

SOUTH AFRICAN REVENUE SERVICE

DISPUTE RESOLUTION GUIDE:

GUIDE ON THE RULES PROMULGATED IN TERMS OF SECTION 103 OF THE TAX ADMINISTRATION ACT, 2011

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www.sars.gov.za

This document is a general guide dealing with the resolution of tax disputes in South Africa. It is an introductory guide and does not deal with all the legal detail associated with dispute resolution. It should therefore not be used as a legal reference. The guide is based on tax legislation as at the date of publication of this guide.

Should you require additional information you may—

- visit the SARS website at www.sars.gov.za - Legal & Policy - Dispute Resolution & Judgments
- visit the SARS website at www.sars.gov.za - Client segments – Individuals - What if I do not agree, or www.sars.gov.za - Client Segments - Tax Practitioners - Objections and Appeal
- visit your nearest SARS branch
- contact your own tax practitioner
- if calling locally, contact the SARS Contact Centre on 0800 00 7277
- e-mail your interpretation enquiries to TAAinfo@sars.gov.za

SOUTH AFRICAN REVENUE SERVICE

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GLOSSARY OF TERMS

Term	Meaning
ADR	Alternative Dispute Resolution
ADR1 / NOO	These are the prescribed Forms which must be completed by a taxpayer for purposes of lodging an objection against an assessment or decision subject to objection. Currently, Form NOO must be used for personal income tax and corporate tax eFiling objections, and Form ADR1 must be used for all other tax type manual objections. Examples are attached as Annexures E and F
ADR2 / NOA	This is the prescribed form which must be completed by a taxpayer who is aggrieved by the disallowance of the taxpayer's objection or the alteration of the taxpayer's objection, and who wishes to appeal to the tax board or tax court against such disallowance or alteration. Currently, Form NOA must be used for personal income tax and corporate tax eFiling appeals, and Form ADR2 must be used for all other tax type manual appeals. Examples are attached as Annexures G and H
Clerk of the tax board	The tax board is administered by a clerk of the board, who is a SARS officer at the SARS Branch Office responsible for the administration of the board in that area. The contact details of the clerk of the board for each area can be found in Annexure D
Commissioner	Means the Commissioner for SARS appointed in terms of section 6 of the SARS Act or the Acting Commissioner designated in terms of section 7 of that Act. SARS is responsible for the administration of the TA Act, which includes the dispute resolution rules, under the control or direction of the Commissioner
Day	Means business day as defined in the TA Act, i.e. a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9 (and these rules), excludes the days between 16 December of each year and 15 January of the following year, both days inclusive
de novo	A matter starts afresh; anew. This refers to the referral of the hearing of a tax appeal 'afresh' by the tax court after the appeal has been decided by the tax board, but one or more of the parties is unhappy with the outcome. Refer section 115 of the TA Act and rule 29
ECT Act	The Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)
EC Rules	The electronic communication rules issued under section 255 of the TA Act
eFiling	Means the SARS electronic filing service available for online objections and appeals
Exceptional Circumstances	<p>This term is used both in Chapter 9 of the TA Act, which regulates dispute resolution (i.e. sections 104(5); 107(2); 113(13); 124(2) and 145(a)), and the dispute resolution rules issued under section 103 (i.e. rules 6(6), 9(2) and 20(4)). It is generally used in the context of condonation or extension of time periods, requiring that exceptional circumstances be shown for condonations or extensions.</p> <p>This concept is not defined in the TA Act or any other tax Act, but it is accepted law that when an Act refers to 'exceptional circumstances' it contemplates something out of the ordinary and of an unusual nature. The South African Constitutional Court has held that the lawgiver cannot be expected to prescribe that which is inherently incapable of delineation. If something can be imagined and outlined in advance, it is probably because it is not exceptional.</p>

Term	Meaning
	<p>A judgment by the Cape High Court¹ sets out general guidelines as to its meaning i.e.–</p> <p>“While it is neither necessary nor desirable to lay down precise rules regarding what circumstances should be regarded as 'exceptional', the authorities provide the following guidelines:</p> <p>(a) What is ordinarily contemplated by the words 'exceptional circumstances' is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different.</p> <p>(b) To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.</p> <p>(c) Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.</p> <p>(d) The word 'exceptional' has two shades of meaning, depending upon the context in which it is used: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.</p> <p>(e) Where it is directed in a statute that a fixed rule will be departed from only under exceptional circumstances, generally speaking effect will best be given to the Legislature's intention by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied upon as allegedly being exceptional.”</p>
Good cause	In the context of delay in complying with time periods under the old rules, it was held in an unreported Tax Court case, ² that the good cause that is required does not have to be a good cause which shows that the defaulting party acted, in every respect, as soon and as promptly as it should have done, but merely that one can understand the reason why a particular procedural step was not taken
ITA	Income Tax Act, 1962 (Act No. 58 of 1962)
Minister	The Minister of Finance
New rules or rules	Are the rules issued by the Minister of Finance in terms of section 103 of the TA Act, which rules commenced on 11 July 2014
Old rules	Are the rules issued by the Minister of Finance in terms of section 107A of the Income Tax Act, 1962, which rules no longer apply with effect from 11 July 2014
PAIA	Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
PAJA	Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)
prima facie	Means at first sight; on the face of it; at first blush. Evidence that, if not contradicted or contested, would be sufficient to prove a claim or offence
Public notice	This means a notice issued by the Commissioner under the TA Act and published in the <i>Government Gazette</i> , subsequent to which it forms part of the TA Act
Registrar of the tax court	The registrar of the tax court is appointed by the Commissioner in terms of section 121 of the TA Act, and includes any other person authorised to act in the place of the registrar. The registrar administers the placing and hearing of tax appeals before the tax court. The current contact details of the registrar are: Office of the Registrar: Tax Court

¹ *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas & Another* 2002 6 SA 150 C

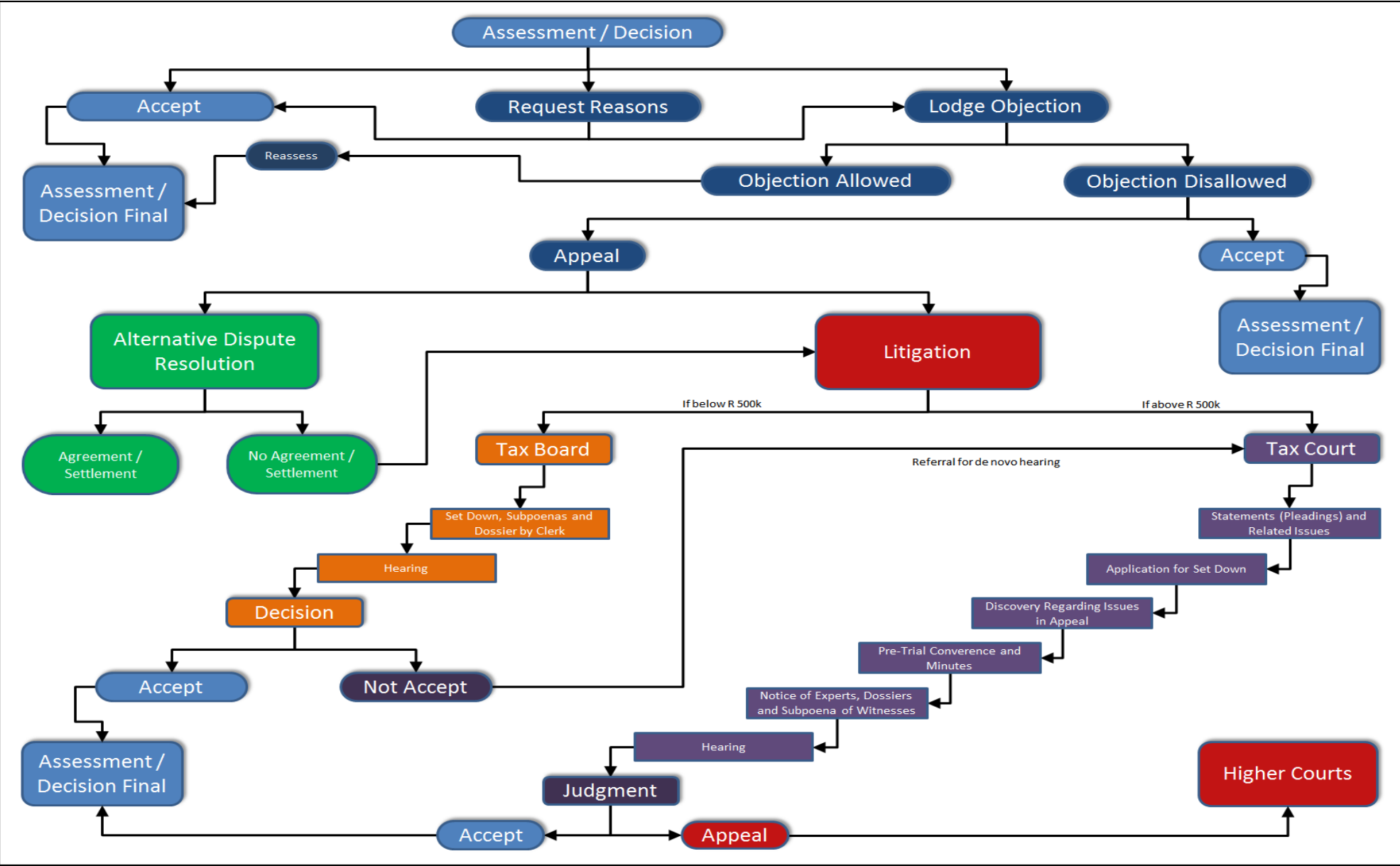
² Judgment by Rogers J in Cape Tax Court in case no 12013 on 13 February 2014 at p 15

Term	Meaning
	<p><i>Physical address:</i> Khanyisa Building, 1st Floor 271 Bronkhorst Street Nieuw Muckleneuk, 0181</p> <p><i>Postal address:</i> PO Box 402 Pretoria, 0001</p> <p><i>Electronic addresses:</i> (fax) (+2712) 422 5012 (e-mail) Marissa Mckenzie: mmckenzie@sars.gov.za Nosiat Lungu: nmlungu@sars.gov.za Luzelle Cupido: lcupido@sars.gov.za Dorothy Talmakies dtalmakies@sars.gov.za Segotsi Mapadimeng smapadimeng@sars.gov.za</p> <p><i>Contact numbers:</i> (Tel) (+2712) 422 5557/4547/5466/4697/7020</p>
Rule	Means a rule issued under section 103 of the TA Act
SARS Act	The South African Revenue Service Act, 1997 (Act No. 34 of 1997)
SCA	Supreme Court of Appeal
SARS official	<p>“SARS official” is a defined term in the TA Act and means—</p> <ul style="list-style-type: none"> • the Commissioner, • an employee of SARS; or • a person contracted by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner. <p>The TA Act also incorporates this meaning in the tax Acts, which typically refers to “officer”. A new definition of officer will be effected by the TA Act in all the tax Acts,³ which definition provides that “officer”, where used in the context of a person who is engaged by the Commissioner in carrying out the provisions of the relevant tax Act, means “a SARS official as defined in section 1 of the Tax Administration Act”.</p>
section	Means a section of the TA Act unless otherwise indicated
senior SARS official	A senior SARS official is a SARS official authorised by the Commissioner to perform one or more of the more serious powers or functions which a SARS official not so authorised may not perform. Refer to section 6(3) of the TA Act
SSMO	SARS Service Monitoring Office
TA Act	Tax Administration Act, 2011 (Act No. 28 of 2011)
Taxpayer	In terms of section 151 of the TA Act, a “taxpayer” is any person chargeable to tax, a representative taxpayer, a withholding agent, a responsible third party or a person who is the subject of a request to provide assistance under an international tax agreement. However, for purposes of this guide, any reference to taxpayer would

³ See, for example, amendment to ITA section 1 by the insertion of the definition of “officer” effected by the TA Act Schedule 1

Term	Meaning
	include a person involved in a tax dispute with SARS in terms of any of the tax Acts in respect of which the new rules and settlement provisions apply
Tax Act	Means the TA Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act
Tax Board	Is the tax board established by section 108 . The Tax board consists of an advocate or attorney as chairperson and may deal with tax appeals where the amount of tax involved is less than R500 000.
Tax Court	Is the tax court established by the President of the Republic in terms of section 116 . It is a court of record and the presiding officer is a judge or an acting judge of the High Court, assisted by an accountant and a representative from the commercial community.
Tax Ombud	The TA Act introduces a Tax Ombud who has the authority to engage with SARS staff when a taxpayer has an administrative complaint about SARS' conduct. The purpose of the Tax Ombud is to promote fair administration through resolving disputes in tax administration. The Tax Ombud will have review and mediatory powers and report directly to the Minister. The Minister will table the Tax Ombud's annual report in Parliament. More information on this is available on the Tax Ombud's webpage at http://www.taxombud.gov.za/
Terms of ADR	The terms governing the ADR proceedings are set out in Part C of the new rules. ADR will only take place if the taxpayer accepts these terms
VAT Act	Value-Added Tax Act, 1991 (Act No. 89 of 1991)

FLOW OF DISPUTE RESOLUTION: SUMMARY



1. INTRODUCTION

1.1. The right to object and appeal and finalisation within a reasonable time

The importance of the ability of taxpayers to challenge the legality of actions and decisions within the tax system is internationally recognised. The right to appeal is seen as fundamental to the fairness of the tax system.⁴

International best practice further dictates that a tax review or appeal should be heard within a reasonable time. Although it is difficult to gauge what a reasonable time is as this is peculiar to each jurisdiction depending upon the review structure, its resources and capacity. It is important, however, to require that a tax review or appeal should be heard within a reasonable time, as there is otherwise a danger that the revenue authority or the taxpayer could unnecessarily delay the proceedings to prevent a hearing. It is in the public interest that disputes should come to an end and, if applicable, that tax that is payable by a taxpayer be collected and tax refundable to a taxpayer be refunded. It is therefore important that the right to review or appeal is subject to stipulated time periods. Unless these time periods are clearly set out, they become arbitrary.⁵

Different tactics by different countries are used to ensure the resolution of disputes within a reasonable time. For example, in the UK, the two key tactics by the HMRC⁶ are supporting their taxpayers to get their tax right the first time around and to resolve the disputes that do arise in a way that establishes the right tax due at the least cost to HMRC and the taxpayer.⁷ More progressively, the ATO⁸ is testing the introduction of pre-assessment review and alternative dispute resolution, referred to as the Independent Review Function. This involves a review undertaken by a 'fresh set of eyes' to the dispute and are independent of the audit process. It is offered at the 'paper stage' of a review which follows the release of the ATO statement of audit position and must be completed in 12 weeks.⁹

Most countries also set clear bench marks for the finalisation of appeals. In Australia, it is set at one year after lodging the appeal and in Canada it is two years. Although it is difficult to determine the average turnaround time on objections or appeals in South Africa, for various reasons, it does appear that this period is substantially longer than that of most OECD member countries and developed countries.

For the new rules discussed to have any impact on the average turnaround time on objections or appeals, what would be required is stricter compliance with the new rules by both SARS and taxpayers.

1.2. Fair hearing of objection and appeal

The conduct of an objection or appeal should be subject to due process or a fair hearing.¹⁰ A fundamental requirement for a fair hearing is impartiality on the part of the SARS officials as well as the judicial officers involved.

The impartiality of decision-makers is founded in the rule against bias, i.e. *nemo iudex in sua causa*, which essentially means no one may be the judge in his or her own cause. This rule founded in the principles of good administration as decisions are more likely to be sound if the decision-maker is unbiased and the public has more faith in an administrative process if the decision-maker is unbiased.

⁴ Bentley, *Taxpayers' Rights: Theory, Origin and Implementation*, Kluwer Law 2007 ed. at 363

⁵ Bentley at 367

⁶ Her Majesty's Revenue and Customs service

⁷ *ATO Multilateral Workshop Talkbook*, A summary of the Multilateral Dispute Resolution Workshop held on 11 and 12 November 2013 in Sydney, Australia, at 13

⁸ Australian Tax Authority

⁹ *ATO Multilateral Workshop Talkbook*, at 11

¹⁰ Bentley at 367

In the context of disputes, this means in practice that the SARS official involved in the audit and assessment should not be extensively involved nor have any final say in the dispute of such assessment. This does not mean that such official is necessarily biased, but this approach recognises potential bias at an operational or structural level resulting from the enthusiasm of officials for the successful discharge of their functions and for the purpose at which those functions are directed. This is effected by at operation level by what is referred to as “breaks in the system”. For example, a taxpayer would be identified by a risk analyst, who then refers the matter to an assurance auditor for verification where after the matter may be referred to an auditor who conducts an in-depth audit. The decision if an assessment should be issued, including if penalties should be imposed, requires the approval of a branch assessment and account maintenance committee.

In turn, an objection is decided at branch level by a committee the majority of which comprises officials not involved in the audit and assessment process. An appeal is generally referred to the SARS Legal and Policy Division (LAPD), which a separate division from the business division where the disputed assessment originates. The dispute resolution subdivision of LAPD also comprises several committees from where appeals are assigned, conceded, settled or referred for litigation.

This is also international best practice. For example:

- In New Zealand, there are two business units within the NZ Inland Revenue (IR) that deal with dispute resolution; the Disputes Review Unit and the Adjudication Unit. The Disputes Review Unit takes a fresh look at a dispute, provides an independent and impartial decision on the issues in the dispute before any adjustment to an assessment is made. Adjudication carries out comprehensive research and analysis of the law. It considers the correctness of legal and factual arguments raised by the taxpayer and by IR in deciding whether an adjustment should be made.
- In Canada, the Appeals Branch is a separate section of the Canadian Revenue Authority. Importantly, it is cognoscente and retains impartiality by remaining an independent function.¹¹
- In the UK, a review is dealt with as a genuine second look at the case and cannot be linked to the Decision Maker. Review and appeal teams are geographically separate to case teams and management chains. This separation benefits all parties involved by ensuring a fair and transparent interaction that maintains decisions with a sound legal basis

In addition the, conduct of SARS officials in context of conflict of interest and bias regulated by:

- The TA Act – section 7
- The Constitution, 1996 – section 195(1)
- The SARS Code of Conduct
- SARS Operational policies.

The TA Act prohibits officials from acting in a matter if—

- a certain relationship exists between the official and the taxpayer exists e.g. financial; professional etc.
- the relationship presents a conflict of interest
- the conflict can be reasonably regarded as giving rise to bias.

1.3. The Tax Administration Act and the new rules

The drafting of the initial Tax Administration Bill, was first announced in the Budget Review 2005 as a project to incorporate into one piece of legislation certain generic administrative provisions, which are currently duplicated in the different tax Acts. The drafting of the Tax Administration Bill focused on reviewing the current administrative provisions of the tax Acts administered by SARS, excluding the Customs and Excise Act, 1964, and harmonising these provisions across taxes to the extent possible. The TA Act was enacted into law on **1 October 2012**.

¹¹ ATO *Multilateral Workshop Talkbook*, at 8 and 12

When taxpayers are aggrieved by an assessment or a decision that is subject to objection and appeal, they have a right to dispute it. [Chapter 9](#) of the TA Act provides the legal framework for these disputes across all tax types found in the tax Acts and must be read in addition to the rules issued under section [103](#). These rules have now been published by public notice in the *Gazette*¹² and apply with effect from **11 July 2014**.

The new dispute resolution rules were issued to align them with the dispute resolution framework of the TA Act. These rules prescribe the procedures to be followed in lodging an objection and appeal against an assessment or a decision subject to objection and appeal under a tax Act, procedures for alternative dispute resolution, the conduct and hearing of appeals by the tax board or tax court and an application on notice before a tax court regarding a procedural matter arising under the rules. The tax board and tax court are tribunals created under the Tax Administration Act and their sittings are generally not public. A taxpayer may appeal the judgment of the tax court to the High Court or Supreme Court of Appeal, which are public courts.

The new rules also—

- fix certain shortcomings in the old rules
- simplify the rules to enhance the understanding of and compliance with the rules
- consolidate duplicate provisions, such as rules providing for the extension of time periods by agreement and other formalities
- shorten the procedural time periods in order to improve turnaround times for finalising disputes
- provide for more effective remedies to address failures to comply with time periods
- provide a better balance between taxpayer rights and remedies, and SARS's powers and duties, for example by aligning time periods and affording more effective remedies to taxpayers
- simplify alternative dispute resolution proceedings
- regulate new provisions of the TA Act such as the power of SARS to designate a test case and to stay similar objections or appeals
- afford the registrar of the tax court a wider discretion in the set down of appeals to ensure optimum utilisation of the allocated court sittings
- enable delivery of documents to an electronic address including an electronic filing page
- regulate the use of the SARS eFiling platform for disputes.

The shortening of the time periods is in line with the commitment by the then Commissioner to do so when the old rules were published in 2003. The strongest remedy afforded by the rules in the event of non-compliance with certain time periods is an application for default judgment under [rule 56](#) in terms of which a party may give notice to the defaulting party to comply within 15 days and if the defaulting party fails to do so, apply to the tax court for a final order in favour of the non-defaulting party.

The significant differences between the old rules and the new rules are reflected in [Annexure A](#).

1.4. The “old rules”

Section 107A of the ITA provided for specific procedures in order to resolve a tax dispute. These rules also applied to various other tax Acts administered by SARS. The objection and appeal procedures and rules relating thereto and the settlement circumstances as contained in the ITA, applied to any dispute in terms of those Acts.

Section 107A of the ITA was repealed by the TA Act when that Act commenced. However, until the new rules were issued under the TA Act, the transitional provisions of the TA Act provided that the old rules issued under section 107A of the ITA applied to disputes that arose before the commencement date of the TA Act¹³ until such time that new rules under section [103](#) are published. In other words, for the period 1 October 2012 until 10 July 2013, disputes were regulated under [Chapter 9](#) of the TA Act and the old rules.

¹² *Government Gazette* 37819, Notice 550

¹³ Section 264 TA Act

1.5. The “new rules”

Background

The draft new rules were reviewed by external counsel during November 2012, prior to their publication for public comment. The draft new rules underwent intensive internal and external consultation. Two rounds of public comments were held during 2013 with comments due by 22 March 2013 and 19 July 2013. Changes based on the written comments and further internal discussion and review were effected, and the third public version of the new rules was discussed during a workshop with various stakeholders on 31 January 2014. Further written comments before 31 January 2014 from those who could not attend the workshop were also accepted.

Section [103](#) also provides that the Minister of Finance may only publish the rules after consultation with the Minister of Justice and Constitutional Development. Interaction with the Department of Justice and Constitutional Development started in September 2013 and written comments were received by them on two occasions, which were duly considered and the necessary changes effected. Final comments by them were discussed during a workshop in May 2014, the outcome of which was that all outstanding issues were resolved.

What do the new rules regulate?

Essentially, the new rules govern the following:

- The procedures to lodge an objection and appeal against an assessment or decision that is subject to objection and appeal under section [104\(2\)](#)
- ADR procedures under which SARS and the person aggrieved by an assessment or decision may resolve a dispute in accordance with [Part C](#) of the rules
- The conduct and hearing of an appeal before a tax board or tax court.

[Part G](#) of the new rules contains transitional rules which provide that disputes not finalised at the commencement date of the new rules, i.e. **11 July 2014**, will generally be dealt with and finalised under the new rules issued under the Act. For example, if a taxpayer has objected under the old rules and the objection has not been dealt with by SARS upon commencement of the new rules, the dispute must continue and the objection must be dealt with by SARS under the new rules “as if taken or instituted under the new rules”. This means, for example, that an objection lodged under the old rules before commencement of the TA Act, must be dealt with by SARS within the time period prescribed in the TA Act or the old rules, as the case may be, but calculated from the date of the commencement of the new rules.

Example: A taxpayer objected on 1 May 2014. The objection was disallowed on 15 June 2014. The taxpayer now has 30 days within which to appeal i.e. until the end of July 2014. This period is not extended as a result of the commencement of the new rules on 11 July 2014. The taxpayer appeals on 15 July 2014. This is after the commencement of the new rules on 11 July 2014 meaning the taxpayer must now comply with rule 10 of the new rules in lodging the appeal.

Most of the procedures under the rules are governed by time periods, a summary of which is reflected in [Annexure B](#).

1.6. The relevant tax Acts

[Chapter 9](#) of the TA Act and the new rules regulate the dispute resolution of disputes arising under the following Acts:

- Transfer Duty Act, 40 of 1949
- Estate Duty Act, 45 of 1955

- Income Tax Act, 58 of 1962
- Value-Added Tax Act, 89 of 1991
- Skills Development Levies Act, 9 of 1999
- Unemployment Insurance Contributions Act, 4 of 2002
- Diamond Export Levy Act, 15 of 2007
- Diamond Export Levy (Administration) Act, 14 of 2007
- Mineral and Petroleum Royalty Resources Act, 28 of 2008
- Mineral and Petroleum Royalty Resources (Administration) Act, 29 of 2008
- Employment Tax Incentive Act, 26 of 2013
- Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 35 of 2013
- Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 36 of 2013

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It should be noted that the Customs and Excise Act,¹⁴ the Customs Duty Act¹⁵ and the Customs Control Act,¹⁶ contain their own provisions relating to dispute resolution. [Chapter 9](#) of the TA Act and the new rules do not apply to disputes under any of these Acts. Customs or excise disputes essentially comprise the following:

- *Internal Administrative Appeals*

If anyone does not agree with the decision of a Customs officer, they should firstly approach that officer's immediate supervisors in order to clarify the decision in question and resolve any uncertainties. Should the matter not be resolved in this way, the person may institute a formal internal administrative appeal.

- *Internal Administrative Appeal (IAA) Process*

In cases where clients are not satisfied with any decision taken by officers in terms of the Customs and Excise Act, they have a right of appeal to the relevant appeal committee. Appeals must be lodged on a [Form DA51](#) at the office where the decision was made and must be delivered to the manager of the office head of Division in Head Office within 30 days of the date of the decision. Alternatively, where reasons for a decision were requested, within 30 days from the date they were advised that sufficient reasons had already been provided or within 30 days from the date the reasons were, in fact, provided. Should clients be unhappy with a decision of any appeal committee, their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with that relevant appeal committee which made the decision.

- *Alternative Dispute Resolution (ADR)*

In addition to the IAA process, provision has also been made for an ADR Process, which can be used as recourse against a final decision made under the IAA Process or as an alternative to litigation. It is important to note that no extension may be given to the 30 day period (as mentioned above) and, should it be exceeded, the IAA process cannot be followed and the applicant's recourse will then lie in litigation. ADR may, however, be offered as part of the litigation process. In the event of an appellant wishing to dispute a determination made by a Customs Appeal Committee, their recourse lies in litigation. Alternatively, they can request that the matter be considered for the ADR process, as a final resort prior to litigation. To apply for ADR, a properly completed [Form DA52](#), together with the relevant supporting documents, must be submitted to the person who informed them of the decision within 30 days of the date of the letter.

¹⁴ Act 91 of 1964

¹⁵ Act 30 of 2013. This Act is not in force as yet. According to see section 229 thereof, it will come into operation on a date to be announced by the President by Proclamation in the *Gazette*

¹⁶ Act 31 of 2013. This Act is not in force as yet. According to see section 994 thereof, it will come into operation on a date to be announced by the President by Proclamation in the *Gazette*

2. TAX DISPUTES

2.1. When and how does a tax dispute arise?

An assessment is defined in the TA Act and means the determination of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS. A notice of assessment by SARS is issued under section [96](#) and delivered to a taxpayer in the manner regulated by the TA Act.¹⁷ It is important to note that the TA Act makes a distinction between the making of an assessment and the issue of the notice of the assessment, which distinction has also been made *inter alia* by the SCA.¹⁸ Dispute resolution under [Chapter 9](#)¹⁹ of the TA Act and the new rules normally involves the determination of the tax liability or refund and a decision specifically made subject to objection and appeal.

Any taxpayer who is aggrieved by an assessment in which that taxpayer has an interest may object to that assessment. A taxpayer may also object to any decision of SARS which is in terms of the relevant section subject to objection and appeal.²⁰ Generally, [Chapter 9](#) distinguishes between an assessment and a decision which is specifically made subject to objection and appeal under a tax Act.

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B It is important to note that for purposes of the new rules, “assessment” includes a decision referred to in section [104\(2\)](#). Thus, when the word “assessment” is used in the rules and this Guide, it may mean either an assessment of the determination of a tax liability or refund, or a decision specifically made subject to objection and appeal under a tax Act. Examples of such decisions are section 3(4) of the ITA and section 32 of the VAT Act. [Annexure C](#) below sets out a list of decisions that are specifically made subject to objection and appeal.

If a decision is not subject to object and appeal, a taxpayer has the following remedies:

- *Withdrawal or amendment of decision:* A person can ask the SARS official who made the decision, that official’s manager or a senior SARS official to withdraw or amend the decision under section [9](#) except a decision given effect to in an assessment
- *Service Escalation:* A taxpayer may pursue the internal administrative complaints procedure in SARS at branch level and, if not satisfied with the outcome, with the SSMO
- *Tax Ombud:* Once a taxpayer has exhausted the internal remedies available to it in SARS, it may lodge a complaint with the Tax Ombud who may deal with it if the compliant falls within its mandate
- *High Court:* If all of the above remedies fail or if the taxpayer chooses to do so directly, it may approach the High Court for a review of the decision by SARS under section [6](#) of PAJA.

2.2. When may a taxpayer lodge a complaint about a tax dispute at the SARS Service Escalation Office or Tax Ombud?

Essentially, there are two kinds of disputes with SARS:

- *Disagreements on the interpretation of law:* In such disputes, the normal dispute resolution steps are followed namely objection and appeal, alternative dispute resolution, appeal to the tax board and/or the tax court, and further appeals to the Higher Courts; and
- *Disagreements on administration of law:* Complaints in this regard may be reported—
 - within the SARS internal administrative complaints resolution process, which process commences at the SARS contact centre or branch level and, if not satisfactorily resolved, it may be escalated to the SARS Service Monitoring Office (SSMO) which falls under the SARS Service Escalation Office at Head Office

¹⁷ Section [251](#) or [252](#)

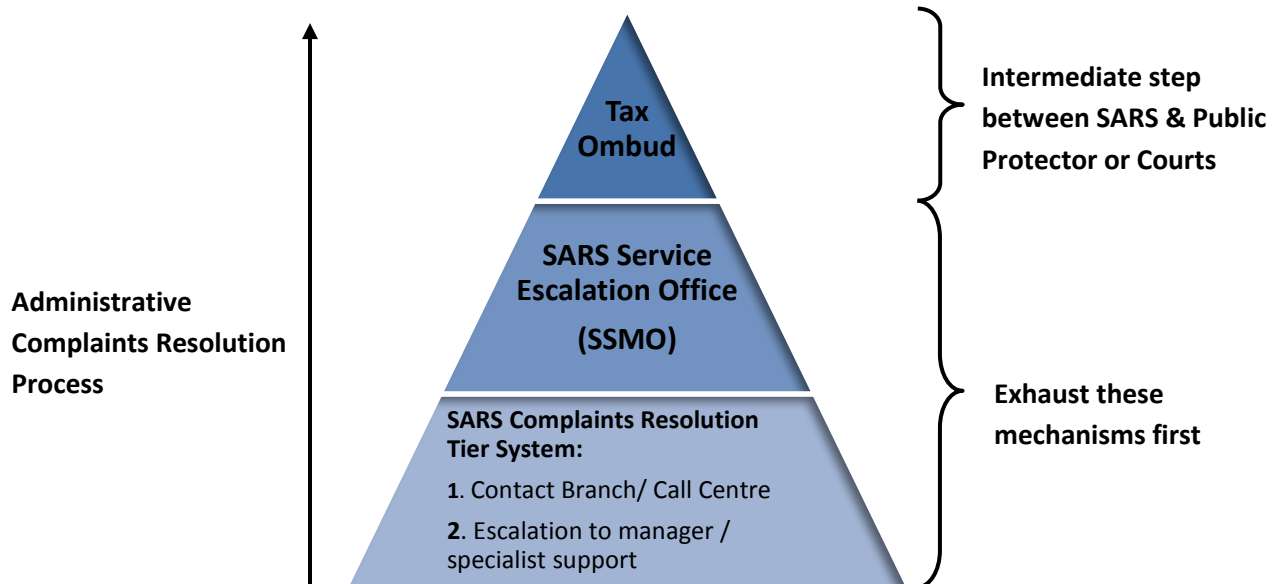
¹⁸ *Commissioner, South African Revenue Services v South African Custodial Services (Pty) Ltd* (131/10) [2011] ZASCA 233; *First South African Holdings (Pty) Ltd v Commissioner for South African Revenue Service* 73 SATC 221 para 15

¹⁹ [Annexure N](#)

²⁰ Section [104\(2\)](#)

- after exhaustion of the SARS internal administrative complaints resolution process, to the [Tax Ombud](#)²¹ unless there are compelling circumstances why the Tax Ombud may be approached directly.²²

The administrative complaints resolution steps can be illustrated as follows:



The SSMO procedure involves the following:

- The taxpayer must first take up the complaint with either the SARS contact centre²³ or branch office where he or she will be issued with a *service request number*
- If the taxpayer's complaint is not resolved within a reasonable time in accordance with internally prescribed turnaround times, the taxpayer can then approach the SSMO²⁴ for assistance in getting the matter resolved
- At the SSMO, the *service request number* is firstly validated to ensure that the complaint has not been dealt with within the internal turnaround time and that the taxpayer has indeed approached either the contact centre or branch office first
- The SSMO will endeavour to resolve the matter within 15 working days and, if not possible, it will continuously update the complainant with progress on their matter.

The Tax Ombud will review the complaint and, if necessary, resolve it through mediation or conciliation between the taxpayer and SARS. The Tax Ombud may then make a recommendation to SARS on how to resolve the complaint. Although the Tax Ombud does not have the authority to direct SARS to comply with its recommendations, instances where SARS does not follow the Tax Ombud's recommendation may find its way into the Tax Ombud's regular reports to the Minister of Finance and the Commissioner and even the Tax Ombud Annual Report – which the Minister must file with Parliament.²⁵ In this manner SARS' decisions will be subject to public scrutiny.

Accordingly, a taxpayer who is dissatisfied with the manner in which the taxpayer's objection or appeal is being dealt with may lodge a complaint—

²¹ Contact details: <http://www.taxombud.gov.za> ; Phone: 0800 662 837 or (+27)12 431-9105; Fax: (+ 27)12- 452-5013; e-mail: complaints@taxombud.gov.za or fill in the [Online complaint form](#)

²² TA Act sections 18(4) and (5)

²³ Contact number 0800 00 7277

²⁴ At 0860121216 or via e-mail ssmo@sars.gov.za.

²⁵ Section 19

- within the SARS internal administrative complaints resolution process and the SSMO, and thereafter
- with the Tax Ombud.

Although the SSMO or Tax Ombud will not be able to deal with the substance or merits of the objection – i.e. disagreements on the facts or the law or both - it may investigate the manner in which the objection is being dealt with. The SSMO or Tax Ombud therefore facilitates the resolution of complaints of a procedural nature. Generally, the Tax Ombud may not review²⁶ a matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal.

Example: A taxpayer has lodged an objection on 31 January 2014. SARS fails to deal with the objection within the period prescribed under [rule 9](#). This is an administrative failure and the taxpayer may pursue the matter within SARS internal complaints resolution process and with the Tax Ombud.

2.3. Does a taxpayer need to pay the amount of tax in dispute?

Pay now argue later rule

Taxpayers are required to pay a tax debt before a dispute is finalised or resolved, which principle is known as the “pay-now, argue-later”. Thus, the obligation to pay tax, which arises upon the issue of an assessment, is not “automatically” suspended by an objection or appeal.

The pay-now, argue-later provision preceded section [164](#) of the TAA and in 2001 the Constitutional Court²⁷ held that the principle was consistent with constitutional imperatives. Since the Constitutional Court upheld the constitutional validity of the principle in the VAT context, other High Courts have confirmed the finding.

The Constitutional Court found that the public interest in requiring vendors to pay tax before finality of a dispute is significant, and reasoned that ensuring prompt payment amounts assessed to be due is clearly an important public purpose. The public interest principles at play are apparent and relate to economic development of the country as a developmental State, funding of governmental initiatives for the benefit of the public at large such as regulating the levels of employment and providing social security for the exposed. The “pay now, argue later” principle will reduce the number of frivolous objections, thereby guarding against the prejudice the *fiscus* will suffer through delays in obtaining finality of liability.

The Constitutional Court recognised that many open and democratic countries adopted the pay now argue later principle and immediate execution, and that this suggested the principle was acceptable in open and democratic societies based on freedom, dignity and equality as required by section 36 of the Final Constitution.

The disadvantage to individual taxpayers of applying the “pay now, argue later” principle are obvious and inevitable in certain cases, but this disadvantage is outweighed by public interests. However, a taxpayer is not without remedies.

Request for suspension

The obligation to pay can only be suspended by SARS upon request by the taxpayer. A taxpayer who pays disputed tax and whose objection or appeal is upheld, is entitled to interest from the date of payment of the disputed amount to the date on which such amount is refunded. This rule applies across all taxes. Amounts short-paid are recoverable with interest calculated as provided in the TA Act²⁸ or the relevant tax Act.

In terms of section [164](#), the obligation to pay tax or the right of SARS to receive and recover tax, pending objection or appeal is not suspended unless a senior SARS official otherwise directs. The taxpayer may request

²⁶ Section 17

²⁷ *Metcash Trading Ltd v Commissioner, South African Revenue Service and Another* 2001 (1) SA 1109 (CC)

²⁸ Section 187(1)

a senior SARS official to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax.

A taxpayer need not first object against an assessment before requesting a suspension, as the taxpayer may first require reasons under [rule 6](#) to enable him or her to formulate the objection. A request for suspension may therefore be made if the taxpayer intends to object. If a suspension is given and the taxpayer does not object, the suspension is automatically revoked and the taxpayer must pay the tax due under the assessment.

A senior SARS official may suspend payment of the disputed tax having regard to—

- the compliance history of the taxpayer;
- the amount of tax involved;
- the risk of dissipation of assets by the taxpayer concerned during the period of suspension;
- whether the taxpayer is able to provide adequate security for the payment of the amount involved;
- whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- whether sequestration or liquidation proceedings are imminent;
- whether fraud is involved in the origin of the dispute; or
- whether the taxpayer has failed to furnish information requested under the TA Act for purposes of a decision under section [164](#).

SARS may have regard to the merits of the taxpayer’s argument and the strength of the assessment when considering a request for suspension in view of the following:

- The introductory words to section [164\(3\)](#) provide that a senior SARS official *may* suspend payment of the disputed tax or a portion thereof having regard to the list of criteria included in the subsection
- It is clear that this is a discretionary power given the permissive statutory language that confers it, such as “may”. Discretionary powers are characterised by the element of choice that they confer on their holders. A public officer has discretion whenever the effective limits of his power leave him free to make a choice among possible courses of action and inaction
- To say that somebody has a discretion presupposes that there is no unique legal answer to the problem. Some administrative tasks are simply not amenable to control by rule, and can be effectively decided only where the decision-maker retains a wide degree of discretion
- The wording of section [164\(3\)](#) does not limit a SARS official in exercising the discretion to have regard only to the factors listed. This is reinforced by the administrative fairness obligation to take a decision only once all relevant considerations were considered. Failure to do so constitutes a basis for review under PAJA.²⁹ The right to administrative justice under the Constitution³⁰ clearly applies to a decision to suspend payment, or not, of disputed tax.

Therefore, the merits of the taxpayer’s argument, where available as a taxpayer may apply for suspension before lodging an objection given its right to request reasons, and the strength of SARS’s assessment, would generally be relevant considerations in deciding a suspension request.³¹

Review application to High Court

²⁹ Section [6\(2\)\(e\)\(iii\)](#)

³⁰ Section 33, which reads:

“**Just administrative action.**—(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. (3) National legislation must be enacted to give effect to these rights, and must—

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;

(b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and

(c) promote an efficient administration.”

³¹ It should be noted that amendments to section [164](#) to clarify this are proposed in the Tax Administration Laws Amendment Bill, 2014.

If SARS, pursuant to a suspension request, refuses such a request, its decision may be taken on review to the High Court. The High Court before which the application is made may order SARS to stop recovery proceedings until the review application is finalised.

Revoking suspension

Since there is an inherent risk that the provision could be misused to delay payment, the TA ACT provides that SARS may review and withdraw the suspension. Therefore, an obligation is placed on the senior SARS official to periodically review the suspension - essentially on a risk basis - during the dispute process, and to revoke the suspension in the case of dissipation of asset risks or delaying tactics employed by the taxpayer.

SARS is authorised to review a decision against the following factors:

- the original circumstances
- the taxpayer's current circumstances
- the merits of an objection or appeal.

A senior SARS official may deny a request for suspension or revoke a decision to suspend payment with immediate effect if satisfied that—

- after the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious;
- the taxpayer is employing dilatory tactics in conducting the objection or appeal;
- on further consideration of the factors referred to above, the suspension should not have been given;
- there is a material change in any of the factors referred to above, upon which the decision to suspend payment of the amount involved was based.

If the taxpayer does not pay within the period specified in his or her assessment and does not ask SARS to suspend payment, SARS may take collection steps. During the period commencing on the day that—

- SARS receives a request for suspension under section [164\(2\)](#); or
- a suspension is revoked as referred to above,

and ending 10 business days after notice of SARS's decision or revocation has been issued to the taxpayer, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets by the person concerned.

This prohibition against recovery proceedings also applies in respect of—

- *Application for civil judgment for recovery of disputed tax:* SARS may not file a statement under section 172 for a civil judgment if a request for suspension has not been finalised or if the tax debt has been suspended under section [164](#)
- *Set off of a refund against disputed tax:* SARS may not set off a refund under section [191](#) against a disputed tax debt if a request for suspension has not been finalised or if the tax debt has been suspended under section [164](#).

3. IMPORTANT DEFINITIONS

3.1. Assessment

The TA Act distinguishes in section [104](#) between an assessment against which a taxpayer may object and decisions may be objected to or appealed against under a tax Act, including under the TA Act. [Chapter 9](#) retains this distinction by referring to an assessment or a decision referred to in section [104\(2\)](#).

However, for purposes of the rules and the simplification thereof, only the term ‘assessment’ is used and is defined in [rule 1](#) to include, *for purposes of these rules*, a decision referred to in section [104\(2\)](#). This approach is generally also followed in this Guide.

