

Tax & Exchange Control ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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In with the new and out with the old: New rules promulgated under the Tax Administration Act

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Some of the noteworthy amendments are outlined below.

Time period to lodge an objection

In terms of the old rules (Rule 7(1)), a taxpayer was required to lodge an objection against an assessment or "decision" by the South African Revenue Service (SARS) within 30 business days from the date of issue of the assessment or delivery of SARS' reasons. This time period has now been extended from 30 business days to 80 business days.

From a review of the new rules, the 80-day (extended) period excludes the 30-day extension that a taxpayer may request on reasonable grounds, and the three-year extension on exceptional grounds.

The extension of the time period to lodge an objection is a welcomed relaxation of the previous rules as taxpayers will now be afforded more time to, amongst other things, collate and submit the substantiating documents for their grounds of objection, especially in cases where the matter is complex and involves a large volume of documents.

Notwithstanding the aforementioned amendment, it should be noted that taxpayers still only have 30 business days from the date of assessment to request reasons required to enable them to formulate an objection. Given that this period is no longer the same as the period for lodging an objection, taxpayers should still consider their assessments timeously and carefully consider whether reasons from SARS are required to formulate their objection. In addition, taxpayers should appreciate that the extended period within which to lodge the objection, does not alter the provisions regarding suspension of payment in section 164 of the TAA, which deal with suspension of the obligation to settle the tax debt that arose in terms of the assessment being disputed.

Submission of substantiating documents

Rule 7(2)(b)(iii) now requires a taxpayer to submit all documentation required to substantiate the grounds of objection, along with the notice of objection, in order for it to be considered valid. Under the old rules, taxpayers were only required



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to **specify** which documents they intended to rely on to substantiate their grounds of objection. An objection would, therefore, not be considered invalid if some of the substantiating documentation was not submitted together with the objection. This may have been the case where taxpayers needed more than the prescribed 30-day period previously provided for under Rule 7 to collate all substantiating documentation (particularly in large or complex disputes).

Notwithstanding this, SARS is still afforded the power to request any additional substantiating documentation that may be outstanding following the submission of the objection (Rule 8).

What is not clear is how SARS will view the submission of further substantiating documentation subsequent to the submission of the objection and following the delivery of SARS' grounds of assessment.

The rules regarding discovery of documents in the context of an appeal to the Tax Court have remained the same (see rule 36), suggesting that the discovery of additional documents not submitted as part of the objection would likely be permitted.

New grounds of appeal/assessment

Where an appeal proceeds to the Tax Court, SARS is required to deliver a Rule 31 statement setting out the grounds, their facts and the legal basis of the assessment, and the facts and legal basis relied on by SARS in opposing the appeal. Rule 31(3), which relates to the introduction of a new ground of assessment, has been amended and is now worded in the positive, whereas previously it was worded in the negative. Rule 31(3) permits SARS to include a new ground of assessment or basis for the partial or full disallowance of the objection unless (i) the new ground is a novation

of the whole of the factual or legal basis of the disputed assessment, or (ii) the new ground requires SARS to issue a revised assessment. This rule has been the subject of a few court decisions and one wonders what impact it will have given that it is now couched in the positive.

The amendment appears to be in line with a recent Tax Court judgment, wherein Strijdom AJ held that:

"It is not possible for the respondent to cater for all grounds of opposition to an appeal before it has had sight of an appeal or even an objection ... It would also not be possible for all grounds of opposition to an appeal to be formulated at the time of disallowance of an objection, as Rule 10(3) allows for a taxpayer to introduce new grounds of appeal after the disallowance of an objection."

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Similar to the abovementioned amendment, Rule 10(3) permits a taxpayer to appeal on a new ground not raised in the notice of objection unless the new ground is a new objection against a part of the assessment not previously objected to. Under the old rules this rule was couched in the negative, but the amendment has now been placed in the positive.

