Dear Ms A Veary,

**RULES ON ELECTRONIC COMMUNICATION UNDER SECTION 255 OF THE TAX ADMINISTRATION ACT, 28 OF 2011**

Please find, set out below, our comments on the Draft 1 of the proposed rules in terms of section 255 of the Tax Administration Act, 2011 (“TAA”).

**Rule 1: Definitions**

**Problem statement**
The definition of ‘automated transaction’ uses the words “not reviewed by a natural person…” It is unlikely that there was no human intervention in the ‘automated transaction, if only to generate it. It is clear that it is intended to refer to a transaction originated by a computer (electronic means) and in response to something where there was no human intervention.

**Proposal**
It is submitted that the emphasis in the definition is wrong and that the definition be amended.
Problem statement
The definition of ‘digital signature’ is meant to have the same as ‘electronic signature’. The term ‘digital signature’ does not appear anywhere in the Rules, and therefore the definition itself is regarded as superfluous. We realise that the Tax Administration Act uses the concept “electronic or digital signature” in relation to a return or communication.

Proposed solution
It is submitted that the term ‘electronic signature’ is sufficient and it is therefore not necessary to have a definition of ‘digital signature’ in the Rules.

Problem statement
Section 255(1) also envisages not only returns, but also refers to “other electronic communications”. The term ‘electronic filing transaction’ (as defined in Rule 1) only refers to ‘electronic communication’ such as the submission of a return or supporting documents, and the making of payments. It is currently possible to use the e-filing system for other matters, such as an application for a tax clearance. It is also use to start the dispute process and allows for the submission of an objection and / or appeal Rule 7 envisages that the dispute resolution process is also included in this.

Proposed solution
The definition should be extended to include all the current possible electronic filing transactions available on e-filing.

Comment
It is recommended that the term ‘electronic signature’ be amended to read as follows: “…means any data identifying the ‘registered user’ or ‘electronic communicator’, attached to…”
Comment
The term ‘intermediary’ refers to “another person” and it is not clear who is envisaged here. The Rules refer to an ‘electronic communicator’ and a ‘registered user’ and also makes reference to a “registered tax practitioner”.

Proposal
The term ‘intermediary’ should be amended to make reference to an authorized person whom acts on behalf of someone else. The person can’t be held liable for the act of an intermediary whom was not authorized to conduct such act.

Comment
The SARS website has a web address of [http://www.sars.gov.za/](http://www.sars.gov.za/) and the efiling service [https://secure.sarsefiling.co.za/](https://secure.sarsefiling.co.za/). The SARS website has a link to the efiling website. It is therefore not clear that the term SARS website is meant to refer to.

Proposal
The term ‘SARS website’ should be amended in order to be more specific by means of including the specific web site address.

Rule 2: Provision of ‘SARS electronic filing service’

Problem statement
Rule 2 uses the term “electronic format” in sub-rule (1) and “electronic form” in sub-rule (2). Neither one of these terms are defined in Rule 1.
From the context in which the term “electronic form” is used in rule 12(1) it is clear that it may have a different meaning.

Proposed solution
Clarity should be provided on the meaning of the terms and the usage thereof in the Rules.
Rule 3: “User ID” and “access code”

Problem statement
Rule 3(2)(c)(i),(ii) and (4) are general guidelines as opposed to being valid rules for the usage of electronic systems. Including it as a rule will not be practical as it is not possible for SARS to govern it.

Proposals
It is proposed that these sub-rules be removed as these aspects are already included in the terms and conditions approved by the taxpayer upon registration to e-filing.
With specific reference to the wording of Rule 3(4), the words “that cannot be easily surmised” should be deleted and replaced with “that meets the validation requirements on the electronic filing service.”

Rule 4: “SARS electronic filing service” registration

Comment
It is proposed that the wording of Rule 4(3)(a) should be amended to include the word reasonably: “…contravenes or fails to reasonably comply…”

Problem statement
Rule 4(3) envisages that SARS may unilaterally cancel or suspend. It makes no reference to a SARS official or senior SARS official. Rule 4(4) provides that a SARS official must provide grounds to the “registered user” for the cancellation or suspension and to also provide such “registered user” the opportunity to state why the service should be reinstated. The rules makes no mention of the time frame in which both the SARS official must provide grounds and the taxpayer can respond. Whilst rule 4(5) refers to “deliver” rule 4 is not clear on how the cancellation or suspension will be communicated to the user.
The wording also creates further confusion as the person is referred to as a “registered user” even though the registration has been cancelled or suspended.

Problem statement
Rule 4(5) refers to a day when the notice is “delivered” to a registered user, but the term “delivered” is not defined in Rule 1 or in the Tax Administration Act. It is questioned why the process does not start with a Senior SARS official informing the registered user of the intention to cancel or suspend and then offering the person the opportunity to make representations of why this should not be done. The rules should be clear with respect to how the cancellation or suspension is communicated to the person and should include reasonable time frames for both SARS and the taxpayer. The term “deliver” should be defined in Rule 1.