3.2. Date of assessment

Defined in the TA Act, this definition is important as many time periods prescribed in the rules depart from this date. In essence, date of assessment means:

- in the case of an assessment by SARS, the date of the issue of the notice of assessment; or
- in the case of self-assessment by the taxpayer—
 - if a return is required, the date that the return is submitted; or
 - if no return is required, the date of the last payment of the tax for the tax period or, if no payment was made in respect of the tax for the tax period, the effective date.

3.3. Delivery

General delivery

“Deliver” as defined in rule 1 means to issue, give, send or serve a document to the address specified for this purpose under the rules, in the following manner:

- by SARS, the clerk or the registrar, in the manner referred to in section [251](#) or [252](#) of the TA Act, except the use of ordinary post
- by SARS, if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, by posting it on the electronic filing page of the taxpayer or appellant
- by the taxpayer or appellant, by—
 - handing it to SARS, the clerk or the registrar
 - sending it to SARS, the clerk or the registrar by registered post
 - sending it to SARS, the clerk or the registrar by electronic means to an e-mail address or telefax number
 - if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, submitting it through the SARS electronic filing service.

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It is important to note that this definition creates a distinction between delivery by SARS and delivery by the taxpayer, i.e.:

- *Delivery by SARS*: If SARS is required to deliver a document, it must do so in the manner prescribed under sections [251](#) and [252](#), in which event the taxpayer is regarded as having received the document under section [253](#).³² Accordingly, SARS does not need to prove actual receipt of the document by the taxpayer for a document to be regarded as received by the taxpayer.
- *Delivery by taxpayer*: If a taxpayer is required to deliver a document, it is only delivered upon actual receipt by SARS.

³² A taxpayer may rebut this presumption by persuading SARS of non-receipt or, if not, a court

The essential rationale for this distinction is that SARS is a big organisation that must deal with thousands of correspondence, including objections and appeals, whilst a taxpayer need only be concerned with his or her own matter.

The manner of delivery by SARS prescribed under sections [251](#) and [252](#), includes:

- Physical delivery to the taxpayer
- Physical delivery to another person over 16 years of age apparently residing or employed at the taxpayer's last known residence, office or place of business
- Postal delivery, including ordinary or registered post, to the person's last known address
- Delivery to an electronic address.

An 'electronic address' as referred to in section [251](#) and [252](#) includes an e-mail address or telefax number.

Electronic delivery by e-mail or telefax

Under [rule 5\(5\)](#), a document delivered electronically must comply with the rules for electronic communication issued under section [255](#). The most important EC rules for electronic delivery include:

- Rules regarding electronic delivery discussed below
- A document in electronic form must be readable by the information system of SARS³³
- The use of an electronic signature if required by the rules
- A communication is regarded to be delivered to the usual place of business or residence of the recipient - this would generally be the place listed in the details provided when registering for tax³⁴
- There is a presumption that an electronic communication is sent by the person, be it a registered user or other electronic communicator, to whom the electronic address is assigned.³⁵

Delivery of an electronic communication, which is what an e-mail or telefax is, will take place when—

- the communication enters the information system of SARS, the electronic communicator or the intermediary of the communicator, and
- is capable of being retrieved and processed.³⁶

Under the electronic communication rules, delivery is contingent on an acknowledgement of receipt.³⁷ An electronic communicator and a SARS official may agree on the form that an acknowledgement of receipt can take.³⁸ Failing this, the default position is that an acknowledgement of receipt may be given—³⁹

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

The most common electronic communications envisaged by the rules are e-mails. Read and delivery receipts are automated in most e-mail applications. All the communicator has to do is activate the functionality.

³³ EC rule [2\(2\)](#). The SARS website at www.sars.gov.za contains information on the form and format that electronic communications should take. For instance, information on methods of uploading large volumes of data is readily available when you visit www.sars.gov.za/Businesses and Employers/Modernised 3rd party data Platform

³⁴ EC rule [3\(4\)](#), which mirrors section 23(c) of the ECT Act

³⁵ EC rule [3\(5\)](#)

³⁶ This matches the requirement for electronic delivery under section 23(b) of the ECT Act

³⁷ EC Rule [3\(3\)](#)

³⁸ EC Rule [3\(1\)](#)

³⁹ This coincides with what is contained in section 26(2) of the ECT Act

Electronic delivery through eFiling service

'Electronic address' has now been defined in the electronic communication rules issued under section [255](#) as "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". This means it also includes, in addition to e-mail and telefax, other electronic addresses such as an 'electronic filing page'. The latter term means a secure data message which—⁴⁰

- is generated by a SARS electronic filing service within the information systems of SARS;
- is accessible from a SARS web site, through the use of a registered user's user ID and access code; and
- contains the electronic filing transactions of that registered user.

SARS have developed various software applications to enable SARS and taxpayers who are registered for SARS's online applications (registered users) to communicate electronically. These applications are collectively termed SARS electronic filing services and include:

- eFiling (both the computer and phone applications)
- e@syFile
- third party data submission channels
- other applications that may be developed by SARS over time.

Each registered user has his or her own electronic filing page. The electronic filing page can be equated to an e-mail inbox or even a post box which is accessed with a key. The registered user can see all their electronic filing transactions on their electronic filing page. Electronic filing transactions are electronic communications between SARS and registered user by means of a SARS electronic filing service. Examples of electronic filing transactions are returns, supporting documents uploaded to the service, notices of assessment and for the purpose of this discussion the notice of objection or appeal and any supporting documents submitted to the service.

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B Delivery of an electronic filing transaction will take place when it is correctly submitted to the SARS electronic filing service and can be processed by the software. Should a registered user or SARS save their electronic filing transaction in the SARS electronic filing service, it will not be delivered as the software will not be able to process the transaction. It is only when it is submitted that delivery is achieved.

Accordingly, if a taxpayer use eFiling to object by completing a Form NOO, further correspondence by SARS, for example a request for substantiating documents or the objection decision, will be delivered to the taxpayer's electronic filing page, which the taxpayer must access by using his or her username and password which, by way of example, is akin to using a key to open a post office box to check for mail. Thereafter, the taxpayer can use a Form NOA to appeal. An objection is processed to its conclusion on eFiling and an appeal against assessment up to a certain point. The SARS electronic filing service is no longer available when the registered user opts for ADR or pursues the appeal to the tax board or court. This is why the taxpayer must in Form NOA specify an address at which the taxpayer will accept delivery of documents when the SARS electronic filing service is no longer available for the further progress of the appeal.⁴¹

3.4. Document

This term has a very wide meaning and has both its meaning under the TA Act and rule 1 and includes:

- anything that contains—
 - a written, sound or pictorial record, or

⁴⁰ EC Rule [1](#) definition

⁴¹ [Rule 10\(2\)\(b\)](#)

- other record of information, whether in physical or electronic form
- an agreement between the parties under the rules, whether in draft or otherwise
- a request or application under the rules
- a notice required under the rules.

3.5. Sign

“Sign” or “signature” has the meaning assigned in EC rule [7](#) to an electronic signature, where a party—

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

Under the EC rule, ‘electronic signature’, in relation to—

- 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
- a registered user, for purposes of a SARS electronic filing service, means—
 - the user ID and access code of the user; and
 - the date and time that the electronic filing transaction was received by the information system of SARS.

Because an electronic signature can be an electronic image of a signature, a symbol or even a typed name at the bottom of an e-mail, the simple act of signing on the dotted line may be slightly more challenging within the electronic environment. The challenge, of course, is that of confidentiality and security, including authenticity, evidential weight and data integrity. In relation to an electronic communicator, EC rule [7\(1\)](#) enhances the definition of an electronic signature as contained in the ECT Act by introducing additional requirements, namely that the electronic signature must be:

- uniquely linked to the signatory;
- capable of identifying the signatory and indicating the signatory’s approval of the information communicated;
- capable of being accepted by the computers or equipment forming part of the information system of SARS; and
- reliable and appropriate for the purpose for which the information was communicated.

These requirements are not as rigorous as those of an advanced electronic signature and can be achieved relatively easily. Provided the registered user complies with the EC rules, SARS is comfortable that its “secure and reliable SARS electronic filing services”⁴² provide sufficient confidentiality and security to enable the user ID and access code to function as an electronic signature.

⁴² EC rule 4(1)

4. REDUCED ASSESSMENTS AND WITHDRAWAL OF ASSESSMENTS

4.1. Must a taxpayer always object to an assessment if there is a problem with it?

No. There is a difference between an assessment which is the subject of a substantive dispute and just an error in assessment. A substantive dispute essentially means there is a disagreement between SARS and the taxpayer on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law, which arises pursuant to the issue of an assessment.

If the assessment contains errors, whether caused by SARS or the taxpayer, it is not necessary to object against the assessment if it is an undisputed error. The taxpayer must submit a request for correction.⁴³

Example – mistake by taxpayer: A taxpayer forgets to claim retirement annuity contributions as deductions and has the required certificates indicating that such expenditure was incurred. SARS agrees that the taxpayer made an error to his or her own prejudice which can be fixed by the issue of a reduced assessment. The taxpayer in this scenario must follow the request for correction (RFC) procedure.

The situation may differ if the taxpayer omitted an amount of income to the prejudice of SARS. Depending on the circumstances, SARS may not always believe that this was simply an error. For example, if the taxpayer only requests a reduced assessment after the taxpayer's return is being verified or audited, SARS may believe that the omission was not erroneous and the taxpayer will then have to object.

Example – mistake by SARS: The most typical examples are processing errors, such as double counting of an amount of income. SARS will fix this by a reduced assessment if SARS discovered the mistake on its own or if the taxpayer followed the request for correction (RFC) procedure.

4.2. How does the reduced assessment process work?

The intention of section 93 is essentially to enable SARS to alter an assessment to rectify processing errors and return completion errors. This section enables SARS to reduce an assessment to rectify these errors even where no objection has been lodged against that assessment.

A formal objection need not be filed if there are certain errors in the assessment as referred to in section 93. In terms of section 93, SARS may make a reduced assessment if SARS is satisfied that there is an error in the assessment as a result of an undisputed error by SARS or the taxpayer in a return. SARS may reduce an assessment despite the fact that no objection has been lodged or appeal noted against the faulty assessment.

However, under section 99(1) SARS may not make a reduced assessment—

- If three years has expired after the [date of assessment](#) of the original assessment by SARS
- in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment by way of self-assessment by the taxpayer or if no return is received, by SARS
- in the case of self-assessment for which no return is required, after the expiration of five years from the date of the last payment of the tax for the tax period or the effective date, if no payment was made in respect of the tax for the tax period
- if the preceding assessment was made in accordance with the [practice generally prevailing](#) at the time of that assessment.

The procedure to obtain a reduced assessment would be the request for correction (RFC) procedure whereby the taxpayer furnishes details of such an error or claim to SARS, preferably in writing, together with any

⁴³ See [Request for Correction and Notice of Objection Guide](#) at www.sars.gov.za AllDocs/OpsDocs/Guides/

necessary documentation or proof if required.

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Before relying on section [93](#), a taxpayer of course needs to be sure he or she is dealing with a processing or return completion error. If in actual fact the taxpayer should have lodged an objection, the taxpayer may be out of time as a result of first requesting a reduced assessment. Thus, if in doubt, the taxpayer must file an objection. SARS will automatically deal with the objection in terms of section [93](#) if this is appropriate.

Where an assessment has been reduced in terms of section [93](#), and there has been an overpayment of tax as a result of the preceding erroneous assessment, a taxpayer is entitled to a refund of this amount.

4.3. When may a taxpayer request the withdrawal of an assessment?

In practice, erroneous assessments are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be unreasonable and inequitable to recover the tax due under such assessments. Examples are assessments that result from fraud by a person not authorised by the taxpayer to complete or submit a return, an undisputed error by the taxpayer in a return or a processing error by SARS in making the assessment.

The new provision in section [98\(1\)\(d\)](#) aims to address this problem by allowing for the withdrawal of an assessment in respect of which the Commissioner, or an official delegated by him under section [6\(2\)](#), is satisfied that—

- it was based on—
 - an undisputed factual error by the taxpayer in a return; or
 - a processing error by SARS; or
 - a return fraudulently submitted by a person not authorised by the taxpayer;
- it imposes an unintended tax debt in respect of an amount that the taxpayer should not have been taxed on;
- the recovery of the tax debt under the assessment would produce an anomalous or inequitable result;
- there is no other remedy available to the taxpayer; and
- it is in the interest of the good management of the tax system.

It is important to note that *all* the above requirements must be met before such an assessment may be withdrawn.

The section further provides that a senior SARS official may agree with the taxpayer as to the amount of tax properly chargeable for the relevant tax period and subsequently issue a revised original, additional or reduced assessment, pursuant to such agreement, which assessment would then not be subject to objection and appeal.

5. REASONS FOR AN ASSESSMENT

5.1. How does a taxpayer request reasons for an assessment?

Grounds for adverse assessment

Under section [96](#), SARS must in the case of an assessment described in section [95](#) (an assessment based on estimation) or an assessment that is not fully based on a return submitted by the taxpayer, issue a statement of the grounds for the assessment. Grounds here generally mean SARS must provide the grounds that enable the taxpayer to determine what has been decided, when, by whom and on what factual and legal basis. It should be noted that under our administrative law grounds for a decision are generally not as extensive as reasons for a decision.⁴⁴ Not all adverse decisions or assessments would be disputed, thus an obligation to provide adequate reasons with every decision would be too administratively burdensome. An adverse decision or assessment both under [rule 6](#) and section [5](#) of PAJA, only invokes a right to request reasons.

Generally, an audit involves a comparison of the taxpayer's accounting records and other information available to SARS, for example information obtained from third parties. Where there was any discrepancy that it did not understand, SARS cannot simply issue additional assessments and leave it to the taxpayer to prove in the tax court that SARS was wrong. For example, SARS cannot simply rely on the fact that the taxpayer bears the burden of proof in tax disputes. This was recently explained by the SCA as follows:⁴⁵

“As best as can be discerned, [SARS’s] approach was that if [it] did not understand something [it] was free to raise an additional assessment and leave it to the taxpayer to prove in due course at the hearing before the Tax Court that she was wrong. [This] approach was fallacious. The raising of an additional assessment must be based on proper grounds for believing that, in the case of VAT, there has been an under declaration of supplies and hence of output tax, or an unjustified deduction of input tax. In the case of income tax it must be based on proper grounds for believing that there is undeclared income or a claim for a deduction or allowance that is unjustified. It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as it is obliged to do. It is also the only basis upon which it can, as it must, provide grounds for raising the assessment to which the taxpayer must then respond by demonstrating that the assessment is wrong. This erroneous approach led to an inability on [SARS’s] part to explain the basis for some of the additional assessments and an inability in some instances to produce the source of some of the figures [it] had used in making the assessments.” (emphasis added)

It is clear that the SCA placed much emphasis on the fact that, for the sake of fairness and proper court procedure, SARS must clearly state the grounds on which it bases its assessments and make clear to the taxpayer what it is disputing, so that the taxpayer knows what is required from it to discharge the burden of proof.

Procedure to request reasons for assessment

The grounds for an adverse assessment by SARS should generally enable the taxpayer to understand the basis for the assessment and to object. However, if this is not the case, the taxpayer may request from SARS the reasons required to enable it to formulate its objection. In terms of [rule 6](#), any taxpayer who is aggrieved by any assessment may request SARS to provide the reasons for the assessment required to enable the taxpayer to formulate an objection.

⁴⁴ See for example Hoexter, *Administrative Law in South Africa*, Juta 2nd ed. 2012

⁴⁵ *SARS v Pretoria East Motors (Pty) Ltd* (291/12) [2014] ZASCA 91 on 12 June 2014, at par [11]

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B The important effect of a request for reasons under [rule 6](#) is that the taxpayer need not lodge an objection until a response is received from SARS.

The essential requirements for a request for reasons are:

- The request must be made in the prescribed form, if any,⁴⁶
- The request must specify an address at which the taxpayer will accept delivery of the reasons, and
- The request must be delivered to SARS within 30 days from the date of assessment.⁴⁷

A taxpayer may request SARS to extend the 30 day period within which reasons may be requested. If SARS is satisfied that reasonable grounds exist for the delay in complying with the 30 day period, the first 30 day period may be extended with a maximum of another 45 day period. If SARS refuses to extend the period as requested, the taxpayer may in terms of [Part F](#) of the rules apply by application on notice to the tax court for an order granting such extension.

After receipt of the request for reasons, the following must happen:

- Where SARS is satisfied that the reasons required to enable the taxpayer to formulate an objection have been provided, for example in the grounds to the assessment, SARS must, within 30 days after delivery of the request, notify the taxpayer accordingly. The notice must also refer to the documents wherein the reasons were provided, OR
- Where, in the opinion of a SARS official, the reasons required to enable the taxpayer to formulate an objection have not been provided, SARS must provide the reasons within 45 days after delivery of the request for reasons.

The period for providing the reasons may be extended by SARS if a SARS official is satisfied that more time is required by SARS to provide reasons due to—

- exceptional circumstances
- the complexity of the matter
- the principle or the amount involved.

5.2. What reasons must be provided to the taxpayer?

The reasons provided under [rule 6](#) must enable a taxpayer to formulate an objection.

In the context of the right to request reasons for an assessment before objecting thereto under the rules, the SCA⁴⁸ recently held that all that is required is that SARS must give the “actual reasons” for an assessment that enable the taxpayer to formulate an objection. “Actual reasons” are essentially SARS's findings of fact and the law applicable thereto. It does not require SARS's reasoning as the rationality test is not applicable. The rationality test is only required to determine if reasons for a decision were “adequate” for purposes of section [5](#) of PAJA.

The intention of [rule 6](#) is not to limit or replace a taxpayer's right to adequate reasons in terms of PAJA. A taxpayer may, instead of or in addition to a request in terms of [rule 6](#), pursue a PAJA request. For purposes of a PAJA review, the person needs to understand the reasoning process to determine if the decision can be challenged by review under PAJA on the bases of error in law, fact or irrationality. Reasons for an assessment,

⁴⁶ Currently there is no prescribed form that must be used for requesting reasons. Thus a normal letter would suffice

⁴⁷ This letter must be sent to the same address for objections indicated on the notice of assessment

⁴⁸ *CSARS v Sprigg Investment 117 CC t/a Global Investment* [2011] 3 All SA 18 (SCA). The court expressly held that the rationality test in the case of *Minister of Environmental Affairs and Tourism v Phambili Fisheries* 2003 (6) SA 407 (SCA), does not apply

in contrast, are only required to enable a taxpayer to formulate its objection. What follows from this judgment is that for purposes of providing reasons for an assessment; SARS is only required to provide its actual reasons (i.e. the facts and applicable law) and not its reasoning process as the rationality test does not apply. In terms of this judgment a taxpayer may challenge the sufficiency of reasons provided by SARS.

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A PAJA request will, however, not extend the period within which the taxpayer must lodge an objection in terms of [rule 7](#), absent a court order to this effect.

5.3. What are the remedies where a taxpayer is not able to formulate the objection based on the reasons given by SARS?

If subsequent to the provision of reasons by SARS under [rule 6](#) the taxpayer is still not able to formulate the objection, the taxpayer may apply to the tax court under Part F of the rules for an order under [rule 52](#) which application must be brought within 20 days after delivery of reasons under this rule. The application on notice procedure is explained below in [par 13](#). The SCA case⁴⁹ discussed above is a recent example of an application where the taxpayer argued that insufficient reasons were provided under the predecessor of [rule 6](#), i.e. rule 3 of the old rules.

In terms of [rule 7](#), if a taxpayer applies to the tax court under [Part F](#) for the reasons required to enable the taxpayer to object, it follows that a taxpayer need only object after the outcome of the application. Furthermore, [rule 50\(4\)](#) provides that an application under [Part F](#) interrupts the periods prescribed for purposes of proceedings under [Part A](#) and [E](#) of the rules for the period commencing on the date of delivery of a notice of motion and ending on the date of delivery of the judgment of the tax court to the parties.

Once the taxpayer has exhausted these remedies, the taxpayer must decide whether to object or not.

5.4. May reasons also be requested in terms of PAJA?

The old or new rules do not oust, contradict or exclude the right to request reasons under PAJA. [Rule 6](#) is an optional alternative to a request for reasons under PAJA, but the main benefit to the taxpayer is that it is intergrated with the time periods of the rules i.e. a taxpayer need not lodge an objection until the reasons necessary to enable the taxpayer to object are given by SARS. Under PAJA, a taxpayer has up to 6 months to request reasons – absent a court order the resolution of a dispute to effect final payment, where appropriate, cannot be subjected to the extensive time periods under PAJA. This rule is similar to old rule 3.

The purpose of reasons under PAJA is to determine the rationality of administrative action and requires facts, applicable law and reasoning to determine whether the action should be set aside under PAJA as irrational. This is not the purpose of reasons under [rule 6](#), as was confirmed in the SCA case⁵⁰ discussed above. Thus, a taxpayer is free to choose whether to request reasons in terms of [rule 6](#) of the section [103](#) rules, or to request reasons for the assessment in terms of section [5](#) of PAJA, where the taxpayer is of the view that the assessment materially and adversely affected his or her rights. However, where a taxpayer has already been provided with adequate reasons, whether in terms of [rule 6](#), the PAJA or otherwise, a taxpayer will not be able to request reasons in respect of the same assessment or decision again, for the simple reason that the taxpayer has already been furnished with adequate reasons.

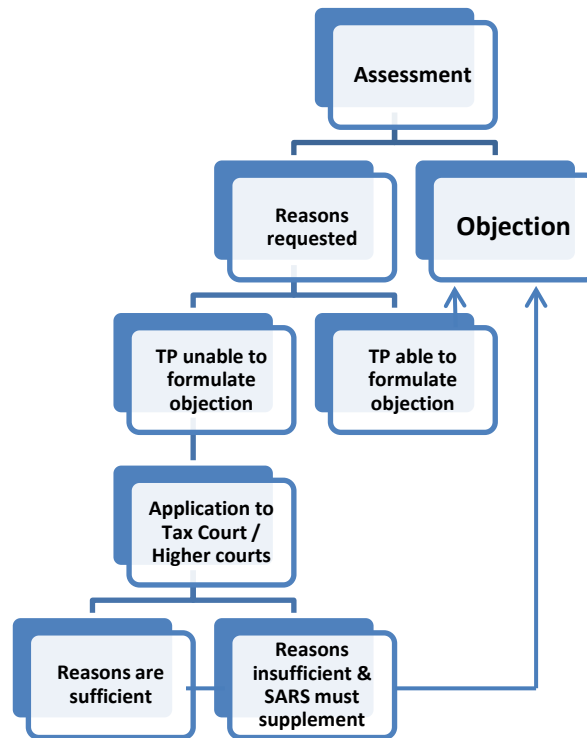
⁴⁹ *Supra*

⁵⁰ *Supra*

6. OBJECTIONS

6.1. The objection procedure

A taxpayer may object to an assessment with or without requesting reasons. It does not always follow that a taxpayer will object once reasons have been received – often the reasons will enable the taxpayer to understand the problem and accept the assessment. The objection and request for reasons process can be illustrated as follows:



6.2. When may a taxpayer object?

A taxpayer who is aggrieved by an assessment or by any decision of SARS which is subject to objection and appeal may object to the assessment or decision in terms of [rule 7](#). These decisions are listed in [Annexure C](#). A taxpayer must lodge its objection within 30 days after—

- the date of assessment of the disputed assessment where a taxpayer has not requested reasons under [rule 6](#)
- where a taxpayer has requested reasons, the date of delivery of the notice under [rule 6\(4\)](#) - i.e. where the SARS official is satisfied that reasons were provided - or the reasons requested under [rule 6](#)
- where SARS fails to provide the reasons under [rule 6](#) required to enable the taxpayer to formulate an objection under [rule 7](#), and the taxpayer has applied to the Tax Court for an order that SARS must provide such reasons, the date of the final outcome of the application, including an appeal against the tax court judgment to the High Court.

Effective date is defined in the TA Act and generally means the date that tax is payable under a tax Act.

For example, in the case of VAT, the effective date for payment is before or on the 25th of the month following the month of the relevant VAT period (unless eFiling is used, in which event payment must be made before the last day of that month). Thus, for the June 2014 tax period, the effective date is 25 July 2014 or, if eFiling is used, 30 July 2014, i.e. the day before the last day of July.

6.3. How can a late objection be condoned?

The 30-day period within which an objection must be lodged may be extended by SARS in terms of section [104\(4\)](#), where a senior SARS official is satisfied that reasonable grounds exist for the delay in lodging the objection. In terms of section [104\(5\)](#) the period for lodging an objection may not be so extended—

- for a period exceeding 21 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection;
- if more than three years have lapsed from the date of assessment or the decision; or
- if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the decision.

Any decision by SARS not to condone a late objection is subject to objection and appeal in terms of section [104\(2\)](#). For further guidance on this issue, see *SARS Interpretation Note 15*.⁵¹

6.4. How does a taxpayer object to an assessment?

An objection must be in the prescribed form, namely the [ADR1](#) or [NOO](#). This form must be completed as comprehensively as possible, and must include detailed grounds on which the objection is founded with supporting documentation where necessary.

Form ADR1 is attached as [Annexure E](#). Form [NOO](#) is only available on the SARS eFiling service and must be completed online by using the relevant functionality on eFiling – an example of the look and feel thereof is attached as [Annexure F](#).

6.5. When will an objection be valid?

Under section [107\(1\)](#) SARS must consider a **valid** objection in the manner and within the period prescribed under the TA Act and the rules. The requirements for a valid objection under [rule 7\(2\)](#) are as follows:

- The objection must be made in the prescribed form ([ADR1](#) / [NOO](#)) with the information requested in the form completed
- The taxpayer must specify in detail the grounds upon which the objection is made, including—
 - the part or specific amount of the disputed assessment objected to;
 - which of the grounds of assessment are disputed;
 - the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment
- If the SARS eFiling service for the objection is not used, Form [ADR1](#) must be used and an address at which the taxpayer will accept delivery of SARS' decision in respect of the objection must be specified
- The completed Form [ADR1](#) must be signed by the taxpayer or the taxpayer's duly authorised representative. The use of the taxpayer or representative practitioner user identity and access code is regarded as the signing of the electronic filing transaction, i.e. the online filing of Form [NOO](#)
- The completed form must be delivered within 30 days of—
 - the date of assessment,
 - delivery of reasons by SARS period, or
 - any extended date if condonement was given by SARS
- The completed form must be delivered at—
 - the SARS address specified in the disputed assessment, or
 - where no address is specified, the address that the Commissioner under rule 2 has specified by public notice as the address at which documents under these rules must be delivered to SARS.

⁵¹ The current version of Interpretation Note 15 is not updated to align it with the TA Act and the new rules. Once updated, the new version will be published

The taxpayer must, together with the completed form, submit the documents supporting the grounds of objection that the taxpayer has not previously delivered to SARS and wishes SARS to consider in support of the objection.

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B Contrary to the old rules, a power of attorney is not required from a person who signs an objection on behalf of the taxpayer.

6.6. How must documents substantiating the objection be submitted?

If eFiling is not used, the substantiating documents may be attached to Form [ADR1](#) and delivered physically or by post to the relevant SARS branch office. If eFiling is used, there is a size limit for uploading on the electronic filing page of the taxpayer and any surplus must be taken to the relevant SARS branch office for scanning and uploading.⁵²

6.7. What happens if an objection is invalid?

In terms of [rule 7](#), where an objection does not comply with any of the requirements, the following may happen:

- SARS may inform the taxpayer by notice within 20 days of delivery of the invalid objection that it is not accepted as a valid objection
- A taxpayer who receives a notice of invalidity under [rule 7\(4\)](#) may within 20 days of delivery of the notice submit a new objection. Where the amended objection complies with the requirements for a valid objection, SARS will treat it as such
- If the taxpayer fails to submit a new objection within the 20-day period under [rule 7](#), the taxpayer may thereafter only submit a new objection together with an application to SARS for an extension of the period for objection under section [104\(4\)](#).

The taxpayer may, where the taxpayer is able to demonstrate on good cause shown that the objection deemed to be invalid by SARS should be accepted as valid, make an application on notice to the tax court, in terms of [rule 52](#), for an order declaring that the objection must be accepted as valid.

6.8. May SARS request substantiating documents after objection is lodged?

Upon receipt of a valid objection, SARS must consider the objection and the grounds upon which it was made. One of the requirements for a valid objection is that the objection must include the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment. However, under [rule 7\(4\)](#) SARS has a discretion to regard the objection as valid notwithstanding, and instead request the taxpayer to submit specified substantiating documents under [rule 8](#).

Where the taxpayer has not furnished all the substantiating documents necessary to decide the objection, the following may happen:

- SARS will notify the taxpayer accordingly and request him or her in writing, in terms of [rule 8](#), to deliver the substantiating documents as specified in that notice
- SARS must do this within 30 days after receipt of the objection

⁵² It is understood that the operational process works as follows: If the taxpayer is a registered e-File then he or she can submit the supporting document via e-Filing by attaching scanned documents subject to a limit of 2MB per document up to a maximum of 40MB. The taxpayer may also visit the relevant SARS branch to lodge his or her NOO with substantiating documents. In this case the substantiating documents will be scanned using the Multi-functional device (MFD). There is a limit to the number of pages that can be scanned using the MFD. If the taxpayer wants to submit the supporting documents at the branch and it exceeds the MFD limit then the documents are sent to the bulk scanning centres for scanning from the branch. The taxpayer can submit the supporting documents via post and this will be bulk scanned at the Mail Centre. More information on this is available on the SARS web site at www.sars.gov.za

- The taxpayer in turn must deliver the requested supporting documents within 30 days after the date of the notice by SARS requesting the supporting documents. The documents must be delivered at the place and in the manner as may be specified by SARS.

A taxpayer may, within the 30-day period during which he or she must provide the substantiating documents, request SARS to extend this 30-day period. Where SARS is satisfied that the taxpayer has submitted reasonable grounds for an extension, the extension may be granted. The extension by SARS may not be more than 20 days. If SARS refuses to extend the period as requested, the taxpayer may make application on notice to the tax court under [rule 52\(2\)\(d\)](#) for an order granting such extension where the taxpayer is able to demonstrate on good cause shown why the extension should be granted.

6.9. What must SARS do with an objection?

SARS must after receipt of the objection, or the substantiating documents requested in the manner described above, consider the objection and either disallow the objection or allow the objection in whole or in part under [rule 9](#).

SARS must notify the taxpayer of its decision in writing—

- within 60 days after delivery of the taxpayer’s objection, or
- if SARS requested substantiating documents under [rule 8](#), 45 days after—
 - delivery of the requested documents; or
 - if the documents were not delivered, the expiry of the period within which the documents must be delivered.

However, where SARS requires more time to deal with the objection due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, SARS may extend the initial period by a period not exceeding 45 days. SARS must, before expiry of the initial period, whichever is applicable, inform the taxpayer accordingly.

6.10. What happens if SARS does not deal with an objection within the prescribed time period?

If SARS fails to deal with the objection within the prescribed period, a taxpayer has the following remedies:

- Pursue a complaint within the SARS internal administrative complaints resolution process and if unsuccessful, submit a complaint to the Tax Ombud⁵³
- Under [rule 56](#), apply for a default judgment.

An application for a default judgment is a procedural application under the rule referred to in [section 117](#). In terms of the [rule 56](#) process, the taxpayer must deliver a notice to SARS that if SARS fails to deal with the objection with 15 days of delivery of the notice, an application will be made to the tax court for a default judgment. If the matter proceeds to the tax court, the court may—

- order SARS to deal with the objection within the period prescribed by the court, or
- if SARS cannot show good cause for the default in dealing with the objection, make an order under [section 129\(2\)](#) including making a final order in favour of the taxpayer.

The tax court under [section 130\(3\)](#) may make a costs order against SARS.

6.11. Must SARS give the basis for disallowing an objection?

Under [section 106\(5\)](#) SARS must state the basis for the decision on the objection and a summary of the procedures for appeal in the notice informing the taxpayer of the decision on objection. Generally, this does not

⁵³ See [par 2.2](#) above

require a repeat or summary of the grounds or reasons for the assessment. It is an explanation why SARS is not persuaded by the objection that the assessment is wrong.

6.12. What may a taxpayer do if SARS disallows the objection or alters the assessment in a manner that does not satisfy the taxpayer?

Any taxpayer entitled to object to an assessment and who is dissatisfied with the final decision of SARS in respect of the objection, may appeal against that decision.

A taxpayer who wishes to appeal must complete the prescribed form ([ADR2](#) or [NOA](#)) and deliver it to the SARS office that dealt with the objection or the address stated by SARS for this purpose in the notice of disallowance.

The notice of appeal must comply with the following requirements:

- It must be in the prescribed form [ADR2](#) or [NOA](#) with the information requested in the form completed
- If a SARS electronic filing service is used, specify an address at which the taxpayer will accept delivery of documents when the SARS electronic filing service is no longer available for the further progress of the appeal
- It must be specified in detail—
 - in respect of which grounds of the objection referred to in [rule 7](#) the taxpayer is appealing
 - the grounds for disputing the basis of the decision to disallow the objection under section [106\(5\)](#)
 - any new ground on which the taxpayer is appealing
- It must be signed by the taxpayer or the taxpayer's duly authorised representative.

The notice must be delivered within 30 days after delivery of the notice of disallowance of the objection. The 30-day period within which an appeal must be noted under [rule 10\(1\)](#), may be extended by SARS in terms of section [107\(2\)](#) as follows:

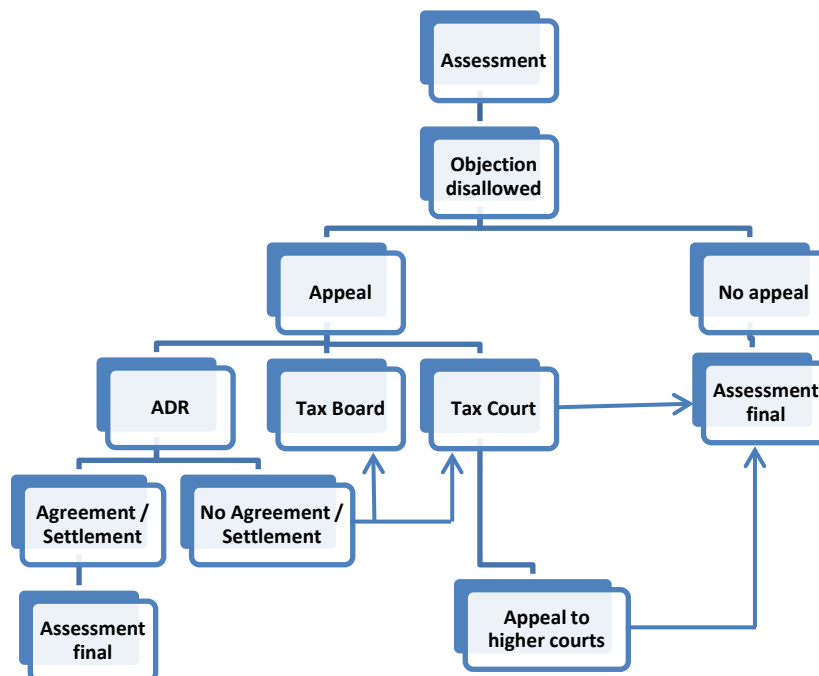
- For 21 business days, if satisfied that reasonable grounds exist for the delay
- For up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.

Any decision by SARS in this regard is subject to objection and appeal in terms of section [104\(2\)](#). In the notice of appeal, the taxpayer may indicate whether or not the taxpayer wishes to make use of the ADR procedures contemplated in [Part C](#) of the rules, should these procedures be available.

7. APPEAL AGAINST DISALLOWANCE OF OBJECTION

7.1. The appeal procedure

The appeal process can be illustrated as follows:



7.2. What is required for an appeal?

A taxpayer must deliver a notice of appeal within—

- 30 days after SARS has delivered the notice of disallowance of the objection under [rule 9](#), or
- the extended period if the taxpayer successfully applied for condonation for late filing under section [107\(2\)](#)

N
B Under the rules, once a taxpayer has lodged an appeal such taxpayer is thereafter referred to as the appellant.⁵⁴

The requirements for an appeal under [rule 10](#) are the following:

- The prescribed Form [ADR2](#) (manual appeal) or Form [NOA](#) (online eFiling appeal) must be used – these forms are attached as [Annexure G](#) and [Annexure H](#)
- The taxpayer must specify an address at which he or she will accept delivery of documents, particularly once the appeal is no longer dealt with on the SARS eFiling platform
- In the prescribed appeal form, the taxpayer must specify in detail:
 - which of the grounds of objection specified in the prescribed objection form are being taken on appeal – this is necessary as the taxpayer may have decided not to appeal on all the objection grounds,

⁵⁴ For purposes of this Guide, the term 'taxpayer' will mostly be used

- the grounds for disputing SARS's basis of the decision to disallow the objection as set out in the notice of disallowance under [rule 9](#) i.e. why does the taxpayer not agree with SARS's basis for disallowance
- any new ground on which the taxpayer is appealing, which may not be a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to under [rule 7](#),
- The prescribed form must be signed by the taxpayer or the taxpayer's duly authorised representative
- The taxpayer must indicate in the prescribed form whether or not he or she wishes to make use of the alternative dispute resolution procedures under section [107\(5\)](#) and [Part C](#) of the rules, should these procedures be available.

7.3. May a taxpayer add new grounds in the notice of appeal?

New grounds in the notice of appeal

The necessity of adding new grounds typically occurs when greater technical or legal expertise is brought to the dispute, for example where the taxpayer decides to brief an expert attorney or advocate to deal with the hearing before the tax board or court.

[Rule 10\(2\)\(c\)\(iii\)](#) expressly provides for the ability of the taxpayer to add new grounds when lodging a notice appeal. This is to address interpretive problems arising from the judgment by the SCA in the *Computek* case.⁵⁵ In this case, the taxpayer originally only objected to additional tax and not the capital amount of the disputed assessment – this it only sought to do when filing its statement under old rule 11.⁵⁶ In other words, the taxpayer tried to bring in a new subject matter or dispute a new part of the assessment which was never objected against. However, the findings of the SCA are interpreted by many to mean that a taxpayer is now limited throughout the further conduct of a dispute to its original grounds of objection. This, it is argued, is in contrast to authority that SARS's statement of reasons for assessment under old rule 10⁵⁷ is not limited to earlier grounds or reasons for the assessment.⁵⁸

In view of this uncertainty, [rule 10](#) now provides clarity. However, the ability to add new grounds in the notice of appeal—

- is limited by [rule 10\(3\)](#) under which the taxpayer may not appeal on a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to in the notice of objection under [rule 7](#),
- if the new ground is based on underlying substantiating documents which SARS has not previously seen, invokes the right of SARS to request these documents under [rule 10\(4\)](#), which the taxpayer must deliver within 15 days after delivery of the notice by SARS unless SARS extends the period for delivery for a further period not exceeding 20 days if reasonable grounds for an extension are submitted by the taxpayer.

This rule should ensure the appropriate balance between the ability of the taxpayer to add new grounds of objection during the appeal stage and the ability of SARS to add new grounds of assessment or opposing the appeal. This ability is already afforded in the notice of appeal under [rule 10](#) to ensure that such new grounds, including documents not seen by SARS before, are considered by SARS in deciding whether to concede the appeal or to proceed with the appeal and complete its statement of the grounds of assessment and opposing the appeal under [rule 31](#).⁵⁹ In this way, no prejudice is suffered by SARS as a result of new grounds raised at appeal stage.

New grounds in statements filed under rules 31 and 32

⁵⁵ *HR Computek (Pty) Ltd v CSARS* [2012] ZASCA 178

⁵⁶ New [rule 32](#)

⁵⁷ New [rule 33](#)

⁵⁸ Per ITC 1843 [2010] 72 SATC 229

⁵⁹ This SARS may do under TA Act section [107\(7\)](#)

It should be noted that SARS, in turn, may include new factual or legal grounds in its statement of the grounds of assessment and opposing the appeal under rule 31. The ability of SARS to add new factual or legal grounds is *inter alia* also premised on the reality that generally only at the appeal stage more expertise and in-depth consideration are brought to a dispute by SARS internal or external experts. Rule 31 is formulated in the present tense and it requires, for example, in rule 31(2)(c) that SARS must set out the material facts and legal grounds upon which it 'relies' when drafting the statement and not only those previously 'relied' on in the grounds of assessment as defined in rule 1.⁶⁰ The rationale why SARS is not limited to its original grounds of assessments, whether factual or legal grounds, was explained by the tax court⁶¹ as follows:

- In this matter it was common cause between the parties that the rule 10 statement (new rule 31) by SARS raised a new ground which was both absent and contrary to any of the preceding letters by the Commissioner setting out the grounds of objection and basis of disallowance of the objection.
- Rules 10 and 11 (of the old rules) oblige both parties to set out the various grounds and facts which each will rely on when the appeal is heard and, in fact, in common parlance, it has become accepted terminology to refer to these two statements as the '*pleadings*' filed by the respective parties in the appeal
- Rule 10(3) (new rule 31) is formulated in the present tense and it requires in rule 10(3)(a) that SARS set out in its statement or '*pleadings*' the grounds upon which the taxpayer's objection '*is*' disallowed and not '*was*' disallowed
- Furthermore, in rule 10(3)(b) it states that the statement must set out the material facts or legal grounds upon which the Commissioner '*relies*' and not '*relied*' for such disallowance
- The present tense would indicate that the statement is to set out the *current* grounds and material facts as at the date of its filing and not the grounds as *at the date when the disallowance took place*
- This view is fortified by comparing the similar present tense wording used in the statement of the grounds of appeal or '*pleadings*' to be filed by the taxpayer in accordance with rule 11 (new rule 32)
- Rule 12 (new rule 34), which deals with the issues in the appeal, expressly states that 'the issues in an 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' and it will be noticed that the rule does *not* state that the issues are defined by any preceding correspondence setting out, for example, the grounds of assessment
- The rules would *not* be left open-ended if SARS was permitted to add any new ground irrespective of what the preceding correspondence contained, as it would not cause the taxpayer any prejudice because he or she would have the opportunity when filing the rule 11 statement (new rule 32) to counter or deal with any new ground in SARS' rule 10 statement (new rule 31)
- The Commissioner was, therefore, *not bound by any previous grounds of assessment* referred to in any preceding correspondence as the clear wording used in the rules militates against this conclusions
- Thus, the Commissioner was entitled to add new grounds to its rule 10 statement that were different from those contained in the preceding correspondence dealing with the grounds of assessment
- There could be no prejudice to the appellant if rules 10 and 11 (new rule 31 and rule 32) were interpreted in the manner contained in the judgment because of all the built-in safeguards which were available to a taxpayer.

