless all the parties to the process agree otherwise or disclosure is allowed by any law.

#### **5. Conclusion of Facilitation**

Facilitators should reduce all agreements, settlement or a recommendation (if requested by both parties) to writing in a clear and concise format.

#### **6. Quality Control**

- 6.1 The SARS has the right to request parties to submit evaluations of the Facilitation Process, including an assessment of the Facilitator, from any party, which evaluations the SARS is entitled to treat confidentially.
- 6.2 SARS may remove a Facilitator from the list of facilitators for good reason, which includes the incompetence of the facilitator.