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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION*by the**President of the Republic of South Africa***No. R. 27, 2003****ABOLITION OF SPECIAL COURTS FOR HEARING INCOME TAX APPEALS AND
ESTABLISHMENT OF TAX COURTS IN TERMS OF SECTION 83(3) OF THE INCOME
TAX ACT, 1962 (ACT NO. 58 OF 1962)**

In terms of section 83(3) of the Income Tax Act, 1963 (Act No. 58 of 1962), I hereby abolish all special courts for hearing income tax appeals constituted before 1 April 2003 and establish tax courts for the areas listed in the Schedule hereto.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 26th day of March Two thousand and Three.

T. M. MBEKI**PRESIDENT****By Order of the President-in-Cabinet****T. A. MANUEL****MINISTER OF THE CABINET**

SCHEDULE
SEATS OF TAX COURTS

AREA OF JURISDICTION	SEAT OF TAX COURT
Cape of Good Hope Provincial Division of the High Court of South Africa	Cape Town
Eastern Cape Division and South-Eastern Cape Local Division of the High Court of South Africa	Grahamstown and Port Elizabeth
Northern Cape Division of the High Court of South Africa	Kimberley
Orange Free State Provincial Division of the High Court of South Africa	Bloemfontein
Transvaal Provincial Division Witwatersrand Local Division of the High Court of South Africa	Pretoria and Johannesburg
Natal Provincial Division and Durban and Coast Local Division of the High Court of South Africa	Durban

PROKLAMASIE*van die**President van die Republiek van Suid-Afrika***No. R. 27, 2003****AFSKAFFING VAN SPESIALE HOWE VIR DIE VERHOOR VAN
INKOMSTEBELASTINGAPPÈLLE EN INSTELLING VAN BELASTINGHOWE
INGEVOLGE ARTIKEL 83(3) VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO.
58 VAN 1962)**

Kragtens artikel 83(3) van die Inkomstebelastingwet, 1962, (Wet No. 58 van 1962), skaf ek hierby al die spesiale howe vir die verhoor van inkomstebelastingappèlle voor 1 April 2003 ingestel, af en stel ek hierby belastinghowe in vir die gebiede in die Bylae hierby uiteengesit.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad hierdie 26ste dag van Maart Tweeduisend en Drie.

T. M. MBEKI**PRESIDENT****Op las van die President-in-Kabinet****T. A. MANUEL****MINISTER VAN DIE KABINET**

BYLAE**SETELS VAN BELASTINGHOF**

REGSGEBIED	SETEL VAN BELASTINGHOF
Provinsiale Afdeling Kaap die Goeie Hoop van die Hooggeregshof van Suid-Afrika	Kaapstad
Oos-Kaapse Afdeling en Suidoos-Kaapse Plaaslike Afdeling van die Hooggeregshof van Suid-Afrika	Grahamstad en Port Elizabeth
Noord-Kaapse Afdeling van die Hooggeregshof van Suid-Afrika	Kimberley
Oranje-Vrystaatse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika	Bloemfontein
Transvaalse Provinsiale Afdeling Witwatersrandse Plaaslike Afdeling van die Hooggeregshof van Suid-Afrika	Pretoria en Johannesburg
Natalse Provinsiale Afdeling en Plaaslike Afdeling Durban en Kus van die Hooggeregshof van Suid-Afrika	Durban

No. R. 28, 2003

FIXING OF DATE ON WHICH SECTIONS 5(1), 10(1), 11(1), 14(1), 15(1), 53(1), 54(1), 55(1), 56(1), 57(1), 58(1), 59(1), 60(1), 145(1), 160(1) and 182(1) OF THE SECOND REVENUE LAWS AMENDMENT ACT, 2001 (ACT NO. 60 OF 2001), SHALL COME INTO OPERATION

In terms of sections 5(2), 10(2), 11(2), 14(2), 15(2), 53(2), 54(2), 55(2), 56(2), 57(2), 58(2), 59(2), 60(2), 145(2), 160(2) and 182(2) of the Second Revenue Laws Amendment Act, 2001 (Act No. 60 of 2001), I hereby determine 1 April 2003 as the date on which sections 5(1), 10(1), 11(1), 14(1), 15(1), 53(1), 54(1), 55(1), 56(1), 57(1), 58(1), 59(1), 60(1), 145(1), 160(1) and 182(1) of the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 26th day of March Two thousand and Three.