The tax court⁶² also referred to an earlier judgment by the high court in 2001,⁶³ where SARS initially argued that that expenditure was not in the production of income, but in argument before the tax court SARS contented that it was of a capital nature. On behalf of the taxpayer it was argued that that it would be inherently unreasonable and indeed unfair if a taxpayer, having been assessed on a particular basis in respect of which he or she has objected, the objection having been considered and an appeal having been noted, were to bear the burden of proving not only that he or she was not taxable on the basis assessed but *on any other basis* which SARS might choose to raise at the hearing of the appeal. That argument was rejected in circumstances

⁶⁰ ITC 1843 *supra* par [17]

⁶¹ See for example ITC 1843 *supra*

⁶² ITC 1843 *supra* par [27]

⁶³ *Warner Lambert SA (Pty) Ltd* 65 SATC 346

where the Income Tax Act at that point in time bound the taxpayer to its grounds of objection.⁶⁴ In ITC 1843⁶⁵ the tax court held in this regard as follows:

“One may have thought it unfair to bind the taxpayer to his defences but allow the Commissioner to have the freedom to alter the grounds for its assessment. Yet the court held that the Commissioner’s freedom not to be limited by the original reasons for disallowing the objection, was fair. Subsequently, the Rules of the Tax Court [the old rules] were promulgated which amended this *lacuna*. It would seem to me that there would be no unfairness if a party is permitted to change its reasoning either in the pleadings or thereafter, provided adequate steps are taken to protect the other party from any resultant prejudice by, for example, the granting of a postponement or leave to lead fresh evidence or permission to file new submissions.”

However, a limitation to the addition of new grounds of assessment is imposed under rule 31(3), in terms of which SARS may not include in the statement a ground that constitutes a ‘novation’ of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment. This term is not defined, and would accordingly bear its ordinary meaning. According to the Shorter Oxford English Dictionary, ‘novate’ in a legal context means “the substitution of a new debtor, creditor, contract ... in place of the old one”. Applied in the context of assessment, novate would mean that the new ground requires the substitution or replacement of the assessment with a new one. The high court⁶⁶ on occasion held that novation takes place as the result of an agreement between parties substituting a new obligation for an existing one, thus cancelling the existing one.

In turn, the taxpayer may then request discovery of substantiating documents for such new grounds under rule 36 and may respond to the new grounds in its statement of grounds of appeal under rule 32. This rule is, similarly to rule 31, formulated in the present tense and it requires, for example, in rule 32(2) that the taxpayer must set out the grounds upon which the taxpayer ‘appeals’ and the material facts and legal grounds upon which it ‘relies’ for the appeal. Accordingly, the taxpayer may include new factual or legal grounds in its statement, but rule 32(3) provides that this may not be a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7.

SARS may then request discovery of substantiating documents for such new grounds under rule 36 and may respond to the new grounds in its reply to the taxpayer’s statement of grounds of appeal under rule 33.

In this way, no prejudice is suffered by a party as a result of new grounds raised by the other party at appeal stage. This is in line with the approach by the tax court and higher courts,⁶⁷ holding that if any prejudice may be suffered by a party as a result of new grounds raised at appeal stage, the party would always be entitled to deal with them in its statement or if already filed, by amending its statement or, if raised at a later stage, seek a postponement in order to prepare properly for any new grounds or arguments raised by the other party.

The ability to seek discovery of documents related to new grounds included in the statement – or “pleadings” as they are known in civil procedural law – is also in line with pleadings and related proceedings under the Rules for the High Court, which rules also enable a party to request discovery of documents related to new grounds included in pleadings.

⁶⁴ It should be noted that in the *CompuTek* judgment by the SCA (*supra*) par [11], reliance was placed on a case which similarly concluded that the taxpayer was limited to its grounds of objection stated in the notice of objection based on the Income Tax Act as it read prior to 2003 (section 83(7)(b) – substituted by Act 70 of 1989). This is arguably incorrect, as the SCA should have applied the provisions of the Income Tax Act as they read in 2012, which no longer included the limitation provision, and the 2003 rules which, as explained in ITC 1834, allowed new grounds in the rule 11 statement of grounds of appeal given the use of the present tense in the rules

⁶⁵ *Supra* par [28]

⁶⁶ *Western Bank Ltd v Rautenbach* 1974 4 SA 960 (E). See further *Financial Services (Pty) Ltd v Naidoo & Another* 2013 1 SA 151 KZP

⁶⁷ ITC 1843 *supra* - relying on earlier judgments by the SCA in the *Bailey* case and by Davis J in the *Warner Lambert* case.

What is a 'new ground'

Although this issue has not been expressly dealt with in case law, it seems reasonable that new grounds—

- may include supplementing, augmenting, refining or adding factual or legal grounds to the grounds of objection
- may not be a complete novation of the grounds of SARS's assessment or the taxpayer's objection.

To approach the meaning of 'new ground' in the rules, it would make sense to follow a purposive approach. In order to achieve finality for both parties and to enable the court to arrive at a correct judgment, it is important that all relevant facts and legal arguments are before court. This approach would be in line with the slightly less formal nature of the tax court than that of the higher courts. The SCA has on occasion stated that it is obviously in the public interest that the Commissioner should collect tax that is payable by a taxpayer, but it is also in the public interest that disputes should come to an end; and it would be unfair to an honest taxpayer if the Commissioner were to be allowed to continue to change the basis upon which the taxpayer were assessed until the Commissioner got it right.⁶⁸

An example where SARS first raised a new ground at the hearing is the *Warner Lambert* case⁶⁹. In that case the argument that the particular expenditure was of a capital nature was first raised in argument before the court. Prior to the hearing SARS contended that the expenditure was not incurred in the production of income. The court then allowed both parties to file additional written submissions dealing with that particular point. It was contended on behalf of the taxpayer that it would be inherently unreasonable and indeed unfair if a taxpayer, having been assessed on a particular basis in respect of which he has objected, the objection having been considered and an appeal having been noted, were to bear the burden of proving not only that he was not taxable on the basis assessed but on any other basis which the Commissioner might choose to raise at the hearing of the appeal. The court held that the Commissioner's freedom not to be limited by the original reasons for disallowing the objection, was fair. The court held that it is of course possible for the court to deal with the question of law arising on the facts and to decide it adversely to the taxpayer, notwithstanding that the ground for its decision are other than those relied upon by the Commissioner, always providing that the maxim *audi alterem partem*⁷⁰ has been observed – this was effected by allowing both parties to file additional written submissions dealing with that particular point.

In another tax court case⁷¹ SARS relied on a ground not expressly contended in its statement of grounds of objection. Although the court agreed with this, it held that an examination of the opening address by counsel for the taxpayer reinforces the general observation that the taxpayer knew the case which was to be mounted by SARS in order to justify its assessment and framed its own case accordingly.

An example where the taxpayer attempted to introduce a new ground is the *CompuTek* case.⁷² In this case, the taxpayer originally only objected to additional tax and not the capital amount of the disputed assessment – this it only sought to do when filing its statement of grounds of appeal.⁷³ The SCA held that when the taxpayer challenged the capital amount for the first time in its statement, it effectively raised a 'new objection' directed at an individual assessed amount that had not previously been objected to. Although the taxpayer was not successful in this case, it follows that new grounds may be raised at the appeal state provided that they do not constitute a new objection against a part or amount of the disputed assessment not objected to.

⁶⁸ See for example *Commissioner, South African Revenue Service v Brummeria Renaissance (Pty) Ltd and Others* 2007 (6) SA 601 (SCA) para 26

⁶⁹ *Warner Lambert SA (Pty) Ltd* 65 SATC 346

⁷⁰ "Let the other side be heard also"

⁷¹ Tax Court case no 13002 by Davis J on 19 August 2013 from par [58] - <http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/2013-2011.aspx>

⁷² *Supra*

⁷³ Old rule 11; new [rule 32](#)

Comparatively, this issue has also been debated in New Zealand in 2013, when concerns were expressed by the judiciary about the application of an exclusion rule to issues and propositions of law after a certain stage in tax litigation proceedings. The concerns were based on the fact that arguments often develop in the course of litigation and the exclusions of issues and propositions of law can stop parties relying on the best arguments. Also, the precedential value of judgments can be reduced where they were made on the basis of an incomplete set of arguments and courts would be obliged to come to a decision without the benefit of hearing all arguments from the parties, given that the exclusion rule would apply to them.⁷⁴

Is the tax court bound to base its judgment on any of the grounds set out in the statements?

The flexibility of the tax court regarding considering new grounds is further demonstrated by the case law. In tax appeals it is firmly established that if the court for example arrives at a conclusion that the taxpayer is liable for the tax under the disputed assessment, the court is not precluded from upholding the assessment merely because the court's conclusion is based on a ground other than the one advanced by the Commissioner, subject only to compliance with the rules of natural justice, meaning that both parties must have had an opportunity to address the court regarding the ground on which the court's conclusion is based.⁷⁵

For example, in the SCA *Bailey* case⁷⁶ the taxpayer's counsel argued on appeal that the special court had not been entitled to decide the case on the basis that a particular entity was a sham since the Commissioner had taxed the company on the basis that it was a valid legal entity. The SCA observed as follows:

'A Special Court under the Income Tax Acts is not a court of appeal in the ordinary sense: it is a court of revision with power to investigate matters before it and to hear evidence thereon; and if it arrives at the conclusion that the appellant is liable for the tax which the Commissioner has levied, it is not precluded from upholding the same, merely because its conclusion is based on a ground other than that advanced by the Commissioner in support of its levy provided that the maxim *audi alterem partem* is observed.' (emphasis added)

In ITC 583⁷⁷ the principle was stated as follows:

'It is of course possible for this court to deal with the question of law arising on the facts and to decide it adversely to the appellant notwithstanding that the ground for its decision are other than those relied upon by the Commissioner always providing that the maxim *audi alterem partem* has been observed.' (emphasis added)

Summary of process and inclusion of new grounds

Below is a summary of the process under the rules for purposes of the inclusion of new grounds:

- In its notice of objection, the taxpayer must specify the part or specific amount of the disputed assessment objected to, for example expenditure disallowed by SARS on the ground that it was not incurred in the production of income under section 11(a) of the ITA⁷⁸
- In its notice of disallowance of the objection, SARS must state the basis for the decision not to allow the objection.⁷⁹ No new grounds would generally be included in this notice
- In its notice of appeal, the taxpayer may rely on a new ground on which it is appealing. The limitation is that such new ground of appeal may not constitute a new objection against a part or amount of the disputed

⁷⁴ Justice Susan Glazebrook, *Taxation Disputes in New Zealand*, presented at the Australasian Tax Teachers Association (ATTA) Conference on 22 January 2013

⁷⁵ See, for example, *Bailey v Commissioner for Inland Revenue* 1933 AD 204 at 220; ITC 583; 14 SATC 111 at 112; ITC 721 (1951) 17 SATC 485 at 487; ITC 1654 (1997) 61 SATC 131 at 142; *Arepee Industries Ltd v CIR* 1993 (2) SA 216 (N) at 221G-223C

⁷⁶ *Supra*

⁷⁷ *Supra*

⁷⁸ Rule 7(2)(b)(i)

⁷⁹ Under section [106\(5\)](#)

assessment not objected to.⁸⁰ For example, a taxpayer may not now object to the imposition of an understatement penalty in the same assessment if this was not included in the notice of objection. The taxpayer may, however, specify a new factual or legal ground why the disallowed expenditure was in the production of income which was not specified in the notice of objection, or supplement, augment or refine factual or legal grounds specified in the notice of objection

- If the taxpayer in the notice of appeal relies on a new ground, the taxpayer must produce any related document requested by SARS in order to decide on the further progress of the appeal⁸¹
- It is implicit from the use of the present tense in rule 31 that SARS may include new grounds of assessment and opposing the appeal.⁸² Limitations:
 - SARS may not include in the statement a ground that constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.⁸³ For example, the new grounds may not include a ground that requires a recalculation of the tax liability in the disputed assessment
 - Using the disallowance of expenditure on the basis that it was not incurred in the production of income example, SARS may include a new ground that the expenditure is also capital in nature.⁸⁴ This does not novate or substitute the whole basis of the assessment
- If SARS includes new grounds of assessment and opposing the appeal in its statement under rule 31, the taxpayer may deliver a notice of discovery requesting SARS to make discovery on oath of any document material to the new ground of appeal in the statement, i.e. a ground not set out in the grounds for the assessment,⁸⁵ to the extent that such document is required by the taxpayer to formulate its grounds of appeal under rule 32⁸⁶
- If such discovery is requested by the taxpayer, the taxpayer only needs to deliver its statement of grounds of appeal under rule 32 after discovery
- It is implicit from the use of the present tense in rule 32 that the taxpayer may similarly include a new ground of appeal. However, the taxpayer may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7⁸⁷
- Upon receipt of the taxpayer's statement under rule 32, SARS may similarly seek discovery of any document material to a new ground of the appeal in the statement⁸⁸
- The taxpayer may then in its reply to SARS' statement under rule 32 deal with the new ground of assessment whether pursuant to discovery or not. Furthermore, the taxpayer may amend its rule 31 statement to properly deal with the new ground of assessment
- If the matter has been set down for hearing, either party may seek a postponement to properly deal with any new ground raised by the other party.⁸⁹

7.4. What happens after the taxpayer lodged an appeal?

The appeal may be referred to:

- Alternative Dispute Resolution ("ADR") at either the SARS Branch Office or SARS Head Office level;
- The tax board (administered at SARS Branch Office level); and/or
- The tax court (administered at SARS Head Office level).

⁸⁰ Rule 10(3)

⁸¹ Rule 10(4)

⁸² ITC 1843 *supra* par [17]

⁸³ Rule 31(3)

⁸⁴ See *Warner Lambert* case and ITC 1843 *supra*

⁸⁵ Defined in rule 1 to include grounds of assessment under section 42(6) or 96, reasons provided under rule 6 or the basis of disallowance of the objection under section 106(2)

⁸⁶ Rule 36(1)

⁸⁷ Rule 32(3)

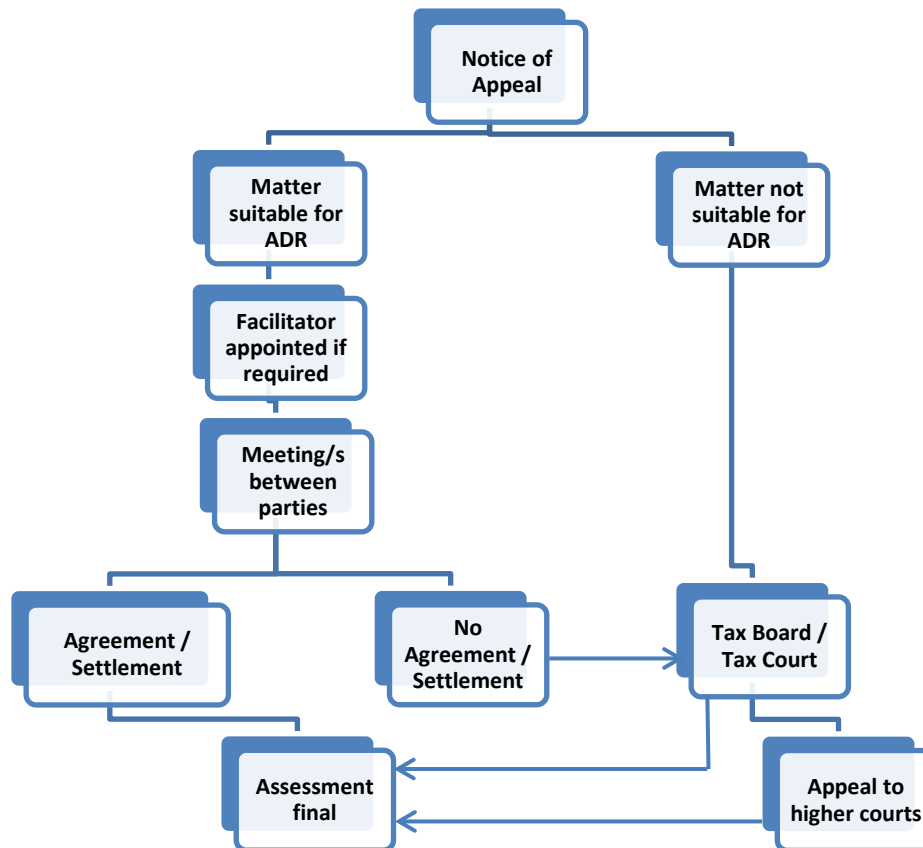
⁸⁸ Rule 36(1)

⁸⁹ Rule 45(2) read with ITC 1843 *supra*

8. ALTERNATIVE DISPUTE RESOLUTION

8.1. The ADR procedure

The ADR process can be illustrated as follows:



8.2. What is Alternative Dispute Resolution (“ADR”) and how does it work?

By mutual agreement, SARS and the taxpayer making the appeal may attempt to resolve the dispute through ADR under procedures specified in the rules.⁹⁰ In the prescribed notice of appeal form the taxpayer is required to indicate ‘yes’ or ‘no’ to refer the appeal for ADR.

[Part C](#) of the rules governs the ADR and settlement procedure to allow for the resolution of tax disputes outside the litigation arena. This procedure creates a structure with the necessary checks and balances within which disputes may be resolved or settled. The ADR process is less formal and expensive than the court process and allows for disputes to be resolved within a much shorter period. Furthermore, it creates a more cost effective remedy for resolving tax disputes.

During ADR a facilitator may, if requested by both parties,⁹¹ facilitate the discussions between the taxpayer and SARS. The parties may first try to reach an agreement whereby either SARS 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. Where SARS and the taxpayer are unable to reach such an agreement, and the Commissioner or any person designated by the Commissioner,⁹² is of the opinion that the circumstances of the matter comply with the

⁹⁰ TA Act section [107\(5\)](#)

⁹¹ Under [rule 16\(2\)](#)

⁹² Under section [6\(2\)](#)

requirements referred to in those regulations, the parties may attempt to settle the matter in accordance with those regulations within the ADR process.

The ADR process seeks to resolve a dispute through an agreement under [rule 23](#) or a settlement under [rule 24](#). An agreement is when either SARS or the person concerned, accepts the other party's interpretation of the facts or the law applicable to those facts or of both the facts and the law. An agreement is always preferred over a settlement, as the former is an agreement on the correct application of the law. If a part of the disputed liability is compromised under the agreement, it is a settlement. This follows from the definition of "settle" in section [142](#) of the TA Act. For purposes of an agreement, the approval of a senior SARS official is not required – this is only required for a settlement under section [147\(4\)](#) of the TA Act as regulated by [rule 24](#).

8.3. How is ADR accessed?

Even if a taxpayer indicates 'yes' for ADR in the notice of appeal, SARS may inform the taxpayer that the appeal is not suitable for ADR. Examples of when SARS may decide an appeal is not suitable for ADR and subsequent settlement include:⁹³

- It is not in the interest of the good management of the tax system
- There are too many disputed facts involved and it is unlikely that agreement on the facts will be achieved
- The action by the taxpayer that relates to the 'dispute' constitutes intentional tax evasion or fraud
- Any settlement pursuant to ADR would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice
- The taxpayer has not complied with the provisions of a tax Act and the non-compliance is of a serious nature
- It is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose
- The pursuit of the matter through the courts will significantly promote taxpayer compliance with a tax Act and the case is suitable for this purpose.

ADR can be initiated by either the taxpayer or SARS as follows:

- Where the taxpayer requests ADR in his or her notice of appeal, SARS must⁹⁴ inform the taxpayer by notice within 30 days of receipt of the notice of appeal whether or not the matter is appropriate for ADR and may be resolved by way of the ADR procedures
- Where the taxpayer has selected "no" for ADR in the notice of appeal but SARS is satisfied that the matter is appropriate for ADR, SARS must⁹⁵ inform the taxpayer accordingly within 30 days of receipt of the notice of appeal. The taxpayer must⁹⁶ then within 30 days of delivery of the notice by SARS deliver a notice stating whether or not the taxpayer agrees thereto. If the taxpayer does not agree, the matter proceeds to the tax board or court.

8.4. What are the ADR terms and agreement?

A taxpayer who requests ADR or agrees thereto, is regarded as having accepted the terms of ADR set out in [Part C](#) of the rules.⁹⁷

8.5. What is the period of alternative dispute resolution?

This period is determined under [rule 15](#), which rule provides that the period within which ADR proceedings are

⁹³ TA Act section [145](#)

⁹⁴ Under [rule 13\(1\)](#)

⁹⁵ Under [rule 13\(2\)\(a\)](#)

⁹⁶ Under [rule 13\(2\)\(b\)](#)

⁹⁷ Under [rule 13\(3\)](#)

conducted commences on the date of delivery of—

- the notice by SARS that the matter will be dealt with under ADR⁹⁸ as requested by the taxpayer in the notice of appeal,⁹⁹ or
- the notice by the taxpayer that he or she is willing to participate in ADR upon request by SARS.¹⁰⁰

The ADR period ends on the date the dispute is resolved¹⁰¹ or the proceedings are terminated.¹⁰² The ADR process must be concluded within 90 days after the date of commencement of ADR.¹⁰³

The period within which ADR proceedings are conducted interrupts the periods prescribed for purposes of the tax board or court proceedings.¹⁰⁴ This means that if the taxpayer wishes to pursue the appeal to the tax board or court, the proceedings and time periods under—

- [Part D](#) (tax board procedure if appeal qualifies for this procedure), apply from the date that the taxpayer, within 20 days after termination of the ADR proceedings, requests the clerk of the tax board to set the matter down before the tax board,¹⁰⁵ or
- [Part E](#) (tax court procedure), apply from the date that the taxpayer, within 20 days after termination of the ADR proceedings, gives notice to SARS that the taxpayer wishes to proceed with the appeal.

8.6. Who is the facilitator?

A senior SARS official must establish a list of facilitators of ADR proceedings and a person included on the list—

- may be a SARS official
- must be a person of good standing of a tax, legal, arbitration, mediation or accounting profession who has appropriate experience in such fields
- must comply with the facilitator's duties under [rule 17](#) namely the duty to—
 - act within the prescripts of the proceedings under [Part C](#) and the law
 - seek a fair, equitable and legal resolution of the dispute between the taxpayer and SARS
 - promote, protect and give effect to the integrity, fairness and efficacy of the ADR process
 - act independently and impartially
 - conduct himself or herself with honesty, integrity and with courtesy to all parties
 - act in good faith
 - decline an appointment or obtain technical assistance when a case is outside the field of competence of the facilitator
 - attempt to bring the dispute to an expeditious conclusion.

A facilitator who is not a SARS official will be regarded as such for purposes of the confidentiality provisions under Chapter 6 of the TA Act. This includes signing an oath or solemn declaration of secrecy.

A facilitator is only appointed if the parties, i.e. the taxpayer and SARS, agree to use a facilitator for the ADR proceedings. The parties may also decide that a facilitator is not required and conduct the ADR proceedings on a party-to-party negotiation basis. SARS will generally be represented by an impartial SARS official who was not involved in the audit and assessment process that led to the dispute. It is important to note that a facilitator does not make any judgment during the proceedings and cannot enforce his or her views on the parties.

Where the parties are in agreement to appoint a facilitator, a senior SARS official may appoint a person from

⁹⁸ Under [rule 13\(1\)](#)

⁹⁹ Under [rule 13\(1\)](#)

¹⁰⁰ Under [rule 13\(2\)\(b\)](#)

¹⁰¹ Under [rule 23](#) or [24](#)

¹⁰² Under [rule 25](#)

¹⁰³ [Rule 15\(3\)](#)

¹⁰⁴ [Rule 15\(2\)](#). These include [rule 12](#) and [Parts D, E and F](#) of the rules

¹⁰⁵ As required under [rule 25\(3\)\(a\)](#)

the list of facilitators within 15 days after the commencement date of the proceedings.¹⁰⁶ SARS must give notice to the taxpayer and the SARS official designated to manage the ADR proceedings. The appointed facilitator may be removed by a senior SARS official after commencement of the ADR proceedings:

- at the request of the facilitator
- by agreement between the parties
- at the request of a party and if satisfied that there has been misconduct, incapacity, incompetence or non-compliance with the duties¹⁰⁷ by the facilitator
- if there is a conflict of interest on the part of the facilitator in the circumstances referred to in [rule 18](#).

8.7. How is ADR proceedings conducted?

The ADR proceedings will be conducted in accordance with the terms set out in [Part C](#). If appointed, the facilitator must within 20 days of his or her appointment arrange for the ADR meeting/s after consultation with the parties.¹⁰⁸ If no facilitator was appointed, the parties must arrange the meeting within 30 days of the commencement of the ADR proceedings.¹⁰⁹

A facilitator or a party is not required to record the proceedings and the proceedings may not be electronically recorded. If the taxpayer is a natural person or a representative taxpayer, he or she must be personally present during the proceedings or may participate by telephonic or video conferencing, and, if SARS so agrees, may be represented in their absence by a representative of their choice.¹¹⁰ If a facilitator was appointed, the facilitator, in exceptional circumstances, may allow the taxpayer to be represented in the taxpayer's absence by a representative of the taxpayer's choice.¹¹¹

If appointed, the facilitator may summarily terminate the ADR process without prior notice—¹¹²

- if any party fails to attend the ADR meeting or to carry out a request by the facilitator to furnish written submissions or other documents
- where the facilitator is of the opinion that the dispute cannot be resolved through the ADR proceedings for any other appropriate reason.

SARS, the taxpayer and the facilitator may agree at the commencement of the ADR proceedings that, if no agreement or settlement is ultimately reached between the parties, the facilitator may make a written recommendation at the conclusion of the proceedings.¹¹³ This recommendation must be delivered to the parties 30 days after termination of the ADR proceedings and will not be admissible during any subsequent proceedings including court proceedings unless it is required by the tax court for purposes of deciding costs.¹¹⁴ In addition, the facilitator may not be subpoenaed during or after termination of the ADR proceedings to explain or defend this recommendation.¹¹⁵

The above recommendation must be distinguished from the compulsory report that the facilitator must make at the conclusion of the ADR meeting or meetings which report must include:¹¹⁶

- The issues which were resolved
- The issues upon which agreement or settlement could not be reached

¹⁰⁶ [Rule 15\(1\)](#)

¹⁰⁷ Set out in [rule 17](#)

¹⁰⁸ [Rule 19\(1\)](#)

¹⁰⁹ Determined under [rule 15\(1\)](#)

¹¹⁰ [Rule 20\(3\)](#)

¹¹¹ [Rule 20\(4\)](#)

¹¹² [Rule 19\(3\)](#)

¹¹³ Under [rule 21](#)

¹¹⁴ Under section [130](#)

¹¹⁵ [Rule 22\(4\)\(c\)](#)

¹¹⁶ [Rule 20\(6\)](#)

- Any other point which the facilitator considers necessary.

8.8. Is there a reservation of rights under ADR?

The ADR proceedings will be without prejudice. Essentially, this means that the ADR proceedings are not one of record, and any representation made or document tendered in the course of the proceedings may not be tendered in any subsequent proceedings as evidence by any other party except—¹¹⁷

- with the knowledge and consent of the party who made the representation or tendered the document
- if such representation or document is already known to, or in the possession of, that party
- if such representation or document is obtained by the party otherwise than under the proceedings in terms of this rule
- if a senior SARS official is satisfied that the representation or document is fraudulent.

In addition, unless a court otherwise directs, no person may at any time subpoena the facilitator or other person involved in the ADR proceedings to compel any representation made or document tendered in the course of the proceedings.¹¹⁸

Should SARS or the taxpayer not be amenable to the proposed settlement or agreement, the matter may still proceed to the tax board or tax court.

8.9. Must an assessment be issued to give effect to agreement or settlement?

During ADR, as explained above, the parties must first try to reach an agreement on the interpretation and application of the relevant tax law. If they fail to reach agreement to resolve the matter in terms of the ordinary provisions of the TA Act, they may attempt to settle the matter under the settlement provisions.

Therefore, subject to compliance with SARS' policies and internal corporate governance requirements in this regard, the outcome of successful ADR may be either—

- agreement on a basis to resolve in terms of the ordinary provisions¹¹⁹
- settlement in terms of the settlement provisions¹²⁰ which will also be formalised by way of a settlement agreement.¹²¹

Where an agreement or a settlement is concluded, SARS must issue an assessment to give effect to that agreement or settlement, as the case may be, within a period of 45 days after the date of the last signature of the settlement.¹²²

Under [rule 52\(5\)](#), a party to an agreement or a settlement pursuant to alternative dispute resolution proceedings under [Part C](#) may apply to a tax court under [Part F](#) for an order that—

- the agreement or settlement be made an order of court; or
- if SARS fails to issue the assessment to give effect to an agreement or settlement within the period prescribed under [rule 23\(3\)](#) or [24\(3\)](#), as the case may be, SARS must issue the assessment.

¹¹⁷ [Rule 22](#)

¹¹⁸ [Rule 22\(4\)](#)

¹¹⁹ [Rule 23](#)

¹²⁰ Under Part F of [Chapter 9](#)

¹²¹ [Rule 24](#)

¹²² [Rule 24\(3\)](#)

9. SETTLEMENTS

9.1. General principles for settlement

By law SARS is not entitled to forgo any tax which a taxpayer is legally liable to pay. [Part F of Chapter 9](#) of the TA Act, however, prescribes the circumstances under which SARS may settle a dispute between SARS and a taxpayer, where the settlement would be to the best advantage of the state. The settlement circumstances are in line with the approach that more emphasis should be placed on resolving disputes otherwise than by way of litigation. It must be emphasised that the basic rule still remains that SARS must enforce all legislation administered by SARS and is obliged to assess and collect all amounts due to the State. There are, however, certain circumstances which justify that the basic rule be tempered for purposes of good management of the tax system and where it would be to the best advantage of the State. This is an internationally recognised principle.

9.2. When and under what circumstances may a tax dispute be settled?

The purpose of [Part F of Chapter 9](#) is not to prescribe the process for settlement. It is an enabling provision which enables SARS to settle a dispute which is to the benefit of the State, provided the matter is appropriate for settlement having regard to the prescribed circumstances. A dispute may be settled at any time, and is not limited for use only in the ADR process. During ADR in terms of [rule 24](#), the parties may settle a tax dispute in terms of the settlement circumstances where they were unable to reach agreement on the interpretation and application of the relevant tax law. For purposes of the settlement of a tax dispute, the Commissioner personally or any person specifically designated by the Commissioner for this purpose¹²³ must be of the opinion that the matter is appropriate for settlement having regard to the settlement circumstances listed in [Part F of Chapter 9](#). These settlement provisions may only be applied if the circumstances of the matter comply with these regulations.

The settlement provisions under Part F of [Chapter 9](#) provide guidelines as to the circumstances when it would be appropriate and when it would be inappropriate to settle.

9.3. Under what circumstances will it be inappropriate to settle?

The settlement provisions provide guidelines as to the circumstances under which it will be inappropriate to settle a matter, for example:¹²⁴

- If in the opinion of SARS the action on the part of the taxpayer which relates to the dispute constitutes intentional tax evasion or fraud (with a let out that such matters may be settled where one of the circumstances under which it would be appropriate to settle exists)
- The settlement would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice
- The person concerned has not complied with the provisions of a tax Act and the non-compliance is of a serious nature
- It is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose
- The pursuit of the matter through the courts will significantly promote compliance and the case is suitable for this purpose.

9.4. Under what circumstances will it be appropriate to settle?

The settlement provisions provide that where it will be to the best advantage of the state, a matter may be

¹²³ Under section [6](#)

¹²⁴ Section [145](#)

settled in whole or in part, on a basis that is fair and equitable to both the taxpayer and SARS.¹²⁵

In settling a matter, SARS must have regard to a number of factors, including:

- Whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of SARS's resources
- The cost of litigation in comparison to the possible benefits with reference to:
 - the prospects of success in a court;
 - the prospects of the collection of the amounts due; and
 - the costs associated with collection
- Whether there are any—
 - complex factual issues in contention
 - evidentiary difficulties,which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;
- A situation where a participant or a group of participants in a tax avoidance arrangement has accepted SARS's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements
- Whether the settlement of the dispute is a cost-effective way to promote compliance with a tax Act by the person concerned or a group of taxpayers.

9.5. What are the reporting requirements for settlements?

SARS must report on an annual basis to the Minister of Finance and the Auditor-General on settlements reached.¹²⁶ This report must be in a format which does not disclose the identity of the taxpayer and must contain details of the number of disputes settled or part settled, the amount of revenue forgone and the estimated amount of savings in costs of litigation,¹²⁷ which must be reflected in respect of main classes of taxpayers.

9.6. Settlement and mutual agreement procedure

Where a settlement involves a matter that may be the subject of a mutual agreement procedure between competent authorities, the restrictions under paragraph 3.3. – “Objection, alternative dispute resolution and settlement”, as set out in the [Guide on Mutual Agreement Procedures \(MAP\) \(Issue 3\)](#), will apply.

¹²⁵ Section [146](#)

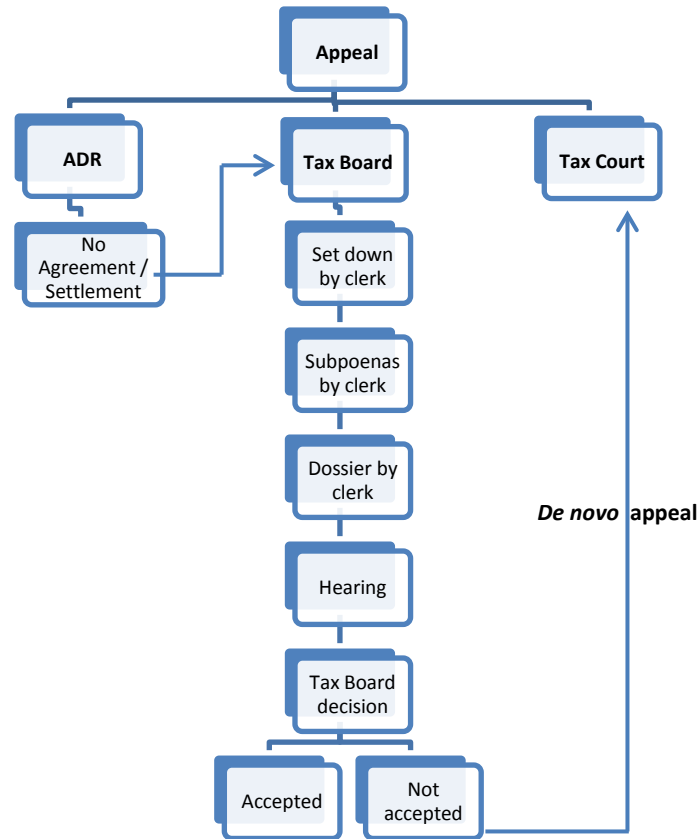
¹²⁶ Section [149](#)

¹²⁷ Section [207](#) of the TA Act. In the draft Tax Administration Laws Amendment Bill, 2014, an amendment to section 207 is proposed to remove the requirement that SARS must report on the estimated amount of savings in costs of litigation, as this is an onerous and impractical requirement. The saving in costs will not in all cases be the reason for the write off of tax under a settlement agreement or quantifiable. A tax debt may on another basis be written off or compromised where in the best interest of the state and these records as a result of strict corporate governance procedures are available for inspection by the Auditor-General

10. APPEALS BEFORE THE TAX BOARD

10.1. The procedure before the tax board

The tax board process can be illustrated as follows:



10.2. What is the tax board?

The tax board is established under the TA Act¹²⁸ and consists of an advocate or attorney as chairperson. Such advocate or attorney is appointed to a panel of suitable advocates or attorneys by the Minister of Finance in consultation with the Judge-President of the relevant Provincial Division. The appointment of such advocates and attorneys are for a term of five years but the person's appointment may be terminated by the Minister where warranted.

If the Chairperson, a senior SARS official or the taxpayer considers it necessary, an accountant or a representative of the commercial community may co-chair the tax board.¹²⁹ The tax board is administered by a clerk of the board, who is a SARS official at the SARS Branch Office responsible for the administration of the tax board in that area and acts as convener of the tax board.¹³⁰ The current officials for each region are reflected in [Annexure D](#).

¹²⁸ Section [108](#)

¹²⁹ Section [110](#)

¹³⁰ Section [112](#)

10.3. When does the tax board deal with an appeal?

[Part D](#) of the rules applies to the hearing of appeals by the tax board.

An appeal against an assessment must in the first instance be heard by a tax board, if—

- the tax in dispute does not exceed the amount the Minister determines by public notice – currently R500 000
- a senior SARS official and the taxpayer so agree, and in making such decision the official must consider whether the grounds of the dispute or legal principles related to the appeal should rather be heard by the tax court,¹³¹ and
- the chairperson prior to or during the hearing, considering the grounds of the dispute or the legal principles related to the appeal, does not believe that the appeal should be heard by the tax court rather than the tax board. If the chairperson so believes, he or she may direct that the appeal be set down for hearing *de novo* before the tax court.¹³²

SARS must designate the places where tax boards hear appeals, but generally the tax board must hear an appeal at the place which is closest to the taxpayer's residence or place of business, unless the taxpayer and SARS agree that the appeal be heard at another place.

10.4. How is the appeal set down before the tax board?

The appeal must be placed by the clerk before the tax board within 30 days after—¹³³

- receipt of a notice by the taxpayer requesting the clerk to set the matter down before the tax board¹³⁴
- the ADR process was terminated and the taxpayer requested the clerk to set the matter down before the tax board¹³⁵
- receipt of a decision by the chairperson to condone non-appearance before the tax board,¹³⁶ or
- receipt of an order by the tax court to condone non-appearance before the tax board.¹³⁷

If the taxpayer fails to notify the clerk pursuant to the termination of ADR proceedings that he or she wishes to proceed with the appeal, SARS may apply for a default judgment under [rule 56](#) in order to obtain final judgment in the appeal.

The clerk in his or her sole discretion may allocate a date for the hearing.¹³⁸ A taxpayer will be informed by the clerk of the board of the date, time and place of the hearing at least 20 days before the hearing of the appeal by the tax board.¹³⁹

¹³¹ Section [109\(4\)](#)

¹³² Section [109\(5\)](#)

¹³³ [Rule 26\(1\)](#)

¹³⁴ Under [rule 11\(2\)\(a\)](#) or [25\(3\)](#)

¹³⁵ Under [rule 23\(4\)](#) or [24\(4\)](#)

¹³⁶ Under [rule 30](#)

¹³⁷ Under [rule 53](#)

¹³⁸ [Rule 26\(2\)](#)

¹³⁹ [Rule 26\(3\)](#)

10.5. What happens before an appeal is heard by the tax board?

At the request of the taxpayer or SARS, or if the tax board so directs, a subpoena may be issued by the clerk requiring a person to—¹⁴⁰

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

The Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa issued under the Rules Board for Courts of Law Act will apply in respect of subpoenas issued under this rule.¹⁴¹

A witness or document subpoenaed must be relevant to the issues in appeal as reflected in the grounds of assessment, notice of objection, notice of disallowance of objection and notice of appeal. This rule¹⁴² ensures that the subpoena process is not abused. In this regard:

- The SCA¹⁴³ held that an abuse of process takes place when the procedures permitted by the rules of the High Court to facilitate the pursuit of the truth are used for a purpose extraneous to that object
- A subpoena must have a legitimate purpose. A litigant only has a right to obtain evidence through the subpoena process that is relevant to his or her case in the pursuit of the truth
- The objective in invoking the machinery of the subpoena process (in that case under rule 38(1) of the High Court rules) must constitute a *bona fide* attempt to secure evidence (for which term *relevance* is a *sine qua non* or indispensable condition), and may not constitute an abuse of the rule for the purpose of obtaining some illegitimate tactical or other advantage ulterior to the purposes of the relevant rules
- Examples of this include matters where the taxpayer requested the clerk or registrar of the tax court to issue subpoenas for the State President, the Minister of Finance or the Commissioner where none of these persons had direct knowledge of the matter or could give evidence relevant to the issues in appeal.

The clerk acts as convenor of the board and will *inter alia* prepare and furnish, within 10 days before the date of hearing of the appeal, the chairperson and the parties concerned with a bundle or 'dossier' consisting of—

- all returns by the taxpayer relevant to the tax period in issue
- all assessments relevant to the appeal
- all documents relevant to a request for reasons for the assessment under [rule 6](#)
- the notice of objection under [rule 7](#) and documents, if any, provided under [rule 8](#)
- the notice of disallowance of the objection under [rule 9](#)
- the notice of appeal under [rule 10](#), and
- any order by the tax court under [Part F](#) of the rules relating to the appeal.

