

Tax Alert

16 September 2014

New dispute rules in terms of section 103 of the Tax Administration Act

In terms of Government Notice No. 550 (published in the Gazette on 11 July 2014), new rules were promulgated under section 103 of the Tax Administration Act, No. 28 of 2011 (the TAA), prescribing the rules related to:

- *lodging an objection or appeal against an assessment or decision;*
- *alternative dispute resolution;*
- *the conduct and hearing of appeals; and*
- *application on notice before a tax court.*

This Tax Alert highlights the more material changes to the dispute rules.

Dispute process

The dispute process can briefly be summarised as follows:

- on receipt of an assessment, a taxpayer is entitled to request reasons for the assessment required to formulate an objection
- a taxpayer can object against the assessment
- SARS must consider the objection and either disallow the objection or allow the objection in whole or in part
- depending on the outcome of the objection, a taxpayer may appeal against it
- this could result in the resolution of the differences through either alternative dispute resolution (“ADR”) or the matter progressing to the Tax Board or Tax Court, potentially followed by appeals to higher courts

General amendments

Delivery

Amongst others, SARS may deliver a document by handing it to a public officer or person over 16 years of age at the company address, by registered post, email, fax or e-filing. 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.

A taxpayer may deliver a document by handing it to SARS, by registered post, email, fax or e-filing. If a taxpayer is required to deliver a document, it is only regarded as delivered upon actual receipt by SARS.

Time periods

Subtle changes have been made to the time frames, resulting in reduced periods in relation to most of the steps in the dispute process. The intention is that, in the interest of the fairness of the tax system, disputes must be finalised in a reasonable time.

Extensions of time periods are permitted by agreement, on condition that any request for extension is delivered before expiry of the original period.



Reasons for assessment

In addition to the grounds of assessment that must be provided in the case of an assessment based on estimation or not fully based on a return, a taxpayer may request more comprehensive reasons for the assessment. A request must be made in the prescribed form and manner.

Objection

An objection must include detailed grounds on which the objection is founded, with supporting documentation where necessary, specifying the part/s of the assessment objected to and indicating which of the grounds of assessment are being disputed.

If an objection is rejected as invalid the taxpayer will be entitled to submit a valid objection within a further twenty day period.

Decision on objection

On receipt of the objection or the substantiating documents requested, SARS must consider it and either disallow the objection or allow the objection in whole or in part within 60 days.

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.

Appeal

The taxpayer must specify in detail:

- which of the grounds of objection are being taken on appeal
- the grounds for disputing SARS's basis of the decision to disallow the objection

Provision is now also made for the ability of the taxpayer to add new grounds when lodging a notice appeal. However, the ability to add new grounds in the notice of appeal is limited in that 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.

The appeal may be referred to ADR, the Tax Board and/or the Tax Court for adjudication.

Provision is now made for SARS to designate an objection or appeal as a test case if 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.

A taxpayer may:

- oppose the decision that an objection or appeal is designated as a test case
- oppose 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
- if the objection or appeal is to be stayed, request a right of participation in the test case

ADR

ADR proceedings are not on record, and any representation made or document tendered in the course of the proceedings may, with certain exceptions, not be tendered in any subsequent proceedings as evidence by any other party.

If the ADR proceedings are terminated, the taxpayer will be required to indicate by notice to SARS his intention to proceed with the appeal.

Appeals to the Tax Court

Statement of grounds of assessment

SARS must deliver to the taxpayer a statement of the grounds of assessment and opposing the appeal, setting out:

- the consolidated grounds of the disputed assessment



- which of the facts or the legal grounds in the notice of appeal 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, 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.

Statement of grounds of appeal

The taxpayer must deliver to SARS a statement of grounds of appeal setting out:

- the grounds upon which the taxpayer appeals
- which of the facts or the legal grounds 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.

The taxpayer may also add a new ground of appeal in the statement, but this may not include a ground of appeal that constitutes a new ground of objection against a part or amount of the disputed assessment not objected to.

Reply to statement of grounds of appeal

After delivery of the statement of grounds of appeal, SARS may deliver a reply to the statement in so far as it relates to new grounds, facts or law.

Summary judgment

Provision is now made for a taxpayer to apply for summary judgment where SARS has repeatedly failed to comply with its obligations under the rules.

For more information, please call any of the contacts below:

Johannesburg

Kyle Mandy 011-797-4977
kyle.mandy@za.pwc.com

Pretoria

Gert Meiring 011-797-5506
gert.meiring@za.pwc.com

Cape Town

Leon Swanepoel 021-529-2376
leon.swanepoel@za.pwc.com

Durban

Jerry Maharaj 031- 271 2028
jerry.maharaj@za.pwc.com

Port Elizabeth

Ian Olls 041-391-4474
ian.olls@za.pwc.com

East London

Susan Minnie 043 707 9600
susan.minnie@za.pwc.com

Bloemfontein

Hesna Rheeder 051- 503-4202
hesna.rheeder@za.pwc.com

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