Problem statement
Rule 4(6) is also only a general guideline as opposed to being valid rule, and in terms of the Protection of Personal Information Act, 2013 SARS, as a responsible party, is required to have safeguards that cover such risks.

Proposal
It is suggested that SARS should make provision to include at least a “time out” if the electronic filing system is not accessed within a certain time period and to make reference to this in the Rules.

**Rule 5: 'SARS web site’**

Problem statement
Rule 5(2) and (3) are also general guidelines as opposed to being valid rules for the usage of electronic systems. Including it as a rule will not be practical as it is not possible for SARS to govern it.
In using the words “must report” it places an onerous obligation on any person who accesses uses the ‘SARS web site’.

Proposed solution
It is proposed that these sub-rules be removed as these aspects are already included in the terms and conditions approved by the taxpayer upon registration to e-filing. We submit that the onus is on SARS with regard to “the content” that “is untrue, inaccurate, defamatory, illegal, infringing or harmful.”

Rule 6: Intellectual property

Comment
It is possible that the intellectual property may not be SARS’s property, such as the tax Acts and when referencing to that it may be more appropriate to acknowledge the real owner.

Rule 7: Other ‘electronic communications’ between SARS and other persons

Comment
The words in the heading are ‘electronic communications’ (plural), but the definition in Rule one is ‘electronic communication’.

Proposal
The single quotation marks can be dropped in the heading.

Comment
The wording in Rule 7(1) should be changed to: “An ‘electronic communicator’…”

Problem statement
The term ‘electronic communicator’ (as defined in Rule 1) specifically excludes SARS and it is therefore unclear how SARS is to communicate with the taxpayers in terms of the
electronic filing services provided, and the manner and form in which the electronic signature of SARS of the Commissioner should be.

The rules do not clarify the difference, if any, between an ‘electronic communicator’ and an ‘originator’.

Proposed solution
Clarity should be provided, and in the event that electronic communications by SARS is governed by other South African legislation then reference should be made accordingly.

**Rule 8: Formation of an ‘electronic communication’**

Problem statement
In terms of the acknowledgement that may be given through communication by a SARS official, certain practical problems have arisen as many taxpayers that currently utilise the SARS electronic filing systems has no method of knowing when their notice or document enters the information system of SARS. No confirmation of receipt is obtained by the person.

The wording of Rule 8(3) will be problematic in this regard, as the person faces practical difficulties together with the added consequences of the rules.

Proposed solution
It is proposed that automated responses (which can be authenticated) acknowledging the receipt of electronic communication be provided for in SARS’ systems, this will place certainty on the receipt by SARS and the taxpayer where the electronic filing service is used as a method of delivery.

**Rule 9: Consequences of “electronic communications”**

The same comment made earlier with regard to the use of the plural in this heading applies.
Comment
The wording of Rule 9(2) should be amended as follows: “…must take all reasonable steps necessary to ensure…”

Problem statement
In terms of Rule (3), it is uncertain what will qualify as “capable of being identified as compromised…”

Comment
Rule 9(4) should be amended as follows: “…was the act or omission of the ‘electronic communicator’.

Rule 10: ‘Electronic signature’

Problem statement
The wording of Rule 10(1) suggests that the rules constitute an agreement being entered into between SARS and the taxpayer. Furthermore, the term “person” is used in the wording of this rule which creates confusion on whether this rule equally applies to SARS, as the balance of the rules refers to “registered users” and “electronic communicators” specifically (which excludes SARS as defined).

Proposed solution
It is proposed that the wording of this rule be amended; so that it reads as a rule and not as a term in a contract to which both parties have equal opportunity to refute. Furthermore, clarity is required on whether this rule applies to SARS.

Problem statement
The use of the words ‘electronic communicator’ in Rule 10(3) implies that SARS is not bound by the same rules on electronic signatures.
Proposed solution
Clarity is to be provided on whether SARS is specifically excluded under this Rule.

Comment
The wording of Rule 10(5) creates uncertainty and confusion. It is proposed that the entire sub-rule be reworded.

**Rule 11: Security**

Problem statement
Rule 11(5)(b) refers to processes that a person needs to follow which are prescribed by SARS. There is no indication in this Rule (or in another place in the rules) of where such processes can be found or how it should be prescribed by SARS. Furthermore, Rule 11(5)(b) refers to the destruction of the information, but Rule 11(5)(d) states that the person should also retain the record of the receipt of the information. These two sub-rules are in contradiction with one another, and create confusion on the practical implementation of this Rule.

Proposed solution
Clarity should be provided as to the implementation of this Rule.

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

Yours faithfully

Piet Nel CA(SA)
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