

TAX AND EXCHANGE CONTROL ALERT

IN THIS ISSUE

IMPROVEMENTS TO DISPUTE RESOLUTION PROCESS

On 15 May 2017, the South African Revenue Service (SARS) released a statement on its website regarding improvements that have been introduced to the current dispute resolution process. According to this statement, these improvements are being implemented by SARS as part of an ongoing commitment to deliver a better service to taxpayers.

CUSTOMS AND EXCISE HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

IMPROVEMENTS TO DISPUTE RESOLUTION PROCESS

In terms of rule 6 of the rules promulgated under s103 of the Tax Administration Act, No 28 of 2011, a taxpayer may request SARS to provide reasons for an assessment in order to enable the taxpayer to formulate an objection.

The Rules prescribe that such a request for reasons must be made in the prescribed form and manner and must be delivered to SARS within 30 days of the date of assessment.



On 15 May 2017, the South African Revenue Service (SARS) released a statement on its website regarding improvements that have been introduced to the current dispute resolution process. According to this statement, these improvements are being implemented by SARS as part of an ongoing commitment to deliver a better service to taxpayers.

More specifically, the statement refers to the implementation of an electronic request for reasons for an assessment as well as the introduction of:

- a separate condonation workflow which caters for the late submission of a dispute for certain types of tax;
- a request for suspension of payment pending the outcome of a value-added tax (VAT) dispute; and
- an eFiling guided process.

We discuss these improvements in more detail below.

Request for reasons (RFR)

Generally, once a taxpayer has been issued with an assessment, the dispute resolution process can be summarised, in simple terms, as follows:

- to the extent that the grounds provided in the assessment do not sufficiently enable the taxpayer to understand the basis of the assessment, the taxpayer may request SARS to provide reasons for the assessment;
- the taxpayer may object against the assessment and SARS must consider the objection and either disallow it or allow it in whole or in part;
- if the taxpayer is dissatisfied with SARS's decision following the objection, the taxpayer may lodge an appeal against such decision; and

- the dispute may be resolved either through Alternative Dispute Resolution, the Tax Board or the Tax Court.

In terms of rule 6 of the rules promulgated under s103 of the Tax Administration Act, No 28 of 2011 (TAA) (Rules), a taxpayer may request SARS to provide reasons for an assessment in order to enable the taxpayer to formulate an objection. If such a RFR is submitted, a taxpayer has 30 business days within which to lodge an objection after having received SARS's reasons, instead of the normal 30 business days after receiving the assessment.

The Rules prescribe that such a RFR must be made in the prescribed form and manner and must be delivered to SARS within 30 days of the date of assessment. However, to date SARS has not released such prescribed form and the RFR could not previously be submitted via the eFiling system. As a result, taxpayers often experienced difficulty in submitting the RFR and/or obtaining SARS's reasons for an assessment. Furthermore, to the extent that a taxpayer succeeded in obtaining SARS's reasons for the assessment and proceeded to submit an objection via eFiling, the SARS system would not record that the taxpayer had previously requested reasons for the assessment, thereby flagging the objection as a late objection.

IMPROVEMENTS TO DISPUTE RESOLUTION PROCESS

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SARS has now introduced a separate condonation workflow whereby the taxpayer will be allowed to submit the RFR, NOO or NOA after the periods prescribed by the Rules have lapsed.



In an attempt to address the abovementioned administrative problems, SARS has implemented an electronic RFR via eFiling and at the SARS branches, for personal income tax (PIT), company income tax (CIT) and VAT.

It is stated that once the system has identified that a valid RFR has been submitted, the period within which an objection must be lodged will be automatically extended for the period provided in the Rules (ie 30 days).

Request to allow late submission of a dispute

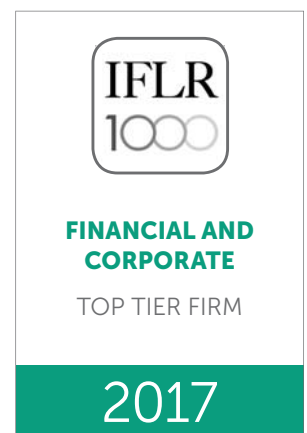
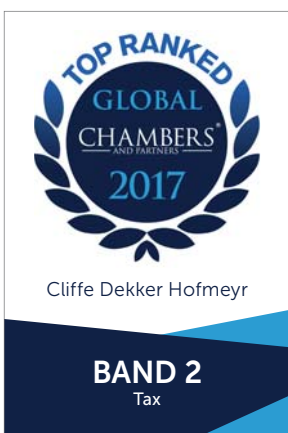
As mentioned above, a taxpayer who is aggrieved by an assessment or certain decisions made under a tax Act may object or appeal against those assessments or decisions. Such an objection or appeal must be lodged in the manner, under the terms and within the periods prescribed in the Rules. An objection against an assessment or decision must be lodged within 30 days of the date of assessment

or decision. Similarly, an appeal against the disallowance of an objection must be lodged within 30 business days of the date of the disallowance of the objection.

