

NEW TAX DISPUTE RESOLUTION RULES



New tax dispute resolution rules provide for, amongst others, 80 days to submit an objection and more independence of an ADR facilitator.

On 10 March 2023, the Minister of Finance published new dispute resolution rules in the *Government Gazette* in terms of the Tax Administration Act, 2011 (the TAA). These rules describe the procedures for objections and appeals, for the alternative dispute resolution (ADR) mechanism and for the conduct and hearing of appeals before a tax board or tax court.

The rules came into effect on 10 March 2023 and apply to matters already underway. Requests for reasons, objections, appeals to the tax board or tax court, ADR, settlement discussions, or interlocutory applications that were instituted under the previous rules (the 2014 rules) but have not been completed, will have to be continued and concluded under the new rules.

The notable changes in the new rules are as follows.

- 1. Extension or shortening of time periods** (rule 4): Parties can agree to shortened time periods for various procedures if the timelines are not already regulated by the rules. The 2014 rules only allowed for parties to agree to extensions.

- 2. Objection against assessment** (rule 7(1)): A taxpayer objecting to an assessment must deliver a notice of objection (NOO) within 80 days (the 2014 rules: 30 days) of the date of the assessment. If the taxpayer requested reasons, the NOO must be delivered within 80 days of the delivery of (i) the SARS notice that adequate reasons have been provided, or (ii) the SARS letter with the reasons requested. The 80-day period excludes the 30-day extension where a taxpayer may still request additional time on reasonable grounds, and up to three years extension on exceptional grounds.
- 3. Appealing on new grounds** (rule 10(3)): A taxpayer may appeal on a new ground not raised in the NOO unless the new ground is a new objection against a part of the assessment not previously objected to. This rule has been the subject of a few court decisions and is now clearly stated. (See also item 6 below.)
- 4. ADR facilitator appointment** (rules 16 and 17): One of the biggest issues with the ADR process in the 2014 rules is the perceived lack of independence of the facilitator as the facilitator is appointed by SARS and is a SARS employee. Rule 16 has been amended to remove the requirement that a senior SARS official must establish a list of facilitators. The new rules also provide that the facilitator must have appropriate tax experience and be acceptable to both SARS and the taxpayer. Although the facilitator, once accepted by all parties, is still appointed by a senior SARS official within 15 days of the ADR commencement date, rule 17(3) now expressly provides that the facilitator must act independently and impartially. These positive amendments are welcomed.
- 5. Delivery of facilitator's report** (rule 20): The facilitator is required to deliver a report within five days of a meeting, and a final report within 10 days after the ADR process ends.

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6. New grounds in the SARS statement of grounds of assessment and opposing appeal (rule 31): If an appeal proceeds to the tax court, SARS is required to deliver a rule 31 statement setting out the grounds, the facts and the legal basis of their assessment, and the facts and legal basis relied on by SARS in opposing the appeal. Rule 31(3) has been amended to provide for SARS to include a new ground of assessment or basis for the partial or full disallowance of the objection. A new ground is allowed 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. As with the amendment to rule 10(3), rule 31(3) is now clear, whereas previously it was worded in the negative.

7. Subpoenas of witnesses to the tax board and tax court (rules 27 and 43): A person may be subpoenaed by the tax board clerk or the tax court registrar to attend the appeal and give evidence or provide documents on issues relevant to the appeal. The new rules also provide that the subpoena must also not be an abuse of process. If a party is of the view that the subpoena is not relevant or an abuse of process, the new rules provide for them to request the withdrawal of the subpoena, and if not withdrawn, to apply to the tax board or tax court for the withdrawal of the subpoena. The same applies where an issued subpoena was withdrawn by the clerk or registrar; the aggrieved party can then apply to the tax board or tax court, as the case may be, for the issue of the subpoena.

8. SARS to issue assessment within 45 days of a tax court decision (rule 44): Where the tax court confirms or alters the SARS decision or assessment, SARS must issue the relevant assessment within 45 days of the registrar receiving the tax court decision.

9. Applications on notice (rule 50): Applications on notice must be brought within 20 days of the cause of the application, unless parties agree to a longer period or the tax court grants an extension on good cause shown.

The new rules are a positive step forward in many ways. Taxpayers and their advisers are advised to be aware of the new rules, particularly on the changes to timelines.

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Other documents

- *Government Gazette* 48187 of 10 March 2023: New dispute resolution rules in terms of section 103 of the Tax Administration Act 28 of 2011:
 - Rule 4 (Extension of time periods); 7(1) (Objection against assessment);
 - Rule 10(3) (Appealing on new grounds);
 - Rules 16 & 17 (ADR facilitator appointment), 17(3);
 - Rule 20 (Delivery of facilitator's report);
 - Rule 31 (New grounds in the SARS statement of grounds of assessment and opposing appeal), 31(3);
 - Rules 27 & 43 (Subpoenas of witnesses to the tax board and tax court);
 - Rule 44 (SARS to issue assessment within 45 days of a tax court decision);
 - Rule 50 (Applications on notice);
- 2014 Rules;
- Notice of objection (NOO);
- A rule 31 statement.

Tags: tax dispute resolution rules; alternative dispute resolution (ADR) mechanism; rule 31 statement.