Dear Madam,

The South African Revenue Service’s draft rules governing the procedures to lodge an objection and appeal against an assessment or decision subject to objection and appeal referred to in section 104(2) of the Tax Administration Act, the procedures for alternative dispute resolution and the conduct and hearing of appeals before a Tax Board or Tax Court issued in February 2013 refers. Please find SAICA’s response to the request for further comments on the “final” document.

Our comments follow the order in draft 2.

**Rule 1 – Definitions**

The definition of “day” duplicates the following part from the Tax Administration Act: “... and for purposes of determining the days or a period allowed for complying with these rules, excludes the days between 16 December of each year and 15 January of the following year, both days inclusive...”
It is not clear why it was necessary to add the part as the definition of “business day” in section 1 of the Tax Administration Act contains the part as well.

The definition of “deliver”

The draft adds the following (item (b)) to this definition:

“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;”

Our concern is that most taxpayers (or their tax practitioners for that matter) do not access their e-filing page on a daily basis and rely on an email from SARS to notify them that something has been posted by SARS on the e-filing page. In addition even when you do log into your e-filing page it is not easy to check when documents have been posted by SARS as these are stored in drill down areas. In our experience SARS do not always send an email notification when documents are posted on a taxpayer’s e-filing page in which case the taxpayer will not be aware of the post until a reminder or final demand is sent by SARS in which case the deadline for submitting a reply will most likely have passed.

We suggest that (b) be replaced with:
“by SARS, if the taxpayer or appellant provided SARS with an email address, by electronic means to that email address”

**Rule 2 - Prescribed form and manner and date of delivery**

It would have been better if we had insight in the “form as may be prescribed” by SARS. In practice the NOO1 can only be used for certain taxpayers (appellants) while others must use the ADR1 or 2. The NOO1 only becomes available if an assessment was made on the taxpayer and is not available in other instances. It is not clear what form must be used where a taxpayer wants to object to a decision made by SARS.
Rule 6 - Reasons for assessment

Rule 6(2)(a)

The document refers to a “prescribed form” to be used when the request for reasons are made. The draft document provides no detail of the “prescribed form” itself or an example. We accept that you did not agree with our previous suggestion that a request for reasons may be done by letter and not necessarily in the prescribed form.

The request for adequate reasons must in practice be made as we experience that SARS do not provide the reasons for the assessment as required by the Tax Administration Act. In practice this request is currently done by letter or email to SARS. There is a problem that the taxpayer or appellant receives no confirmation of receipt of the request for reasons. It is then difficult to follow the matter up with SARS if no response is received.

We trust that the use of the prescribed form will address the concerns raised above.

Rule 6(7) (now rule 7(8))

We welcome the fact that the reasons given by SARS are not final and that the taxpayer or appellant now has the ability to approach the court.

Rule 7 – Objection against assessment

Rule 7(2)(a) still requires that the taxpayer must complete the prescribed form in full.”

We have no problem with the principle that the form must be completed to the extent that it applies. Our concern is that the form (or standard form) was not made available for comment. The NOO1 or ADR1 forms currently in use do not require the same information and it is suggested that a standard form be used.
We reiterate of previous view that “completed ... in full” would only mean that the taxpayer, year of assessment and the other information required by rule 7(2)(b) – (e) are provided.

It is not clear what is envisaged in rule 7(2)(b) with the “specific amount of the disputed assessment”. We are aware of the current practice where the NOO1 requires the amounts to be included and accept that for natural persons this would be easy to do. It may not in all cases be possible to give the amount involved. This would for instance be where objection is made to a decision by SARS.

The concern is that the objection may not be seen (by SARS) to be complete if no amount is provided with the grounds.

It is suggested that the words “where applicable” be added in this instance.

We are not sure why the words “together with any documents supporting the grounds of objection that the taxpayer has not previously delivered to SARS” are being removed from rule 7(2)(e).

We submit that the taxpayer or appellant must have the ability to add supporting documents to the grounds of objection. The NOO1 and ADR1 allows for this.

**Rule 31 - Statement of grounds of appeal**

We accept that the double “the” in 31(2)(b) in “the legal grounds the law applicable thereto” will be corrected.

**Rule 36 - Discovery of documents**

In the ordinary course discovery takes place after close of pleadings. The proposed sub-rule in 36(1) and in 36(2) create an exception to the established practice and grant SARS an unfair advantage in that SARS is able to request discovery before delivering statements of opposing appeal in terms of rule 32. The taxpayer does not have the same right and therefore when
drafting his or her (or its) statement for grounds of appeal in rule 31 he or she (or it) will have to do so without having seen all the relevant documents.

We propose that the addition of a rule which entitles the taxpayer to request further particulars prior to filing its statements of ground of appeal is considered. This would contribute to a proper ventilation of the issues.

**Rule 40 - Dossier to tax court**

It is not clear what the “grounds of assessments” are that rule 40(1)(b) refers to and whether they are the same as the ones envisaged in rule 40(1)(h).

We suggest that it is clarified whether or not it is the grounds of opposing appeal that is referred to in (b).

**Rule 44 - Procedures in tax court**

Rule 44(1) provides that the taxpayer must commence the proceedings unless the issue relates to an understatement penalty where SARS bears the burden of proof.

In terms of section 102(2) SARS also bears the burden of proof whether an estimate under section 95 is reasonable.

It is submitted that if the only issue in dispute is the estimated assessment that SARS should also start proceedings.

Rule 44(2)(b) allows a party to “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...” In the ordinary course a court can only consider evidence placed before the court.
It is not clear what is intended here and what the evidentiary value of any fact contained in any such document will be. It is also not clear if the party presenting such documents will be obliged to make it available to the other party before the hearing.

We suggest that the above issues be clarified.

**Part F**

*Applications on notice*

General comment

The applications dealt with in Part F (rules 50 – 64) would require that a permanent tax court be created.

It is not clear if SARS anticipates that a tax court will be created that will sit on a permanent basis. It is suggested that a permanent tax court be created.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

Piet Nel CA(SA)

**PROJECT DIRECTOR: TAX**

*The South African Institute of Chartered Accountants*