

25 June 2021

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181

Via email: ACollins@sars.gov.za

Dear Colleagues,

RE: DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2020

1. We have reviewed the Draft Public Notice issued by SARS on 3 June 2021 (as well as form) and in essence have no objection to the Notice.
2. We do however attach certain comments insofar as we deem it necessary for purposes of clarification which emanates from the SAIT Tax Administration Technical Work Group (“WG”) specifically relating to the electronic form of record keeping in terms of section 30(1)(b) of the Tax Administration Act, 2011.
3. We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate.
4. Please do not hesitate to contact us should you need further information.

Yours sincerely,



Elle-Sarah Rossato
Chairperson of SAIT Tax Administration Technical Work Group

1. Ad Paragraphs 1 – 3

1. General

[1.1.] Unless the context indicates otherwise, [A]ny word or expression contained in this notice to which a meaning has been assigned in a tax Act as defined in section 1 of the Tax Administration Act, 2011 ("the Act") has the meaning so assigned, **[unless the context indicates otherwise.**

1.2. In this notice, and the following terms, if in single quotation marks, have the following meanings—

'[an]acceptable electronic form' has the meaning contained in rule 3.2;

'[the]Electronic Communications and Transactions Act' means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

'electronic records' means records that are kept or stored in electronic form on a computer or on another electronic storage device and are either originally created in an electronic form or are converted from any non-electronic form into an electronic form; and

'records' mean the records, books of account or documents that a person is required to keep or retain in terms of section 29 of the Act.

2. Authority to keep records in electronic form

A person who is required to keep records in terms of section 29 of the Act may keep those records, or part of those records, in an electronic form as provided in the rules set out in this notice.

3. Acceptable electronic form

3.1. In addition to the other requirements contained in these rules, the electronic records must be kept in an acceptable electronic form.

3.2. An acceptable electronic form is a form in which—

(b) the person required to keep records **[are]is able to, within a reasonable period when required by SARS[—**

- (i) *I provide SARS with an electronic copy of the records in a format that [SARS] is [able to] readily accessible, readable and correctly [analyse]analysable, including—[;*
- (ii) *send [the] records to SARS in an electronic form that is readily accessible by SARS; or*
- (iii) *provide SARS with a paper copy of the records]*
- (i) database records in delimited, Microsoft Excel or similar format; and
- (ii) records that substantiate database records, such as supplier invoices, purchase orders, bank statements, in portable document or similar format; and...

WG Comment:

- 1.1. With reference to **paragraph 1.2**: Comprehensive and practical guidance is required, and should be regularly updated as technology develops, in respect of the meaning of ‘*acceptable electronic form*’, with specific reference to the format(s) that SARS can access, read and analyse.
- 1.2. Taxpayers need certainty and guidance on the types of formats of acceptable technology formats that SARS can use since SARS’ own software licenses and digital capabilities are not common knowledge.
- 1.3. With reference to **paragraph 3.2 (b)(i)**: Clarity and certainty sought as to who will be authorised to determine whether the records are capable of being ‘*correctly analysable*’.
- 1.4. The proposed wording appears to have an element of subjectivity and we propose reconsidering the terminology.
- 1.5. In addition, should SARS decide that the records are not ‘*correctly analysable*’, what will be the proposed process be to resolve disputes in this regard? eg. Will it be the remedies contained in Chapter 9 of the Tax Administration Act 28 of 2011 (“**the TAA**”)?
- 1.6. Clarity and certainty are required in relation to what would constitute a format ‘similar’ to Microsoft Excel?
- 1.7. **With reference to 3.2 (b)(i)**: The word “provide” in (i) seems to be misplaced it should be (b) as it makes (ii) and (iii) a bit confusing since we are not sure whether the database records and substantiating documents are required to be provided or retained.

2. Ad Paragraph 4.2(a)(ii)

4.2. Despite rule 4.1, a **[A senior SARS official may authorise a]person [to]may keep records in an electronic form at a location outside South Africa if [the official is satisfied that]they, in the attached form provided to SARS at ElectronicRecords@sars.gov.za, declare that—**

- (a) the electronic system used by the person will be accessible to SARS—
 - (i) from the person's physical address in South Africa; or
 - (ii) in the case of a person who is not a resident of the Republic and is liable to register under section 23(1A) of the Value-Added Tax Act, from the natural person responsible for...

WG Comment:

- 2.1. The term “*natural person*” is open for interpretation and may create confusion.
- 2.2. For clarity and certainty, does SARS in this instance refer to a ‘*representative taxpayer*’ or is another meaning intended?
- 2.3. Other interpretations could include only a natural person resident in South Africa, or will a non-resident natural person also qualify under this requirement as the company may have a registered address in South Africa, but no natural person located in South Africa?

3. Ad Paragraph 5.1

5.1. A person who uses computer software or an electronic platform that is commonly recognised in South Africa, to keep records in an electronic form, need not keep the documentation described in this rule.

WG Comment:

- 3.1. Is SARS prepared to issue and maintain a list of commonly recognized platforms and software (as it develops over time) as referred to in paragraph 5.1?
- 3.2. With reference to form, where this will be made available and how often taxpayers will be required to update same?

Yours faithfully,

The Tax Administration Technical Work Group.

End.