10.6. What happens during the hearing before the tax board?

The procedure before the tax board is generally inexpensive and informal. Subject to the procedure provided for by the rules, the chairperson determines the procedures during the hearing of an appeal as the chairperson sees fit, and each party must have the opportunity to put the party's case to the tax board.¹⁴⁴

The taxpayer, in the case of a natural person who has the capacity to act, must appear in person or, in the case of a legal entity, be represented by its representative taxpayer. The taxpayer or its representative taxpayer may

¹⁴⁰ [Rule 27\(1\)](#)

¹⁴¹ [Rule 27\(2\)](#). This will essentially be rule 26 of the Magistrate's Court rules – see [Annexure J](#)

¹⁴² [Rule 27\(3\)](#)

¹⁴³ *Beinash v Wixley* 1997 (3) SA 721 (SCA)

¹⁴⁴ Section [113\(1\)](#)

be represented by a legal or other representative. If a third party prepared the taxpayer's return involved in the assessment, that third party may appear on the taxpayer's behalf. SARS will normally be represented by a senior SARS official from the SARS branch office concerned.¹⁴⁵

The chairperson may, when the proceedings open, formulate the issues in the appeal.¹⁴⁶ Parties must present all evidence, including leading witnesses, on which the party's case is based and must adhere to the rules of evidence. At the conclusion of the evidence, the parties may be heard in argument.¹⁴⁷ The tax board is not required to record its proceedings, and may adjourn the hearing of an appeal to a convenient time and place.¹⁴⁸

In the case of failure to appear at the hearing by—

- the taxpayer, the tax board may confirm the assessment or decision in respect of which the appeal has been lodged if satisfied that the taxpayer was furnished with the notice of the sitting of the tax board¹⁴⁹
- SARS, the tax board may allow the taxpayer's appeal at the taxpayer's request, in which case SARS may not thereafter refer the appeal to the tax court.¹⁵⁰

However, if the chairperson is satisfied that sound reasons exist for the non-appearance and the reasons are delivered by the taxpayer or SARS to the clerk of the tax board within 10 business days after the date determined for the hearing or the longer period as may be allowed in exceptional circumstances, the chairperson may condone the non-appearance.¹⁵¹ If the chairperson refuses to condone the non-appearance, the party may apply to the tax court under [Part F](#) of the rules for an order condoning a party's non-appearance at a tax board hearing.¹⁵²

It is important to note that the following procedures of the tax board also apply in the tax court:

- If an accountant or a representative of the commercial community co-chairs the tax board, this member of the tax board must, in the case of a conflict of interest which may give rise to bias, withdraw from the proceedings at own initiative or at the request of any party¹⁵³
- If the chairperson or member dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal must be heard de novo¹⁵⁴
- The sitting of the tax board is not public unless the chairperson in exceptional circumstances and on request of any person, orders it to be public¹⁵⁵
- SARS, the taxpayer or the chairperson may subpoena any witness in the manner prescribed in the rules, whether or not that witness resides within the tax board's area of jurisdiction¹⁵⁶
- If a witness duly subpoenaed does not attend the hearing or fails to give evidence, the chairperson may issue a warrant for the person to be apprehended, impose a fine or, in default of payment, imprisonment for a period not exceeding three months¹⁵⁷
- The chairperson may find a person appearing before the board in contempt if that person wilfully insults the chairperson or a member of the board, wilfully interrupts the proceedings or otherwise misbehaves in the place where the hearing is held.¹⁵⁸

¹⁴⁵ Section [113\(5\) and \(6\)](#)

¹⁴⁶ Section [113\(3\)](#)

¹⁴⁷ [Rule 28](#)

¹⁴⁸ Section [113\(3\) and \(4\)](#)

¹⁴⁹ Section [113\(9\)](#)

¹⁵⁰ Under section [115](#)

¹⁵¹ Section [113\(13\)](#)

¹⁵² [Rule 53](#)

¹⁵³ Section [122](#)

¹⁵⁴ Section [123](#)

¹⁵⁵ Section [124](#)

¹⁵⁶ Section [126](#)

¹⁵⁷ Section [127](#)

¹⁵⁸ Section [128](#)

A chairperson must withdraw from the proceedings as soon as the chairperson becomes aware of a conflict of interest which may give rise to bias,¹⁵⁹ or any party may ask for withdrawal of the chairperson on the basis of conflict of interest or other indications of bias under the procedures provided for in [rule 54](#).¹⁶⁰

10.7. Decision of the tax board

The tax board, after hearing the matter, must decide the matter on the basis that the burden of proof is upon the taxpayer¹⁶¹ or, where applicable, SARS.¹⁶² It may make the following decisions:¹⁶³

- Confirm the assessment
- Order the assessment or decision to be altered, or
- Refer the assessment back to SARS for further examination and assessment.

The chairperson cannot make an order as to costs in the matter. Costs orders can only be made in the tax court.

The chairperson will hear the case and make a ruling, which decision must be given within 60 days after the hearing of the case.¹⁶⁴ The clerk must furnish SARS and the taxpayer with a copy of the board's decision within 10 days of receipt of the decision.¹⁶⁵

If no referral of the appeal to the tax court is requested,¹⁶⁶ SARS must, if required, issue the assessment to give effect to the decision of the tax board within a period of 45 days after delivery of a copy of the tax board's decision by the clerk.¹⁶⁷

10.8. What if the outcome of the appeal before the tax board is dissatisfactory?

If the taxpayer or SARS does not accept the decision it may request that the appeal be referred to the tax court.¹⁶⁸

The following procedure applies:¹⁶⁹

- If the taxpayer or SARS wishes to pursue the appeal to the tax court, SARS or the taxpayer must notify the clerk of the tax board within 21 business days of receiving the decision of the chairperson before the expiry of the 60-day period within which the chairperson must deliver the decision
- If the party seeking the referral is unable to deliver the notice within the prescribed period, the party may within a 21-day period deliver a request for an extension by the chairperson, to the clerk setting out the grounds for the extension or delay¹⁷⁰
- The clerk of the tax board must within 10 days of receipt of the request, deliver the request to the relevant chairperson and a copy thereof to the other party
- The chairperson must determine whether good cause exists for the extension and must make a decision within 15 days of receipt of the request and inform the clerk accordingly, and the clerk must notify the parties within 10 days of delivery of the decision of the chairperson

¹⁵⁹ Section [111\(6\)](#)

¹⁶⁰ Section [111\(7\)](#)

¹⁶¹ As described in section [102](#)

¹⁶² Under section [102\(2\)](#), the burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS

¹⁶³ Section [110\(2\)](#), read with section [129](#)

¹⁶⁴ Section [114\(2\)](#)

¹⁶⁵ [Rule 28\(4\)](#)

¹⁶⁶ Under section [115](#) read with [rule 29](#)

¹⁶⁷ [Rule 28\(5\)](#)

¹⁶⁸ Under section [115](#) read with [rule 29](#)

¹⁶⁹ [Rule 29](#)

¹⁷⁰ Under section [115](#)

- If the chairperson denies the extension, the party may apply to the tax court under [Part F](#) of the rules for an order allowing the party's request for extension of the referral of the appeal to the tax court.¹⁷¹

The appeal will then be referred to SARS Head Office¹⁷² and will thereafter be dealt with in accordance with the tax court procedure under [Part D](#) of the rules. The appeal will be heard afresh by the tax court. Where the decision of the tax board is substantially confirmed, the tax court may order costs against the party who did not accept the outcome of the tax board's decision.¹⁷³

¹⁷¹ [Rule 53](#)

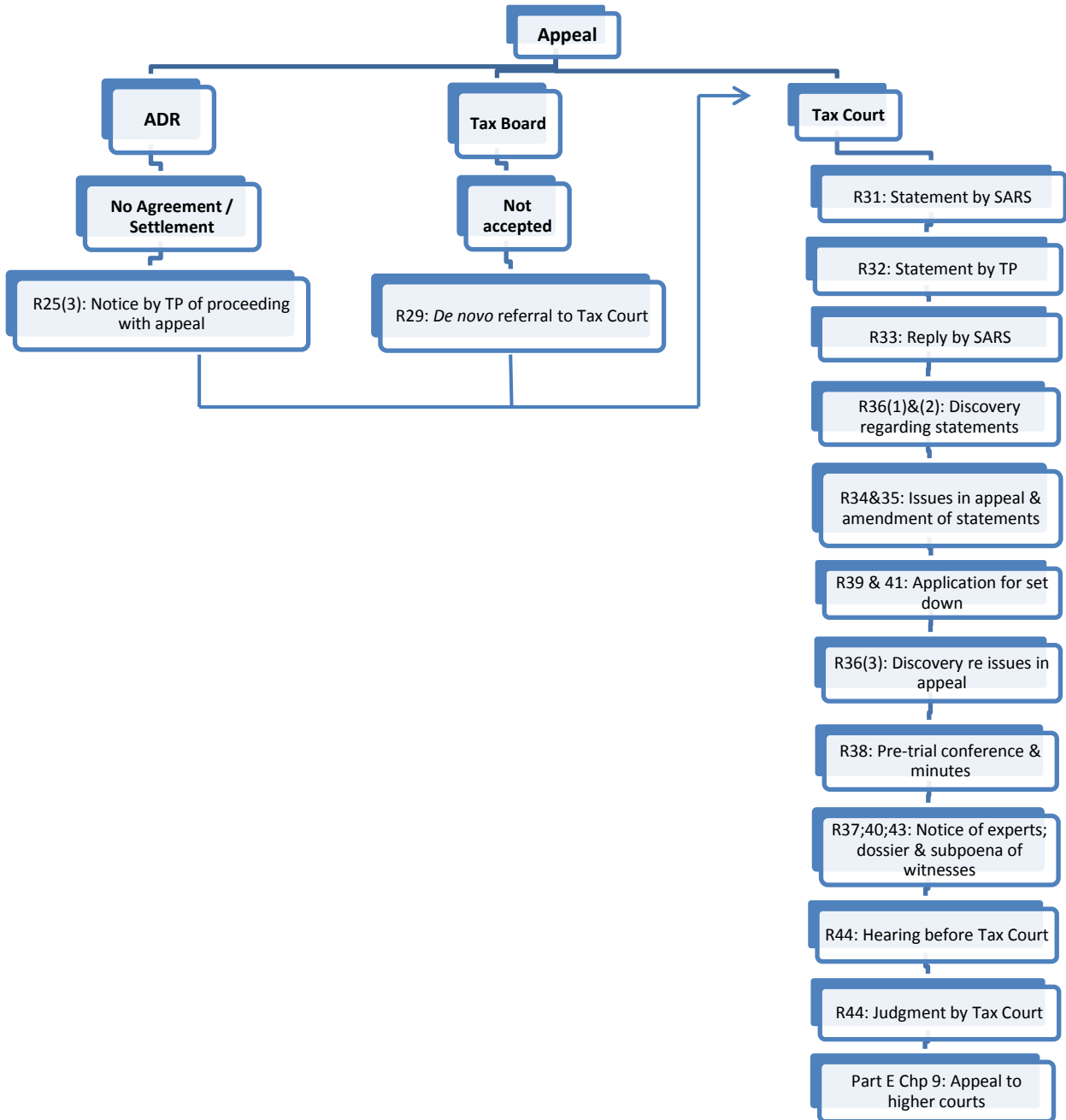
¹⁷² Currently, to the Legal and Policy: Revenue Litigation subdivision

¹⁷³ Section [113\(1\)\(c\)](#)

11. APPEAL TO THE TAX COURT

11.1. The procedure before the tax court

The tax court process can be illustrated as follows:



11.2. What is a tax court?

The President of the Republic may by proclamation in the *Gazette* establish a tax court or additional tax courts for areas that the President thinks fit and may abolish an existing tax court as circumstances may require, which

is a court of record.¹⁷⁴ A tax court does not have the same status as the High Court but is a tribunal created by statute that only has the powers afforded to it by law.¹⁷⁵ For example, it cannot deal with constitutional review applications under PAJA, other constitutional matters or matters under the tax Act arising for adjudication other than under [Chapter 9](#) of the TA Act.

The tax court has jurisdiction over—¹⁷⁶

- tax appeals lodged under section [107](#)
- an interlocutory application related to the tax appeal
- an application in a procedural matter relating to a dispute under [Chapter 9](#) as provided for in the rules, in particular [Part F](#).

A tax court established under the TA Act consists of—

- a judge or an acting judge of the High Court, who is the president of the tax court and is nominated by the Judge-President in the area where the tax court is constituted,¹⁷⁷
- an accountant selected from the panel of members appointed under section [120](#), and
- a representative of the commercial community selected from the panel of members appointed under section [120](#)¹⁷⁸.

The panel of tax court members is appointed by the President of the Republic by proclamation in the *Gazette* for a term of office of five years, and a member must be a person of good standing who has appropriate experience. Only the President may terminate the appointment of a member at any time for misconduct, incapacity or incompetence. A member of the tax court must, in the case of a conflict of interest which may give rise to bias, withdraw from the proceedings at his or her own initiative or at the request of any party under the procedures set out in [rule 55](#).

The registrar of the tax court is a SARS official, but must perform his or her functions under [Chapter 9](#) and the rules independently, impartially and without fear, favour or prejudice.¹⁷⁹

11.3. When does the tax court deal with an appeal?

If ADR is not pursued or is unsuccessful or the taxpayer is not satisfied with the decision of the tax board, the taxpayer may pursue his or her appeal to the tax court. The tax court will hear all cases where the tax involved exceeds the amount of R500 000 and cases where important tax principles are involved, even if these do not exceed R500 000. This is a formal court process akin to a High Court trial.

The tax court will be presided over by the president of the tax court together with two members to assist the judge. The members will generally be an accounting member and a person from the business community. The latter member, if the president, a senior SARS official or the taxpayer so requests, may also be—

- if the appeal relates to the business of mining, a registered engineer with experience in that field
- if the appeal involves the valuation of assets, a sworn appraiser.¹⁸⁰

The Judge President of the Provincial Division of the High Court having jurisdiction in the area where the tax court to hear the appeal is situated may direct that the tax court hearing the appeal must consist of three judges

¹⁷⁴ Section [116](#)

¹⁷⁵ ITC 1806, 68 SATC 117

¹⁷⁶ Section [117](#)

¹⁷⁷ Section [119](#)

¹⁷⁸ Section [120](#)

¹⁷⁹ Section [121](#)

¹⁸⁰ Section [118](#)

or acting judges of the High Court where—¹⁸¹

- the amount which is the subject of the dispute exceeds R50 million, or
- SARS and the taxpayer jointly apply to that Judge President.

11.4. What happens before appeal is set down in the tax court?

The appeal goes through several pre-hearing stages, which are set out in rules 31 to 43.

11.4.1. Pre-hearing stage 1 - Statements

This is the so-called “pleadings stage”, which is common to most civil proceedings. The idea is that each party formulates its case in order to crystallise the issues that must be dealt with by the court.

Step 1: Statement of grounds of assessment and opposing appeal by SARS (rule 31)

In terms of rule 31, SARS must deliver to the taxpayer a statement of the grounds of assessment and opposing the appeal within 45 days after delivery of—

- the documents required by SARS under rule 10(5)
- if alternative dispute resolution proceedings were followed under Part C, the notice by the taxpayer of proceeding with the appeal under rule 24(4) or 25(3)
- if the matter was decided by the tax board, the notice of a *de novo* referral of the appeal to the tax court under rule 29(2)
- in any other case, the notice of appeal under rule 10.

If the taxpayer fails to notify the registrar under rule 24(4) or 25(3) pursuant to the termination of ADR proceedings that he or she wishes to proceed with the appeal, SARS may apply for a default judgment under rule 56 in order to obtain final judgment in the appeal.

The statement of the grounds of opposing the appeal must set out a clear and concise statement of—

- the consolidated grounds of the disputed assessment
- which of the facts or the legal grounds in the notice of appeal under rule 10 are admitted and which of those facts or legal grounds are opposed
- the material facts and legal grounds upon which SARS relies in opposing the appeal.

SARS may add a new ground of assessment in the statement,¹⁸² but this may not include a ground that constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.

Step 2: Statement of grounds of appeal by taxpayer (rule 32)

Rule 32¹⁸³ obliges the taxpayer to deliver to SARS a statement of grounds of appeal within 45 days after delivery of—

- the required documents by SARS, where it was requested to make discovery under rule 36(1), or
- the statement by SARS under rule 31.

The statement must set out a clear and concise statement of—

- the grounds upon which the taxpayer appeals

¹⁸¹ Section 118(5)

¹⁸² Rule 31(2)(c) – use of present tense - read with rule 36(1) and relevant case law – see par 7.3

¹⁸³ Note: Errata in rule 32(1)(a) – reference to ‘appellant’ must be ‘SARS’. To be amended.

- which of the facts or the legal grounds in the statement under [rule 31](#) are admitted and which of those facts or legal grounds are opposed
- the material facts and the legal grounds upon which the taxpayer relies for the appeal and opposing the facts or legal grounds in SARS's statement under [rule 31](#).

The taxpayer may add a new ground of appeal in the statement,¹⁸⁴ but this may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under [rule 7](#).

Step 3: Reply to statement of grounds of appeal (rule 33)

Under [rule 33](#), SARS may after delivery of the statement of grounds of appeal under [rule 32](#) deliver a reply to the statement within—

- 15 days after the taxpayer has discovered the required documents, where the taxpayer was requested to make discovery under [rule 36\(2\)](#), or
- 20 days after delivery of the taxpayer's statement of grounds of appeal under [rule 32](#).

11.4.2. [Pre-hearing stage 2 - Discovery](#)

Discovery relates to the preparation for a trial and the procuring of evidence for purposes of such trial. In civil proceedings discovery is normally utilised after the close of pleadings, when discovery may be sought of documents or information relevant to the crystallised issues. Discovery ensures that the trial takes place with fairness to each side, and with sufficient information being placed before the court to avoid surprises (i.e. "trial by ambush") during the hearing of the appeal.

In the hearing of appeals before the tax court, "close of pleadings" would occur after the delivery of the reply to statement of grounds of opposing appeal by SARS under [rule 33](#). The crystallised issues in the appeal to the tax court will be those issues defined in the statement of the grounds of assessment and opposing appeal read with the statement of the grounds of appeal and the reply to statement of grounds of appeal as referred to in [rule 34](#).

The importance of making full discovery lies in the fact that a document not disclosed pursuant to a notice of discovery may not, unless the tax court in the interest of justice otherwise directs, be used for any purpose at the appeal by the party who failed to make disclosure, but the other party may use such document.¹⁸⁵ This does not, however, include a document specifically prepared to assist the court in understanding the case of the relevant party and which is not presented as evidence in the appeal, for example a power point presentation.¹⁸⁶

Step 1: Request for discovery of documents (rule 36(1)-(3))

Discovery may take place on three different occasions under [rule 36](#):

- *Discovery related to new ground in [rule 31](#) statement:* The taxpayer may, within 10 days after delivery of the statement of grounds of assessment and opposing appeal under [rule 31](#), deliver a notice of discovery to SARS requesting SARS to make discovery of any document material to a ground of the assessment or opposing the appeal specified in the statement not set out in the [grounds of assessment](#), to the extent that such document is required by the taxpayer to formulate its grounds of appeal under [rule 32](#).
- *Discovery related to new ground in [rule 32](#) statement:* SARS may, within 10 days after delivery of the statement of grounds of appeal under [rule 32](#), deliver a notice of discovery requesting the taxpayer to make discovery on oath of any document material to a new ground of appeal in the statement not included in the

¹⁸⁴ [Rule 32\(2\)\(c\)](#) – use of present tense - read with [rule 36\(2\)](#) and relevant case law – see [par 7.3](#)

¹⁸⁵ [Rule 36\(7\)](#)

¹⁸⁶ [Rule 36\(8\)](#)

grounds of appeal under rule 10,¹⁸⁷ to the extent such document is required by SARS to formulate its grounds of reply to statement of grounds of appeal under rule 33.

- *Discovery related to issues in appeal:* Either party may, within 15 days after delivery of the statements under rule 32 and, if any, rule 33, deliver a notice of discovery to the other party requesting the party to make discovery of all documents relating to the issues in appeal¹⁸⁸ and if required and reasonable, produce specified documents in a specified manner, including electronically.

Step 2: Discovery of documents (rule 36(4))

A party to whom a notice of discovery has been delivered, must make discovery on oath of all documents relating to the request within 20 days after delivery of the discovery notice.¹⁸⁹

In such discovery affidavit the party must specify separately—

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

Step 3: Production or inspection of the requested documents (rule 36(5))

The production or inspection of the requested documents takes place at a venue and in a manner as agreed between the parties. If required and reasonable, a party may be requested to produce specified documents in a specified manner, including electronically. For example, electronically discovering electronic documents would probably be the most effective means of discovery as one would in essence be providing the originals. In the context of e-mails, this would mean discovery of the original e-mail as an attachment, scanned image or download, e.g. from a SARS electronic filing service.

Any document not disclosed may not be used for any purpose at the appeal by the party who is obliged but failed to disclose it, unless the tax court in the interest of justice grants leave to do so. The other party, however, may use such document or information. This does not include a document specifically prepared to assist the court in understanding the case of the relevant party and which is not presented as evidence in the appeal.¹⁹⁰

Step 4: Further discovery sought (rule 36(6))

If either party believes that, in addition to the documents disclosed, there are other documents in possession of the other party that may be relevant to the discovery request related to the statements or the issues in appeal, that have not been discovered, then that party may give notice of further discovery within 10 days of the initial discovery or the inspection of the documents. The other party must then make such discovery within 10 days of delivery of the further request.¹⁹¹

11.4.3. Pre-hearing stage 3 - Set down of appeal for hearing before tax court

Step 1: Application for date of hearing (rule 39)

The taxpayer must apply to the registrar to allocate a date for the hearing of the appeal within 30 days after delivery of the taxpayer's statement of grounds of appeal under rule 32 or SARS' reply under rule 33, as the case may be and give notice thereof to SARS. If the taxpayer fails to apply for the date within the period aforementioned, SARS must apply for a date within 30 days after the expiry of that period. The registrar must

¹⁸⁷ Note: Errata in rule 36(2) – reference to ground of assessment must be ground of appeal. To be amended.

¹⁸⁸ Referred to in rule 34

¹⁸⁹ Rule 36(4)

¹⁹⁰ Rule 36(5)

¹⁹¹ Rule 36(6)

deliver to the parties a written notice of the time and place appointed for the hearing of the appeal at least 80 days before the hearing of the appeal.

A change from the old rule 17 is that the registrar of the tax court in his or her sole discretion may allocate a date for the hearing. The essential problem that arose from the wording of old rule 17 was that both representatives as well as some of the presidents of the tax court, where they had occasion to deal with postponements based on a representative not being available, are of the view that the wording, and in particular the word 'arrange', suggest that the registrar may only set the matter down on a date suitable to both parties, in particular the representatives of the parties.

Therefore, if a party chooses to use a particular representative, the date of the hearing is then dictated by that representative's availability and often results in numerous postponements in order to accommodate the taxpayer's representative of choice. The problem, over the years, has resulted in an underutilisation of the tax court rolls and inconvenience to the Judge Presidents who reserved courts and judges for the tax court sittings, as well as the judges themselves.

In contrast, the set down of cases on the rolls of the High Court, Supreme Court of Appeal or Constitutional Court is not dependant on the availability of counsel and the rolls of these courts are, accordingly, not dictated by counsel's diaries. In these higher courts, if a party's counsel of choice is not available on the allocated date, the party will simply have to use another counsel. This approach ensures better utilisation of available trial court days.¹⁹²

The new [rule 39](#) now leaves the date of the hearing in the discretion of the registrar and allows for the planning of the rolls approximately up to one year in advance. In determining the date the registrar must, however, allow sufficient time for discovery and pre-trial proceedings.

Step 2: Set down of matter at place at which court sits (rule 41)

The Judge-President of the Division of the High Court with jurisdiction in the area where a tax court has been established¹⁹³ must—

- determine the place and the times of the sittings of the tax court in that area by arrangement with the registrar, and
- allocate a judge or an acting judge of the High Court as the president of the tax court for each sitting.

Every appeal must be heard and determined by the tax court in the area which is nearest to the residence or principal place of business of the taxpayer. The parties may agree that the appeal or application be heard by a tax court sitting in another area or the tax court, on application by a party may order that the appeal or application be heard and disposed by a tax court sitting in another area. This order will only be granted if there are reasonable grounds to determine the matter in that tax court and it is approved by the Judge-President of the Division of the High Court with jurisdiction in the area where the tax court sits.¹⁹⁴ Currently, the tax court sits in Pretoria, Johannesburg, Durban, Cape Town, Bloemfontein and Kimberley.

Step 3: Postponement or removal of case from the roll (rule 45)

An appeal may be postponed or removed from the roll by agreement. The party initiating the proceedings must notify the registrar thereof. If opposed, an application by a party to postpone or remove a case from the roll may be made to the tax court. The president of the tax court may hear and determine the matter in the manner referred to in section [118\(3\)](#) and the president may make an appropriate cost order under section [130](#).

¹⁹² It is also largely aligned with High Court rule 6(5) issued under the (now repealed) Supreme Court Act, 1959, as well as Labour Court rule 7(6) issued under section 159 of the Labour Relations Act, 1995.

¹⁹³ Under section [116](#)

¹⁹⁴ [Rule 41\(2\)](#)

Recently the high court¹⁹⁵ held that as a party seeking a postponement is seeking an indulgence, he must show good cause for the interference with his or her opponent's procedural right to proceed and with the general interest of justice in having the matter finalised. The court is entrusted with a discretion as to whether to grant or refuse the indulgence, and should be slow to refuse a postponement where the reasons for the applicant's inability to proceed have been fully explained. The prejudice that the parties may suffer must be considered and the usual rule is that the party who is responsible for the postponement must pay the wasted costs. The Court was not satisfied that the applicant had fully explained the reasons for the delay and accordingly her inability to proceed. The postponement was therefore refused.

Step 4: Withdrawal or concession of appeal or application (rule 46)

An appeal may, at any time before it has been set down for hearing under rule 39, be withdrawn by the taxpayer or conceded by SARS. If an appeal or application has been set down for hearing, or is part heard, the party conceding or withdrawing the appeal may consent to pay costs, failing which the other party may apply to the tax court for an order for costs.

11.4.4. Pre-hearing stage 4 - Pre-trial Conference

Pre-trial meetings are also common to most civil proceedings. The idea is to further crystalize the issues that must be dealt with by the court and to shorten the hearing, for example by agreeing on certain facts previously disputed. It can also be used as a last attempt to settle the matter. A pre-trial conference under the rules is compulsory.

Rule 38 provides that the pre-trial conference must be held not later than 60 days before the hearing of the appeal. This conference must take place at the SARS office determined by SARS unless the parties agree that it may take place at a different venue. During this conference, SARS and the taxpayer must attempt to reach consensus on the following evidentiary issues:

- What facts are common cause and what facts are in dispute
- The resolution of preliminary points that either party intends to take
- The sufficiency of the discovery process
- The preparation of a paginated bundle of documents
- The manner in which evidence is to be dealt with, including an agreement on the status of a document and if a document or a part thereof, will serve as evidence of what it purports to be
- Whether evidence on affidavit will be admitted and the waiver of the right of a party to cross-examine the deponent
- Expert witnesses and the evidence to be given in an expert capacity
- The necessity of an inspection *in loco*
- An estimate of the time required for the hearing and any means by which the proceedings may be shortened
- If the dispute could be resolved or settled in whole or in part.

After the conclusion of the pre-trial conference, SARS must deliver a minute of the conference within 10 days of the conclusion of the pre-trial. Where the taxpayer, however, does not agree with the content of the minute, the taxpayer must deliver his or her own minute to SARS within 10 days of the date of the delivery of the minute by SARS.

11.4.5. Pre-hearing stage 5 - Subpoena of witnesses and documentary preparation

Step 1: Subpoenas (rule 43)

SARS, the taxpayer or the president of a tax court may subpoena any witness in the manner prescribed in rule

¹⁹⁵ [\[2014\] JOL 31990 \(ECP\)](#)

43, whether or not that witness resides within the tax court's area of jurisdiction.¹⁹⁶

Subpoenas may be issued by the registrar at the request of either party or by the direction of the tax court, requiring a person to attend the hearing of the appeal for the purpose of giving evidence in connection with an appeal. The subpoena may require the person summoned to produce any specified document which may be in the person's possession or under the person's control.

The Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa issued under the Rules Board for Courts of Law Act will apply in respect of subpoenas issued under this rule.¹⁹⁷ A witness or document subpoenaed must be relevant to the issues in appeal as reflected in the grounds of assessment, notice of objection, notice of disallowance of objection and notice of appeal. This rule¹⁹⁸ ensures that the subpoena process is not abused, as more fully discussed in par 10.5.

In terms of section 127, where a person has been subpoenaed and fails without just cause to give evidence at the hearing of the appeal, to remain in attendance throughout the proceedings unless excused by the president of the tax court or fails to produce the required document or thing in the person's possession, the president of the tax court may—

- issue a warrant for the apprehension of that person to be brought to give evidence or produce the document or thing in accordance with the subpoena
- impose a fine or in default of payment imprisonment for a period not exceeding three months.

Step 2: Notice of expert witness (rule 37)

This rule enables the other party to decide whether to call for its own expert witness and to prepare for cross-examining the other party's expert witness. Prior notice of an expert witness to be called by any party must be given not less than 30 days before the hearing of the appeal. A summary of such expert's opinion and his or her reasons must be delivered not less than 20 days before the hearing of the appeal. If the party wishing to call an expert witness does not comply with the above, such witness may not testify at the hearing unless the tax court allows it.

Step 3: Witness fees (rule 48)

A witness in any proceedings in the tax court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and Constitutional Development and published in terms of section 37 of the Superior Courts Act.¹⁹⁹

Step 4: Dossier (rule 40)

This rule prescribes the documents to be included in the dossier which must be prepared and delivered by SARS 30 days before the date of the hearing to the taxpayer and the registrar.

The dossier must include, where applicable:

- All returns by the taxpayer relevant to the year of assessment in issue
- All assessments by SARS relevant to the issues in appeal
- The taxpayer's objection to the assessment
- SARS's notice of disallowance of the objection
- The taxpayer's notice of appeal
- SARS's statement of grounds of assessment and opposing the appeal under rule 31

¹⁹⁶ Section 126

¹⁹⁷ Rule 27(2). This will essentially be rule 26 of the Magistrates' Courts rules – see Annexure J

¹⁹⁸ Rule 43(3)

¹⁹⁹ Act No.10 of 2013

- The taxpayer's statement of grounds of appeal under [rule 32](#)
- SARS's reply to the taxpayer's statement of grounds of appeal under [rule 33](#), if any
- SARS's minute of the pre-trial conference and, if any, the taxpayer's differentiating minute
- Any request for a referral of a tax board decision to the tax court under [rule 29](#)
- Any order by the tax court under [Part F](#) or a higher court in an interlocutory application or application on a procedural matter relating to the objection or the appeal.

Step 5: Index and pagination of documents (rule 5)

In all proceedings before the tax board and tax court all documents required to be delivered under the rules must be divided into paragraphs numbered consecutively and paginated by the party who seeks to put them before the tax board or tax court, and as far as practical be arranged in chronological order.

11.5. What happens during the hearing of appeal before the tax court?

11.5.1. What is the nature of an appeal to the tax court?

It should be borne in mind that an appeal under [Chapter 9](#) of the TA Act is not the equivalent of an appeal in the strict sense of the word. It is not the same as an appeal which is heard in the High Court where a judgment by a lower court is taken on 'appeal'. An appeal of the latter kind is limited to the evidence which had been before the court of first instance, and which, on the facts at any rate, is therefore limited to the four corners of the record of proceedings in the court of first instance. What comes before the tax court is not such an appeal.

Despite being called an appeal in the TA Act, it is in fact a re-hearing, which means that both the taxpayer and SARS are fully entitled to place before it, by way of evidence, any further information that they might feel is relevant to the issues in dispute. The SCA explained this as follows:²⁰⁰

- The tax court is not a court of appeal in the ordinary sense: it is a court of revision
- This means that the Legislature intended that there should be a re-hearing of the whole matter by the tax court and that that court could substitute its own decision for that of the Commissioner.

11.5.2. What is a test case?

If a senior SARS official considers that the determination of an objection or an appeal is likely to be determinative of all or a substantial number of the issues involved in one or more other objections or appeals, the official may designate that objection or appeal as a test case and may stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court.²⁰¹

Notice of this must be given to the affected taxpayers, which notice must set out—²⁰²

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

In response to the notice, the taxpayer may deliver a notice to SARS within 30 days—

- opposing the decision that an objection or appeal is designated as a test case
- opposing the decision that an objection or appeal is stayed pending the final determination of a test case on a similar objection or appeal before the tax court

²⁰⁰ *SARS v Pretoria East Motors (Pty) Ltd supra* at par [2]

²⁰¹ Section [106\(6\)](#)

²⁰² [Rule 12\(2\)](#)

- if the objection or appeal is to be stayed, requesting a right of participation in the test case.

If the taxpayer's objection or appeal has been designated as a test case or suspended pending the outcome of a test case, that taxpayer may oppose the decision and if the senior SARS official does not agree with the taxpayer, SARS must apply to the tax court in terms of [rule 52\(3\)](#) of [Part F](#) to have the matter selected as a test case or suspended pending the outcome of a test case.

Proceedings in an objection or appeal under the rules which have been instituted but not determined by the tax board, tax court or any other court of law are stayed with effect from delivery of the notice until the stay of an objection or appeal is terminated under [rule 12\(6\)](#).

A test case is heard by the tax court²⁰³ in the same manner as any other appeal and the court may decide the case by either—

- confirming the assessment or decision
- ordering the assessment or decision to be altered
- referring the assessment or decision back to SARS for further examination and assessment.²⁰⁴

For purposes of a costs order by the tax court, or higher court dealing with an appeal against the judgment of the tax court, the appellants in the test case include the taxpayer whose appeal was selected as the test case *and* a taxpayer who participated in the test case. In the event that a tax court²⁰⁵ under section [130](#) awards costs and—²⁰⁶

- SARS is substantially successful in a test case, the appellants in the test case will be responsible for their legal costs on the proportionate basis as may be determined by the tax court; or
- the appellants are substantially successful in a test case, SARS will be liable for the legal costs of the appellants and the taxpayers whose objections or appeals were stayed on the proportionate basis as may be determined by the tax court.

Unless a tax court otherwise directs, a decision by the tax court in a designated test case is determinative of the issues in an objection or appeal stayed by reason of the test case to the extent determined under the rules. In this regard, [rule 52\(4\)](#) provides that a taxpayer may apply, if SARS does not agree, to the tax court for an order that the judgment in a test case is not determinative of the issues in that taxpayer's objection or appeal and that the taxpayer may pursue its objection and appeal under these rules.

11.5.3. Are the sittings of the tax court public?

The general rule is that the tax court sittings are not public, with the court having a discretion to allow for the hearing to be opened. Under section [124\(2\)](#), the president of the tax court may in exceptional circumstances, on request of any person, allow the person or any other person to attend the sitting but may do so only after taking into account any presentations that the taxpayer and a senior SARS official, referred to in section [12](#) appearing in support of the assessment or decision wishes to make on the request.²⁰⁷ This exception was created to ensure the constitutionality of the tax court hearings as closed sittings may violate the right of access to a court under section 34 of the Constitution,²⁰⁸ which provides for the right to a fair *public* hearing.

²⁰³ By default, this would be a 'full bench' tax court established under section [118\(5\)](#) unless the Judge-President decides otherwise

²⁰⁴ Section [129](#)

²⁰⁵ Or a higher court dealing with an appeal against the judgment of the tax court in the test case

²⁰⁶ [Rule 12\(10\)](#) and [\(11\)](#)

²⁰⁷ Section [124](#)

²⁰⁸ Access to courts — Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

11.5.4. Who bears the burden of proof?

In most tax appeals before the tax court, the burden of proof would be on the taxpayer.²⁰⁹ Essentially, the main justification for placing the onus of proof on the taxpayer in tax appeals, is that matters concerning the tax position taken by a taxpayer are normally primarily within the knowledge and power of the taxpayer and originate with him or her. In several instances, however, it has been held in case law that SARS bears a rebuttal onus. This essentially means evidence to prove that the evidence submitted on behalf of the taxpayer is wrong.

Section [102](#) provides that the decision of SARS will not be reversed or altered by the tax court unless it is shown by the taxpayer that the decision is wrong. What is required from the taxpayer to discharge this onus, is firm evidence that satisfies a court, upon a balance of probability, that the taxpayer is entitled to the exemption, that an amount or item is deductible or may be set-off, the rate of tax applicable, that an amount qualifies as a reduction of tax payable, that a valuation is correct or whether a decision that is subject to objection and appeal under a tax Act is correct. The burden of proving whether an assessment based on an estimate under section [95](#) is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16 of the TA Act is upon SARS.

The SCA in a recent judgment acknowledged that the taxpayer carries the burden of proof, but explained it as follows:²¹⁰

- The fact that the taxpayer carries the burden of proof does not suggest that SARS was free to simply adopt a supine attitude. It was bound before the appeal to set out the grounds for the disputed assessments and the taxpayer was obliged to respond with the grounds of appeal and these delineate the disputes between the parties
- A taxpayer, to discharge the onus, may call witnesses. The taxpayer's evidence under oath and that of its witnesses could not be disregarded simply as being self-serving and therefore unreliable - it should be given full consideration along with all other evidence, and the credibility of the witnesses must be tested just as it is in any other matter before a court
- In this matter, SARS insisted that the evidence of the witnesses was insufficient and that the taxpayer was obliged to provide documentary evidence to discharge the onus. However, even before the matter came before the tax court, SARS insisted that the taxpayer had provided insufficient proof. The taxpayer had provided SARS with relevant records and even put all of its ledger accounts in a van and had them delivered to SARS's offices. However, SARS refused to inspect the documents. On several further occasions the taxpayer tendered the documents to SARS
- In the tax court, counsel for SARS questioned the taxpayer's witnesses and asked them to provide source documents proving that SARS was wrong, without indicating which specific documents it required. Such an approach was untenable, for it left the taxpayer none the wiser as to what was truly in issue and what needed to be produced in order for it to discharge the burden of proof that rested upon it
- The taxpayer thus adopted the general approach that, as SARS had misunderstood the accounts and ignored the provisions in particular of the VAT Act, it sufficed for the taxpayer to demonstrate that through the evidence of witnesses. That was a perfectly proper approach
- The taxpayer was not alerted to any other issue and was certainly not called upon to produce every underlying voucher or invoice or to reconstruct its accounts from scratch for the tax court. In these circumstances the submissions that the original vouchers had not been produced or that the witness's explanations were to be ignored because they were based on hearsay, cannot be sustained
- Where, for example, the SARS auditor has based an assessment upon the taxpayer's accounts and records, but has misconstrued them, then it is sufficient for the taxpayer to explain the nature of the misconception, point out the flaws in the analysis and explain how those records and accounts should be properly understood. That can be done by a witness

²⁰⁹ Section [102](#)

²¹⁰ SARS v *Pretoria East Motors (Pty) Ltd supra*

- If there are underlying facts in support of that explanation that SARS wishes to place in dispute, then it should indicate clearly what those facts are so that the taxpayer is alerted to the need to call direct evidence on those matters. Any other approach would make litigation in the tax court unmanageable, as the taxpayer would be left in the dark as to the level of detail required of it in the presentation of its case
- The SCA stressed that SARS is under an obligation throughout the assessment process leading up to the appeal and the appeal itself to indicate clearly what matters and which documents are in dispute so that the taxpayer knows what is needed to present its case.

11.5.5. What happens if a party fails to appear at hearing?

The taxpayer or the taxpayer's representative may appear at the hearing of an appeal in support of the appeal, while a senior SARS official²¹¹ may appear at the hearing of an appeal in support of the assessment.²¹² SARS may also be represented by an external attorney or advocate.

If a party or a person authorised to appear on the party's behalf fails to appear before the tax court at the time and place appointed for the hearing of the appeal the tax court may decide the appeal,²¹³ upon—

- the request of the party that does appear; and
- proof that the prescribed notice of the sitting of the tax court has been delivered to the absent party or absent party's representative.²¹⁴

11.5.6. What happens during the hearing?

This is regulated by rule 44. The procedure is essentially as follows:

- The taxpayer will commence the proceedings unless the only issue in dispute is whether an estimate on which the disputed assessment is based, is reasonable or the facts upon which an understatement penalty is imposed by SARS
- The party commencing the proceedings must present the party's case to the tax court by way of leading evidence or by tendering a statement of facts on which the party relies
- Where oral testimony is tendered by a party the other party will be allowed the opportunity to cross examine such witnesses
- At the conclusion of the party commencing the proceeding's case, the other party will likewise be given the opportunity to present its case and the other party will be afforded the opportunity to cross examine any witnesses who testify
- Both parties will, after all the evidence has been heard by the tax court, be afforded an opportunity to present oral argument
- Thereafter the tax court will decide on the issues in dispute or reserve judgment until a later date to enable it to consider all the evidence and arguments presented to court.

11.5.7. What if there is a procedure not catered for in the rules?

If the rules do not provide for a procedure in the tax court, then the most appropriate rule under the Rules of the High Court made in accordance with the Rules Board for Courts of Law Act and to the extent consistent with the TA Act and the rules, may be utilised by a party or the tax court.²¹⁵

²¹¹ Referred to in section [12](#)

²¹² Section [125](#)

²¹³ Under section [129](#)

²¹⁴ [Rule 44\(7\)](#)

²¹⁵ [Rule 42](#)

11.6. What happens after the hearing of the appeal by the tax court?

11.6.1. When will judgment be given?

The tax court may reserve its decision until a later date and where the decision is reserved, the judgment must be delivered by the president of the tax court in the manner considered fit.²¹⁶ The registrar will inform all parties as to the time and place when the court will deliver its judgment. The tax court can in its judgment either—

- confirm the assessment or decision;
- order the assessment or decision to be altered; or
- refer the assessment or decision back to SARS for further examination and assessment.²¹⁷

The registrar must by notice deliver the written judgment of the tax court to the parties within 21 days of delivery thereof.²¹⁸

11.6.2. When may a tax court make a costs order?

The tax court may, on application by an aggrieved party, grant an order for costs in favour of the party if—

- the SARS grounds of assessment or decision are held to be unreasonable
- the taxpayer's grounds of appeal are held to be unreasonable
- the tax board's decision is substantially confirmed
- the hearing of the appeal is postponed at the request of the other party
- the appeal is withdrawn or conceded by the other party after the registrar allocates a date of hearing.²¹⁹

Such costs must be determined in accordance with the fees prescribed by the rules of the High Court. The registrar may either perform the functions and duties of a taxing master or, upon request by the tax court or the party, appoint any person to act as taxing master.²²⁰

11.6.3. Is a judgment of the tax court published for public consumption?

A judgment of the tax court must be published for general information and, unless the sitting of the tax court was public under the circumstances referred to under section [124\(2\)](#), the judgment must be published in a form that does not reveal the taxpayer's identity.²²¹

11.7. How does a party appeal against the judgment by the tax court?

Any party who feels aggrieved by the judgment can thereafter appeal to a full bench of the High Court or the SCA against the judgment under Part E of [Chapter 9](#). Thus the taxpayer or SARS may appeal against any decision of the tax court.

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It should be noted that an appeal to a higher court or the SCA will always be a public hearing, i.e. any confidentiality attached to the matter during the tax court hearing will no longer apply.

A party who lodges an intention to appeal must in such notice indicate whether the party wishes to appeal directly to the SCA or, if not, in which division of the High Court the party wishes the appeal to be heard and

²¹⁶ [Rule 44\(5\)](#)

²¹⁷ [Section 129](#)

²¹⁸ [Rule 44\(6\)](#)

²¹⁹ [Section 130](#)

²²⁰ [Rule 47](#)

²²¹ [Section 132](#). The tax court judgments are published on the SARS web page at: <http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/default.aspx>

whether the appeal is against the whole or against a specific part of the judgment only. For purposes of a direct appeal to the SCA, the president of the tax court (i.e. the presiding judge) must grant leave to appeal.²²² The other party may lodge a cross-appeal under section [139](#).

