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Submission File

25 June 2021

South African Revenue Service  
Private Bag X923  
Pretoria  
0001

BY E-MAIL: [acollins@sars.gov.za](mailto:acollins@sars.gov.za)

Dear Ms Collins

**COMMENTS ON THE DRAFT ELECTRONIC FORM OF RECORD KEEPING IN TERMS OF SECTION 30(1)(b) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011)**

1. We herewith take an opportunity to present the comments the South African Institute of Chartered Accountants (SAICA) on the draft electronic form of record keeping in terms of section 30(1)(b) of the Tax Administration Act, 2011 (Act No. 28 of 2011) (TAA) that prescribes the electronic form in which records, books of account and documents that are required to be kept or retained in terms of section 29 of the TAA, must be held.

**COMMENTS**

**Ordering of section 30 of the TAA**

2. Though it is not a new requirement section 30(1) states:

*The records, books of account, and documents referred to in section 29 must be kept or retained –*

- (a) *In their original form in an orderly fashion and a safe place;*
  - (b) *In the form, including electronic form, as may be prescribed by the Commissioner in a public notice; or*
  - (c) *In a form specifically authorised by a senior SARS official in terms of subsection (2).*
3. Given the conjunctive “or”, any of the above three manners of record keeping comply with section 30 which means that subsection 1(b) would only apply if the “original form” is not already electronic and if 1(c) does not apply i.e. a special approval.



4. The Electronic Communications and Transactions Act 2002 provides for other laws to determine how data messages are to be addressed though in this instance section 30(1)(a) does not do so in relation to “original form”.
5. Section 14 of the Electronic Communications and Transactions Act 2002 states:

***Original***

**14.** (1) *Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if-*

(a) *the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and*

(b) *that information is capable of being displayed or produced to the person to whom it is to be presented.*

(2) *For the purposes of subsection 1(a), the integrity must be assessed -*

(a) *by considering whether the information has remained complete and unaltered. except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display:*

(b) *in the light of the purpose for which the information was generated; and*

(c) *having regard to all other relevant circumstances.*

6. Submission: It may useful that SARS provides guidance in a guide or its website on this ordering of the sections and it should confirm whether electronic documents which are in original form also have to comply with section 14 of the Electronic Communications and Transactions Act and not the regulations issued under section 30(1)(b) (which also compels compliance with section 14 Electronic Communications and Transactions Act).

**Acceptable electronic form**

7. It would seem that the regulation is in fact not prescribing an electronic form, as electronic versus non-electronic is the form differentiation, but in fact describing the characteristics of an electronic document format when it states that the form should be readily accessible, readable, and correctly analysable by SARS.
8. For example, in New Zealand Revenue Authority Guide<sup>1</sup> it states:

*You can keep your electronic data on CD Rom, DVD, floppy disk or some tapes.*

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<sup>1</sup> [Computer record keeping for audit \(ird.govt.nz\)](http://ird.govt.nz)



*If we need to do an audit, we can also download from any of these to our own computers. Transfer by cable or by USB memory stick between personal computers is also an option.*

*The best format for saving and storing your data is:*

- *text*
- *delimited (use tab, pipe or comma delimited)*
- *MS Access*
- *DBF file*
- *print file*
- *XML.*

9. The above seems more correctly stating a “electronic form” (i.e. format) and not the characteristics of the above records’ forms i.e. it actually has a format. Arguably only paragraph 3.2(b) states some formats.
10. Though we acknowledge SARS may not want to be too prescriptive on the actual format, being too broad with a process whereby what is the acceptable “format” is not determined up front poses much risk to taxpayers.
11. Furthermore, paragraph 5.1 exclusions only apply as to the further “system documents” not the electronic documents themselves.

12. Submission: It is submitted that paragraph 3 addressing “acceptable electronic form” should be expanded to at least provide that if the common software complies with paragraph 5.1 and SARS has approved the form of the records, then it has complied with paragraph 3.

#### **4.2 Location of records – Form ERF001**

13. A person may currently keep records in an electronic format at a location outside South Africa if a SARS official is satisfied that the electronic system has met certain requirements. The proposed changes require the person to provide SARS with an ERF001 form (Declaration for Electronic Form of Record Keeping) detailing the physical address where the records are kept and accessible and why they are not kept within South Africa.
14. A description of the records that are electronically stored outside South Africa and the types of tax to which these records relate (eg. VAT, PAYE etc) also need to be listed. The name of the computer software or electronic platform as well as the representative taxpayer also need to be provided.

15. Submission: It should be indicated by when this form needs to be submitted by taxpayers in order to be compliant with the public notice.
16. Clarification would also be needed to be provided as to whether those persons that have already obtained approval from SARS to keep their electronic records at a location outside South Africa would be required to re-apply and complete the new form.

#### 4.2 Location of records – Non-residents

17. The change in 4.2(a)(ii) requires that where a person is not a resident of the Republic and is liable to register under section 23(1A) of the Value-Added Tax Act, SARS must be able to access the electronic system used by that person located outside South Africa from the natural person responsible for the VAT affairs of that person.
18. It would seem that such last mentioned person also does not need to reside in South Africa.
19. Furthermore, this change specifically refers to VAT and does not consider other taxes such as employees' tax where a similar situation could arise where a non-resident employer has appointed an agent per the definition of "representative employer" in the Fourth Schedule to the Income Tax Act to act on its behalf. This could also probably apply to a non-resident taxpayer, such as a permanent establishment in SA, which arises not by virtue of physical location of a fixed place of business but through a dependent agent that habitually exercises the authority to conclude contracts on behalf of the non-resident or where services are rendered and the treaty principle of staff being present in South Africa for more than 183 days applies.
20. So this should apply in all instances where no fixed place in the South Africa is required for there to be a permanent establishment.

21. Submission: To cater for the situations above, section 4.2(a)(ii) could be reworded as follows:
22. *"in the case of a person who is not resident of the republic and is liable to tax or liable to register under any of the tax Acts administered by SARS, from a representative taxpayer as defined in section 153 of the TAA".*
23. This will also confirm that such person must reside in South Africa as those referenced sections in 153 of the TAA require.

#### Systems documentation explanation

24. Paragraph 5.1 states that a person who uses computer software or an electronic platform that is commonly recognised in South Africa, to keep records in electronic form, need not keep the documentation described in this rule.
25. It is unclear what would be regarded as commonly recognised in South Africa.



26. Submission: Taking our submission in point 12 into account, we request that SARS clarify what software or electronic platforms would be regarded as “commonly recognised in South Africa” and what proof would be required in order to meet this requirement.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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**Dr Sharon Smulders**  
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*The South African Institute of Chartered Accountants*