Shortening of time periods

Rule 4 has always provided for the extension of dispute resolution time periods. The new rules now also provide for the shortening of time periods. In this regard, the parties may agree to the shortening of the time periods, or, agreement can be reached between one of the parties and the clerk or Registrar of the Tax Board or Tax Court. Therefore, no one party can unilaterally reduce any of the dispute resolution time periods.

This amendment to the rules will allow taxpayers and SARS to speed up the dispute resolution process where appropriate, by agreement.

Alternative dispute resolution proceedings

In terms of the new rules, the categories of persons who can serve as an alternative dispute resolution (ADR) facilitator have been broadened. In this context, the facilitator that is appointed must not only have appropriate experience in the field of tax but must also be acceptable to both parties.

In respect of the facilitator's interim report, a deadline for the delivery thereof has also been introduced. Rule 20(6) now provides for the facilitator's 'interim' report to be delivered within five business days after the conclusion of the ADR meeting. This is in addition to the deadline applicable to the final report, which states that delivery must take place 10 business days after the end of ADR proceedings.

Another notable amendment that was introduced insofar as ADR proceedings are concerned is contained in Rule 22(4). In terms of the new Rule 22(4) the court will no longer permit the issuing of subpoenas of persons involved in ADR proceedings to compel the disclosure of representations made or documents tendered during ADR proceedings. This amendment should enhance the confidentiality of ADR proceedings.

Giving effect to Tax Court judgments

A very welcome amendment to Rule 44 is the insertion of sub-rule 8, which compels SARS to issue the assessment to give effect to the Tax Court's decision within a period of 45 business days after receipt of the Tax Court's decision from the Registrar, provided that no appeal is lodged by SARS under section 133 of the TAA.

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The often-significant delays in SARS issuing assessments to give effect to judgments has been a longstanding issue which has caused prejudice to taxpayers in practice. The introduction of sub-rule 8 should allow taxpayers to compel SARS to adhere to the 45-day period.

Another notable change is the period within which the Registrar must notify the parties of the Tax Court's judgment. This has been reduced from 21 business days to 10 business days, meaning that if a party wishes to appeal a judgment, as contemplated in the TAA, such appeal can be lodged sooner.

To consider

These amendments are not the only amendments contained in the new rules. Given that there was no prior announcement or publicised stakeholder engagement in respect of the new rules, it is crucial for taxpayers (and tax advisors alike) to familiarise themselves with **all** the amendments to the rules and the transitional arrangements contained in Rules 65 to 68.

In terms of the transitional arrangements, the new rules apply to all current Chapter 9 dispute proceedings, without prejudice to anything done under the old rules. New procedures may be conducted under the new rules, provided that the time period under the applicable previous rule has not yet expired. For existing disputes, the procedures contained in the new rules may be adopted, provided that the period provided for under the old rules has not expired. In this regard, taxpayers whose 30-day period to lodge an objection expired before 10 March 2023 will not have another 50 days and will need to request condonation for the late filing of an objection. On the other hand, taxpayers whose 30-day period to lodge an objection had not yet expired by 10 March 2023 will automatically have another 50 days to lodge an objection without having to request condonation.

[Puleng Mothabeng](#)



OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com



Mark Linington

Director:
Tax & Exchange Control
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Gerhard Badenhorst

Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink

Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus

Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Dries Hoek

Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Alex Kanyi

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com



Heinrich Louw

Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Howmera Parak

Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



Stephan Spamer

Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



Tersia van Schalkwyk

Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



Louis Botha

Senior Associate:
Tax & Exchange Control
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Varusha Moodaley

Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Nicholas Carroll

Associate:
Tax & Exchange Control
T +27 (0)21 481 6433
E nicholas.carroll@cdhlegal.com



Puleng Mothabeng

Associate:
Tax & Exchange Control
T +27 (0)11 562 1355
E puleng.mothabeng@cdhlegal.com



Esther Ooko

Associate Designate:
Tax & Exchange Control
T +27 (0) 11 562 1778
E esther.ooko@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

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