A party who intends to lodge an appeal must deliver a notice of the party's intention to lodge an appeal to the registrar and the opposing party (or the opposing party's attorney of record), within 21 days after the date of the written notice from the registrar notifying the parties of the tax court's decision.²²³ Section [134](#) sets out the content of the notice of intention to appeal, i.e. the notice of intention of appeal must state—

- in which division of the High Court the appellant wishes the appeal to be heard
- whether the whole or only part of the judgment is to be appealed against (if in part only, which part), and the grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against
- whether the appellant requires a transcript of the evidence given at the tax court hearing of the case in order to prepare the record on appeal (or if only a part of the evidence is required, which part).²²⁴

A person entitled to appeal against a decision of the tax court, who has not lodged a notice of intention to appeal within the time and in the manner required by section [134](#), abandons the right of appeal against the decision.²²⁵

Once a notice of intention to appeal is properly lodged under Part E of [Chapter 9](#), if the notice of intention to appeal was noted to the High Court or leave to appeal to the SCA has been refused under section [135](#), the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.²²⁶ The appeal is further regulated by the rules of the relevant High Court or SCA to which the appeal is made. If the notice of intention to appeal was noted to the High Court or leave to appeal to the SCA has been refused under section [135](#), the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.

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B Given the fact that an appeal to the High Court or SCA is very formalistic, it would be advisable to seek legal assistance for purposes of pursuing such an appeal.

²²² Sections [133\(2\)](#), [135](#), and [138](#)

²²³ Section [134\(1\)](#)

²²⁴ Fees are payable for the transcripts to the registrar under [rule 49](#)

²²⁵ Section [137](#)

²²⁶ Section [138\(2\)](#)

12. EXTENSION OF TIME PERIODS, CONDONATION AND NON-COMPLIANCE

12.1. How does extension of prescribed periods work?

In terms of [rule 4](#) the taxpayer and SARS can by agreement agree to time periods except where the extension of a period prescribed under the TA Act or these rules is otherwise regulated in [Chapter 9](#) of the TA Act or these rules. This would accordingly exclude, for example—

- the period within which reasons for an assessment must be requested by the taxpayer (from date of assessment) – this is regulated under [rule 6\(3\)](#)
- the period for providing the reasons for an assessment by SARS (45 days after delivery of request for reasons) - this is regulated under [rule 6\(5\)](#)
- the period for lodging an objection by the taxpayer (30 days after date of assessment or date of receipt of reasons) - this is regulated under section [104\(4\)](#) and [rule 7\(4\)](#)
- the period for lodging a valid objection (20 days after delivery of notice by SARS that objection is invalid) - this is regulated under section [104\(5\)](#)
- the period of delivery of substantiating documents for the objection (30 days after notice by SARS requesting supporting documents) - this is regulated under [rule 8](#)
- the period within which SARS must notify the taxpayer of its decision on the objection (60 days after delivery of the objection or 45 days after receipt of supporting documents if so requested) - this is regulated under [rule 9](#)
- the period for the lodging of an appeal by the taxpayer (30 days after delivery of the notice of disallowance of the objection) - this is regulated under section [107\(2\)](#)
- the 21-day period within which a party must apply for a *de novo* hearing before the tax court if dissatisfied with the tax board's decision under section [115](#).

Periods which may be extended by agreement under [rule 4](#) include, for example—

- the 30-day period within which the taxpayer must respond to a test case notice by SARS under [rule 12\(3\)](#)
- any of the ADR periods under [Part C](#) of the rules
- the 45-day period within which SARS must issue an assessment to give effect to the tax board decision under [rule 28\(5\)](#)
- the 45-day period within which SARS must deliver its statement of grounds of assessment and opposing appeal under [rule 31](#)
- the 45-day period within which the taxpayer must deliver its statement of grounds of appeal under [rule 32](#)
- the period within which SARS must deliver its reply to statement of grounds of appeal under [rule 33](#)
- any period related to discovery under [rule 36](#)
- the periods within which notice must be given of expert witnesses and a summary of their opinions under [rule 37](#)
- the period within which a pre-trial conference must be held and the period for delivery of the pre-trial minutes under [rule 38](#)
- the 30-day period within which SARS must deliver the dossier under [rule 40](#)
- the date of the hearing before the tax court under [rule 45](#)
- any of the application on notice periods under [Part F](#) of the rules.

A period under [rule 4](#) may be extended by agreement between—

- the parties
- a party or the parties and the clerk
- a party or the parties and the registrar.

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

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

If a party does not agree to an extension of a time period, the requesting party may apply to the tax court under [Part F](#) of the rules for an extension order. [Rule 52](#) provides that a taxpayer may apply to a tax court—

- if SARS fails to provide the reasons under [rule 6](#) for an assessment required to enable the taxpayer to formulate an objection under [rule 7](#), for an order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection
- if an objection is treated as invalid under [rule 7](#), for an order that the objection is valid
- if the period of time to lodge an objection to an assessment has not been extended under section [104\(4\)](#), for an order extending the period within which an objection must be lodged by a taxpayer subject to the provisions of section [104\(5\)](#)
- if the period of time to lodge an appeal to an assessment has been extended under section [107\(2\)](#), for an order extending the period within which an appeal must be lodged by an appellant for a period not exceeding 45 days from the date of the order.

If a period is extended under this rule by an agreement between the parties or a final order pursuant to an application under [Part F](#), the period within which a further step of the proceedings under these rules must be taken commences on the day that the extended period ends.²²⁷

12.2. How does condonation of non-compliance with the rules work?

[Rule 52](#) provides that the tax court may upon application on notice, and on good cause shown, condone any non-compliance with these rules. This rule essentially ensures that a defaulting party can approach the tax court for condonation even before an application based on such default is brought against such defaulting party by the other party.

12.3. How may non-compliance with the rules be challenged?

[Rule 52](#) makes provision for general relief and specific relief regarding non-compliance with the rules.

General relief²²⁸

Where either party fails to comply with any requirement contained in the rules the tax 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. This includes an application for default judgment in the event of non-compliance with the rules.

Specific relief²²⁹

- Where SARS fails to provide the reasons under [rule 6](#) for an assessment required to enable the taxpayer to formulate an objection under [rule 7](#), the court may order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection
- Where an objection is treated as invalid under [rule 7](#), the court may order that the objection is valid
- Where the period of time to lodge an objection to an assessment has not been extended under section [104\(4\)](#), the court may order the extension of the period within which an objection must be lodged by a taxpayer

²²⁷ [Rule 4](#)

²²⁸ [Rule 52\(1\)](#)

²²⁹ [Rule 52\(2\)](#)

- Where the period of time to lodge an appeal to an assessment has not been extended under section [107\(2\)](#), the court may order the extension of the period within which an appeal must be lodged by a taxpayer
- SARS may for the purposes of [rule 12](#) apply for an order that an objection or appeal be selected as a test case and that the objection or appeal be stayed pending the determination of the test case
- A party to an agreement or settlement in terms of the ADR proceedings may apply for an order that the agreement or settlement be made an order of court or if SARS fails to issue the assessment to give effect to an agreement or settlement within the prescribed periods, for SARS to issue the assessment
- A party who failed to deliver a statement of grounds of assessment and opposing appeal, statement of grounds of appeal or a reply to a statement of grounds of appeal, may apply to the tax court for an order condoning the failure to deliver the statement or reply and the determination of a further period within which the statement or reply must be delivered
- A party seeking an amendment of a statement under [rule 35](#) may apply to court for an appropriate order, including an order concerning a postponement of the hearing
- A party may also apply to the tax court for an order as to whether items or portions of items in the bill of costs taxed under [rule 47](#) may be allowed, reduced or disallowed
- Application for the withdrawal of the chairperson of the tax board
- Application for the withdrawal of a member of the tax court.

[Rule 56](#), in turn, makes provision for final relief regarding non-compliance with the rules by allowing for an application for default judgment in the event of non-compliance with the rules by either the taxpayer or SARS. For example, if SARS fails to deal with an objection within the periods prescribed under [rule 9](#), the taxpayer may deliver a notice to SARS informing SARS of its intention to apply to the tax court for a final order in the event that SARS fails to remedy the default within 15 days of delivery of the notice. In the event that SARS fails to remedy the default within the prescribed period the taxpayer may apply, on notice to SARS, to the tax court for a final order under section [129](#) to the effect that SARS's assessment or decision be altered unless SARS can show good cause for its default.

A recent case²³⁰ illustrates the tax court's approach where SARS sought condonation for the late filing of a statement under old rule 10. The application was brought under old rule 26, which involved a more cumbersome process for final relief. Under this rule, the taxpayer first had to apply to the tax court for an order compelling SARS to deal with the appeal within the period prescribed by the court. Where the defaulting party fails to comply with the order made, the Tax Court may, upon *further* application on notice by the other party, finally deal with the appeal by allowing the objection and an order that SARS must alter the assessment in accordance with the objection. In delivering its judgment in favour of SARS, the court noted that it should be very careful to place a threshold at so high a level that it would result in the inability of SARS to prosecute what may well be a legitimate case regarding unpaid taxes from a party such as the taxpayer, that the public interest demands that all South African citizens pay their due taxes and that technical arguments should be placed in proper perspective. The court acknowledged that the purpose of the condonation application was to introduce some nature of pragmatism into the manner in which parties litigate and was of the view that the taxpayer's insistence that the condonation application be made, postponed the matter unduly. The court concluded that this was not the kind of case where condonation should be refused and it would be a significant 'overreach' of the scope of the powers of the court to set aside SARS's assessment.

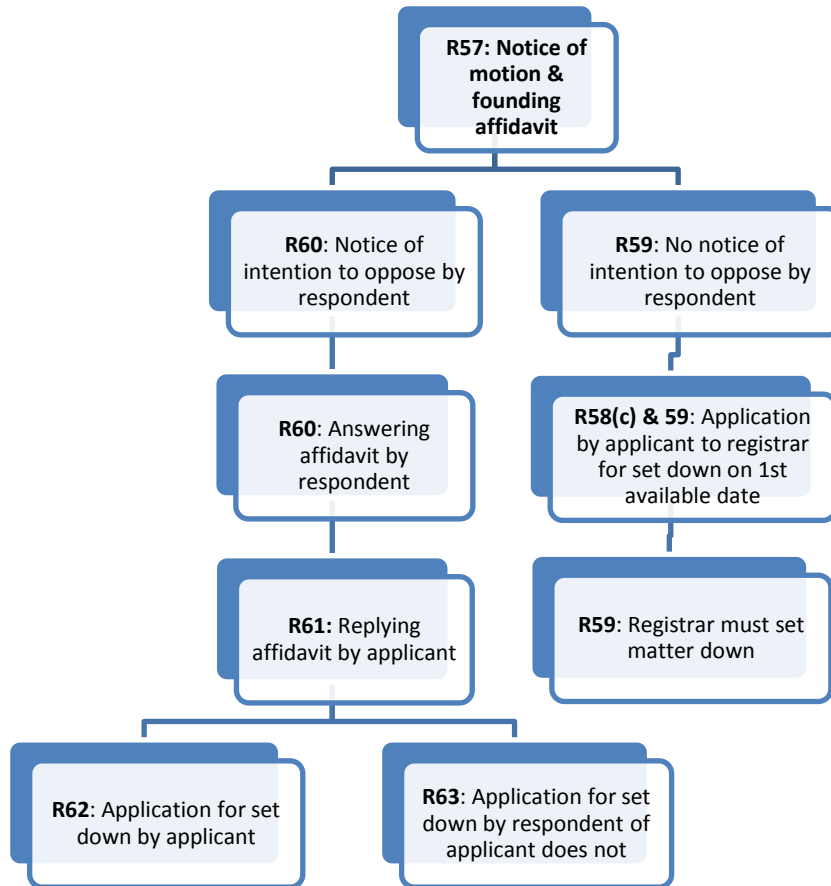
Under [rule 56](#) which specifically provides that the tax court may make an order under section [129\(2\)](#), it is submitted that the court will not consider making a final order in favour of the taxpayer as an overreach of the scope of its powers.

²³⁰ Judgment by Davis J in Cape Town tax court, case no. 0006/12 dated 3 December 2012

13. APPLICATION ON NOTICE TO TAX COURT

13.1. The procedure

The notice of motion process can be illustrated as follows:



13.2. How does an application on notice work?

A party who wishes to bring an application by notice under [Part F](#) of the rules to the tax court must do so by way of notice of motion. The party bringing the application is called the applicant and the opposing party the respondent. The process involves:

- Within 20 days after the date of the action – or inaction – giving rise to the application, the applicant must set out in a document (notice of motion) the required relief sought together with its founding affidavit(s) and supporting documentation on which the case is based – [rule 57\(2\)](#) and [58](#)
 - The notice of motion must set forth a day, not less than 10 days after delivery thereof, on or before which the respondent is required to notify the applicant, whether the respondent intends to oppose that application – [rule 58\(b\)](#)
 - The notice of motion must state that if no notice of intention to oppose the application is received by the date mentioned above, the matter will be set down for hearing on the first available opportunity which date may not be less than 15 days after serving the notice of motion on the respondent - [rule 58\(c\)](#)
 - The notice of motion must be delivered to SARS and the registrar and the respondent – [rule 57\(3\)](#)
- If the respondent does not deliver the notice of intention to oppose the application within the 10-day period, the applicant must apply to the registrar to set the matter down on the first available day – [rule 59\(1\)](#)

- The registrar must give the parties notice of the date 10 days prior to the hearing – [rule 59\(3\)](#)
- If the respondent delivers the notice of intention to oppose the application within the 10-day period, the respondent must thereafter within 15 days deliver its answering affidavit wherein the respondent must address the allegations of the applicant in the notice of motion and founding affidavit – [rule 60](#)
- If the respondent fails to deliver its answering affidavit, the applicant may apply to the registrar to set the matter down on the first available day – [rule 62](#)
- If the respondent delivers its answering affidavit, the applicant is then afforded a final opportunity to reply (replying affidavit) within 10 days to the issues raised in the respondent's affidavit – [rule 61](#)
- The applicant must then apply to the registrar to set the matter down on the first available day – [rule 58\(c\)](#)
- If the applicant does not apply for set down, the respondent may do so – [rule 63](#)
- The registrar must give both parties notice of the date of the hearing 10 days prior to the hearing – [rule 62\(2\)](#) or [63\(2\)](#)
- After the hearing, the judge may reserve its decision and once delivered, the registrar must deliver the written judgment to both parties with 10 days after judgment is given – [rule 64](#).

Examples of the outline of a notice of motion, notice of intention to oppose and founding / answering / replying affidavit are attached as [Annexures K, L and M](#).

It is important that great care is taken in drawing up the affidavit(s) to ensure that all the issues in dispute are covered because the facts and allegations contained in the affidavit(s) replace the oral evidence that is normally presented at a trial and a party will only in highly exceptional circumstances be afforded an opportunity to place additional facts, not covered in the original affidavit(s), before the tax court.

14. TRANSITIONAL ARRANGEMENTS

14.1. Application of rules to prior or continuing action - rule 66

The new rules will apply to an act or proceeding taken, occurring or instituted before the commencement date of the rules on 11 July 2014, but without prejudice to the action taken or proceedings conducted before the commencement date of the comparable provisions of these rules.

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

A document delivered by the taxpayer, appellant, SARS, clerk or registrar under the old rules must be regarded as delivered in terms of the comparable provision of the new rules, as from the date that the document was issued or delivered under the old rules. If, before the commencement of the new rules and before an appeal has been heard by the tax court a statement of grounds of appeal by the taxpayer under rule 11 of the old rules has been delivered, SARS may deliver a reply to the statement under new rule 33.

14.2. Applications of new procedures – rule 67

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

- the procedure sought to be used follows in sequence after the last action taken by either of the parties; and
- the period contained in the relevant previous rule has not expired, counting from the commencement date of these rules.

14.3. Completion of time periods – rule 68

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

Also, the new rules only apply after expiry of a time period that commenced under the old rules and this period is not shortened by the new rules. Under rule 66(1) – which is the main transitional rule – the new rules apply to an act or proceeding taken, occurring or instituted before the commencement date of these rules, but without prejudice to the action taken or proceedings conducted before the commencement date of the comparable provisions of these rules.

For example, if the period for dealing with the objection commenced on 15 June 2014 and, under the old rules, SARS had 90 days within which to deal with the objection without and extension, this period is not shortened to the new 60-day period under rule 9(2), as this will constitute prejudice to a proceeding instituted before commencement of the new rules. This is further clarified by rule 68(2), which provides that the next step in the sequence of proceedings under the new rules commences on the day after the expiry of the period under the old rules. In the above example, that means the next step - the notice of appeal by taxpayer after delivery of decision on objection - follows after expiry of the 90 day period which commenced under the old rules.

If the old rules prescribed a period within which a party, clerk or registrar must deliver a document, and that period expires after the commencement date of the new rules, the first day of the prescribed period for any further procedures under the new rules is regarded as commencing on the day after the last day of that expired period. If an objection or an appeal could have been lodged before the commencement date of the new rules

but is lodged after the period prescribed under the old rules, an application for the condonation of the late lodging of the objection or appeal must be considered under the new rules.

Annexure A – Main differences between old rules and new rules

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
	<p>Deleted definitions: “board”; “court”; “information”; “SARS”; “taxpayer”; “things”</p> <p>New: “appellant”; “assessment”; “clerk”; “deliver”; “document”; “electronic address”; “electronic filing page”; “grounds of assessment”; “party”; “parties”; “Rules Board for Courts of Law Act”; “SARS electronic filing service”; “sign or signature”; “Superior Courts Act”</p>	Rule 1	Rule 1	
	<p>New: Prescribed form and manner and date of delivery</p>	-	Rule 2	
Index and pagination of documents				
	<p>New: Unless the parties otherwise agree, the party who produces the paginated documents and index must make the number of copies specified by the clerk of the registrar of the original and any supplementary documents, as well as the related index, and deliver a copy to the clerk or registrar and the other party.</p>		Rule 5(4)	
	<p>New: A document delivered electronically must comply with the rules for electronic communication issued under section 255 of TA Act.</p>		Rule 5(5)	
Extension of time-periods				
	<p>New: If a period is extended under this rule by an agreement between the parties or a final order pursuant to an application under Part F, the period within which a further step of the proceedings under these rules must be taken commences on the day that the extended period ends.</p>		Rule 4(4)	
Reasons for assessment/grounds of assessment				
<p>30-day period to request reasons may be extended by CSARS for a period of not more than 60 days where CSARS is satisfied that reasonable grounds exist for the delay in complying with the period</p>	<p>The 30-day period within which the reasons may be requested by the taxpayer may be extended by SARS for a period not exceeding 45 days if a SARS official is satisfied that reasonable grounds exist for the delay in complying with that period.</p>	Rule 3(1)(b)	Rule 6(3)	
<p>“adequate reasons”</p>	<p>“reasons required to enable taxpayer to formulate an objection”</p>	Rule 3(2)	Rule 6(4)	
<p>CSARS must provide written reasons for the assessment within 60 days after receipt of the notice by the taxpayer requesting reasons</p>	<p>SARS must provide the reasons within 45 days after delivery of the request for reasons by the taxpayer</p>	Rule 3(3)	Rule 6(5)	
Objection				
	<p>New: A taxpayer who lodges an objection to an assessment must submit the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment.</p>		Rule 7(2)(b)(iii)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
Where the CSARS is satisfied that reasonable grounds exist for the delay in lodging the objection, the period may be extended for a maximum of 30 days , unless exceptional circumstances exist which gave rise to the delay in lodging the objection.	Where a senior SARS official is satisfied that reasonable grounds exist for the delay in lodging the objection, the period may be extended for a maximum of 21 days , unless satisfied that exceptional circumstances exist giving rise to the delay in lodging the objection.			ITA: s81(2) TA Act: s104(5)
Where a taxpayer delivers an objection that does not comply with the requirements of a valid objection [Rule 5(1)], CSARS may inform the taxpayer by notice within 60 days that he or she does not accept is as a valid objection.	Where a taxpayer delivers an objection that does not comply with the requirements of a valid objection [Rule 7(2)], SARS may regard the objection as invalid and must notify the taxpayer accordingly and state the ground for invalidity in the notice within 30 days of delivery of the invalid objection.	Rule 5(1)	Rule 7(4)	
The taxpayer may <i>within 10 days</i> of a notice by the CSARS that the objection does not comply with the requirements of a valid objection, submit an amended objection to together with an application for extension if applicable.	A taxpayer who receives a notice of invalidity may within 20 days of delivery of the notice submit a new objection without having to apply to SARS for an extension under section 104(4).	Rule 5(1)	Rule 7(5)	
	New: If the taxpayer fails to submit a new objection or submits a new objection which fails to comply with the requirements of a valid objection [Rule 7(2)] within the 20 day period, the taxpayer may thereafter only submit a new and valid objection together with an application to SARS for an extension of the period for objection under section 104(4).		Rule 7(6)	
Where the CSARS is satisfied that the taxpayer has not furnished all the information, documents or things required to decide on the taxpayer's objection, the CSARS must, not later than 60 days after receipt of the objection, notify the taxpayer to deliver the information, documents or things as specified in the notice.	SARS may require a taxpayer to produce the additional substantiating documents necessary to decide an objection within 30 days after delivery of the objection.	Rule 5(2)(a)	Rule 8(1)	
Taxpayer must deliver the requested information, documents or things within 60 days after the date of the notice by the CSARS requesting such information, documents or things.	Taxpayer must deliver the documents within 30 days after delivery of the notice by SARS.	Rule 5(2)(b)	Rule 8(2)	
CSARS may extend the period within which the taxpayer must deliver the requested information, documents or things for a maximum of 60 days where satisfied that reasonable grounds exist	SARS may extend the period for delivery of the requested documents for a further period not exceeding 20 days where reasonable grounds for an extension are submitted by the taxpayer.	Rule 5(2)(c)	Rule 8(3)	
CSARS must disallow objection, reduce assessment, withdraw assessment and notify the taxpayer of his or her decision 60 days after receipt of the required information or in any other case 90 days after the date of receipt of	SARS must notify the taxpayer of the allowance or disallowance of the objection and the basis thereof under section 106(2) within 60 days after delivery of the taxpayer's objection or 45 days after delivery of the requested documents or if the	Rule 5(3)	Rule 9(1)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
<i>the taxpayer's objection.</i>	documents are not delivered, the expiry of the period within which the documents must be delivered.			
CSARS may extend the period within which CSARS has to advise the taxpayer of the outcome of the objection with— <ul style="list-style-type: none"> • 60 days where the CSARS requested additional information, documents or things; • 90 days after the date of receipt of the taxpayer's objection. 	SARS may extend the period within which SARS has to advise the taxpayer of the outcome of the objection with a further period not exceeding 45 days .	Rule 5(4)	Rule 9(2) and (3)	
	New: Designation of an objection or appeal as a test case.			Section 106(6)
Appeal				
	New: A notice of appeal must specify in detail the grounds for disputing the basis of the decision to disallow the objection referred to in section 106(5) and any new ground on which the taxpayer is appealing.		Rule 10(2)(c)(ii) and (iii)	
	New: The taxpayer may not appeal on a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to under Rule 7.		Rule 10(3)	
	New: If the taxpayer in the notice of appeal relies on a ground not raised in the objection under Rule 7, SARS may require a taxpayer within 15 days after delivery of the notice of appeal to produce the substantiating documents necessary to decide on the further progress of the appeal.		Rule 10(4)	
	New: The taxpayer must deliver the documents within 15 days after delivery of the notice by SARS unless SARS extends the period for delivery for a further period not exceeding 20 days if reasonable grounds for an extension are submitted by the taxpayer.		Rule 10(5)	
	New: A senior SARS official may extend the period within which an appeal must be lodged for <ul style="list-style-type: none"> • 21 days, if satisfied that reasonable grounds exist for delay; or • up to 45 days, if exceptional circumstances exist that justify an extension beyond 21 days. 			Section 107(2)
Alternative Dispute Resolution				
Taxpayer requests ADR: CSARS must inform taxpayer by notice within 20 days of receipt of the notice of appeal whether or not the CSARS is of the opinion that the matter is appropriate for ADR	Taxpayer requests ADR: SARS must inform appellant by notice within 30 days of receipt of the notice of appeal whether or not the matter is appropriate for ADR	Rule 7(1)(a)	Rule 13(1)	
Taxpayer did not request ADR: CSARS of opinion matter appropriate for ADR must inform	Taxpayer did not request ADR: SARS of opinion matter is appropriate for ADR must inform taxpayer	Rule 7(1)(b)	Rule 13(2)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
taxpayer accordingly within 10 days from receipt of notice of appeal and taxpayer must delivery notice stating whether or not taxpayer agrees within 10 days from date of notice by CSARS	accordingly within 30 days of receipt of the notice of appeal and appellant must within 30 days of delivery of notice by SARS deliver notice stating whether or not the appellant agrees			
ADR proceedings will only take place if taxpayer accepts terms of ADR	If taxpayer requests ADR or agrees thereto, regarded as having accepted terms of ADR	Rule 7(2)	Rule 13(3)	
Period for ADR commences 20 days after date of receipt by CSARS of notice of appeal.	Period for ADR commences on date of delivery of notice by SARS that matter is appropriate for ADR (where appellant requested ADR) or where SARS receives a letter from taxpayer agreeing that matter is appropriate for ADR (where appellant did not request ADR).	Rule 7(3)	Rule 15(1)	
CSARS may appoint any person, including a person employed by SARS, to facilitate the proceedings in terms of this rule. Code of ethics had to be signed by facilitator.	If required by parties, senior SARS Official must appoint facilitator from list of facilitators New: Facilitator must be selected from a list. Parties on the list must meet requirements of Rule 16 and 17. Code of ethics replaced with rule regulating conduct of facilitator	Rule 7	Rule 16(1) & (3) Rule 16 & 17 Rule 16	
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	Either party may request the senior SARS official who appointed the facilitator to withdraw the facilitator on the basis of conflict of interest or other indicators of bias and, if the parties so agree, appoint a new facilitator to continue the proceedings	Rule 3 - Schedule A	Rule 18(3)	
Facilitator must determine a place, date and time at which the parties shall convene the ADR meeting within 20 days of appointment of facilitator or within such further period as the CSARS and taxpayer may agree	Facilitator must determine a place, date and time at which the parties must convene the ADR meeting within 20 days of the facilitator's appointment.	Rule 7.2 Schedule A	Rule 19(1)	
	New: Where a facilitator has not been appointed the parties must within 30 days (after commencement of ADR proceedings) determine a place, date and time at which the ADR meeting must take place.		Rule 19(2)	
Taxpayer or representative taxpayer must be present in person unless facilitator allows representative	New: Taxpayer or representative taxpayer may also participate in ADR proceedings via telephonic or video conferencing.	Rule 7(5)(b)	Rule 20(3)	
Recommendation by facilitator will be <i>admissible</i> during any subsequent proceedings including court proceedings.	Recommendation by facilitator may only be considered by tax court for purposes of deciding costs under section 130.	Rule 7(4)(c)	Rule 21(3)	
No time-period within which recommendation had to be delivered.	New: Facilitator must deliver recommendation within 30 days after termination of proceedings unless parties agree to an extension of this period.	Rule 7(4)(c)	Rule 21(2)	
Where an agreement or settlement has been reached between the parties, CSARS must issue an assessment to give effect to the agreement within a	Where an agreement or settlement has been reached SARS must issue an assessment to give effect to the agreement within a period of 45 days after the date of the last signing of the	Rule 7(7)(c)	Rule 23(3) and rule 24(3)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
period of 60 days after the date of the conclusion of the agreement.	agreement.			
Where proceedings are terminated the taxpayer will, unless he or she informs the CSARS otherwise, be deemed to pursue his or her appeal to the tax board or tax court.	If appellant wishes to pursue appeal on unresolved issues from an agreement or settlement to the tax board or tax court, the appellant must deliver a notice to this effect to the clerk or registrar, within 15 days of the date of agreement.	Rule 7(7)(d)	Rule 23(4) and rule 24(4)	
	New: Agreement must also include an agreement with regard to costs .		Rule 23(2)(b)	
	New: Agreement/Settlement may be made an order of court either with the consent of both parties, or on application to the tax court by a party under Part F of the Rules.		Rule 23(2)(d) and rule 24(2)(e)	
	New: Termination of proceedings Taxpayer must within 20 days of date of termination of proceedings request clerk to set the matter down in the tax board or tax court whichever is applicable.		Rule 25	
Hearing of matter by tax board				
	New: If no alternative dispute resolution proceedings are pursued, the appellant must within 35 days of delivery of the notice of appeal request the clerk of the tax board to set the matter down before the tax board under Rule 26.		Rule 11(2)	
CSARS must give written notice of the time and place appointed for the hearing of the appeal no later than 40 days after receipt of the notice of appeal or termination of ADR proceedings	Clerk must set appeal down before the tax board within 30 days after receipt of a <i>notice by the appellant</i> under rule 11(2), 23(4), 24(5) or 25(3), decision by chairperson to condone the non-appearance before the tax board under Rule 30 or an order by the tax court to condone non-appearance before the tax board under Rule 53	Rule 8(2)	Rule 26(1)	
CSARS must give notice of set down at least 21 days before the hearing of the appeal.	Clerk must give notice of set down at least 20 days before the hearing.	Rule 8(2)	Rule 26(3)	
If the appellant has failed to state the grounds of his objection and appeal in definite terms, the Board may, upon the opening of the proceedings, decide what shall be considered to constitute the grounds of the objection and appeal.	Not included in new rules – grounds must be properly formulated in notice of objection and appeal			Section 83(A)(10)(g) ITA
	New: The Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa issued under the Rules Board for Courts of Law Act will apply in respect of subpoenas issued under rule 27. New: A witness or document subpoenaed must be relevant to the issues in appeal as reflected in the grounds of assessment, notice of objection, notice of disallowance of objection and notice of appeal.		Rule 27(2) Rule 27(3)	
Chairperson must furnish his or her decision to the clerk of the	Chairperson must prepare a written statement of the tax board's decision	Rule 8(3)(a)		Section 114(2) of TA

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
Board within 30 days of the hearing of the appeal.	within 60 days after conclusion of the hearing. New: Decision must include that tax board's findings of the facts of the case and the reason for its decision.			Act
Chairperson may not confirm assessment or allow appeal where satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the CSARS within 7 days after the date on which the appeal was set down for hearing	Chairperson may not confirm assessment or allow appeal where satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the CSARS within 10 days after the date determined for the hearing New: Extension: 10 days or the longer period as may be allowed in exceptional circumstances.			Section 83A(9)(f) of ITA Section 113(13) of TA Act read with rule 30(2)
	New: Procedure: Where clerk received a request for the chairperson to withdraw the tax board's decision, where it was given as a result of non-appearance, the clerk must within 10 days of receipt of the request deliver the application to the chairperson and a copy thereof to the other party.		Rule 30(3)	
	New: Standard: Chairperson must determine whether the party's non-appearance is <i>due to sound reasons</i> and must make a decision within 15 days of receipt of the request and inform the clerk accordingly.		Rule 30(4)	
	New: Procedure: Clerk must deliver chairperson's decision as to the non-appearance to parties within 10 days of receipt of decision.		Rule 30(5)	
Where appellant or CSARS is not satisfied with decision of the board, they may refer the appeal to tax court for hearing and notify the appellant thereof within 30 days after the date it received notice of the decision of the board from the clerk	If appellant or SARS is dissatisfied with tax board's decision or chairperson fails to deliver the decision under section 114(2) within prescribed 60 days period , they may within 21 days after the date of the notice of the decision of the board from the clerk or the expiry of the 60 day period, request that the appeal be referred to the tax court. New: This period may be extended under rule 29(2).			Section 83A(13) (a), (b) ITA Section 115 of TA Act
	New: Extension: Parties may request extension of the 21-day period referred before expiry of that period, setting out the grounds for the extension or delay.			Section 115 TA Act
	New: Procedure: Clerk must within 10 days of receipt of request for extension of 21-day period deliver the request to the relevant chairperson and a copy thereof to other party.		Rule 29(4)	Section 115 TA Act
	New: Standard: Chairperson must determine whether <i>good cause</i> exists for the extension and must make a decision within 15 days of receipt of request and inform clerk accordingly. Procedure: Clerk must notify the parties within 10 days of delivery of the decision of the chairperson.		Rule 29(5)	
No specific time-limit on clerk to furnish the dossier	Dossier must be delivered by the clerk to the parties at least 10 days before the hearing or as otherwise agreed		Rule 27(4)	Section 83A(7)(b) of ITA

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
	between the parties.			
	New: Procedure: A party must present all evidence, including leading witnesses, on which the party's case is based and must adhere to the rules of evidence.		Rule 28	
Tax Court				
If at any stage during the hearing of the appeal, or after hearing of the appeal but before judgment has been handed down, one of the members dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall proceed before the President and remaining members.	New: If the President deems it necessary, the president may order that a replacement member be appointed to take the place of the other member that died, retired or otherwise became incapable of acting in that capacity.			Section 83(4C)(b) of ITA Section 123(3) of TA Act
Appointment of member of the tax court may at any time be terminated by the President of the Republic for any reason which he considers good and sufficient.	President may only terminate appointment of a member for misconduct, incapacity or incompetence.			Section 83(5)(a) of ITA Section 120(4) of TA Act
Sittings of tax court not public and court shall at any time on application of appellant exclude or require to withdraw from such sitting all or any persons whose attendance is not necessary for the hearing of the appeal under consideration.	New: President may also under exceptional circumstances, on request of any person, allow a person to attend the sitting of the tax court after taking into account any representations that the appellant or SARS wishes to make on request.			Section 83(11) of ITA Section 124(2) of TA Act
President of the court may indicate which judgments or decisions of the court must be published for general information, in such for as does not reveal the identity of the appellant.	New: Publication of all judgments of the tax court is compulsory but in a form that does not reveal the appellant's identity.			Section 83(19) of ITA Section 132 of TA Act
Decision by a tax court				
	New: Unless a tax court otherwise directs, a decision by the tax court in a test case designated under section 106(6) is determinative of the issues in an objection or appeal stayed by reason of the test case under section 106(6)(b) to the extent determined under the rules.		Rule 12	Section 129(5) of TA Act
Costs by the tax court				
One of the grounds upon which the tax court may make an order of costs is if the grounds of appeal of the appellant are held to be frivolous.	Concept of frivolous has been changed to concept of where the appellant's grounds of appeal are held to unreasonable. Aligns with the test applied to SARS i.e. where SARS's grounds of assessment/decision is held to be unreasonable.			Section 83(17)(b) of ITA Section 130(b) of TA Act
	New: The tax court may make an order of costs in a— <ul style="list-style-type: none"> • test case under section 106(5); or • an interlocutory application; or • an application in a procedural matter referred to under section 117(3). 			Section 130(3) of TA Act

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
Hearing by tax court				
Limitation of issues in dispute - deleted		Rule 9		
Statement of grounds of assessment must be furnished within 90 days of certain events.	Statement of grounds of assessment and opposing the appeal must be delivered within 45 days of certain events.	Rule 10(1)	Rule 31(1)	
	New: New ground of assessment may be included, but SARS may not include in the statement of grounds of assessment and opposing appeal a ground that constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.		Rule 31(2)(c) – use of present tense - read with rule 36(1) & Rule 31(3)	
Taxpayer must deliver statement of grounds of appeal within 60 days after delivery by CSARS of the statement of grounds of assessment	Taxpayer must deliver statement of grounds of appeal within 45 days after certain events.	Rule 11(1)	Rule 32(1)	
	New: New ground of appeal may be included, but appellant may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7.		Rule 32(2)(c) – use of present tense - read with Rule 36(2) & Rule 32(3)	
	New: SARS may after delivery of the statement of grounds of appeal under rule 32 deliver a reply to the statement of grounds of appeal within certain time-periods which reply must set out a clear and concise reply to any new grounds, material facts or applicable law set out in the statement.		Rule 33	
Discovery of documents				
	New: Appellant may, within 10 days after delivery of rule 31 statement by SARS, deliver notice of discovery to SARS requesting it to make discovery of any document material to a ground of the assessment or opposing the appeal specified in the statement not set out in the grounds of assessment as defined in rule 1, to the extent such document is required by the appellant to formulate its grounds of appeal under rule 32.		Rule 36(1)	
	New: SARS may within 10 days after delivery of the rule 32 statement by appellant deliver a notice of discovery requesting the appellant to make discovery of any document material to a ground (of appeal in the statement not set out in the grounds of appeal under rule 10), to the extent such document is required by SARS to formulate its ground of reply under rule 33.		Rule 36(2) <i>Note: error in rule 36(2) – reference to ground of assessment must be ground of appeal</i>	
Party to whom notice to discover has been delivered, must make discovery within 40 days after delivery by that party of that	Party to whom notice to discover has been delivered, must make discovery within 20 days after delivery by that party of that notice.	Rule 14(2)	Rule 36(4)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
notice.				
Court may grant leave that document, information or thing not disclosed be used for the purpose of the appeal.	If tax court in the interest of justice otherwise directs , a document not disclosed, may not be used for any purpose at the appeal. New: Specific exclusion from discovery rule of a document specifically prepared to assist the court in understanding the case of the relevant party and which is not presented as evidence in the appeal.	Rule 14(4)	Rule 36(7) Rule 36(8)	
Pre-trial conference				
Pre-trial conference must be arranged by SARS within 60 days after all parties have delivered their discovery notices or where not discovery notices were delivered, 60 days after receipt by CSARS of the statement of grounds of appeal.	Pre-trial conference must be arranged by SARS not later than 60 days before the hearing of the appeal .	Rule 16(1)	Rule 38(1)	
Set down of appeal for hearing before tax court				
After delivery of the pre-trial conference minute, the CSARS must arrange a date for the hearing of the appeal and inform the Registrar accordingly.	Appellant must apply with registrar to allocate a date for the hearing of the appeal within 30 days after delivery of the appellant's statement of grounds of appeal or SARS's reply to the statement of grounds of appeal as the case may be and notify SARS.	Rule 17(1)	Rule 39(1)	
	New: If appellant fails to apply for the date within the prescribed period, SARS must apply for a date for the hearing within 30 days after the expiry of the period.		Rule 39(2)	
Registrar must deliver to appellant and to CSARS written notice of time and place appointed for hearing of appeal at least 40 days before hearing of the appeal.	Registrar must deliver to the parties a written notice of the time and place appointed for the hearing of the appeal at least 80 days before the hearing of the appeal.	Rule 17(2)	Rule 39(4)	
Dossier to tax court				
	New: Some additional documents required in dossier (e.g. pre-trial minute, SARS reply to appellant's statement of grounds of appeal).		Rule 40	
Procedures not covered by Act and Rules				
Rules issued in terms of section 43 of the <i>Supreme Court Act, 1959</i> , shall apply in respect of the general practice and procedure of the Court in so far as such rules are applicable.	Most appropriate rule under the Rules of the High Court made in accordance with the Rules Board for Courts of Law Act and to the extent consistent with the Act will apply.	Rule 20(1)	Rule 42(1)	
Subpoena of witnesses				
Rules issued in terms of section 43 of the <i>Supreme Court Act, 1959</i> , governing the service of subpoenas in civil matters in the High Court will apply	The Rules for the High Court made in accordance with the Rules Board for Courts of Law Act governing the service of subpoenas in civil matters in the high court will apply in respect of subpoenas issued under rule 43	Rule 21	Rule 43(4)	
	New: A witness or document subpoenaed must be relevant to the issues in appeal under rule 34.		Rule 43(3)	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
Procedures in tax court				
	New: Proceedings are commenced by the appellant unless the only issue in dispute is whether an estimate under section 95 of TA Act on which the disputed assessment is based, is reasonable or the facts upon which an understatement penalty is imposed by SARS under section 222(1) of TA Act.		Rule 44(1)(a)	
	New: A party may present a document specifically prepared to assist the court in understanding the case of the party and which is not presented as evidence in the appeal.		Rule 44(2)(b)	
Registrar must deliver the written judgment to CSARS and appellant within 15 days of the receipt thereof.	Registrar must deliver the written judgment to parties within 20 days of delivery thereof.	Rule 22(9)		
Taxation of costs				
CSARS or appellant may apply to President 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. President's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.	Not included under new rules	Rule 27(3)	Rule 47	
Request for recordings				
Person requiring transcript of the evidence must deposit with the Registrar such sum as in the opinion of the Registrar is sufficient to cover the costs for the transcript and pay such costs upon receipt of such transcript.	If appellant requires transcript of evidence or a copy of the recording of the evidence appellant must pay to the registrar the costs as prescribed by CSARS in a public notice under section 134(3) of TA Act.	Rule 29	Rule 49(1)	
	New: If appellant requires transcript payment must be made within 20 days of delivery of the transcript and if copy of recording of evidence is required, payment must be made in full upon receipt of the copy.		Rule 49(2)	
Appeal against decision of tax court				
Appeal shall lie to the provincial division of the High Court having jurisdiction in the area in which the sitting of the special court was held.	An appeal against a decision of the tax court lies to the full bench of the Provincial Division of the High Court which has jurisdiction in the area in which the tax court sitting is held.			Section 86A(2)(a) of ITA Section 132 of TA Act
Notice of intention to appeal, if the intending appellant wishes the appeal to be heard by the Supreme Court of Appeal, must indicate whether the whole or part of the judgment is to be appealed against and if part only what part, and the contemplated grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against.	This requirement for a notice of intention to appeal has now been made applicable to any appeal against a decision of the tax court irrespective of whether or not that appeal is to the Supreme Court of Appeal.			Section 86A(4)(b) of ITA Section 134(2)(b) of TA Act
Where the appellant wishes to appeal to the Supreme Court of appeal the President of the tax	Subject to the right to petition the Chief Justice for leave to appeal to the Supreme Court of Appeal in terms			Section 86A(5) of

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
court must make an order granting or refusing, as he sees fit, leave to appeal against such decision to the Supreme Court of Appeal, and the order so made shall be final.	of section 21 of the Supreme Court Act, 1959, an order made by the president of the court is final.			ITA Section 135(3) of TA Act
Applications on notice				
General provision: Court may order extension of periods, condonation with non-compliance of the rules, order a defaulting party to comply.	New: Rules 52 to 56 list the orders that can be obtained by a party in terms of the rules.	Rule 26(3), (4) and (5)	Rule 52 to 56	
	New: An application must be brought within 20 days after the date of the action, including the delivery of a notice, document, decision or judgment by a party, the clerk, the registrar, a tax board or a tax court or a failure to do so, giving rise to an application under this Part of the rules.		Rule 57(2)	
	New: Application under Part F interrupts the periods prescribed in the rest of the rules commencing on the date of delivery of a notice of motion under rule 57 and ending on the date of— <ul style="list-style-type: none"> • delivery of a notice of withdrawal of the application by the applicant; • an agreement between the applicant and respondent to terminate proceedings under this Part; or • delivery of the judgment of the tax court to the parties. 		Rule 50(4)	
Set down for hearing where no intention to oppose				
	New: Registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.		Rule 59(3)	
Set down for hearing where no answering affidavit				
	New: Registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.		Rule 62(2)	
Application for set down by respondent				
Where applicant fails to apply to Registrar to allocate a date for the hearing of the application the respondent may do so immediately upon expiry thereof. 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.	Respondent must apply to registrar to allocate a date for the application within 10 days of the expiry of the relevant periods. Registrar must deliver to the parties a written notice of the time and place appointed for the application at least 10 days before the date on which it has been set down.	B11	Rule 63	
Judgment by tax court in terms of Part F				
	New: Tax court may reserve its decision until a later date and the		Rule 64	

Old rules/ITA	New rules/TAA	Old Rule	New Rule	TAA/ITA
	registrar must by notice deliver the written judgment of the tax court to the parties, or the clerk of the tax board if appropriate, within 10 days of delivery thereof.			