T. M. MBEKI

PRESIDENT

By Order of the President-in-Cabinet

T. A. MANUEL

MINISTER OF THE CABINET

No. R. 28, 2003

BEPALING VAN DATUM WAAROP ARTIKELS 5(1), 10(1), 11(1), 14(1), 15(1), 53(1), 54(1), 55(1), 56(1), 57(1), 58(1), 59(1), 60(1), 145(1), 160(1) EN 182(1) VAN DIE TWEDE WYSIGINGSWET OP INKOMSTEWETTE, 2001 (WET NO. 60 VAN 2001), IN WERKING TREE

Kragtens artikels 5(2), 10(2), 11(2), 14(2), 15(2), 53(2), 54(2), 55(2), 56(2), 57(2), 58(2), 59(2), 60(2), 145(2), 160(2) en 182(2) van die Tweede Wysigingswet op Inkomstewette, 2001 (Wet No. 60 van 2001), bepaal ek hierby 1 April 2003 as die datum waarop artikels 5(1), 10(1), 11(1), 14(1), 15(1), 53(1), 54(1), 55(1), 56(1), 57(1), 58(1), 59(1), 60(1), 145(1), 160(1) en 182(1) van bogemelde Wet in werking tree.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hierdie 26ste dag van Maart Tweeduisend en Drie.

T. M. MBEKI

PRESIDENT

Op las van die President-in-Kabinet

T. A. MANUEL

MINISTER VAN DIE KABINET

No. R. 29, 2003

**FIXING OF DATE ON WHICH SECTIONS 6(1)(n), 111(1) AND 114(1)(b) OF
THE REVENUE LAWS AMENDMENT ACT, 2002 (ACT NO. 74 OF 2002)
SHALL COME INTO OPERATION**

In terms of sections 6(2)(i), 111(2) and 114(2) of the Revenue Laws Amendment Act, 2002 (Act No. 74 of 2002), I hereby fix 1 April 2003 as the date on which sections 6(1)(n), 111(1) and 114(1)(b) of the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town
this 26th day of March Two thousand and Three.

T. M. MBEKI

PRESIDENT

By Order of the President-in-Cabinet

T. A. MANUEL

MINISTER OF THE CABINET

No. R. 29, 2003

**BEPALING VAN DATUM WAAROP ARTIKELS 6(1)(s), 111(1) EN 114(1)(b)
VAN DIE WYSIGINGSWET OP INKOMSTEWETTE, 2002 (WET NO. 74 VAN
2002) IN WERKING TREE**

Kragtens artikels 6(2)(k), 111(2) en 114(2) van die Wysigingswet op Inkomstewette, 2002 (Wet No. 74 van 2002), bepaal ek hierby 1 April 2003 as die datum waarop artikels 6(1)(s), 111(1) en 114(1)(b) van bogemelde Wet in werking tree.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad op hierdie 26ste dag van Maart Tweeduisend en Drie.

T. M. MBEKI

PRESIDENT

Op las van die President-in-Kabinet

T. A. MANUEL

MINISTER VAN DIE KABINET

No. R. 30, 2003

FIXING OF A DATE ON WHICH SECTION 40(1) OF THE REVENUE LAWS AMENDMENT ACT, 2001 (ACT NO. 19 OF 2001), SECTION 130(1)(i) OF THE SECOND REVENUE LAWS AMENDMENT ACT, 2001 (ACT NO. 60 OF 2001), AND SECTION 108(1) OF THE REVENUE LAWS AMENDMENT ACT, 2002 (ACT NO. 74 OF 2002), SHALL COME INTO OPERATION IN RESPECT OF CERTAIN GOODS LIABLE TO EXCISE DUTY AND FUEL LEVY

In terms of section 40(2) of the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), section 130(2) of the Second Revenue Laws Amendment Act, 2001 (Act No. 60 of 2001) and section 108(2) of the Revenue Laws Amendment Act, 2002 (Act No. 74 of 2002), I hereby, by means of the accompanying proclamations in English and Afrikaans, determine 2 April 2003 as the date on which the following sections shall come into operation—

- (a) section 40(1) of the Revenue Laws Amendment Act, 2001, to the extent that it inserts section 19A(1), (2) and (3) in the Customs and Excise Act, 1964, in respect of petroleum and other goods liable to excise duty (as specified in item 105.10 of Section A of Part 2 of Schedule No. 1 of the Customs and Excise Act, 1964), and liable to fuel levy (as specified in item 195.10 of Part 5 of that Schedule);
- (b) section 130(1)(i) of the Second Revenue Laws Amendment Act, 2001; and

(c) section 108(1) of the Revenue Laws Amendment Act, 2002.

Given under my Hand and the Seal of the Republic of South Africa at Cape Town this 26th day of March Two thousand and Three.

