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Submission File

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South African Revenue Service
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PRETORIA
0001

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SUBMISSION: COMMENTS ON THE DRAFT RULES PROMULGATED UNDER SECTION 103 OF THE TAX ADMINISTRATION ACT, 2011

Dear Sir/Madam

The South African Revenue Service’s the 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 comments on the document.

General comment

SAICA welcome the fact that the document specifies number of days to be observed by SARS in providing reasons etc.

Page 1 – date of document

The draft document carries a date of 2012. It is assumed that the date will be changed to 2013.
The rest of our comments are presented in the order of the rules.

**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,

**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. It is submitted that it should be acceptable to request the reasons for the assessment by letter and that a prescribed form is not necessary.

Rule 6(7)
It is stated in that “the provisions of reasons by SARS under this rule is final.” The use of the word “provisions” must be reconsidered. It seems that the intention is that the reasons provided for in response to the request will be given once only. If so, the word should be used in the singular.

The request for reasons will only be made if the “statement of the grounds for the assessment” or “grounds for believing that the tax would otherwise be in jeopardy” did not provide sufficient detail for the taxpayer to object to the assessment or where the taxpayer is aggrieved by a decision by SARS. The taxpayer must have the ability to get the reasons in sufficient detail to make the
objection. If the reasons provided are final the taxpayer will not be able to request more detail in instances where they are not adequate to specify the grounds of the objection in detail. The rule should allow the taxpayer to request detail with regard to the reasons provided if the one provided for do not provide sufficient detail to enable the taxpayer to provide the grounds of the objection.

Rule 7 – Objection against assessment

Rule 7(2)(a) requires that the taxpayer must complete the prescribed form in full.”
The NOO1 or ADR1 forms currently in use do not require the same information and it is suggested that a standard form be used. It would be useful if the form (or standard form) is also made available for comment before it is implemented. Surely “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.

Rule 10 – Appeal against assessment

Principally the appeal in terms of rule 10 is against the disallowance of the objection. The previous rules promulgated under section 107A (in April 2003) provided for a “statement of grounds of assessment.” The draft rules make no reference to the grounds of assessment and it is requested that the rules be amended to include this. Draft rule 10 does not allow the taxpayer to comment on the grounds of assessment.

Rule 11 – Appeal to tax board or court

The following part in rule 11(2)(a) “... if the appeal is to be dealt with by the tax board, within 20 days of the delivery of the notice of appeal or the request the clerk to set the matter down before the tax board…” is not complete and it appears that some words are missing between “request” and “the clerk.”.
Rule 11(2)(b) should refer to the tax court, not the tax board as it currently states.

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