Annexure B – Time Periods

Process	Time Period	From / After	Extension	Rule	Section
Reasons, objection & appeal					
Request by taxpayer	30 days	From date of assessment or extended date	45 days	6(2) - 6(3)	
SARS Notice: Reasons already provided	30 days	After date of delivery of request	By agreement under rule 4	6(4)	
Reasons by SARS	45 days	After date of delivery of request	45 days if exceptional circumstances	6(5) - (7)	
Objection by TP	30 days	Date of delivery of SARS notice or SARS reasons	21 days unless exceptional circumstances	7(1) to (3)	104(4)
SARS Notice: Invalid objection	30 days	After date of delivery of invalid objection	By agreement under rule 4	7(4)	
Amended objection by TP	20 days	After date of notice of invalidity		7(5)	
Amended objection by TP	>20 days	Date of extended period if condoned	21 days unless exceptional circumstances	7(6)	104(4)
SARS Notice: Request for substantiating documents	30 days	After date of delivery of objection	By agreement under rule 4	8(1)	
TP: Submission of substantiating documents	30 days	After date of delivery of SARS notice requesting documents	20 days if reasonable grounds	8(2) & (3)	
SARS decision on objection	60 days	After date of delivery of objection or 45 days after receipt of substantiating documents	45 days	9(1) and (2)	106(2)
Appeal: Notice by TP	30 days	After date of delivery of notice of disallowance or extended date	21 or 45 days if exceptional circumstances	10(1)	107(2)
SARS Notice: Substantiating documents	15 days	Date of delivery of notice of appeal	By agreement under rule 4	10(4)	
TP: Submission of substantiating documents	15 days	Date of delivery of SARS notice	20 days if reasonable grounds	10(5)	
ADR					
Initiated by TP in ADR 2 /NOA: Notice by SARS matter appropriate	30 days	Date of receipt of notice of appeal	By agreement under rule 4	13(1)	
Initiated by SARS: Notice by SARS seeking consent by TP	30 days	Date of receipt of notice of appeal	By agreement under rule 4	13(2)	
Appointment of facilitator	15 days	Date of commencement of ADR proceedings under rule 15(1)	By agreement under rule 4	16(3)	
ADR meeting: facilitator	20 days	Date of appointment	By agreement under rule 4	19(1)	
ADR meeting: parties	30 days	Date of commencement of ADR proceedings under rule 15(1)	By agreement under rule 4	19(2)	
Report by Facilitator	10 days	Date of cessation of ADR	By agreement under rule 4	20(6)	
Recommendation by	30 days	Termination of ADR proceedings	By agreement	21(1)	

Process	Time Period	From / After	Extension	Rule	Section
Facilitator		under rule 25	under rule 4		
Period: ADR finalised	90 days	Date of commencement of ADR proceedings under rule 15(1)	By agreement under rule 4	15(3) & 25(1)	
Assessment by SARS after successful ADR	45 days	Date of agreement or settlement	By agreement under rule 4	23(3) & 24(3)	
Tax Board					
Notice of set down by TP: after ADR	20 days	Date of termination of ADR proceedings	By agreement under rule 4	25(3)	
Notice of set down by TP: No ADR proceedings	35 days	Date of delivery of notice of appeal	By agreement under rule 4	11(2)	
Clerk must set matter down	30 days	Date of receipt of notice by TP under rule 11(2); 23(4); 24(4); decision under rule 30; order under rule 53(2)		26(1)	
Clerk written notice to parties of date, time and place for hearing	20 days	Prior to hearing		26(3)	
Clerk to prepare and deliver dossier to chairperson and parties	10 days	Prior to hearing		27(4)	
Chairperson to give decision after hearing	60 days	After conclusion of hearing			114(2)
Clerk to deliver copy of decision to parties	10 days	After receipt of decision		28(4)	114(3)
If no referral of decision to tax court: SARS to issue assessment	45 days	After receipt of tax board's decision	By agreement under rule 4	28(5)	
Notice of referral to tax court of appeal after tax board decision	21 days	After receipt of tax board's decision or extended date under rule 53(2) or expiry of 60 days under section 114(2)	By tax board under rule 29(3) or tax court under rule 53(2)(b)	29	115
Tax Court					
SARS: Deliver statement of grounds of assessment and opposing the appeal	45 days	After delivery of appeal under rule 10(1) or documents under rule 10(4); notice under rule 24(4), 25(3) or 29(2)	By agreement under rule 4	31(1)	
TP: Deliver statement of grounds of appeal	45 days 15 days	After delivery of rule 31 statement Or discovery of documents under rule 36(1)	By agreement under rule 4	32(1)	
SARS: Reply to statement of grounds of appeal	20 days 15 days	After delivery of statement under rule 32 or discovery of documents under rule 36(2)	By agreement under rule 4	33(1)	
Request for discovery by either party for hearing	15 days	After delivery of statements under rule 32 or 33	By agreement under rule 4	36(3)	
Discovery by requested parties	20 days	After delivery of discovery notice	By agreement under rule 4	36(4)	
TP to apply to registrar for set down	30 days	After delivery of rule 32 or 33 statements	By agreement under rule 4	39	
SARS to arrange pre-trial conference	60 days	Prior to date of set down of hearing	By agreement under rule 4	38(1)	
SARS to deliver pre-trial conference minutes	10 days	After conclusion	By agreement under rule 4	38(4)	

Process	Time Period	From / After	Extension	Rule	Section
TP: Differentiating minute	10 days	After delivery of SARS minute	By agreement under rule 4	38(5)	
Expert witnesses: Notice of intention to call expert witness	30 days	Prior to date of set down of hearing	By agreement under rule 4	37	
Summary of expert's opinion	20 days	Prior to date of set down of hearing	By agreement under rule 4	37	
SARS to deliver dossier to registrar and TP	30 days	Prior to date of set down of hearing	By agreement under rule 4	40(1)	
Registrar to deliver copies to tax court	20 days	Prior to date of set down of hearing	By agreement under rule 4	40(3)	

Annexure C – Decisions subject to objection and appeal under tax Acts

Act	Section	Description
Transfer Duty Act, 1949	Section 20B(1) and (3)	Decision to apply GAAR: Transactions, operations, schemes or understanding for the obtaining of undue tax benefits. CSARS shall determine the liability for duty as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the CSARS deems appropriate for the prevention or diminution of the tax benefit. Any decision of the CSARS under section 20B(1) shall be subject to objection and appeal.
Income Tax Act, 1962	<i>Sections listed in section 3(4):</i>	
	Section 1	Decision relating to definition of 'benefit fund'; "pension fund"; "pension preservation fund"; "provident fund"; "provident preservation fund"; "retirement annuity fund"; and "spouse".
	Section 8(5)(b)	Amount deemed by CSARS to have been applied in reduction or towards settlement of the purchase price of a property.
	Section 8(5)(bA)	Decision by CSARS that former lessee is deemed to have acquired property for no consideration where the former lessee may use, enjoy or deal with the property as the former lessee deems fit without the payment of consideration; or in the case of a lease without the payment of any rental or other consideration or subject to the payment of any consideration which is nominal in relation to the fair market value of the property.
	Section 10(1)(cA)	Decision by CSARS to withdraw the approval of an institution, board, body or company that failed to comply with the requirements set out in this section.
	Section 10(1)(e)(i)(cc)	Decision by CSARS not to approve an association of persons in terms of this section
	Section 10(1)(j)	Decision by CSARS that a Bank is not resident in the Republic and entrusted by the Government of a territory outside the Republic with the custody of the principal foreign exchange reserves of that territory.
	Section 10(1)(nB)	Exempt income: Benefit or advantage accruing to any employee Decision by CSARS to allow costs incurred by an employee (where the expense is born by the employer) in respect of the sale of his previous residence and in settling in permanent residential accommodation at his new place of residence in consequence of the transfer of the employee from one place of employment to another place of employment or the appointment of the employee as an employee of the employer or the termination of the employee's employment, as exempt income.
	Section 10A(8)	Calculation or recalculation by the CSARS of the capital element of annuity amounts received or accrued to a taxpayer
	Section 11(e)	Determination by CSARS as the reasonable and just amount by which the value of any machinery, plant, implements, utensils and articles as owned by the taxpayer and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment.
	Paragraph (bb) of proviso to section 11(f)	Determination by CSARS of the probable duration of use or occupation by a taxpayer where the taxpayer or the person by whom the right of use or occupation was granted holds a right or option to extend or renew the period of such use or occupation.
	Paragraph (cc) of proviso to section 11(f)	Determination by CSARS of the allowable portion of the amount of the premium or consideration having regard to the period during which the taxpayer will enjoy the right to use the film, sound recording, advertising matter, patent, design, trade mark, copyright or other property and any other circumstances which in the opinion of the CSARS are relevant.
	Section 11(g)	Determination by CSARS of the fair and reasonable value of improvements made by taxpayer

Act	Section	Description
	Section 11(gA)	Determination by CSARS of the probable duration of use of an invention, patent, design, trade mark, copyright, or property or knowledge
	Section 11(j)	Determination of a doubtful debt allowance by the CSARS
	Section 11(l)(i)	Sum contributed by employer for benefit of employees to any pension fund, provident fund or benefit fund: Determination by CSARS that lump sum contributions shall be deducted in a series of annual instalments and in specific proportions.
	Section 11(l)(i)	Determination by CSARS of reasonable amount to be deducted where CSARS is satisfied that aggregate of contributions and the total remuneration accrued to such employee in respect of his employment by the employer is excessive or unjustifiable In relation to the value of the services rendered by that employee to the employer.
	Section 11(l)(iii)	Determination by CSARS of fair and reasonable remuneration in relation to the value of the services rendered by an employee to an employer.
	Section 12B(6)	Determination by CSARS of allowable amount in respect of the expired portion of a lease or any portion of the interest or right which has not been disposed of by a lessor.
	Section 12C(1)(a),(b) and par (c) to the proviso	Determination by CSARS whether a process carried on by the taxpayer is similar to a process of manufacture.
	Section 12E(1)	Determination by CSARS whether a process carried on by the taxpayer is similar to a process of manufacture.
	Section 12J(6)	Decision by CSARS to withdraw the approval granted to a venture capital company where that company during the year of assessment failed to comply with the requirements listed in section 12J(5).
	Section 12J(6A)	Decision by CSARS to withdraw the approval granted to a venture capital company does not comply with the requirements of section 12J(6A).
	Section 12J(7)	Decision by CSARS to approve a company as a venture capital company, if the approval was withdrawn and the non-compliance which resulted in the withdrawal has been rectified to the satisfaction of the CSARS.
	Section 13(1)(b), (d), (dA), (f),	Determination by CSARS whether a process carried on by the taxpayer is similar to a process of manufacture.
	Section 15(b)	Determination by CSARS that any expenditure incurred by the taxpayer on prospecting operations (or other incidental expenditure) shall be deducted in a series of annual instalments and in specific proportions.
	Section 22(1)(a)	Determination by CSARS of the just and reasonable amount by which the value of trading stock has been diminished by reasons of damage, deterioration, change of fashion, decrease in the market value or for any other reason satisfactory to the CSARS.
	Section 22(3)(b)	The further costs which in terms of paragraph (a)(i) are required to be included in the cost price of any trading stock shall be such costs as in terms of any generally accepted accounting practice approved by the CSARS should be included in the valuation of such trading stock.
	Section 23H(2)	Decision by the CSARS that the apportionment of expenditure in accordance with section 23H(1) be made in such other manner as to him appears fair and reasonable, if satisfied that the apportionment of the expenditure does not reasonably represent a fair apportionment of such expenditure in respect of the goods, services or benefits to which it relates.
	Section 23K	The CSARS may on application by an acquiring company, issue a directive that section 23K(2) does not apply in respect of an amount of interest incurred as contemplated in that subsection provided certain requirements are met.
	Section 24(2)	Credit agreements and debtors allowance: If at least 25 per cent of the amount payable under an agreement in terms of this section only becomes due and payable on or after the expiry of a period of not less than 12 months after the date of the agreement, the CSARS may make such further allowance as under the special circumstances of the trade of the taxpayer

Act	Section	Description
		seems to him reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period.
	Section 24A(6)	A company which not yet been recognized under the provisions of this Act as a public company, may at the request of the taxpayer, be deemed to be a public company, if the CSARS is satisfied that such company will be so recognized.
	Section 24C(1) and (2)	If the income of a taxpayer includes or consists of an amount received by or accrued to him in terms of any contract and the CSARS is satisfied that such amount will be utilized in whole or in part to finance future expenditure which will be incurred by the taxpayer in the performance of his obligations under such contract, taxpayer may deduct an allowance as the CSARS may determine, in respect of so much of such future expenditure as in the opinion of the CSARS relates to the said amount.
	Section 24D(1)	Taxpayer may deduct expenditure actually incurred by the taxpayer, as the CSARS is satisfied was so incurred, directly in the performance of any act ordered, performed or executed under the provisions of the National Key Points Act, 1980, or any National Key Point or Key Point as defined in section 1 of that Act.
	Section 24I(1)	The CSARS may prescribe an alternative rate to any of the prescribed rates listed in the definition of "ruling exchange rate" to be applied by a person in such particular circumstances, if such alternative rate is used for accounting purposes in terms of generally accepted accounting practice.
	Section 24I(7)	Gains or losses on foreign exchange transactions: Decision by CSARS that exchange difference or premium or other consideration shall not longer be carried forward to subsequent years of assessment.
	Section 24J(9)	Any company whose business comprises the dealing in instruments, interest rate agreements or option contracts may elect that certain provisions of section 24J, section 24K and section 24L shall not apply. This election shall not take effect unless the CSARS has approved the methodology to be applied by the company to determine the market value in respect of such instruments, interest rate agreements or option contracts and the manner in which such market value is to be taken into account in the determination of the taxable income of the company.
	Section 25A	Where a taxpayer who is married in community of property has lived apart from his spouse in circumstances which, in the opinion of the CSARS, indicate that the separation is likely to be permanent, his taxable income shall be determined at such amount as the CSARS, having regard to the circumstances of the case, determines to be the amount at which such taxpayer's taxable income would have been determined if such taxpayer had not been married in community of property.
	Section 27(2)(g)	Determination by CSARS of an allowance in respect of losses suffered by an agricultural co-operative in consequence of physical damage to or deterioration of pastoral, agricultural and other farm products held by such agricultural co-operative on behalf of any control board established under the provisions of the Marketing Act, 1968.
	Section 28(9)	Any deduction contemplated in section 28(7) shall be subject to such adjustments as may be made by the CSARS.
	Section 30(3)(c) & (f)	The CSARS shall approve a public benefit organisation if satisfied that it was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy.
	Section 30(3)(f)	The CSARS shall approve a public benefit organisation if satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph 10 (iii) of Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided.
	Section 30(3B)	Where an organisation applies for approval, the CSARS may approve that organisation with retrospective effect, to the extent that the CSARS is satisfied that that organisation during the period prior to its application complied with the requirements of a "public benefit organisation" as defined in section 30(1).

Act	Section	Description
	Section 30(8)	The provisions of section 30 shall not, if the CSARS is satisfied that the non-compliance giving rise to the withdrawal contemplated in section 30(5) has been rectified, preclude any organisation from applying for approval in the year of assessment following the year of assessment during which the approval was so withdrawn by the CSARS.
	Section 30A(2)(c)	The CSARS must approve a recreational club for the purposes of section 10(1)(cO), if the CSARS is satisfied that the club is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy.
	Section 30A(4)	Where a club applies for approval, the CSARS may approve that club with retrospective effect, to the extent that the CSARS is satisfied that that club during the period prior to its application complied with the requirements of a "recreational club" as defined in section 30A(1).
	Section 30A(5)	Notification by the CSARS of the intention to withdraw the approval of the recreational club if no corrective steps are taken within a period stated in that notice, where the CSARS is satisfied that the recreational club in any material respect or on a continuous or repetitive basis, failed to comply with the provisions of section 30A, or the constitution or other written instrument under which it was established.
	Section 30B(5)	Notification by the CSARS of the intention to withdraw the approval of the entity if corrective steps are not taken within the period stated in the notice, where the CSARS is satisfied that an entity has in any material respect or on a continuous or repetitive basis, failed to comply with this section, or the constitution or written instrument under which it was established,
	Section 31	Determination of tax payable in respect of international transactions to be based on arm's length principle.
	Section 37A(3)	Closure of rehabilitation companies and trusts: Company or trust must be wound-up or liquidated and its assets remaining after the satisfaction of its liabilities must be transferred to an account or trust prescribed by the Cabinet member responsible for mineral resources as approved of by the CSARS if the CSARS is satisfied that such company or trust satisfies the objects of section 37(1)(a).
	Section 37A(8)(a)	Decision by the CSARS to include an amount equal to twice the market value of all of the property held in the company or trust on the date of the contravention as taxable income if satisfied that the company or trust contravened any provision of this section.
	Section 37A(8)(b)	Decision by the CSARS to include the amount contemplated in section 37A(8)(a) in the income of the person contemplated in section 37A(1)(d) if satisfied that the company or trust contravened any provision of section 37.
	Section 38(2)(a)	Decision by CSARS to recognise a company, all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, as a public company if satisfied that the requirements of section 38(2)(a) are met.
	Section 38(2)(b)	Decision by the CSARS to recognise any other company, not being a private company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008), nor a close corporation, as a public company if satisfied that the requirements of section 38(2)(b) are met.
	Section 38(4)(a)	The general public in relation to any company shall be deemed not to include any relative of any director of the company, unless it is shown to the satisfaction of the CSARS that such relative, if he is not the spouse or minor child of such director, has at all times which the CSARS considers relevant exercised his rights as a shareholder in the company or in any other company through which such relative is interested in the shares of the company, independently of such director.
	Section 38(4)(b)	The general public in relation to any company shall be deemed to include any benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or any trust or institution which in the opinion of the CSARS is of a public character.

Act	Section	Description
	Section 38(4)(c)	A person shall be deemed to be interested in only the portion of shares as the CSARS is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders.
	Section 38(4)(d)	Where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the equity shares of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as the CSARS is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.
	Section 44(13)(a)	The provisions of section 44 do not apply where an amalgamated company has not, within a period of 36 months after the date of the amalgamation transaction, or such further period as the CSARS may allow, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister.
	Section 47(6)(c)(i)	The provisions of section 47 do not apply where the liquidating company has not, within a period of 36 months after the date of the liquidation distribution, or such further period as the CSARS may allow, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister.
	Section 57	Disposals by companies under donations at the instance of any person: If any property is disposed of by any company at the instance of any person and that disposal would have been treated as a donation had that disposal been made by that person, that property must be deemed to be disposed of under a donation by that person.
	Section 62(1)(c)(iii)	Determination of the value of any property in the case of a right of ownership in any movable or immovable property subject to usufructuary or other like interest in favour of any person.
	Section 62(1)(d)	Determination of the value of property for purposes of donations tax.
	Section 62(2)(a)	Determination of the annual value of the right of enjoyment of a property for purposes of donations tax.
	Section 62(4)	If the CSARS is of the opinion that the amount shown in any return as the fair market value of any property is less than the fair market value of that property, he or she may fix the fair market value of that property.
	Section 80B	Determination by the CSARS of the tax consequences of any impermissible avoidance arrangement for any party to that arrangement. The CSARS must make compensating adjustments that the CSARS is satisfied are necessary and appropriate to ensure the consistent treatment of all parties to the impermissible avoidance arrangement.
	Section 103(2)	Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income.
	Paragraph 6(3) of the First Schedule	Any farmer who classifies any kind of his livestock on a basis other than that applied by a regulation referred to in paragraph 6, may adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the CSARS with due regard to the values fixed by regulation.
	Paragraph 7 of the First Schedule	The exercise of an option under paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer may be varied by him in respect of any subsequent year of assessment, save with the consent and approval of the CSARS and upon such terms as the CSARS may require.
	Paragraph 9 of the First Schedule	The value to be placed upon produce included in any return shall be such fair and reasonable value as the CSARS may fix.
	Paragraph 13(1)(a) and (b) of the First Schedule	Decision by CSARS that the cost of the livestock be allowed, at the option of such farmer, as a deduction in the determination of the farmer's taxable income for the year of assessment during which the livestock was so sold, provided certain conditions as set out in the section is met.
	Paragraph 14(2)(b) of the First Schedule	Determination by the CSARS of the consideration payable for any plantation disposed of by a farmer in the absence of an agreed amount between the parties to the transaction.

Act	Section	Description
	Paragraph 19 of the First Schedule	Determination by the CSARS of a taxpayer's annual average taxable income from farming.
	Paragraph 20(1) of the First Schedule	Determination of the normal tax chargeable in respect of the taxable income of a taxpayer (other than a company) who derives income from farming operations, made an election as provided in paragraph 20(6) and further proved to the CSARS that certain conditions in this paragraph had been met.
	Paragraph 20(1A) of the First Schedule	Where it is shown by the taxpayer to the satisfaction of the CSARS that the land referred to in paragraph 20(1) was acquired within the period of twelve months after the owner accepted an offer to purchase the land, it shall be deemed for purposes of that paragraph that such land was acquired on the date on which the offer was accepted.
	Paragraph 20(2) of the First Schedule	Determination of the taxpayer's abnormal farming receipts or accruals for the purposes of paragraph 20(1)(c).
	Paragraph 20(3)(f) of the First Schedule	Determination of livestock profits or loss or average livestock profits by the CSARS where the disposals of livestock took place otherwise than in the ordinary course of farming or because of any unusual circumstances.
	Paragraph 4(3) of the Second Schedule	If a person who is a member of a provident fund retires from such fund before he or she reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such person in consequence of or following upon such retirement shall, unless the CSARS having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 of the Schedule.
	Paragraph 14(6) of the Fourth Schedule	Decision by CSARS to impose a penalty where an employer fails to render to the CSARS a return referred to in paragraph 14(3) within the period prescribed in that paragraph.
	Paragraph 18(1)(d) of the Fourth Schedule	Exemption from payment of provisional tax of any natural person 65 years or older, provided the CSARS is satisfied that the conditions in paragraph 18(1)(d) is met.
	Paragraph 20(1)(a) of the Fourth Schedule	Determination of the penalty to be imposed by the CSARS in addition to the normal tax chargeable in respect of the taxpayer's taxable income in the event of taxable income being underestimated.
	Paragraph 20(2) of the Fourth Schedule	Decision by CSARS to remit the penalty if satisfied that the amount of any estimate was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated.
	Paragraph 20A(1) of the Fourth Schedule	Determination of the penalty to be imposed by the CSARS in addition to the normal tax chargeable in respect of the taxpayer's taxable income in the event of failure to submit an estimate of taxable income timeously.
	Paragraph 20A(2) of the Fourth Schedule	Decision by CSARS to remit the penalty if satisfied that the provisional taxpayer's failure to submit an estimate timeously was not due to intent to evade or postpone the payment of provisional tax or normal tax.
	Paragraph 21(2) of the Fourth Schedule	The period referred to in paragraph 21(1)(a) shall be reckoned from such date as the CSARS upon application of the taxpayer and having regard to the circumstances of the case may approve.
	Paragraph 24 of the Fourth Schedule	Decision by CSARS to absolve any provisional taxpayer from making payment of provisional tax if satisfied that the taxable income which may be derived by the taxpayer cannot be estimated on the facts available at the time when payment of the amount in question has to be made.
	Paragraph 27(1) of the Fourth Schedule	Determination of the penalty to be imposed by the CSARS on the late payment of provisional tax.
	Paragraph 10(3) of the Sixth Schedule	Decision by CSARS that a person remains a registered micro business where the CSARS is satisfied that the increase in the qualifying turnover to an amount greater than the amount described in paragraph 2 is of a nominal and temporary nature.
	Paragraph 11(2) of the Sixth Schedule	The estimate described in paragraph 11(1)(a) may not be less than the taxable turnover of the previous year of assessment unless the CSARS, having regard to the circumstances, agrees to accept the lower estimate.
	Paragraph 11(7) of the Sixth Schedule	Where the CSARS is satisfied that the estimate described in paragraph 11(4)(a) was not deliberately or negligently understated and was seriously

Act	Section	Description
		made based on the information available, or is partly so satisfied, the CSARS must waive the penalty charged in terms of paragraph 11(6) in full or in part.
	Paragraph 13 of the Sixth Schedule	The total amount received from carrying on business activities by a connected person in relation to a person described in paragraph 2(1)(a) or (b) must be included in the qualifying turnover of that person where the CSARS is satisfied that certain conditions are met.
	Paragraph 2(h) of the Seventh Schedule	Debt owing by the employee to the employer extinguished by prescription: Employer deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the debt owing or caused the running of the prescription to be interrupted, unless it is shown to the satisfaction of the CSARS that the employer's failure to recover the debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee.
	Paragraph 3(2) of the Seventh Schedule	Re-determination by the CSARS of the cash equivalent of the value of a tax benefit, if no determination is made, or if such determination appears to be incorrect.
	Paragraph 6(4)(b) of the Seventh Schedule	Determination of the value to be placed on the private or domestic use of an asset by an employee where the asset consists of any equipment or machine which the employer concerned allows his employees in general to use from time to time for short periods.
	Paragraph 7(6) of the Seventh Schedule	Determination of the value to be placed on the private use of a motor vehicle where more than one motor vehicle is made available by an employer to a particular employee at the same time and the CSARS is satisfied that each such vehicle was used by the employee primarily for business purposes.
	Paragraph 7(7) of the Seventh Schedule	Decision by CSARS to reduce the value placed on the private use of a vehicle where it is proved to the satisfaction of the CSARS that accurate records of distances travelled for business purposes are kept.
	Paragraph 7(8) of the Seventh Schedule	Decision by CSARS to reduce the value placed on the private use of a vehicle where it is proved to the satisfaction of the CSARS that accurate records of distances travelled for private purposes are kept and the employee bears the costs as set out in paragraph 7(8) in relation to such vehicle.
	Paragraph 11 of the Seventh Schedule	Consent by the CSARS that a different method of calculation of the cash equivalent or portions thereof may be employed where the CSARS is satisfied that such method achieves substantially the same result as the methods provided in paragraphs 11(1) and (2).
	Paragraph 12A(3) of the Seventh Schedule	Decision by CSARS that the apportionment be made in such other manner as appears fair and reasonable, where the CSARS is satisfied that the apportionment of the contribution or payment amongst all employees in accordance with paragraph 12A(2) does not reasonably represent a fair apportionment of that contribution or payment amongst the employees.
	Paragraph (bb)(A) of proviso to paragraph 12A(6)(e) of the Eighth Schedule	Paragraph 12A(6)(e) will not apply if the company has not, within 36 months of the date on which the debt is reduced or such further period as the CSARS may allow, taken the steps contemplated in section 41(4) to liquidate, wind up, deregister or finally terminate its existence.
	Paragraph 29(2A) of the Eighth Schedule	Circumstances where the CSARS must, after consultation with the recognised exchange and the Financial Services Board determine the market value of an financial instrument.
	Paragraph 29(7) of the Eighth Schedule	Decision by CSARS to adjust the value of an asset if not satisfied with any value at which an asset has been valued.
	Paragraph 31(2)(a) of the Eighth Schedule	Determination by the CSARS of the annual value of the right of enjoyment of any asset which is subject to any fiduciary, usufructuary or other like interest.
	Paragraph 65(1)(d) of the Eighth Schedule	Decision by the CSARS to extend the period within which the contract must be concluded or asset brought into use.
	Paragraph 66(1)(e) of the Eighth Schedule	Decision by the CSARS to extend the period by which the contracts must be concluded or assets brought into use.
	<i>Sections listed in 32:</i>	

Act	Section	Description
Value-Added Tax Act, 1991	Section 23(7)	Decision by the CSARS notifying that person of the CSARS's refusal to register that person in terms of this Act.
	Section 24(6) or (7)	Decision by the CSARS notifying a person of the CSARS's decision to cancel any registration of that person in terms of this Act or of the CSARS's refusal to cancel such registration.
	Section 17(1)	Decision by the CSARS refusing to approve a method for determining the ratio contemplated in section 17(1).
	Section 50A(3) and (4)	Decision made by the CSARS and served on that person in terms of section 50A(3) or (4) of the Act.
Securities Transfer Tax Act, 2007	Section 9(3)	Decision by the CSARS that any transaction, operation or scheme or understanding was a scheme to obtain an undue tax benefit. The decision is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, 2011.
Mineral and Petroleum Resources Royalty Act, 2008	Section 12(2)	Decision by the CSARS that the disposal, transfer, operation, scheme or understanding would result in the avoidance or postponement of liability for the royalty, or in the reduction of the amount thereof. The decision is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, 2011.
Tax Administration Act, 2011	Section 104(2)(a)	Decision by the SARS under section 104(4) not to extend the period for lodging an objection.
	Section 104(2)(b)	Decision by the SARS under section 107(2) not to extend the period for lodging an appeal.
	Section 190(6)	Decision by the SARS not to authorise a refund under this section.
	Section 220	Decision by SARS not to remit a 'penalty' imposed under Chapter 15 in whole or in part.
	Section 224	Decision by SARS to impose an understatement penalty under section 222 or a decision by SARS not to remit an understatement penalty under section 223(3).
	Section 231(2)	Decision by a senior SARS official to withdraw voluntary disclosure relief.

Annexure D – Clerk of the Tax Board

Name	Surname	Region	Position	Contact Number	E-mail Address
Michelle	Chokoe	Limp, NW, Mpu	Clerk of the Tax Board	015 299 7308	MChokoe@sars.gov.za
Zanele	Madonsela	GN	Clerk of the Tax Board	012 340 3534	ZMadonsela@sars.gov.za
Gugu	Mavuso	GN	Clerk of the Tax Board	012 340 3119	GMavuso@sars.gov.za
Tshifhiwa	Dau	GC2	Clerk of the Tax Board	011 602 4242	TDau@sars.gov.za
Sibongile	Ngema	GC1	Clerk of the Tax Board	011 602 4260	SNgema@sars.gov.za
Gina	Mackenzie	GS	Clerk of the Tax Board	011 862 5615	GMackenzie@sars.gov.za
Evelyn	Banda	CTN	Clerk of the Tax Board	021 413 6280	EBanda1@sars.gov.za
Kim	Dean	DBN	Clerk of the Tax Board	031 328 7542	KDean@sars.gov.za
Francie	Smith	FS	Clerk of the Tax Board	051 505 3165	FSmith@sars.gov.za
Linda	Els	EC	Clerk of the Tax Board	041 507 7607	LEls@sars.gov.za
Refilwe	Makhafola	TCEI, GC	Administrator	011 602 3209	RMakhafola@sars.gov.za
Gavaza	Shilubana	HO	Coordinator	012 422 6726	GShilubana@sars.gov.za



Notice of Objection

The completed form together with the supporting documentation must be returned to the SARS office where the taxpayer is registered for the applicable tax.

Full name(s) of taxpayer or Trading name															
Taxpayer reference number												SARS office where taxpayer is registered for applicable tax			

Contact details (For purpose of further correspondence regarding the objection)

Full name(s)											Postal address					
ID Number													Code			
Tel number											Physical address					
Fax number																
E-mail												Code				

Assessment detail (Mark applicable tax type with an X)

Type of Tax:	Income Tax/STC	<input type="checkbox"/>	VAT	<input type="checkbox"/>	PAYE/SDL/UIF	<input type="checkbox"/>	Estate Duty	<input type="checkbox"/>	Donations Tax	<input type="checkbox"/>	Other	<input type="checkbox"/>					
If 'Other', please specify																	
Nature of the amount in dispute:	Income	<input type="checkbox"/>	Deduction	<input type="checkbox"/>	Additional tax /understatement penalty	<input type="checkbox"/>	Interest	<input type="checkbox"/>	Penalty	<input type="checkbox"/>	Other	<input type="checkbox"/>					
Tax Period	C	C	Y	Y	M	M	D	D	Date of assessment/notice	C	C	Y	Y	M	M	D	D
Amount of tax in dispute in terms of the assessment/notice	R																

Grounds of objection

In the event of a discrepancy/dispute you are required to mark the nature of dispute with an X in the appropriate box(es) to enable SARS to consider the objection. Please note that you may select more than one box. Provide detailed grounds upon which the objection is made on a separate page(s) together, with any supporting documentation attached thereto.

Processing-related objections

- There is a miscalculation on the assessment in that an amount(s) was taken into account/not taken into account to determine the liability for tax.
- Penalty imposed for the late rendition of a tax return must be remitted.
- Penalty for late payment of tax must be remitted.
- Penalty for underestimation of provisional tax must be remitted.
- Interest on underpayment of provisional tax must be remitted.
- I do not agree with a notice/decision issued by SARS which in terms of legislation, is subject to objection an appeal.
- Other (please elaborate)

Factual and interpretative disputes

- Additional tax /understatement penalty in the amount of R must be remitted to an amount of R
- Interest in the amount of R imposed must be remitted.
- An amount of R claimed as a deduction but which has been disallowed must be allowed.
- An amount of R included as income by SARS must not be so included.
- Other (please elaborate)

Extension request:

The objection is filed late on when the 30 days from date of assessment/notice was
 (The reason for the late submission must be justified in full and attached to this notice.)

Completed by:

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Full name	Signature	Capacity	Date

This notice must be signed by the taxpayer or representative taxpayer. Any other person signing on behalf of a taxpayer or representative taxpayer must complete the addendum to this notice and submit the dispute resolution Power of Attorney.



Addendum to notice of objection

The completed form must be attached to the ADR1 Notice of objection and returned to the SARS branch office where the taxpayer is registered for the applicable tax. Please complete the applicable parts only.

Name of taxpayer or Trading name
Taxpayer reference number

1. Grounds of objection (Grounds on which your objection is based):

This part must be completed by all taxpayers. The objection will not be considered unless the grounds of the objection have been supplied.

2. Reasons for late submission of objection:

The taxpayer must deliver the objection to SARS within 30 days after -
(i) in the case where the taxpayer has requested reasons for an assessment, either the date of the notice by SARS that adequate reasons have been provided or the date that reasons were furnished by SARS, as the case may be; or
(ii) in any other case, the date of the assessment.
Where the objection is delivered to SARS later than the prescribed period reasons for the late delivery must be supplied before your objection can be considered.

3. Representative statement:

Complete this part only if you signed the ADR1 Notice of objection on behalf of another taxpayer. (It is however not applicable to a representative taxpayer)

Reasons why the taxpayer or taxpayer representative is unable to sign the objection

Do you have the necessary power of attorney to sign on behalf of the taxpayer or taxpayer representative?

Is the taxpayer or taxpayer representative aware of the objection and does he agree with the grounds thereof?

Annexure G – Form ADR2



SOUTH AFRICAN REVENUE SERVICE

ADR 2

Notice of Appeal

The completed form together with the supporting documentation must be returned to the SARS office where the taxpayer is registered for the applicable tax.

Full name(s) of taxpayer or Trading name

Taxpayer reference number SARS office where taxpayer is registered for applicable tax

Contact details (For purpose of further correspondence regarding the objection)

Full name(s) Postal address

Tel number Code

Fax number Physical address

E-mail Code

Assessment detail (Mark applicable tax type with an X)

Type of Tax: Income Tax/STC VAT PAYE/SDL/UIF Estate Duty Donations Tax Other

If 'Other', please specify

Nature of the amount in dispute: Income Deduction Additional tax / understatement penalty Interest Penalty Other

Tax Period Date of disallowance of objection

Amount of tax in dispute in terms of the notice of disallowance R

Grounds of appeal

! Please indicate which of the grounds specified in your objection you are still relying on.
! If the space provided is not sufficient, reasons should be provided in a separate document.

Extension request:

The 30 days for lodging the appeal expired on:

The reason for the late appeal is:

Alternative Dispute Resolution (ADR)

Choose to refer to ADR (Alternative Dispute Resolution) YES NO If YES, read and sign the terms on page 2 of

I hereby request that this dispute, the details of which are contained in this notice, be referred for Alternative Dispute Resolution

Signature

Full name Signature Date Capacity

Version 2013.0.1

THE TERMS OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Notification to taxpayer:-

The SARS has introduced an option of resolving tax disputes within an alternative dispute resolution procedure. ADR is not intended to be a "court case", but an opportunity to settle differences of fact and interpretation of law. This option is available in addition to a taxpayer's right to appeal to the Tax Court or Board, and any delays caused through the ADR procedure will not affect this right.

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 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 under certain circumstances.
- 10.3 Neither party, except under certain circumstances, 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.

I hereby agree and confirm that the terms of the ADR process shall apply to the resolution of this dispute:

Signed at	this	day of	20	
Full name	Signature	Capacity	Taxpayer reference number	

Annexure H – Form NOA Look & Feel

Notice of Appeal

Tax Number NTXRF001

NOA1

Applicant Details - Individual INDIF01

Sumame Home Tel No.

First Two Names Bus Tel No.

ID No. Passport No. Passport Country (e.g. South Africa = ZAF) Cell No.

Contact Email

Applicant Details - Company / Close Corporation / Government / Foreign Entity COMIF01

Sumame or Registered Name

Trading or Other Name

CK No. Bus Tel No. Fax No. Cell No.

Contact Email

Particulars of Representative (Person Dealing with Dispute on Behalf of Taxpayer) REPIF01

Sumame Initials

ID No. Passport Country (e.g. South Africa = ZAF) Passport No. Cell No.

Tel No. Fax No. Tax Practitioner Registration No. **PR -**

Capacity: Public Officer Caretaker / Trustee / Liquidator / Executor / Administrator Partner Treasurer Accounting officer for Local / Public Authority / Accountant Sole Proprietor Tax Practitioner Legal Representative / Attorney

Email

Are you signing on behalf of the taxpayer? Y N If yes, do you have a power of attorney from the taxpayer? Y N Is the taxpayer aware of and agree with the grounds of dispute? Y N

Reason why taxpayer is unable to sign this dispute

Postal Address for Delivery of Notice (Correspondence)

Please ensure that you capture your postal address in the following sequence: Box / Bag Number, Suburb / District, City, Country Code, Postal Code. For street delivery, please follow the physical address format.

Postal Code

Declaration PDAIF01

I declare that:

- The information furnished in and with this form is true and correct in every respect; and
- I have the necessary records to support all my declaration on this form which I will retain for inspection purposes for a period of five years.

Date (CCYYMMDD)

For enquiries go to www.sars.gov.za or call 0800 00 7277

XXXXXXXXXXXX

XXXXXXXXXXXX

Please ensure you sign over the text lines above

Ba35a57b0e9527741eae01111

Ba35a57b0e9527741eae01111

Assessment Under Dispute

Annexure J - Rules regulating the subpoena of witnesses

Proceedings of the Magistrates' Courts of South Africa:

Rule 26: Subpoena, interrogatories and commission *de bene esse*

B26.2 Registrar or clerk of the court one or more subpoenas

B26.3 Evidence of any person is to be taken on commission before any Commissioner within the Republic

B26.4 Has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence

B26.5 The court may set aside service of any subpoena

Rule 26

- (1) Any party desiring the attendance of any person to give evidence at a trial, may as of right, without any prior proceeding whatsoever, sue out from the office of the **registrar or clerk of the court one or more subpoenas** for that purpose, each of which subpoena shall contain the names of not more than four persons, and the service thereof upon any person therein named shall be effected by the sheriff in the manner prescribed by rule 9, and the process of subpoenaing such witness shall correspond substantially to Form 24.
- (2) (a) Where the **evidence of any person is to be taken on commission before any Commissioner within the Republic**, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.
(b) In the case of evidence taken on commission, such process shall be sued out by the party desiring the attendance of the witness and shall be issued by the Commissioner.
- (3) If any witness **has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence**, the subpoena shall specify such document or thing and require him or her to produce it to the court at the trial.
- (4) There shall be handed to the sheriff together with a subpoena so many copies thereof as there are witnesses to be summoned and also the sum of money that the party for whom they are to be summoned considers that the sheriff shall pay or offer to the said witnesses for their conduct money.
- (5) **The court may set aside service of any subpoena** if it appears that the witness was not given reasonable time to enable him or her to appear in pursuance of the subpoena.

Discussion of rule 26

B26.2 Registrar or clerk of the court one or more subpoenas The power to permit the issue of a subpoena is derived from the Magistrates' Courts Act, 1944 (Act No. 32 of 1944, section 51) and the rule gives a party who desires the attendance of someone to give evidence or to produce a document or thing at a trial, the power, as of right, to sue out from the office of the registrar one or more subpoenas for that purpose in accordance with the form prescribed by the rules.

There are six principles involved:

- (a) the duty to give evidence resting upon the public;
- (b) the element of sacrifice which is due from every member of the community;
- (c) society as a whole has a right to the evidence;
- (d) exemptions from giving evidence are limited;
- (e) witnesses ought to be accommodated; and
- (f) witnesses are equal.

