31 January 2012

Legal & Policy Division
SARS
PO Box 402
Pretoria
0001

By E-mail: policycomments@sars.gov.za

Dear Sir / Madam

Call for Comment: Proposed Amendments to Rule 17 of the Tax Court Rules (Section 107A(1)).

We refer to the call for comment on the above-mentioned document. Set out below please find the SAICA National Tax Committee’s submission comments regarding the proposed amendments to Rule 17 of the Tax Court Rules (section 107A(1)).

We welcome the proposed amendments.

However, we are of the view that the period of 30 days in sub-rule (2) is too short (and is less than the 40 days currently contained in the rule). There are only a few counsels who are employed at the bar who argue tax matters. If a date for the hearing is notified 30 days before the appeal, there is a good chance that the counsel who has been briefed on the matter will not be available because of prior commitments. We would thus suggest that the 30 days be increased to at least 60 days.

In the second line of the proposed sub-rule (1) the word "Register" should read "Registrar".

As the rules are being amended, it is further suggested to amend some of the other rules that cause difficulty. It is a requirement that the notice of objection and the notice of appeal must be delivered to the SARS within certain periods. The word "deliver" is defined in paragraph 1(1) of the rules to include a document submitted by email or fax, but then it goes on to say that in such case the original, signed document must be submitted by hand or registered post within 10 days.

There are certain times when objection and appeal have to be lodged by e-filing, for example, in the case of individuals. This is not permitted in the rules. Moreover, it is simply not
possible to submit an original, signed document thereafter. The SARS's technology has overtaken the law, and the law must be amended to catch up.

Another major concern is the failure by the SARS in so many cases to adhere to the time deadlines legislated for in the rules, and the fact that there is a complete absence of consequences if they disregard the deadlines. The most that one can do is make an application on notice to the Tax Court to compel the SARS to meet the deadlines, but this is a lengthy and expensive procedure in itself, and is not really a solution to the problem. We propose that the deadlines be re-examined and that there must be adverse consequences for the SARS if they fail to adhere to them.

In certain cases it would appear that the deadlines are unachievable. For example, it is a requirement that, if an ADR is requested in a notice of appeal, the Commissioner must give his response within 20 days of the appeal. If the quantum exceeds a certain threshold, the branch has no authority to give an answer, and the matter must be referred to head office in Pretoria. It appears that 20 days - 4 weeks - is too short a period for the branch to process the receipt of the notice of appeal, prepare the file, submit it to Pretoria, and have someone in Pretoria make a decision. We can accept that the 20 day period should be increased, but, again, there ought to be stronger mechanisms to force the relevant officials to comply with deadlines than those currently legislated for.

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

Yours faithfully

Muneer Hassan CA(SA)
PROJECT DIRECTOR: TAX
The South African Institute of Chartered Accountants