T. M. MBEKI

PRESIDENT

By Order of the President-in-Cabinet

T. A. MANUEL

MINISTER OF THE CABINET

No. R. 30, 2003

BEPALING VAN 'N DATUM WAAROP ARTIKEL 40(1) VAN DIE WYSIGINGSWET OP INKOMSTEWETTE, 2001 (WET NO. 19 VAN 2001), ARTIKEL 130(1)(i) VAN DIE TWEDE WYSIGINGSWET OP INKOMSTEWETTE, 2001 (WET NO. 60 VAN 2001) EN ARTIKEL 108(1) VAN DIE WYSIGINGSWET OP INKOMSTEWETTE, 2002 (WET NO. 74 VAN 2002), TEN OPSIGTE VAN SEKERE GOEDERE ONDERHEWIG AAN AKSYNSREG EN BRANDSTOFHEFFING IN WERKING TREE

Kragtens artikel 40(2) van die Wysigingswet op Inkomstewette, 2001 (Wet No. 19 van 2001), artikel 130(2) van die Tweede Wysigingswet op Inkomstewette, 2001 (Wet No. 60 van 2001) en artikel 108(2) van die Wysigingswet op Inkomstewette, 2002 (Wet No. 74 van 2002), bepaal ek hierby, deur middel van bygaande proklamasies in Engels en Afrikaans 2 April 2003 as die datum waarop die volgende artikels in werking tree—

- (a) artikel 40(1) van die Wysigingswet op Inkomstewette, 2001, in die mate wat dit artikel 19A(1), (2) en (3) in die Doeane- en Aksynswet, 1964, invoeg ten opsigte van petroleum en ander goedere onderhewig aan aksynsreg (soos vermeld in item 105.10 van Afdeling A van Deel 2 van Bylae No. 1 van die Doeane- en Aksynswet, 1964), en onderhewig aan brandstofheffing (soos vermeld in item 195.10 van Deel 5 van daardie Bylae);
- (b) artikel 130(1)(i) van die Tweede Wysigingswet op Inkomstewette, 2001; en

(c) artikel 108(1) van die Wysigingswet op Inkomstewette, 2002.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Kaapstad
op hierdie 26ste dag van Maart Tweeduisend en Drie.

T. M. MBEKI

PRESIDENT

Op las van die President-in-Kabinet

T. A. MANUEL

MINISTER VAN DIE KABINET

GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

SOUTH AFRICAN REVENUE SERVICE SUID-AFRIKAANSE INKOMSTEDIENS

No. R. 466**1 April 2003**

DETERMINATION OF LIMIT ON AMOUNT OF REMUNERATION FOR PURPOSES OF DETERMINATION OF CONTRIBUTION IN TERMS OF SECTION 6 OF THE UNEMPLOYMENT INSURANCE CONTRIBUTIONS ACT, 2002 (ACT NO. 4 OF 2002)

By virtue of the powers vested in me by section 6(2) of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), I, Trevor Andrew Manuel, Minister of Finance, hereby after consultation with the Minister of Labour and the Unemployment Insurance Commissioner, determine that section 6(1) of that Act shall, with effect from 1 April 2003, not apply to so much of the remuneration paid or payable by an employer to an employee during any month, as exceeds R8 836.

**T A MANUEL
MINISTER OF FINANCE**

No. R. 466

1 April 2003

**U TEWA HA PHIMO KHA TSHELEDE YA MALAMBA ZWI TSHI ITELWA U
TA ZWIBVISWA HU TSHI TEVHEDZWA KHETHEKANYO 6 YA MULAYO
WA ZWIBVISWA ZWA NDINDAKHOMBO YA U SHAEYA HA MISHUMO,
2002 (MULAYO WA NOMBORO 4 WA 2002)**

Nga maanda e nda ambadzwa nga khethekanyo 6(2) ya Mulayo wa zwibviswa zwa Ndindakhombo ya u Shaeya ha Mishumo, 2002 (Mulayo wa Nomboro 4 Wa 2002), Nne, Trevor Andrew Manuel, Minista wa zwa Gwama, afha nga murahu ha nyambedzano na Minista wa zwa Mishumo na Khomishinari wa Ndindakhombo ya u Shaeya ha Mishumo, ndi ta uri khethekanyo 6(1) ya Mulayo uyo u thoma nga la 1 Lambamai 2003, a i nga shumi kha malamba a badeliwaho kana o fanelaho u badelwa nga mutholi kha mutholwa kha nwedzi munwe na munwe a padaho R8 836.

**T A MANUEL
MINISTA WA ZWA GWAMA**

No. R. 467

1 April 2003

**RULES PROMULGATED UNDER SECTION 107A OF THE INCOME TAX ACT, 1962
(ACT NO. 58 OF 1962), PRESCRIBING THE PROCEDURES TO BE OBSERVED IN
LODGING OBJECTIONS AND NOTING APPEALS AGAINST ASSESSMENTS,
PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION AND THE CONDUCT
AND HEARING OF APPEALS BEFORE A TAX COURT**

The Minister of Finance has under section 107A of the Income Tax Act, 1962 (Act No. 58 of 1962), after consultation with the Minister for Justice and Constitutional Development, made the rules in the Schedule prescribing the procedures to be observed in lodging objections and noting appeals against assessments, the procedures for alternative dispute resolution and the conduct and hearing of appeals before a Tax Court.