B26.3 Evidence of any person is to be taken on commission before any Commissioner within the Republic

Evidence on commission can be taken within the Republic or beyond its borders. It must appear that the taking of evidence on commission is "convenient or necessary for the purposes of justice". The words are disjunctive and form a jurisdictional fact. In addition, or as part of the requirement, the evidence must be relevant to an issue in dispute.

In considering the application, the court exercises a discretion and the following questions may have to be considered:

- How material (as distinct from merely being relevant) is the evidence? Materiality may range from crucial to peripheral.
- How substantial are the prospects that the evidence would indeed be forthcoming if the commission is authorised? An assessment of this issue could depend on whether the witness concerned would be compellable; whether the commission would be held within the country; whether the witness will have valid grounds on which he could refuse to testify; and whether he has committed himself to giving such evidence.
- Has the party seeking the order to adduce the evidence on commission acted with proper diligence in pursuing alternative remedies (short of the order sought) that might reasonably have been available to it?
- Is the commission being sought on *bona fide* grounds to advance a legitimate case or is there reason to suspect that it is a tactical stratagem designed to secure some unfair delay or other illegitimate advantage?
- How convenient and expensive will the proposed hearing before the commission be? This in itself is a relative inquiry.

- Where is the balance of prejudice?
- What would the relative importance have been for the trial court itself to see and hear the particular witness?

Where the attendance of a witness cannot be enforced, the court will as a rule allow the evidence to be taken on commission unless it appears that the other side is likely to be prejudiced thereby or that a miscarriage of justice may result. The court may exercise its discretion not only in respect of formal evidence but also in relation to contentious issues. It must, however, be satisfied that the evidence is material and further that the person is unwilling or unable to attend or give evidence in court.

B26.4 Has in his or her possession or control any deed, instrument, writing or thing which the party requiring his or her attendance desires to be produced in evidence

The subpoena issued in this regard is known as a *subpoena duces tecum*.

A witness who has been subpoenaed merely to produce documents need not be sworn. If, however, he is in addition required to identify the documents, he must be sworn and can then be cross-examined by the other party.

If the witness is, for instance, required to produce a deed, he must hand it over to the registrar as soon as possible (presumably on the day of the trial) unless he claims privilege. If he claims privilege, the court will first decide on the validity of his claim before he can be obliged to hand over the document. The parties to the litigation are entitled to inspect and make copies or transcriptions of the matter in the hands of the registrar and the subpoenaed witness is thereafter entitled to its return.

Rule 26 will exclude the provisions of PAIA after proceedings have been instituted. Reference to witness should be widely interpreted, and it is not required that a party intend to call a person as a witness and/or introduce a document into evidence for a subpoena *duces tecum*.

B26.5 The court may set aside service of any subpoena

The court may set aside service of any subpoena if it appears that the witness was not given reasonable time to enable him or her to appear in pursuance of the subpoena. The court may also set aside a subpoena if the subpoena amounts to an abuse of the process of the court. The setting aside can take place at any stage after issue of the subpoena and need not be decided by the trial court. Not only the person subject to the subpoena but also any other interested party may apply for the setting aside on the ground of abuse. Where documents can be obtained by a subpoena *duces tecum*, section 7(1) of the Promotion of Access to Information Act 2 of 2000 precludes a party from using the mechanisms provided by that Act in order to obtain the documents.

Annexure K – Example: Notice of Motion

IN THE TAX COURT OF SOUTH AFRICA

SEATED IN PRETORIA

Case No: _____

In the matter between:-

(Name of Taxpayer)

Applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN

REVENUE SERVICE

Respondent

NOTICE OF MOTION

[In terms rule 52 of the rules issued under s103 of the Tax Administration Act, 2011]

PLEASE TAKE NOTICE that application will be made on behalf of the above-named Applicant for the following relief:

1. That the Respondent be ordered to take a decision in respect of an objection lodged by the Applicant on ? *(date)* as required by rule 9 of the rules issued in terms of under s103 of the Tax Administration Act, 2011;
2. etc. etc.
3. That the Respondent be ordered to pay the costs of suit on an attorney and client scale;
4. Further and/or alternative relief.

AND PLEASE TAKE NOTICE that the Affidavit of ? *(applicant)* and ? will be used in support hereof.

TAKE FURTHER NOTICE that the Applicant has appointed ?, at ? as the address at which it will accept notice and service of all process in these proceedings.

TAKE FURTHER NOTICE that if you intend opposing this application you are required -

- (a) to notify Applicant's attorney in writing on or before the ? day of ? 20?? *(10 days after delivery of Notice of Motion)*;
- (b) within 15 (fifteen) days after you have so given notice of your intention to oppose the application, to file your Answering Affidavit, if any;
- (c) to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings;
- (d) should no such notice of intention to oppose be given, the application will be made on the ? at 10:00 *(15 days after service of Notice of Motion)* or as soon thereafter as the Applicant may be heard.

DATED AT _____ ON THE _____ DAY OF _____.

.....
(Signature & address)

To: The Registrar of the Tax Court

Annexure L – Example: Notice of Intention to Oppose

IN THE TAX COURT OF SOUTH AFRICA
SEATED IN PRETORIA

Case No: _____

In the matter between:-

(Name of Taxpayer)

Applicant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

NOTICE OF INTENTION TO OPPOSE

[In terms rule 52 of the rules issued under s103 of the Tax Administration Act, 2011]

PLEASE TAKE NOTICE that the Respondent has appointed ?, at ? as the address at which it will accept notice and service of all process in these proceedings.

DATED AT _____ ON THE _____ DAY OF _____.

.....
(Signature & full address)

To: The Applicant ?
At address: ?

And
To: The Registrar of the Tax Court

Annexure M – Example: Founding/Opposing/Replying/Replicating Affidavit

IN THE TAX COURT OF SOUTH AFRICA
SEATED IN PRETORIA

Case No: _____

In the matter between:-

(Name of Taxpayer)

Applicant

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

FOUNDING / OPPOSING / REPLYING / REPLICATING AFFIDAVIT

I, the undersigned,

?

do hereby make oath and state as follows:-

1. I am an adult [*female/male*] employed as ? a [*capacity*] at ? [*office& address*].
2. (*Contents of affidavit*)...

DEPONENT

Date.....Place.....

1. I certify that prior to my administering the prescribed oath/affirmation*, I put the following questions to the deponent and wrote down his answers thereto in his presence:

a) Do you know and understand the contents of the above statement?	Answer.....
b) Do you have any objection to taking the prescribed oath/affirmation*?	Answer.....
c) Do you regard the prescribed oath/affirmation*as binding on your conscience?	Answer.....
2. I certify that the deponent acknowledges that he knows and understands the contents of this statement which was sworn to/affirmed* and signed by the deponent in my presence.

Justice of the Peace / Magistrate/ Commissioner of Oaths*

Designation (Rank).....

Date.....Place.....

Full first names and surname.....

Address.....

*Delete whichever is not applicable

To: (*the other party*) ?
At address: ?

And
To: The Registrar of the Tax Court

**CHAPTER 9
DISPUTE RESOLUTION**

***Part A
General***

101. Definitions.

In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings—

‘**appellant**’, except in Part E of this Chapter, means a person who has noted an appeal against an assessment or ‘decision’ under section 107;

‘**decision**’ means a decision referred to in section 104 (2);

‘**registrar**’ means the registrar of the tax court; and

‘**rules**’ mean the rules made under section 103.

102. Burden of proof.

(1) A taxpayer bears the burden of proving—

- (a) that an amount, transaction, event or item is exempt or otherwise not taxable;
- (b) that an amount or item is deductible or may be set-off;
- (c) the rate of tax applicable to a transaction, event, item or class of taxpayer;
- (d) that an amount qualifies as a reduction of tax payable;
- (e) that a valuation is correct; or
- (f) whether a ‘decision’ that is subject to objection and appeal under a tax Act, is incorrect.

(2) The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS.

103. Rules for dispute resolution.

(1) The Minister may, after consultation with the Minister of Justice and Constitutional Development, by public notice make ‘rules’ governing the procedures to lodge an objection and appeal against an assessment or ‘decision’, and the conduct and hearing of an appeal before a tax board or tax court.

(2) The ‘rules’ may provide for alternative dispute resolution procedures under which SARS and the person aggrieved by an assessment or ‘decision’ may resolve a dispute.

(3) The Commissioner may prescribe the form of a document required to be completed and delivered under the ‘rules’.

***Part B
Objection and Appeal***

104. Objection against assessment or decision.

(1) A taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment.

(2) The following decisions may be objected to and appealed against in the same manner as an assessment—

- (a) a decision under subsection (4) not to extend the period for lodging an objection;
- (b) a decision under section 107 (2) not to extend the period for lodging an appeal; and
- (c) any other decision that may be objected to or appealed against under a tax Act.

(3) A taxpayer entitled to object to an assessment or ‘decision’ must lodge an objection in the manner, under the terms, and within the period prescribed in the ‘rules’.

(4) A senior SARS official may extend the period prescribed in the ‘rules’ within which objections must be made if satisfied that reasonable grounds exist for the delay in lodging the objection.

(5) The period for objection must not be so extended—

- (a) for a period exceeding 21 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection;
- (b) if more than three years have lapsed from the date of assessment or the ‘decision’; or
- (c) if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the ‘decision’.

105. Forum for dispute of assessment or decision.

A taxpayer may not dispute an assessment or ‘decision’ as described in section 104 in any court or other proceedings, except in proceedings under this Chapter or by application to the High Court for review.

106. Decision on objection.

(1) SARS must consider a valid objection in the manner and within the period prescribed under this Act and the ‘rules’.

(2) SARS may disallow the objection or allow it either in whole or in part.

(3) If the objection is allowed either in whole or in part, the assessment or ‘decision’ must be altered accordingly.

(4) SARS must, by notice, inform the taxpayer objecting or the taxpayer’s representative of the decision referred to in subsection (2), unless the objection is stayed under subsection (6) in which case notice of this must be given in accordance with the ‘rules’.

(5) The notice must state the basis for the decision and a summary of the procedures for appeal.

(6) If a senior SARS official considers that the determination of the objection or an appeal referred to in section 107, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections or appeals, the official may—

- (a) designate that objection or appeal as a test case; and
- (b) stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court,

in the manner, under the terms, and within the periods prescribed in the 'rules'.

107. Appeal against assessment or decision.

(1) After delivery of the notice of the decision referred to in section 106 (4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'.

(2) A senior SARS official may extend the period within which an appeal must be lodged for—

- (a) 21 business days, if satisfied that reasonable grounds exist for the delay; or
- (b) up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.

(3) A notice of appeal that does not satisfy the requirements of subsection (1) is not valid.

(4) If an assessment or 'decision' has been altered under section 106 (3), the assessment or 'decision' as altered is the assessment or 'decision' against which the appeal is noted.

(5) By mutual agreement, SARS and the taxpayer making the appeal may attempt to resolve the dispute through alternative dispute resolution under procedures specified in the 'rules'.

(6) Proceedings on the appeal are suspended while the alternative dispute resolution procedure is ongoing.

(7) SARS may concede an appeal in whole or in part before—

- (a) the matter is heard by the tax board or the tax court; or
- (b) an appeal against a judgment of the tax court or higher court is heard.

Part C Tax Board

108. Establishment of tax board.

(1) The Minister may by public notice—

- (a) establish a tax board or boards for areas that the Minister thinks fit; and
- (b) abolish an existing tax board or establish an additional tax board as circumstances may require.

(2) Tax boards are established under subsection (1) to hear appeals referred to in section 107 in the manner provided in this Part.

109. Jurisdiction of tax board.

(1) An appeal against an assessment or 'decision' must in the first instance be heard by a tax board, if—

- (a) the tax in dispute does not exceed the amount the Minister determines by public notice; and
- (b) a senior SARS official and the 'appellant' so agree.

(2) SARS must designate the places where tax boards hear appeals.

(3) The tax board must hear an appeal at the place referred to in subsection (2) which is closest to the 'appellant's' residence or place of business, unless the 'appellant' and SARS agree that the appeal be heard at another place.

(4) In making a decision under subsection (1) (b), a senior SARS official must consider whether the grounds of the dispute or legal principles related to the appeal should rather be heard by the tax court.

(5) If the chairperson prior to or during the hearing, considering the grounds of the dispute or the legal principles related to the appeal, believes that the appeal should be heard by the tax court rather than the tax board, the chairperson may direct that the appeal be set down for hearing *de novo* before the tax court.

110. Constitution of tax board.

(1) A tax board consists of—

- (a) the chairperson, who must be an advocate or attorney from the panel appointed under section 111; and
- (b) if the chairperson, a senior SARS official, or the taxpayer considers it necessary—
 - (i) an accountant who is a member of the panel referred to in section 120; and
 - (ii) a representative of the commercial community who is a member of the panel referred to in section 120.

(2) Sections 122, 123, 124, 126, 127, 128 and 129 apply, with the necessary changes, and under procedures determined in the 'rules', to the tax board and the chairperson.

111. Appointment of chairpersons.

(1) The Minister must, in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit, by public notice appoint advocates and attorneys to a panel from which a chairperson of the tax board must be nominated from time to time.

(2) The persons appointed under subsection (1)—

- (a) hold office for five years from the date the notice of appointment is published in the public notice; and
- (b) are eligible for re-appointment as the Minister thinks fit.

(3) The Minister may terminate an appointment made under this section at any time for misconduct, incapacity or incompetence.

(4) A member of the panel must be appointed as chairperson of a tax board.

(5) A chairperson will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

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

(7) Either party may ask for withdrawal of the chairperson on the basis of conflict of interest or other indications of bias, under procedures provided in the 'rules'.

112. Clerk of tax board.

(1) The Commissioner must appoint a clerk of the tax board.

(2) The clerk acts as convener of the tax board.

(3) If no chairperson is available in the jurisdiction within which the tax board is to be convened, the clerk may convene the tax board with a chairperson from another jurisdiction.

(4) The clerk of the tax board must, within the period and in the manner provided in the 'rules', submit a notice to the members of the tax board and the 'appellant' specifying the time and place for the hearing.

113. Tax board procedure.

(1) Subject to the procedure provided for by the 'rules', the chairperson determines the procedures during the hearing of an appeal as the chairperson sees fit, and each party must have the opportunity to put the party's case to the tax board.

(2) The tax board is not required to record its proceedings.

(3) The chairperson may, when the proceedings open, formulate the issues in the appeal.

(4) The chairperson may adjourn the hearing of an appeal to a convenient time and place.

(5) A senior SARS official must appear at the hearing of the appeal in support of the assessment or 'decision'.

(6) At the hearing of the appeal the 'appellant' must—

(a) appear in person in the case of a natural person; or

(b) in any other case, be represented by the representative taxpayer.

(7) If a third party prepared the 'appellant's' return involved in the assessment or 'decision', that third party may appear on the 'appellant's' behalf.

(8) The 'appellant' may, together with the notice of appeal, or within the further period as the chairperson may allow, request permission to be represented at the hearing otherwise than as referred to in subsection (6).

(9) If neither the 'appellant' nor anyone authorised to appear on the 'appellant's' behalf appears before the tax board at the time and place set for the hearing, the tax board may confirm the assessment or 'decision' in respect of which the appeal has been lodged—

(a) at the request of the SARS representative; and

(b) on proof that the 'appellant' was furnished with the notice of the sitting of the tax board.

(10) If the tax board confirms an assessment or 'decision' under subsection (9), the 'appellant' may not thereafter request that the appeal be referred to the tax court under section 115.

(11) If the senior SARS official fails to appear before the tax board at the time and place set for the hearing, the tax board may allow the 'appellant's' appeal at the 'appellant's' request.

(12) If the tax board allows the appeal under subsection (11), SARS may not thereafter refer the appeal to the tax court under section 115.

(13) Subsections (9), (10), (11) and (12) do not apply if the Chairperson is satisfied that sound reasons exist for the non-appearance and the reasons are delivered by the 'appellant' or SARS to the clerk of the tax board within 10 business days after the date determined for the hearing or the longer period as may be allowed in exceptional circumstances.

114. Decision of tax board.

(1) The tax board, after hearing the 'appellant's' appeal against an assessment or 'decision', must decide the matter in accordance with this Chapter.

(2) The Chairperson must prepare a written statement of the tax board's decision that includes the tax board's findings of the facts of the case and the reasons for its decision, within 60 business days after conclusion of the hearing.

(3) The clerk must by notice in writing submit a copy of the tax board's decision to SARS and the 'appellant'.

115. Referral of appeal to tax court.

(1) If the 'appellant' or SARS is dissatisfied with the tax board's decision or the Chairperson fails to deliver the decision under section 114 (2) within the prescribed 60 business day period, the 'appellant' or SARS may within 21 business days, or within the further period as the Chairperson may on good cause shown allow, after the date of the notice referred to in section 114 (3) or the expiry of the period referred to in section 114 (2), require, in writing, that the appeal be referred to the tax court for hearing.

(2) The tax court must hear *de novo* a referral of an appeal from the tax board's decision under subsection (1).

Part D Tax Court

116. Establishment of tax court.

(1) The President of the Republic may by proclamation in the *Gazette* establish a tax court or additional tax courts for areas that the President thinks fit and may abolish an existing tax court as circumstances may require.

(2) The tax court is a court of record.

117. Jurisdiction of tax court.

(1) The tax court for purposes of this Chapter has jurisdiction over tax appeals lodged under section 107.

(2) The place where an appeal is heard is determined by the 'rules'.

(3) The court may hear and decide an interlocutory application or an application in a procedural matter relating to a dispute under this Chapter as provided for in the 'rules'.

118. Constitution of tax court.

- (1) A tax court established under this Act consists of—
 - (a) a judge or an acting judge of the High Court, who is the president of the tax court;
 - (b) an accountant selected from the panel of members appointed in terms of section 120; and
 - (c) a representative of the commercial community selected from the panel of members appointed in terms of section 120.
- (2) If the president of the tax court, a senior SARS official or the 'appellant' so requests, the representative of the commercial community referred to in subsection (1) (c) must—
 - (a) if the appeal relates to the business of mining, be a registered engineer with experience in that field; or
 - (b) if the appeal involves the valuation of assets, be a sworn appraiser.
- (3) If an appeal to the tax court involves a matter of law only or is an interlocutory application or application in a procedural matter under the 'rules', the president of the court sitting alone must decide the appeal.
- (4) The President of the court alone decides whether a matter for decision involves a matter of fact or a matter of law.
- (5) The Judge-President of the Division of the High Court with jurisdiction in the area where the relevant tax court is situated, may direct that the tax court consist of three judges or acting judges of the High Court (one of whom is the president of the tax court) and the members of the court referred to in subsections (1) (b) and (c) and (2), where necessary, if—
 - (a) the amount in dispute exceeds R50 million; or
 - (b) SARS and the 'appellant' jointly apply to the Judge-President.

119. Nomination of president of tax court.

- (1) The Judge-President of the Division of the High Court with jurisdiction in the area for which a tax court has been constituted must nominate and second a judge or an acting judge of the division to be the president of that tax court.
- (2) The Judge-President must determine whether the secondment referred to in subsection (1) applies for a period, or for the hearing of a particular case.
- (3) A judge will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

120. Appointment of panel of tax court members.

- (1) The President of the Republic by proclamation in the *Gazette* must appoint the panel of members of a tax court for purposes of section 118 (1) (b) and (c) for a term of office of five years from the date of the relevant proclamation.
- (2) A person appointed in terms of subsection (1) must be a person of good standing who has appropriate experience.
- (3) A person appointed in terms of subsection (1) is eligible for reappointment for a further period or periods as the President of the Republic may think fit.
- (4) The President of the Republic may terminate the appointment of a member under this section at any time for misconduct, incapacity or incompetence.
- (5) A member's appointment lapses in the event that the tax court is abolished under section 116 (1).
- (6) A member of the tax court must perform the member's functions independently, impartially and without fear, favour or prejudice.

121. Appointment of registrar of tax court.

- (1) The Commissioner appoints the 'registrar' of the tax court.
- (2) A person appointed as 'registrar' and persons appointed in the 'registrar's' office are SARS employees.
- (3) The 'registrar' and other persons referred to in subsection (2) must perform their functions under this Act and the 'rules' independently, impartially and without fear, favour or prejudice.

122. Conflict of interest of tax court members.

- (1) A member of the court must withdraw from the proceedings as soon as the member becomes aware of a conflict of interest which may give rise to bias which the member may experience with the case concerned or other circumstances that may affect the member's ability to remain objective for the duration of the case.
- (2) Either party may ask for withdrawal of a member on the basis of conflict of interest or other indications of bias, under procedures provided in the 'rules'.
- (3) A member of the court will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in the case.

123. Death, retirement or incapability of judge or member.

- (1) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down, one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal must be heard *de novo*.
- (2) If the tax court has been constituted under section 118 (5), the hearing of the appeal referred to in subsection (1) must proceed before the remaining judges and members, if the remaining judges constitute the majority of judges before whom the hearing was commenced.
- (3) If at any stage during or after the hearing of an appeal but before judgment has been handed down, a member of the tax court dies, retires or becomes incapable of acting in that capacity, the hearing of the appeal must proceed before the president of the tax court, any other judges, the remaining member, and, if the president deems it necessary, a replacement member.
- (4) The judgment of the remaining judges and members referred to in subsection (1) or (3) is the judgment of the court.

124. Sitting of tax court not public.

- (1) The tax court sittings for purposes of hearing an appeal under section 107 are not public.

(2) The president of the tax court may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting but may do so only after taking into account any representations that the 'appellant' and a senior SARS official, referred to in section 12 appearing in support of the assessment or 'decision', wishes to make on the request.

125. Appearance at hearing of tax court.

(1) A senior SARS official referred to in section 12 may appear at the hearing of an appeal in support of the assessment or 'decision'.

(2) The 'appellant' or the 'appellant's' representative may appear at the hearing of an appeal in support of the appeal.

126. Subpoena of witness to tax court.

SARS, the 'appellant' or the president of a tax court may subpoena any witness in the manner prescribed in the 'rules', whether or not that witness resides within the tax court's area of jurisdiction.

127. Non-attendance by witness or failure to give evidence.

(1) A person subpoenaed under section 126 is liable to the fine or imprisonment specified in subsection (2), if the person without just cause fails to—

- (a) give evidence at the hearing of an appeal;
- (b) remain in attendance throughout the proceedings unless excused by the president of the tax court; or
- (c) produce a document or thing in the person's possession or under the person's control according to the subpoena.

(2) The president of the tax court may impose a fine or, in default of payment, imprisonment for a period not exceeding three months, on a person described in subsection (1) upon being satisfied by—

- (a) oath or solemn declaration; or
- (b) the return of the person by whom the subpoena was served,

that the person has been duly subpoenaed and that the person's reasonable expenses have been paid or offered.

(3) The president of the tax court may, in addition to imposing a fine or imprisonment under subsection (2), issue a warrant for the person to be apprehended and brought to give evidence or to produce the document or thing in accordance with the subpoena.

(4) A fine imposed under subsection (2) is enforceable as if it were a penalty imposed by a High Court in similar circumstances and any laws applicable in respect of a penalty imposed by a High Court apply with the necessary changes in respect of the fine.

(5) The president of the tax court may, on good cause shown, remit the whole or any part of the fine or imprisonment imposed under subsection (2).

(6) The president of the tax court may order the costs of a postponement or adjournment resulting from the default of a witness, or a portion of the costs, to be paid out of a fine imposed under subsection (2).

128. Contempt of tax court.

(1) If, during the sitting of a tax court, a person—

- (a) wilfully insults a judge or member of the tax court;
- (b) wilfully interrupts the tax court proceedings; or
- (c) otherwise misbehaves in the place where the hearing is held,

the president of a tax court may impose upon that person a fine or, in default of payment, imprisonment for a period not exceeding three months.

(2) An order made under subsection (1) must be executed as if it were an order made by a Magistrate's Court under similar circumstances, and the provisions of a law which apply in respect of such an order made by a Magistrate's Court apply with the necessary changes in respect of an order made under subsection (1).

129. Decision by tax court.

(1) The tax court, after hearing the 'appellant's' appeal lodged under section 107 against an assessment or 'decision', must decide the matter on the basis that the burden of proof as described in section 102 is upon the taxpayer.

(2) In the case of an assessment or 'decision' under appeal or an application in a procedural matter referred to in section 117(3), the tax court may—

- (a) confirm the assessment or 'decision';
- (b) order the assessment or 'decision' to be altered; or
- (c) refer the assessment back to SARS for further examination and assessment.

(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty.

(4) If SARS alters an assessment as a result of a referral under subsection (2) (c), the assessment is subject to objection and appeal.

(5) Unless a tax court otherwise directs, a decision by the tax court in a test case designated under section 106 (6) is determinative of the issues in an objection or appeal stayed by reason of the test case under section 106 (6) (b) to the extent determined under the 'rules'.

130. Order for costs by tax court.

(1) The tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if—

- (a) the SARS grounds of assessments or 'decision' are held to be unreasonable;
- (b) the 'appellant's' grounds of appeal are held to be unreasonable;
- (c) the tax board's decision is substantially confirmed;
- (d) the hearing of the appeal is postponed at the request of the other party; or
- (e) the appeal is withdrawn or conceded by the other party after the 'registrar' allocates a date of hearing.

(2) The costs awarded by the tax court under this section must be determined in accordance with the fees prescribed by the rules of the High Court.

- (3) The tax court may make an order as to costs provided for in the 'rules' in—
 - (a) a test case designated under section 106 (5); or
 - (b) an interlocutory application or an application in a procedural matter referred to in section 117 (3).

131. Registrar to notify parties of judgment of tax court.

The 'registrar' must notify the 'appellant' and SARS of the court's decision within 21 business days of the date of the delivery of the written decision.

132. Publication of judgment of tax court.

A judgment of the tax court dealing with an appeal under this Chapter must be published for general information and, unless the sitting of the tax court was public under the circumstances referred to in section 124 (2), in a form that does not reveal the 'appellant's' identity.

Part E
Appeal Against Tax Court Decision

133. Appeal against decision of tax court.

- (1) The taxpayer or SARS may in the manner provided for in this Act appeal against a decision of the tax court under sections 129 and 130.
- (2) An appeal against a decision of the tax court lies—
 - (a) to the full bench of the Provincial Division of the High Court which has jurisdiction in the area in which the tax court sitting is held; or
 - (b) to the Supreme Court of Appeal, without an intermediate appeal to the Provincial Division, if—
 - (i) the president of the tax court has granted leave under section 135; or
 - (ii) the appeal was heard by the tax court constituted under section 118 (5).

134. Notice of intention to appeal tax court decision.

- (1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must, within 21 business days after the date of the notice by the 'registrar' notifying the parties of the tax court's decision under section 131, or within a further period as the president of the tax court may on good cause shown allow, lodge with the 'registrar' and serve upon the opposite party or the opposite party's attorney or agent, a notice of intention to appeal against the decision.
- (2) A notice of intention to appeal must state—
 - (a) in which division of the High Court the appellant wishes the appeal to be heard;
 - (b) whether the whole or only part of the judgment is to be appealed against (if in part only, which part), and the grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and
 - (c) whether the appellant requires a transcript of the evidence given at the tax court's hearing of the case in order to prepare the record on appeal (or if only a part of the evidence is required, which part).
- (3) If the appellant is the taxpayer and requires a—
 - (a) transcript of the evidence or a part thereof from the 'registrar', the appellant must pay the fees prescribed by the Commissioner by public notice; or
 - (b) copy of the recording of the evidence or a part thereof from the 'registrar' for purposes of private transcription, the appellant must pay the fees prescribed by the Commissioner in the public notice.
- (4) A fee paid under subsection (3) constitutes funds of SARS within the meaning of section 24 of the SARS Act.

135. Leave to appeal to Supreme Court of Appeal against tax court decision.

- (1) If an intending appellant wishes to appeal against a decision of the tax court to the Supreme Court of Appeal, the 'registrar' must submit the notice of intention to appeal lodged under section 134 (1) to the president of the tax court, who must make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.
- (2) If the president of the tax court cannot act in that capacity or it is inconvenient for the president to act in that capacity for purposes of this section, the Judge-President of the relevant Division of the High Court may nominate and second another judge or acting judge to act as president of the tax court for that purpose.
- (3) Subject to the right to petition the Chief Justice for leave to appeal to the Supreme Court of Appeal in terms of section 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), an order made by the president of the tax court under subsection (1) is final.

136. Failure to lodge notice of intention to appeal tax court decision.

- (1) A person entitled to appeal against a decision of the tax court, who has not lodged a notice of intention to appeal within the time and in the manner required by section 134, abandons, subject to any right to note a cross appeal, the right of appeal against the decision.
- (2) A person who under section 134 lodged a notice of intention to appeal against a decision of the tax court but who has subsequently withdrawn the notice, abandons the right to note an appeal or cross-appeal against the decision.

137. Notice by registrar of period for appeal of tax court decision.

- (1) After the expiry of the time allowed under section 134 (1) for the lodging of a notice of intention to appeal, the 'registrar' must—
 - (a) give notice to a person who has lodged a notice of intention to appeal which has not been withdrawn, that if the person decides to appeal, the appeal must be noted within 21 business days after the date of the 'registrar's' notice; and
 - (b) supply to the person referred to in paragraph (a) a certified copy of an order that the president of the tax court made under section 135 which is the subject of the intended appeal.

(2) The 'registrar' may not give notice under subsection (1) (a) until the order has been made or the transcript has been completed if—

- (a) it appears that the president of the tax court will make an order under section 135; or
- (b) an intending appellant requires a transcript of evidence given at the hearing of the case by the tax court as envisaged in section 134 (2) (c).

(3) If the opposite party is not also an intending appellant in the same case, the 'registrar' must provide to the opposite party copies of the notice and any order referred to in subsection (1) (a) and (b).

138. Notice of appeal to Supreme Court of Appeal against tax court decision.

(1) If a person has—

- (a) appealed to the Supreme Court of Appeal from a court established under section 118 (5);
- (b) been granted leave to appeal to the Supreme Court of Appeal under section 135; or
- (c) successfully petitioned to the Supreme Court of Appeal for leave to appeal,

the appeal which a party must note against a decision given in the relevant case must be noted to that Court.

(2) If the notice of intention to appeal was noted to the High Court or leave to appeal to the Supreme Court of Appeal has been refused under section 135, the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.

(3) The notice of appeal must be lodged within the period referred to in section 137 (1) (a) or within a longer period as may be allowed under the rules of the court to which the appeal is noted.

(4) A notice of appeal must be in accordance with the requirements in the rules of the relevant higher court.

139. Notice of cross-appeal of tax court decision.

(1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the 'registrar', serving it upon the opposite party or the opposite party's attorney and lodging it with the registrar of the court to which the cross-appeal is noted.

(2) The notice of cross-appeal must be lodged within 21 business days after the date the appeal is noted under section 138 or within a longer period as may be allowed under the rules of the court to which the cross-appeal is noted.

(3) A notice of cross-appeal must state—

- (a) whether the whole or only part of the judgment is appealed against, and if a part, which part;
- (b) the grounds of cross-appeal specifying the findings of fact or rulings of law appealed against; and
- (c) any further particulars that may be required under the rules of the court to which the cross-appeal is noted.

140. Record of appeal of tax court decision.

(1) The record lodged with a court to which an appeal against a decision of a tax court is noted, includes all documents placed before the tax court under the 'rules'.

(2) Documents submitted in the tax court which do not relate to the matters in dispute in the appeal may be excluded from the record with the consent of the parties.

141. Abandonment of judgment.

(1) A party may by notice in writing lodged with the 'registrar' and the opposite party or the opposite party's attorney or agent, abandon the whole or a part of a judgment in the party's favour.

(2) A notice of abandonment becomes part of the record.

Part F Settlement of Dispute

142. Definitions.

In this Part, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings—

'**dispute**' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law, which arises pursuant to the issue of an assessment or the making of a 'decision'; and

'**settle**' means to resolve a 'dispute' by compromising a disputed liability, otherwise than by way of either SARS or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts or of both the facts and the law, and '**settlement**' must be construed accordingly.

143. Purpose of Part.

(1) A basic principle in tax law is that it is the duty of SARS to assess and collect tax according to the laws enacted by Parliament and not to forgo a tax which is properly chargeable and payable.

(2) Circumstances may require that the strictness and rigidity of this basic principle be tempered, if such flexibility is to the best advantage of the State.

(3) The purpose of this Part is to prescribe the circumstances in which it is appropriate for SARS to temper the basic principle and 'settle' a 'dispute'.

144. Initiation of settlement procedure.

(1) Either party to a 'dispute' may initiate a 'settlement' procedure by communication with the other party.

(2) Neither SARS nor the taxpayer has the right to require the other party to engage in a 'settlement' procedure.

145. Circumstances where settlement is inappropriate.

It is inappropriate and not to the best advantage of the State to 'settle' a 'dispute' if in the opinion of SARS—

- (a) no circumstances envisaged in section 146 exist and—

- (i) the action by the person concerned that relates to the 'dispute' constitutes intentional tax evasion or fraud;
 - (ii) the 'settlement' would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice; or
 - (iii) the person concerned has not complied with the provisions of a tax Act and the non-compliance is of a serious nature;
- (b) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose; or
- (c) the pursuit of the matter through the courts will significantly promote taxpayer compliance with a tax Act and the case is suitable for this purpose.

146. Circumstances where settlement is appropriate.

The Commissioner may, if it is to the best advantage of the state, 'settle' a 'dispute', in whole or in part, on a basis that is fair and equitable to both the person concerned and to SARS, having regard to—

- (a) whether the 'settlement' would be in the interest of good management of the tax system, overall fairness, and the best use of SARS' resources;
- (b) SARS' cost of litigation in comparison to the possible benefits with reference to—
 - (i) the prospects of success in court;
 - (ii) the prospects of the collection of the amounts due; and
 - (iii) the costs associated with collection;
- (c) whether there are any—
 - (i) complex factual issues in contention; or
 - (ii) evidentiary difficulties,
 which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative 'dispute' resolution procedures or the courts;
- (d) a situation in which a participant or a group of participants in a tax avoidance arrangement has accepted SARS' position in the 'dispute', in which case the 'settlement' may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or
- (e) whether 'settlement' of the 'dispute' is a cost-effective way to promote compliance with a tax Act by the person concerned or a group of taxpayers.

147. Procedure for settlement.

- (1) A person participating in a 'settlement' procedure must disclose all relevant facts during the discussion phase of the process of 'settling' a 'dispute'.
- (2) A 'settlement' is conditional upon full disclosure of material facts known to the person concerned at the time of 'settlement'.
- (3) A disputes 'settled' in whole or in part must be evidenced by an agreement in writing between the parties in the prescribed format and must include details on—
 - (a) how each particular issue is 'settled';
 - (b) relevant undertakings by the parties;
 - (c) treatment of the issue in future years;
 - (d) withdrawal of objections and appeals; and
 - (e) arrangements for payment.
- (4) The agreement must be signed by a senior SARS official.
- (5) SARS must, if the 'dispute' is not ultimately 'settled', explain to the person concerned the further rights of objection and appeal.
- (6) The agreement and terms of a 'settlement' agreement must remain confidential, unless their disclosure is authorised by law or SARS and the person concerned agree otherwise.

148. Finality of settlement agreement.

- (1) The settlement agreement represents the final agreed position between the parties and is in full and final 'settlement' of all or the specified aspects of the 'dispute' in question between the parties.
- (2) SARS must adhere to the terms of the agreement, unless material facts were not disclosed as required by section 147 (1) or there was fraud or misrepresentation of the facts.
- (3) If the person concerned fails to pay the amount due pursuant to the agreement or otherwise fails to adhere to the agreement, a senior SARS official may—
 - (a) regard the agreement as void and proceed with the matter in respect of the original disputed amount; or
 - (b) enforce collection of the 'settlement' amount under the collection provisions of this Act in full and final 'settlement' of the 'dispute'.

149. Register of settlements and reporting.

- (1) SARS must—
 - (a) maintain a register of all 'disputes' that are 'settled' under this Part; and
 - (b) document the process under which each 'dispute' is 'settled'.
- (2) The Commissioner must provide an annual summary of 'settlements' to the Auditor-General and to the Minister.
- (3) The summary referred to in subsection (2) must be submitted by no later than the date on which the annual report for SARS is submitted to Parliament for the year and must—
 - (a) be in a format which, subject to section 70 (5), does not disclose the identity of the person concerned; and
 - (b) contain details, arranged by main classes of taxpayers or sections of the public, of the number of 'settlements', the amount of tax forgone, and the estimated savings in litigation costs.

150. Alteration of assessment or decision on settlement.

- (1) If a 'dispute' between SARS and the person aggrieved by an assessment or 'decision' is 'settled' under this Part, SARS may, despite anything to the contrary contained in a tax Act, alter the assessment or 'decision' to give effect to the 'settlement'.

(2) An altered assessment or 'decision' referred to in subsection (1) is not subject to objection and appeal.

Annexure O – Other relevant provisions of the TA Act & related Acts

TA ACT

1. Definitions.

In this Act, unless the context indicates otherwise, a term which is assigned a meaning in another tax Act has the meaning so assigned, and the following terms have the following meaning—

“**date of assessment**” means—

- (a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or
- (b) in the case of self-assessment by the taxpayer—
 - (i) if a return is required, the date that the return is submitted; or
 - (ii) if no return is required, the date of the last payment of the tax for the tax period or, if no payment was made in respect of the tax for the tax period, the effective date;

5. Practice generally prevailing.

(1) A practice generally prevailing is a practice set out in an official publication regarding the application or interpretation of a tax Act.

(2) Despite any provision to the contrary contained in a tax Act, a practice generally prevailing set out in an official publication, other than a binding general ruling, ceases to be a practice generally prevailing if—

- (a) the provision of the tax Act that is the subject of the official publication is repealed or amended to an extent material to the practice, from the date the repeal or amendment becomes effective;
- (b) a court overturns or modifies an interpretation of the tax Act which is the subject of the official publication to an extent material to the practice from the date of judgment, unless—
 - (i) the decision is under appeal;
 - (ii) the decision is fact-specific and the general interpretation upon which the official publication was based is unaffected; or
 - (iii) the reference to the interpretation upon which the official publication was based was *obiter dicta*; or
- (c) the official publication is withdrawn or modified by the Commissioner, from the date of the official publication of the withdrawal or modification.

(3) A binding general ruling ceases to be a practice generally prevailing in the circumstances described in section 85 or 86.

6. Powers and duties.

(1) The powers and duties of SARS under this Act may be exercised for purposes of the administration of a tax Act.

(2) Powers and duties which are assigned to the Commissioner by this Act must be exercised by the Commissioner personally but he or she may delegate such powers and duties in accordance with section 10.

(3) Powers and duties required by this Act to be exercised by a senior SARS official must be exercised by—

- (a) the Commissioner;
- (b) a SARS official who has specific written authority from the Commissioner to do so; or
- (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

(4) The execution of a task ancillary to a power or duty under subsection (2) or (3) may be done by—

- (a) a SARS official under the control of the Commissioner or a senior SARS official; or
- (b) the incumbent of a specific post under the control of the Commissioner or a senior SARS official.

(5) Powers and duties not specifically required by this Act to be exercised by the Commissioner or by a senior SARS official, may be exercised by a SARS official.

(6) The Commissioner may by public notice specify that a power or duty in a tax Act other than this Act must be exercised by the Commissioner personally or a senior SARS official.

9. Decision or notice by SARS.

(1) A decision made by a SARS official and a notice to a specific person issued by SARS, excluding a decision given effect to in an assessment or a notice of assessment—

- (a) is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary; and
- (b) may in the discretion of a SARS official described in subparagraphs (i) to (iii) or at the request of the relevant person, be withdrawn or amended by—
 - (i) the SARS official;
 - (ii) a SARS official to whom the SARS official reports; or
 - (iii) a senior SARS official.

(2) If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to in subsection (1) may not be withdrawn or amended with retrospective effect, after three years from the later of the—

- (a) date of the written notice of that decision; or
- (b) date of assessment of the notice of assessment giving effect to the decision (if applicable).

12. Right of appearance in proceedings.

(1) Despite any law to the contrary, a senior SARS official may on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear *ex parte* in a judge's chambers in the tax court or in a High Court.

(2) A senior SARS official may appear in the tax court or a High Court only if the person—

- (a) is an advocate duly admitted under—
 - (i) the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or

- (ii) a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996; or
- (b) is an attorney duly admitted and enrolled under—
 - (i) the Attorneys Act, 1979 (Act No. 53 of 1979); or
 - (ii) a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996.

42. Keeping taxpayer informed.

(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104 (2) resulting from the audit and the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision, or the further period that may be required based on the complexities of the audit or the decision.

93. Reduced assessments.

- (1) SARS may make a reduced assessment if—
 - (a) the taxpayer successfully disputed the assessment under Chapter 9;
 - (b) necessary to give effect to a settlement under Part F of Chapter 9;
 - (c) necessary to give effect to a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal; or
 - (d) SARS is satisfied that there is an error in the assessment as a result of an undisputed error by—
 - (i) SARS; or
 - (ii) the taxpayer in a return.
- (2) SARS may reduce an assessment despite the fact that no objection has been lodged or appeal noted.

95. Estimation of assessments.

- (1) SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate if the taxpayer—
 - (a) fails to submit a return as required; or
 - (b) submits a return or information that is incorrect or inadequate.
- (2) SARS must make the estimate based on information readily available to it.
- (3) If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly, which assessment is not subject to objection or appeal.

96. Notice of assessment.

- (1) SARS must issue to the taxpayer assessed a notice of the assessment made by SARS stating—
 - (a) the name of the taxpayer;
 - (b) the taxpayer's taxpayer reference number, or if one has not been allocated, any other form of identification;
 - (c) the date of the assessment;
 - (d) the amount of the assessment;
 - (e) the tax period in relation to which the assessment is made;
 - (f) the date for paying the amount assessed; and
 - (g) a summary of the procedures for lodging an objection to the assessment.
- (2) In addition to the information provided in terms of subsection (1) SARS must give the person assessed—
 - (a) in the case of an assessment described in section 95 or an assessment that is not fully based on a return submitted by the taxpayer, a statement of the grounds for the assessment; and
 - (b) in the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.

