



# Tax & Legal - News Alert

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## Important changes to Dispute Resolution Rules

In terms of Government Notice No. R. 3146 (published in the Government Gazette on 10 March 2023), new dispute resolution rules were promulgated under section 103 of the Tax Administration Act No. 28 of 2011 (the **TAA**) (the **new rules**). The new rules replace the dispute resolution rules published on 11 July 2014 (the **old rules**). Briefly, these rules elaborate on the processes and procedures that are to be followed when lodging an objection and appeal, when utilising alternative dispute resolution (**ADR**), or when a matter is before the Tax Board or Tax Court.

The new rules became effective on 10 March 2023 and will apply to any new proceedings and proceedings that were instituted (but not concluded) before the enactment of the new rules. However, where the time period within which a taxpayer was required to take certain steps under the old rules has already prescribed, the new rules will not extend that time period (even where the new rules allow for longer time periods). Notwithstanding, an application for condonation for late lodging must be considered.

The material changes to the dispute rules include:

- **Objection against assessment (Rule 7):** Previously, a taxpayer who was entitled to object to an assessment was required to do so within 30 days from either the date of assessment or, where reasons for the assessment were requested by the taxpayer, the date that the reasons for the assessment were delivered. **In terms of the new rules, taxpayers now have 80 days to object, from either the date of assessment or the date on which reasons for the assessment were delivered (if requested by the taxpayer).** Where disputes were complex, or unforeseen circumstances arose, it was often difficult for taxpayers to collate the relevant information within the 30-day period.

Another change under Rule 7 is the requirement to attach substantiating documents. Previously, taxpayers merely had to specify the documents that were required to substantiate the grounds of objection. **In terms of the new rules, the taxpayer must submit the documents required to substantiate the grounds of objection. While this requirement is more onerous than before, the extension of the objection period to 80 days should provide sufficient time for taxpayers to compile and collate the relevant substantiating documentation.**

- **Extension of time periods (Rule 4):** Previously, parties could agree to extend periods of time prescribed for certain procedures to be concluded. In terms of the new rules, parties

may also agree to shorten prescribed time periods. This should help expedite the dispute resolution process (where appropriate).

- **Appointment of facilitator and proceedings before facilitator (Rule 16 and Rule 20):** Previously, facilitators of ADR could be chosen unilaterally by the South African Revenue Service (**SARS**). Under the new rules, the facilitator must be acceptable to both parties. Further, where the facilitator could previously be a person of good standing of a tax, legal, arbitration, mediation or accounting profession, this has been amended so that **the facilitator must have appropriate experience in the field of tax. In addition, the new rules require the facilitator to deliver a preliminary report to the taxpayer and SARS within 5 days of the meeting and a final report within 10 days from the finalisation of the ADR process.**
- **Procedures in Tax Court (Rule 44):** In terms of the new rules, provided that no appeal is lodged by SARS, SARS is compelled to issue an assessment giving effect to the Tax Court's decision within 45 days of receipt of the decision. There was previously no prescribed time period within which to issue this assessment.

Whilst the new rules may have brought about some welcome changes that will benefit taxpayers, the new rules must be seen in the context of the TAA as a whole, such as the “pay now argue later” rule. For instance, even though the objection period is extended to 80 days, the same process continues to apply regarding payment to SARS whilst the dispute is in process or requesting a suspension of payment. **Ultimately, Taxpayers require certainty and this can only be obtained through a timely resolution of tax disputes.**

For assistance with your SARS disputes, please contact us.



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