An objection or appeal that is not lodged within the prescribed time limits (as discussed above) is deemed to be an invalid appeal or objection. However, a taxpayer may request a senior SARS official to extend the period within which an objection or appeal must be lodged.

Generally, where the request for late submission of a RFR, notice of objection (NOO) or notice of appeal (NOA) was unsuccessful, the current dispute process "caused confusion regarding the outcome of the dispute and what the next available step in the dispute process was".

SARS has now introduced a separate condonation workflow whereby the taxpayer will be allowed to submit the RFR, NOO or NOA after the periods prescribed by the Rules have lapsed. More specifically, the new automated condonation process



IMPROVEMENTS TO DISPUTE RESOLUTION PROCESS

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Taxpayers are now able to request suspension of payments pending the outcome of a dispute on VAT via eFiling or at a SARS branch.



will allow SARS to attend to the request for late submission before the dispute or RFR case can be created and considered. To the extent that the RFR, NOO or NOA was submitted late, the taxpayer will be prompted to provide reasons for the late submission.

The new condonation process will ensure that the request for late submission is aligned with legislation as SARS will inform the taxpayer upfront that the submission is late instead of classifying the dispute as invalid.

Suspension of payments on VAT

In terms of s164 of the TAA, a taxpayer may request that a senior SARS official suspend the obligation to pay any tax or a portion thereof due under an assessment, until the dispute between SARS and the taxpayer has been finally resolved. During 2015, SARS implemented requests for suspension of payment via eFiling for PIT and CIT.

Taxpayers are now able to request suspension of payments pending the outcome of a dispute on VAT via eFiling or at a SARS branch.

eFiling guided process

The SARS statement provides that eFiling has been made "an entirely guided process" which will ensure that taxpayers submit a dispute in accordance with the legislative requirements, thereby eliminating any invalid disputes from being submitted to SARS.

It is stated that this guided process will enable taxpayers to follow the correct procedures and complete all the required information when submitting a dispute on eFiling.

It is clear that taxpayers will welcome these long awaited improvements. It will be interesting to see whether, in practice, these improvements assist in ensuring a more administratively fair dispute resolution process.

Gigi Nyanin

CHAMBERS GLOBAL 2011 - 2017 ranks our Tax and Exchange Control practice in Band 2: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 - 2017 in Band 1: Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017 in Band 1: Tax.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 in Band 3: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2017 in Band 1: Tax.



CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.



This week's selected highlights in the Customs and Excise environment since our last instalment:

- Rule 101A.12 to the Customs & Excise Act, No 91 of 1964 (Act) has been amended and currently states that the time any amendment to a tariff heading or item of any Schedule takes effect is at 00:00 on the date of publication of the relevant gazette.
- The International Trade Administration Commission has received an application for increase in duty on biaxially oriented polymers of propylene (excluding that which is self-adhesive on both sides), of a width not exceeding 200mm from 10% ad valorem to 20% classifiable in subheadings 3919.10.43 and 3919.10.47 by amending the scope of subheading 3919.10.43 to the following: "Of biaxially oriented polymers of propylene (excluding that which is self adhesive on both sides)" and that of subheading 3919.10.47 to the following: "Other biaxially oriented polymers of propylene, self-adhesive on both sides".
- Representations should reach ITAC (Mrs. Ayanda Gandhi, fax: (012) 394-4724, e-mail: endou@itac.org.za and Mr Nkulana Phenya, fax: (012) 394-4677, e-mail: nphenya@itac.org.za) within four weeks of the date of the notice (which is 19 May 2017).
- SARS advised that an external workshop on the discussion of comments received on the Draft Rules to the Customs Control Act, 2014, will be held as follows:
Date: 29 May 2017;
Time: 10h00 – 14h00;
Venue: 2nd floor, Linton House Auditorium, SARS, Brooklyn, Pretoria;
Address: Linton House, 570 Fehrsen Street, Brooklyn Bridge, Brooklyn, Pretoria; (GPS co-ordinates: S25 46.295 E28 14.174).
RSVP: Samantha Authar (sauthar@sars.gov.za) by 26 May 2017.
- Call for comments opened on 22 May 2017 on the Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill. Public hearings will be conducted at Parliament on Wednesday, 31 May 2017. From a customs perspective, the bill aims to amend rates of duty in Schedule 1 to that Act to insert a new part, insert a new section and insert new tariff items.
- Interest charged on outstanding taxes, duties and levies are currently 10.5% per annum.

Petr Erasmus

OUR TEAM

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