98. Withdrawal of assessments.

- (1) SARS may, despite the fact that no objection has been lodged or appeal noted, withdraw an assessment which—
 - (a) was issued to the incorrect taxpayer;
 - (b) was issued in respect of the incorrect tax period;
 - (c) was issued as a result of an incorrect payment allocation; or
 - (d) in respect of which the Commissioner is satisfied that—
 - (i) it was based on—
 - (aa) an undisputed factual error by the taxpayer in a return; or
 - (bb) a processing error by SARS; or
 - (cc) a return fraudulently submitted by a person not authorised by the taxpayer;
 - (ii) it imposes an unintended tax debt in respect of an amount that the taxpayer should not have been taxed on;
 - (iii) the recovery of the tax debt under the assessment would produce an anomalous or inequitable result;
 - (iv) there is no other remedy available to the taxpayer; and
 - (v) it is in the interest of the good management of the tax system.
- (2) An assessment withdrawn under this section is regarded not to have been issued, unless a senior SARS official agrees in writing with the taxpayer as to the amount of tax properly chargeable for the relevant tax period and accordingly issues a revised original, additional or reduced assessment, as the case may be, which assessment is not subject to objection or appeal.

99. Period of limitations for issuance of assessments.

- (1) SARS may not make an assessment in terms of this Chapter—
 - (a) three years after the date of assessment of an original assessment by SARS;
 - (b) in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment—

- (i) by way of self-assessment by the taxpayer; or
 - (ii) if no return is received, by SARS;
 - (c) in the case of a self-assessment for which no return is required, after the expiration of five years from the—
 - (i) date of the last payment of the tax for the tax period; or
 - (ii) effective date, if no payment was made in respect of the tax for the tax period;
 - (d) in the case of—
 - (i) an additional assessment if the—
 - (aa) amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of the preceding assessment, not assessed to tax; or [Item (aa) substituted by s. 59 of Act No. 21 of 2012.]
 - (bb) full amount of tax which should have been assessed under the preceding assessment was, in accordance with the practice, not assessed;
 - (ii) a reduced assessment, if the preceding assessment was made in accordance with the practice generally prevailing at the date of that assessment; or
 - (iii) a tax for which no return is required, if the payment was made in accordance with the practice generally prevailing at the date of that payment; or
 - (e) in respect of a dispute that has been resolved under Chapter 9.
- (2) Subsection (1) does not apply to the extent that—
- (a) in the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to—
 - (i) fraud;
 - (ii) misrepresentation; or
 - (iii) non-disclosure of material facts;
 - (b) in the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to—
 - (i) fraud;
 - (ii) intentional or negligent misrepresentation;
 - (iii) intentional or negligent non-disclosure of material facts; or
 - (iv) the failure to submit a return or, if no return is required, the failure to make the required payment of tax;
 - (c) SARS and the taxpayer so agree prior to the expiry of the limitations period; or
 - (d) it is necessary to give effect to—
 - (i) the resolution of a dispute under Chapter 9;
 - (ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal; or
 - (iii) an assessment referred to in section 98 (2).

100. Finality of assessment or decision.

- (1) An assessment or a decision referred to in section 104 (2) is final if, in relation to the assessment or decision—
- (a) it is an assessment described—
 - (i) in section 95 (1) and no return described in section 91 (5) (b) has been received by SARS; or
 - (ii) in section 95 (3);
 - (b) no objection has been made, or an objection has been withdrawn;
 - (c) after decision of an objection, no notice of appeal has been filed;
 - (d) the dispute has been settled under Part F of Chapter 9;
 - (e) an appeal has been determined by the tax board and there is no referral to the tax court under section 115;
 - (f) an appeal has been determined by the tax court and there is no right of further appeal; or
 - (g) an appeal has been determined by a higher court and there is no right of further appeal.
- (2) Subsection (1) does not prevent SARS from making an additional assessment, but in respect of an amount of tax that has been dealt with in a disputed assessment referred to in—
- (a) subsection (1) (d), (e) and (f), SARS may only make an additional assessment under the circumstances referred to in section 99 (2) (a) and (b); and
 - (b) subsection (1) (g), SARS may not make an additional assessment.

151. Taxpayer.

In this Act, taxpayer means—

- (a) a person chargeable to tax;
- (b) a representative taxpayer;
- (c) a withholding agent;
- (d) a responsible third party; or
- (e) a person who is the subject of a request to provide assistance under an international tax agreement.

164. Payment of tax pending objection or appeal.

- (1) Unless a senior SARS official otherwise directs in terms of subsection (3)—
- (a) the obligation to pay tax; and
 - (b) the right of SARS to receive and recover tax,
- will not be suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal under section 133.
- (2) A taxpayer may request a senior SARS official to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax under Chapter 9.
- (3) A senior SARS official may suspend payment of the disputed tax or a portion thereof having regard to—
- (a) the compliance history of the taxpayer;
 - (b) the amount of tax involved;
 - (c) the risk of dissipation of assets by the taxpayer concerned during the period of suspension;
 - (d) whether the taxpayer is able to provide adequate security for the payment of the amount involved;
 - (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;

- (f) whether sequestration or liquidation proceedings are imminent;
- (g) whether fraud is involved in the origin of the dispute; or
- (h) whether the taxpayer has failed to furnish information requested under this Act for purposes of a decision under this section.

(4) If payment of tax was suspended under subsection (3) and subsequently—

- (a) no objection is lodged;
- (b) an objection is disallowed and no appeal is lodged; or
- (c) an appeal to the tax board or court is unsuccessful and no further appeal is noted,

the suspension is revoked with immediate effect from the date of the expiry of the relevant prescribed time period or any extension of the relevant time period under this Act.

(5) A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of subsection (3) with immediate effect if satisfied that—

- (a) after the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious;
- (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;
- (c) on further consideration of the factors referred to in subsection (3), the suspension should not have been given; or
- (d) there is a material change in any of the factors referred to in subsection (3), upon which the decision to suspend payment of the amount involved was based.

(6) During the period commencing on the day that—

- (a) SARS receives a request for suspension under subsection (2); or
- (b) a suspension is revoked under subsection (5),

and ending 10 business days after notice of SARS' decision or revocation has been issued to the taxpayer, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets by the person concerned.

(7) If an assessment or a decision referred to in section 104 (2) is altered in accordance with—

- (a) an objection or appeal;
- (b) a decision of a court of law pursuant to an appeal under section 133; or
- (c) a decision by SARS to concede the appeal to the tax board or the tax court or other court of law,

a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by SARS to the date the refunded tax is paid, and amounts short-paid are recoverable with interest calculated as provided in section 187 (1).

(8) The provisions of section 191 apply with the necessary changes in respect of an amount refundable and interest payable by SARS under this section.

191. Refunds subject to set-off and deferral.

(1) If a taxpayer has an outstanding tax debt, an amount that is refundable under section 190, including interest thereon under section 188 (3) (a), must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, to the extent of the amount outstanding, and any remaining amount must be setoff against any outstanding debt under the Customs and Excise Act.

(2) Subsection (1) does not apply to a tax debt—

- (a) for which the period referred to in section 164 (6) has not expired or suspension of payment under section 164 exists; or
- (b) in respect of which an instalment payment agreement under section 167 or a compromise agreement under section 204 applies.

(3) An amount is not refundable if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the taxpayer account.

207. Reporting by Commissioner of tax debts written off or compromised.

(1) The amount of tax debts 'written off' or 'compromised' during a financial year must be disclosed in the annual financial statements of SARS relating to administered revenue for that year.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister a summary of the tax debts which were 'written off' or 'compromised' in whole or in part during the period covered by the summary, which must—

- (a) be in a format which, subject to section 70 (5), does not disclose the identity of the 'debtor' concerned;
- (b) be submitted by the end of the month following the end of the fiscal year; and
- (c) contain details of the number of tax debts 'written off' or 'compromised', the amount of revenue forgone, and the estimated amount of savings in costs of recovery, which must be reflected in respect of main classes of taxpayers or sections of the public.

251. Delivery of documents to persons other than companies.

If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having issued, given, sent or served the communication to the person if—

- (a) handed to the person;
- (b) left with another person over 16 years of age apparently residing or employed at the person's last known residence, office or place of business;
- (c) sent to the person by post to the person's last known address, which includes—
 - (i) a residence, office or place of business referred to in paragraph (b); or
 - (ii) the person's last known post office box number or that of the person's employer; or
- (d) sent to the person's last known electronic address, which includes—
 - (i) the person's last known email address; or
 - (ii) the person's last known telefax number.

252. Delivery of documents to companies.

If a tax Act requires or authorises SARS to issue, give, send or serve a notice, document or other communication to a company, SARS is regarded as having issued, given, sent or served the communication to the company if—

- (a) handed to the public officer of the company;
- (b) left with a person older than 16 years apparently residing or employed at—
 - (i) the place appointed by the company under section 247; or
 - (ii) where no such place has been appointed by the company, the last known office or place of business of the company;
- (c) sent by post addressed to the company or its public officer at the company or public officer's last known address, which includes—
 - (i) an office or place referred to in paragraph (b); or
 - (ii) the company or public officer's last known post office box number or that of the public officer's employer; or
- (d) sent to the company or its public officer's last known electronic address, which includes the—
 - (i) last known email address; or
 - (ii) last known telefax number.

253. Documents delivered deemed to have been received.

(1) A notice, document or other communication issued, given, sent or served in the manner referred to in section 251 or 252, is regarded as received by the person to whom it was delivered or left, or if posted it is regarded as having been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the addressed place.

(2) Subsection (1) does not apply if—

- (a) SARS is satisfied that the notice, document or other communication was not received or was received at some other time; or
- (b) a court decides that the notice, document or other communication was not received or was received at some other time.

(3) If SARS is satisfied that—

- (a) a notice, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner referred to in section 251 or 252 (excluding paragraphs (a) and (b) thereof)—
 - (i) has not been received by the addressee; or
 - (ii) has been received by that person considerably later than it should have been received; and
- (b) the person has in consequence been placed at a material disadvantage,
the notice, document or other communication must be withdrawn and be issued, given, sent or served anew.

255. Rules for electronic communication.

(1) The Commissioner may by public notice make rules prescribing—

- (a) the procedures for submitting a return in electronic format, electronic record retention and other electronic communications between SARS and other persons;
- (b) requirements for an electronic or digital signature of a return or communication; and
- (c) the procedures for electronic record retention by SARS.

(2) SARS may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature as a valid signature for purposes of a tax Act if a signature is required.

(3) If in any proceedings under a tax Act, the question arises whether an electronic or digital signature of a person referred to in subsection (2) was used with the authority of the person, it must be assumed, in the absence of proof to the contrary, that the signature was so used.

EXTRACTS FROM RELATED ACTS

PAJA

5. Reasons for administrative action.

(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.

(2) The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.

(3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

(4) (a) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and must forthwith inform the person making the request of such departure.

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including—

- (i) the objects of the empowering provision;
- (ii) the nature, purpose and likely effect of the administrative action concerned;
- (iii) the nature and the extent of the departure;
- (iv) the relation between the departure and its purpose;
- (v) the importance of the purpose of the departure; and
- (vi) the need to promote an efficient administration and good governance.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

(6) (a) In order to promote an efficient administration, the Minister may, at the request of an administrator, by notice in the *Gazette* publish a list specifying any administrative action or a group or class of administrative actions in respect of which the administrator concerned will automatically furnish reasons to a person whose rights are adversely affected by such actions, without such person having to request reasons in terms of this section.

(b) The Minister must, within 14 days after the receipt of a request referred to in paragraph (a) and at the cost of the relevant administrator, publish such list, as contemplated in that paragraph.

6. Judicial review of administrative action.

(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.

(2) A court or tribunal has the power to judicially review an administrative action if—

- (a) the administrator who took it—
 - (i) was not authorised to do so by the empowering provision;
 - (ii) acted under a delegation of power which was not authorised by the empowering provision; or
 - (iii) was biased or reasonably suspected of bias;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action was procedurally unfair;
 - (d) the action was materially influenced by an error of law;
 - (e) the action was taken—
 - (i) for a reason not authorised by the empowering provision;
 - (ii) for an ulterior purpose or motive;
 - (iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
 - (iv) because of the unauthorised or unwarranted dictates of another person or body;
 - (v) in bad faith; or
 - (vi) arbitrarily or capriciously;
 - (f) the action itself—
 - (i) contravenes a law or is not authorised by the empowering provision; or
 - (ii) is not rationally connected to—
 - (aa) the purpose for which it was taken;
 - (bb) the purpose of the empowering provision;
 - (cc) the information before the administrator; or
 - (dd) the reasons given for it by the administrator;
 - (g) the action concerned consists of a failure to take a decision;
 - (h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or
 - (i) the action is otherwise unconstitutional or unlawful.
- (3) If any person relies on the ground of review referred to in subsection (2)(g), he or she may in respect of a failure to take a decision, where—
- (a) (i) an administrator has a duty to take a decision;
 - (ii) there is no law that prescribes a period within which the administrator is required to take that decision; and
 - (iii) the administrator has failed to take that decision, institute proceedings in a court or tribunal for judicial review of the failure to take the decision on the ground that there has been unreasonable delay in taking the decision; or
 - (b) (i) an administrator has a duty to take a decision;
 - (ii) a law prescribes a period within which the administrator is required to take that decision; and
 - (iii) the administrator has failed to take that decision before the expiration of that period, institute proceedings in a court or tribunal for judicial review of the failure to take the decision within that period on the ground that the administrator has a duty to take the decision notwithstanding the expiration of that period.

Annexure P – Rules in terms of section 103 of the Tax Administration Act, 2011

SOUTH AFRICAN REVENUE SERVICE

R. No. 550

11 July 2014

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

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

NM NENE

MINISTER OF FINANCE

SCHEDULE

Part A **General provisions**

1. Definitions

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

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

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

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

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

“deliver” means to issue, give, send or serve a document to the address specified for this purpose under these rules, in the following manner:

- (a) by SARS, the clerk or the registrar, in the manner referred to in section 251 or 252 of the Act, except the use of ordinary post;
- (b) by SARS, if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, by posting it on the electronic filing page of the taxpayer or appellant; or
- (c) by the taxpayer or appellant, by—
 - (i) handing it to SARS, the clerk or the registrar;
 - (ii) sending it to SARS, the clerk or the registrar by registered post;
 - (iii) sending it to SARS, the clerk or the registrar by electronic means to an e-mail address or telefax number; or
 - (iv) if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, submitting it through the SARS electronic filing service.

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

- (a) an agreement between the parties under these rules, whether in draft or otherwise;
- (b) a request or application under these rules; and
- (c) a notice required under these rules;

“electronic address” has the meaning assigned in the rules for electronic communication issued under section 255 of the Act;

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

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

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

“party” means—

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

“parties” means—

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

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

“Rules Board for Courts of Law Act” means the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985);

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

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

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

“Superior Courts Act” means the Superior Courts Act, 2013 (Act No. 10 of 2013);

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

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

2. Prescribed form and manner and date of delivery

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

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

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

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

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

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

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

4. Extension of time periods

(1) Except where the extension of a period prescribed under the Act or these rules is otherwise regulated in Chapter 9 of the Act or these rules, a period may be extended by agreement between—

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

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

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

(4) If a period is extended under this rule by an agreement between the parties or a final order pursuant to an application under Part F, the period within which a further step of the proceedings under these rules must be taken commences on the day that the extended period ends.

5. Index and pagination of documents

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

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

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

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

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

(5) A document delivered electronically must comply with the rules for electronic communication issued under section 255 of the Act.

Part B

Reasons for assessment, objection, appeal and test cases

6. Reasons for assessment

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

(2) The request must—

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

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

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

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

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

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

7. Objection against assessment

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

- (a) delivery of a notice under rule 6(4) or the reasons requested under rule 6; or

- (b) where the taxpayer has not requested reasons, the date of assessment.
- (2) A taxpayer who lodges an objection to an assessment must—
 - (a) complete the prescribed form in full;
 - (b) specify the grounds of the objection in detail including—
 - (i) the part or specific amount of the disputed assessment objected to;
 - (ii) which of the grounds of assessment are disputed; and
 - (iii) the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment;
 - (c) if a SARS electronic filing service is not used, specify an address at which the taxpayer will accept delivery of SARS's decision in respect of the objection as well as all other documents that may be delivered under these rules;
 - (d) sign the prescribed form or ensure that the prescribed form is signed by the taxpayer's duly authorised representative; and
 - (e) deliver, within the 30 day period, the completed form at the address specified in the assessment or, where no address is specified, the address specified under rule 2.
- (3) The taxpayer may apply to SARS under section 104(4) for an extension of the period for objection.
- (4) Where a taxpayer delivers an objection that does not comply with the requirements of subrule (2), SARS may regard the objection as invalid and must notify the taxpayer accordingly and state the ground for invalidity in the notice within 30 days of delivery of the invalid objection, if—
 - (a) the taxpayer used a SARS electronic filing service for the objection and has an electronic filing page;
 - (b) the taxpayer has specified an address required under subrule (2)(c); or
 - (c) SARS is in possession of the current address of the taxpayer.
- (5) A taxpayer who receives a notice of invalidity may within 20 days of delivery of the notice submit a new objection without having to apply to SARS for an extension under section 104(4).
- (6) If the taxpayer fails to submit a new objection or submits a new objection which fails to comply with the requirements of subrule (2) within the 20 day period, the taxpayer may thereafter only submit a new and valid objection together with an application to SARS for an extension of the period for objection under section 104(4).

8. Request for substantiating documents after objection lodged

- (1) Within 30 days after delivery of an objection, SARS may require a taxpayer to produce the additional substantiating documents necessary to decide the objection.
- (2) The taxpayer must deliver the documents within 30 days after delivery of the notice by SARS.
- (3) If reasonable grounds for an extension are submitted by the taxpayer, SARS may extend the period for delivery of the requested document for a further period not exceeding 20 days.

9. Decision on objection

- (1) SARS must notify the taxpayer of the allowance or disallowance of the objection and the basis thereof under section 106(2) of the Act within—
 - (a) 60 days after delivery of the taxpayer's objection; or
 - (b) where SARS requested supporting documents under rule 8, 45 days after—
 - (i) delivery of the requested documents; or
 - (ii) if the documents were not delivered, the expiry of the period within which the documents must be delivered.
- (2) SARS may extend the 60 day period for a further period not exceeding 45 days if, in the opinion of a senior SARS official, more time is required to take a decision on the objection due to exceptional circumstances, the complexity of the matter or the principle or the amount involved.
- (3) If a period is extended the official must, before expiry of the 60 day period, inform the taxpayer that the official will decide on the objection within a longer period not exceeding 45 days.

10. Appeal against assessment

- (1) A taxpayer who wishes to appeal against the assessment to the tax board or tax court under section 107 of the Act must deliver a notice of appeal in the prescribed form and manner within—
 - (a) 30 days after delivery of the notice of disallowance of the objection under rule 9; or
 - (b) the extended period pursuant to an application under section 107(2).
- (2) A notice of appeal must—
 - (a) be made in the prescribed form;
 - (b) if a SARS electronic filing service is used, specify an address at which the appellant will accept delivery of documents when the SARS electronic filing service is no longer available for the further progress of the appeal;
 - (c) specify in detail—
 - (i) in respect of which grounds of the objection referred to in rule 7 the taxpayer is appealing;
 - (ii) the grounds for disputing the basis of the decision to disallow the objection referred to in section 106(5); and
 - (iii) any new ground on which the taxpayer is appealing;
 - (d) be signed by the taxpayer or the taxpayer's duly authorised representative; and
 - (e) indicate whether or not the taxpayer wishes to make use of the alternative dispute resolution procedures referred to in Part C, should the procedures under section 107(5) be available.
- (3) The taxpayer may not appeal on a ground that constitutes a new objection against a part or amount of the disputed assessment not objected to under rule 7.
- (4) If the taxpayer in the notice of appeal relies on a ground not raised in the objection under rule 7, SARS may require a taxpayer within 15 days after delivery of the notice of appeal to produce the substantiating documents necessary to decide on the further progress of the appeal.
- (5) The taxpayer must deliver the documents within 15 days after delivery of the notice by SARS unless SARS extends the period for delivery for a further period not exceeding 20 days if reasonable grounds for an extension are submitted by the taxpayer.

11. Appeal to tax board or tax court

(1) Where—

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

12. Test cases

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

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

(2) The notice must set out—

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

(3) The taxpayer or appellant concerned may within 30 days of delivery of the notice, deliver a notice—

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

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

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

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

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

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

- (a) expiry of the 30 day period prescribed under subrule (5), if a taxpayer or appellant has delivered a notice under subrule (3) and the senior SARS official has not within the 30 day period withdrawn the decision under subrule (5)(a) or made an application under subrule (5)(c);
- (b) delivery of the notice by the official that the decision has been withdrawn under subrule (5)(a);
- (c) agreement between the taxpayer or appellant and the official that the stay of the objection or appeal is terminated; or
- (d) dismissal by the tax court, or higher court dealing with an appeal against the decision of the tax court under rule 52, of an application by the official under subrule (5)(c).

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

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

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

(9) A test case designated under section 106(6) must be heard by the tax court constituted under section 118(5) and if not so designated, the tax court constituted under section 118(1).

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

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

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

- (a) SARS is substantially successful in a test case, the appellants in the test case will be responsible for their legal costs on the proportionate basis as may be determined by the tax court; or
- (b) the appellants are substantially successful in a test case, SARS will be liable for the legal costs of the appellants and the taxpayers whose objections or appeals were stayed on the proportionate basis as may be determined by the tax court.

Part C **Alternative dispute resolution**

13. Notice of alternative dispute resolution

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

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

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

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

14. Reservation of rights

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

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

15. Period of alternative dispute resolution

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

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

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

16. Appointment of facilitator

(1) A senior SARS official must establish a list of facilitators of alternative dispute resolution proceedings under this Part and a person included on the list—

- (a) may be a SARS official;
- (b) must be a person of good standing of a tax, legal, arbitration, mediation or accounting profession who has appropriate experience in such fields; and
- (c) must comply with the duties under rule 17.

(2) A facilitator is only required to facilitate the proceedings if the parties so agree.

(3) Where the parties agree to use a facilitator, a senior SARS official must appoint a person from the list of facilitators—

- (a) within 15 days after the commencement date of the proceedings under rule 15; or
 - (b) within 5 days after the removal of a facilitator under subrule (4) or the withdrawal of a facilitator under rule 18(2);
- and give notice thereof to the appellant and the SARS official to whom the appeal is allocated.

(4) A senior SARS official may not remove the facilitator appointed for the proceedings once the facilitator has commenced with the proceedings, save—

- (a) at the request of the facilitator;
- (b) by agreement between the parties;
- (c) at the request of a party and if satisfied that there has been misconduct, incapacity, incompetence or non-compliance with the duties under rule 17 by the facilitator; or
- (d) under the circumstances referred to in rule 18.

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

17. Conduct of facilitator

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

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

18. Conflict of interest of facilitator

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

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

(3) Either party may request the senior SARS official who appointed the facilitator to withdraw the facilitator on the basis of conflict of interest or other indications of bias and, if the parties so agree, appoint a new facilitator to continue the proceedings.

19. Determination and termination of proceedings by facilitator

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

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

(2) Where a facilitator has not been appointed, the parties must—

- (a) within 30 days determine a place, date and time at which the parties must convene the alternative dispute resolution meeting; and
- (b) if required, notify the other party in writing which written submissions or any other document should be furnished or exchanged and when the submissions or documents are required.

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

- (a) if a party fails to attend the meeting;
- (b) if a party fails to carry out a request under subrule (1)(b);
- (c) if of the opinion that the dispute cannot be resolved through such proceedings; or
- (d) for any other appropriate reason.

20. Proceedings before facilitator

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

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

(3) During the proceedings the appellant, if a natural person or if a representative taxpayer within the meaning of section 153 of the Act, must be personally present or participate by telephonic or video conferencing and, if SARS so agrees, may be represented by a representative of the appellant's choice.

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

(5) The meeting may be—

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

(6) If a facilitator was appointed, the facilitator must at the conclusion of the meeting deliver a report that records—

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

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

21. Recommendation by facilitator

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

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

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

22. Confidentiality of proceedings

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

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

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

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

(4) Unless a court otherwise directs, no person may—

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

23. Resolution of dispute by agreement

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

(2) An agreement under this rule—

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

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

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

24. Resolution of dispute by settlement

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

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

- (a) is subject to the approval of the senior SARS official referred to in section 147 of the Act;
- (b) must be recorded in writing and signed by the appellant and the senior SARS official;
- (c) must relate to the appeal as a whole, including costs;
- (d) if not all issues in dispute were settled, must stipulate those areas in dispute—
 - (i) that are resolved; and
 - (ii) that could not be resolved and on which the appellant may continue the appeal to the tax board or tax court;
- (e) may be made an order of court either with the consent of both parties, or on application to the tax court by a party under Part F; and
- (f) must be reported in the manner referred to in section 149.

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

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

25. Termination of proceedings

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

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

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

(3) If alternative dispute resolution proceedings are terminated under this rule, the appellant must within 20 days of the date of the termination—

- (a) if the appeal is to be dealt with by the tax board, request the clerk to set the matter down before the tax board under rule 26; or
- (b) if the appeal is to be dealt with by the tax court, give notice to SARS that the appellant wishes to proceed with the appeal.

Part D Procedures of tax board

26. Set down of appeal before tax board

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

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

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

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

27. Subpoenas and dossier to tax board

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

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

(2) The Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa issued under the Rules Board for Courts of Law Act will apply in respect of subpoenas issued under this rule.

(3) A witness or document subpoenaed must be relevant to the issues in appeal as reflected in the grounds of assessment, notice of objection, notice of disallowance of objection and notice of appeal.

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

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

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

28. Procedures in tax board

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

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

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

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

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

29. Referral of appeal from tax board to tax court

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

(2) The referral notice must be delivered within the 21 day period prescribed under section 115 or the period extended under this rule—

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

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

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

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

30. Reasons for non-appearance at tax board hearing

(1) If the chairperson confirms an assessment under section 113(9) of the Act or allows an appeal under section 113(11), a party who failed to appear at the hearing of the board must provide the reasons referred to in section 113(13) for the non-appearance and request that the chairperson withdraws the tax board's decision.

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

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

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

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

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

Part E Procedures of tax court

31. Statement of grounds of assessment and opposing appeal

(1) SARS must deliver to the appellant a statement of the grounds of assessment and opposing the appeal within 45 days after delivery of—

- (a) the documents required by SARS under rule 10(4);
- (b) if alternative dispute resolution proceedings were followed under Part C, the notice by the appellant of proceeding with the appeal under rule 24(4) or 25(3);
- (c) if the matter was decided by the tax board, the notice of a *de novo* referral of the appeal to the tax court under rule 29(2); or
- (d) in any other case, the notice of appeal under rule 10.

(2) The statement of the grounds of opposing the appeal must set out a clear and concise statement of—

- (a) the consolidated grounds of the disputed assessment;

- (b) which of the facts or the legal grounds in the notice of appeal under rule 10 are admitted and which of those facts or legal grounds are opposed; and
 - (c) the material facts and legal grounds upon which SARS relies in opposing the appeal.
- (3) SARS may not include in the statement a ground that constitutes a novation of the whole of the factual or legal basis of the disputed assessment or which requires the issue of a revised assessment.

32. Statement of grounds of appeal

- (1) The appellant must deliver to SARS a statement of grounds of appeal within 45 days after delivery of—
- (a) the required documents by SARS, where the appellant was requested to make discovery under rule 36(1); or
 - (b) the statement by SARS under rule 31.
- (2) The statement must set out clearly and concisely—
- (a) the grounds upon which the appellant appeals;
 - (b) which of the facts or the legal grounds in the statement under rule 31 are admitted and which of those facts or legal grounds are opposed; and
 - (c) the material facts and the legal grounds upon which the appellant relies for the appeal and opposing the facts or legal grounds in the statement under rule 31.
- (3) The appellant may not include in the statement a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to under rule 7.

33. Reply to statement of grounds of appeal

- (1) SARS may after delivery of the statement of grounds of appeal under rule 32 deliver a reply to the statement within—
- (a) 15 days after the appellant has discovered the required documents, where the appellant was requested to make discovery under rule 36(2); or
 - (b) 20 days after delivery of the statement under rule 32.
- (2) The reply to the statement of grounds of appeal must set out a clear and concise reply to any new grounds, material facts or applicable law set out in the statement.

34. Issues in appeal

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

35. Amendments of statements

- (1) The parties may agree that a statement under rule 31, 32 or 33 be amended.
- (2) If the other party does not agree to the amendment, the party who requires an amendment may apply to the tax court under Part F for an order under rule 52.

36. Discovery of documents

(1) The appellant may, within 10 days after delivery of the statement under rule 31, deliver a notice of discovery to SARS requesting it to make discovery on oath of any document material to a ground of the assessment or opposing the appeal specified in the statement under rule 31 not set out in the grounds of assessment as defined in rule 1, to the extent that such document is required by the appellant to formulate its grounds of appeal under rule 32.

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

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

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

(4) A party to whom a notice of discovery has been delivered must make discovery on oath of all documents relating to a request under subrule (1) or (2) or the issues in appeal, as the case may be, within 20 days after delivery of the discovery notice, specifying separately—

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

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

(6) If either party believes that, in addition to the documents disclosed, there are other documents in possession of the other party that may be relevant to a request under subrule (1) or (2) or the issues in appeal, as the case may be, that have not been discovered, then that party may give notice of further discovery within 10 days of the discovery under subrule (4), or of the inspection of the documents under subrule (5), to that other party requiring the other party to within 10 days—

- (a) make the further documents available for inspection; or
- (b) state under oath that the documents requested are not in that party's possession, in which event the party must state their whereabouts, if known.

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

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

37. Notice of expert witness

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

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

38. Pre-trial conference

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

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

- (a) what facts are common cause and what facts are in dispute;
- (b) the resolution of preliminary points that either party intends to take;
- (c) the sufficiency of the discovery process;
- (d) the preparation of a paginated bundle of documents;
- (e) the manner in which evidence is to be dealt with, including an agreement on the status of a document and if a document or a part thereof, will serve as evidence of what it purports to be;
- (f) whether evidence on affidavit will be admitted and the waiver of the right of a party to cross-examine the deponent;
- (g) expert witnesses and the evidence to be given in an expert capacity;
- (h) the necessity of an inspection *in loco*;
- (i) an estimate of the time required for the hearing and any means by which the proceedings may be shortened; and
- (j) if the dispute could be resolved or settled in whole or in part.

(3) This conference must take place at the SARS office determined by SARS unless the parties agree that it may take place at a different venue.

(4) SARS must within 10 days of the conclusion of the pre-trial conference prepare and deliver to the appellant a minute setting out the parties' discussion and an agreement reached in respect of each matter referred to in subrule (2).

(5) Where the appellant does not agree with the content of the minute, the appellant must, within 10 days of delivery of the minute by SARS, deliver a differentiating minute to SARS setting out with which statements in the minute by SARS the appellant does not agree and why.

39. Set down of appeal for hearing before tax court

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

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

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

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

40. Dossier to tax court

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

- (a) all returns by the appellant relevant to the year of assessment in issue;
- (b) all assessments by SARS relevant to the issues in appeal;
- (c) the appellant's notice of objection against the assessment;
- (d) SARS's notice of disallowance of the objection;
- (e) the appellant's notice of appeal;
- (f) SARS's statement of grounds of assessment and opposing the appeal under rule 31;
- (g) the appellant's statement of grounds of appeal under rule 32;
- (h) SARS's reply to the appellant's statement of grounds of appeal under rule 33, if any;
- (i) SARS's minute of the pre-trial conference and, if any, the appellant's differentiating minute;
- (j) any request for a referral from a tax board decision to the tax court under rule 29; and
- (k) any order by the tax court under Part F or a higher court in an interlocutory application or application on a procedural matter relating to the objection or the appeal.

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

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

41. Places at which tax court sits

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

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

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

- (a) the parties agree that the appeal or application be heard by a tax court sitting in another area; or

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

42. Procedures not covered by Act and rules

(1) If these rules do not provide for a procedure in the tax court, then the most appropriate rule under the Rules for the High Court made in accordance with the Rules Board for Courts of Law Act and to the extent consistent with the Act and these rules, may be utilised by a party or the tax court.

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

43. Subpoena of witnesses to tax court

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

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

(3) A witness or document subpoenaed must be relevant to the issues in appeal under rule 34.

(4) The Rules for the High Court made in accordance with the Rules Board for Courts of Law Act governing the service of subpoenas in civil matters in the high court will apply in respect of subpoenas issued under this rule.

44. Procedures in tax court

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

(a) the only issue in dispute is whether an estimate under section 95 of the Act on which the disputed assessment is based, is reasonable or the facts upon which an understatement penalty is imposed by SARS under section 222(1); or

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

(2) A party—

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

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

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

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

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

(6) The registrar must by notice deliver the written judgment of the tax court to the parties within 21 days of delivery thereof.

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

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

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

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

45. Postponement or removal of case from roll

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

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

46. Withdrawal or concession of appeal or application

(1) If at any time before it has been set down under rule 39 an appeal or application under Part F is withdrawn by the appellant or conceded by SARS under section 107 of the Act, notice of the withdrawal or concession, whichever is applicable, must be given to the other party.

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

(a) deliver a notice of withdrawal or concession, whichever is applicable, to the other party and to the registrar; and

(b) in such notice, indicate whether or not the party consents to pay the costs of the other party.

47. Costs

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

(a) perform the functions and duties of a taxing master; or

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

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

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

48. Witness fees

(1) A witness in proceedings before the tax court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister of Justice and Constitutional Development and published under section 37 of the Superior Courts Act.

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

49. Request for recordings

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

- (a) a transcript of the evidence or part thereof given at the hearing of the appeal; or
- (b) a copy of the recording of the evidence or a part thereof given at the hearing of the appeal for purposes of private transcription, the appellant must pay to the registrar the costs as prescribed by the Commissioner in a public notice issued under section 134(3).

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

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

Part F **Applications on notice**

50. Procedures under this Part

(1) For the purpose of this Part—

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

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

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

- (a) to the registrar at the address specified by public notice under rule 3;
- (b) to SARS at the address specified under rule 2(1); or
- (c) to the taxpayer or appellant, at the address specified under rule 2(1).

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

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

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

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

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

51. Application provided for in Act

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

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

52. Application provided for under rules

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

- (a) condoning the non-compliance with the period; and
- (b) extending the period for the further period that the tax court deems appropriate.

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

- (a) if SARS fails to provide the reasons under rule 6 required to enable the taxpayer to formulate an objection under rule 7, for an order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection;
- (b) if an objection is treated as invalid under rule 7, for an order that the objection is valid;
- (c) if the period of time to lodge an objection to an assessment has not been extended by SARS under section 104(4) on request by the taxpayer under rule 7, for an order extending the period within which an objection must be lodged by a taxpayer;
- (d) if the period of time to provide documents to substantiate an objection requested by SARS has not been extended under rule 8, for an order extending the period within which the information must be provided by the taxpayer; or

- (e) if the period of time to lodge an appeal to an assessment has not been extended by SARS under section 107(2) of the Act on request by the taxpayer under rule 10, for an order extending the period within which an appeal must be lodged by an appellant.
 - (3) SARS may for purpose of rule 12 apply to a tax court under this Part for an order—
 - (a) that an objection or appeal be selected as test case;
 - (b) that an objection or appeal be stayed pending the determination of the test case;
 - (c) if in dispute, what are the issues that will be determined in the test case; or
 - (d) that a taxpayer or appellant requesting participation in the test case should not be allowed to do so.
 - (4) A taxpayer may apply, if SARS does not agree, to the tax court for an order that the judgment in a test case is not determinative of the issues in that taxpayer's objection or appeal and that the taxpayer may pursue its objection and appeal under these rules.
 - (5) A party to an agreement under rule 23 or a settlement under rule 24 pursuant to alternative dispute resolution proceedings under Part C, may apply to a tax court under this Part for an order that—
 - (a) the agreement or settlement be made an order of court; or
 - (b) if SARS fails to issue the assessment to give effect to an agreement or settlement within the period prescribed under rule 23(3) or 24(3), as the case may be, SARS must issue the assessment.
 - (6) A party who failed to deliver a statement as and when required under rule 31, 32 or 33, may apply to the tax court under this Part for an order condoning the failure to deliver the statement and the determination of a further period within which the statement may be delivered.
 - (7) A party seeking an amendment of a statement under rule 35, may apply to the tax court under this Part for an appropriate order, including an order concerning a postponement of the hearing.
 - (8) A person who is of the view that the issue of a subpoena under rule 27 or 43 constitutes an abuse of process may apply to the tax court under this Part for the withdrawal of the subpoena
 - (9) If a notice of withdrawal or concession is delivered under rule 46 after the appeal or application has been set down for hearing without a consent to pay the other party's costs, the aggrieved party may apply to the tax court under this Part for an order as to costs under section 130(1)(e).
 - (10) A party may apply to the tax court under this Part for an order as to the reconsideration of items or portions of items in a bill of costs taxed by the registrar or the person appointed to act as taxing master under rule 47 and whether items or portions of items in the bill of costs taxed may be allowed, reduced or disallowed.

53. Application against decision by chairperson of tax board

- (1) A party may, despite the procedures set out in Part D, apply to a tax court against a decision by a chairperson of a tax board that concerns—
 - (a) the non-appearance of a person at a hearing of the tax board under section 113(13) of the Act; or
 - (b) the extension of the period within which a request to refer a tax board decision to the tax court under section 115 must be made.
- (2) A party may apply to the tax court to may make an order—
 - (a) condoning a party's non-appearance at a tax board hearing; or
 - (b) allowing a party's request for extension of the referral of the appeal to the tax court.

54. Application for withdrawal of chairperson of tax board

- (1) An application for the withdrawal of a chairperson of the tax board under section 111(7) of the Act may be made to—
 - (a) that chairperson before or during the hearing of the appeal by the tax board; or
 - (b) if the application made to that chairperson was refused, the tax court in the manner provided for in this Part.
- (2) For purpose of the application to the tax court by the applicant, the chairperson must postpone the hearing *sine die*.
- (3) The tax court to which an application is made may order the withdrawal of the chairperson if satisfied that there—
 - (a) is a conflict of interest on the part of the chairperson that may reasonably be regarded as giving rise to bias which the chairperson may experience with the case concerned; or
 - (b) are other circumstances that may reasonably be regarded as giving rise to bias and affect the chairperson's ability to remain objective for the duration of the case,
 together with any other order it deems fit, including an order as to costs.
- (4) The applicant must within 10 days of delivery of the judgment of the tax court by the registrar under rule 50(6), request the clerk to convene or reconvene, as the case may be, the tax board under rule 26.

55. Application for withdrawal of member of tax court

- (1) An application for the withdrawal of a member of the tax court under section 122 of the Act, may be made in the manner provided for in this Part to—
 - (a) if the appeal has been set down under rule 39, the tax court where the appeal has been set down; or
 - (b) if the appeal has not been set down under rule 39, the tax court where the application is set down under this Part.
- (2) If an application for the withdrawal of a member of the tax court is made—
 - (a) after the appeal has been set down but before the hearing, the applicant must request the registrar to postpone the hearing of the appeal *sine die*; or
 - (b) during the hearing of the appeal, the tax court must postpone the hearing of the appeal *sine die*.
- (3) The tax court to which an application is made under this rule may order the withdrawal of the member if satisfied that there—
 - (a) is a conflict of interest on the part of the member that may reasonably be regarded as giving rise to bias which the member may experience with the case concerned; or
 - (b) are other circumstances that may reasonably be regarded as giving rise to bias and affect the member's ability to remain objective for the duration of the case.

(4) If an application for the withdrawal of a member of the tax court is successful, the applicant must within 10 days of delivery of the order of the tax court by the registrar, request the registrar to set the appeal down under rule 39.

(5) The registrar after receipt of the notice of the applicant requesting set down, must select another person from the panel of members of the tax court established under section 120 for the hearing of the appeal.

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

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

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

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

- (a) in the absence of good cause shown by the defaulting party for the default in issue make an order under section 129(2); or
- (b) make an order compelling the defaulting party to comply with the relevant requirement within such time as the court considers appropriate and, if the defaulting party fails to abide by the court's order by the due date, make an order under section 129(2) without further notice to the defaulting party.

57. Notice of motion and founding affidavit

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

(2) An application must be brought within 20 days after the date of the action, including the delivery of a notice, document, decision or judgment by a party, the clerk, the registrar, a tax board or a tax court or a failure to do so, giving rise to an application under this Part or the Act.

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

58. Address and due date

In the notice of motion, the applicant must—

- (a) indicate an address, if different from the address referred to in rule 50(3), at which the applicant will accept notice and delivery of all documents in proceedings under this Part;
- (b) set forth a day, not less than 10 days after delivery thereof to the respondent, on or before which the respondent is required to notify the applicant, whether the respondent intends to oppose that application; and
- (c) state that if no such notification is given, the application will be set down for hearing on the first available day determined by the registrar, being not less than 15 days after service of that notice on the respondent.

59. Set down for hearing where no intention to oppose

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

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

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

60. Notice of intention to oppose and answering affidavit

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

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

61. Replying affidavit

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

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

62. Set down for hearing where no answering affidavit

(1) If no answering affidavit is delivered by the respondent within the period referred to in rule 60(c), the applicant may within 5 days of the expiry of that period apply to the registrar to set the application down.

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

63. Application for set down by respondent

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

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

64. Judgment by tax court

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

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

Part G **Transitional arrangements**

65. Definitions

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

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

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

66. Application of rules to prior or continuing action

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

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

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

(4) If, before the commencement of these rules and before an appeal has been heard by the tax court a statement of grounds of appeal by the taxpayer under rule 11 of the previous rules has been delivered, SARS may deliver a reply to the statement under rule 33.

67. Applications of new procedures

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

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

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

68. Completion of time periods

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

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

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

Annexure Q – Electronic Communication Rules under section 255 of TA Act

SOUTH AFRICAN REVENUE SERVICE

No. 644

25 August 2014

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

I, Visvanathan 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.

V PILLAY

ACTING COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

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 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;

'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;

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

'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 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 returns or generate and deliver notices, documents or other communications in electronic form as provided for in these rules.

(2) A 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 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; 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 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 on a 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 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 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) 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 data, as well as the security and reliable operation of its information systems, a SARS web site and a SARS electronic filing service.

(2) 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) 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) Where a copy or printout of, or an extract from, the communication referred to in subrule (2) is used, such copy, printout or extract must be certified to be correct by SARS or the representative taxpayer of the communicator.

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