These rules apply with effect from 1 April 2003 in respect of all assessments issued, objections lodged or appeals noted on or after that date.

Part B of the Regulations contained in Government Notice R.105 in *Gazette* No. 1011 of 22 January 1965, is hereby repealed to the extent that these rules in terms of Part C apply in respect of any objection or appeal.

**T. A. MANUEL, MP
MINISTER OF FINANCE**

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**RULES PRESCRIBING THE PROCEDURES TO BE OBSERVED IN LODGING
OBJECTIONS AND NOTING APPEALS AGAINST ASSESSMENTS, THE
PROCEDURES FOR ALTERNATIVE DISPUTE RESOLUTION AND THE CONDUCT
AND HEARING OF APPEALS BEFORE A TAX COURT**

Part A:

Objections, Appeals and Alternative Dispute Resolution

Definitions

1. (1) In these rules, any meaning ascribed to any word or expression in the Act, shall bear the meaning so ascribed and, unless the context otherwise indicates, —

“Board” means the tax board established by section 83A of the Act;

“Court” means the tax court established by section 83 of the Act;

“day” means a day as contemplated in section 83(23) of the Act;

“deliver” means—

- (a) handing the relevant document to the relevant person;
- (b) sending the relevant document to the relevant person by registered post;
- (c) telefaxing the relevant document to the relevant person;
- (d) transmitting the relevant document to the relevant person by electronic means; or
- (e) any other means of service authorised by the Court consisting of the President of the Court sitting alone:

Provided that in the case of paragraphs (c) and (d), the original, signed document must be handed to that person or sent by registered post to that person within ten days of it being so telefaxed or transmitted by electronic means;

“documents” means documents as defined in section 74(1) of the Act;

“information” means information as defined in section 74(1) of the Act;

“Registrar” means the Registrar of the Court appointed in terms of section 83(20) of the Act and includes any other person authorised to act in the place of the Registrar;

“SARS” means the South African Revenue Service as established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“taxpayer” means a taxpayer as defined in section 1 of the Act and includes, for purposes of these rules, any person chargeable with any tax, levy, duty, charge or other amount imposed in terms of any other Act administered by the Commissioner;

“the Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

"things" means things as defined in section 74(1) of the Act.

Office of Registrar

2.(1) The location of the office of the Registrar will be determined by the Commissioner from time to time and particulars thereof must be published for general information in the *Gazette*.

(2) The office of the Registrar will be open every Monday to Friday, excluding public holidays, from 08h00 to 16h00.

Reasons for assessment

3. (1)(a) Any taxpayer who is aggrieved by any assessment may by written notice delivered to the Commissioner within 30 days after the date of the assessment, request the Commissioner to furnish reasons for the assessment. The written notice must specify the address at which the taxpayer will accept notice and delivery of such reasons and all documents in terms of the proceedings contemplated in rule 26.

(b) Upon request by the taxpayer, the period prescribed in paragraph (a) may be extended by the Commissioner for a period of not more than 60 days where the Commissioner is satisfied that reasonable grounds exist for the delay in complying with that period.

(2) Where in the opinion of the Commissioner adequate reasons have already been provided, the Commissioner must, within 30 days after receipt of the notice contemplated in subrule (1), notify the taxpayer accordingly in writing which notice must refer to the documents wherein such reasons were provided.

(3) Where in the opinion of the Commissioner adequate reasons have not yet been provided, the Commissioner must provide written reasons for the assessment within 60 days after receipt of the notice contemplated in subrule (1): Provided that where in the opinion of the Commissioner more time is required due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, the Commissioner must, before expiry of that 60 day period, inform the taxpayer that written reasons will be provided not later than 45 days after the date of expiry of that first 60 day period.

Objection

4. A taxpayer who is aggrieved by an assessment may object to an assessment, which objection must—
- (a) be in such form as may be prescribed by the Commissioner in terms of section 65 of the Act;
 - (b) be in writing specifying in detail the grounds upon which it is made;
 - (c) specify an address at which the taxpayer will accept notice and delivery of the Commissioner's decision in respect of such objection and all documents in terms of the proceedings contemplated in rule 26;
 - (d) be signed by the taxpayer: Provided that where the taxpayer is unable to personally sign the objection, the person signing on behalf of the taxpayer must state in an annexure to the objection—
 - (i) the reason why the taxpayer is unable to sign the objection;
 - (ii) that he or she has the necessary power of attorney to sign on behalf of the taxpayer; and
 - (iii) that the taxpayer is aware of the objection and agrees with the grounds thereof; and
 - (e) be delivered to the Commissioner at the address specified in the assessment for this purpose, within 30 days after—
 - (i) in the case where the taxpayer has requested reasons under rule 3, either the date of the notice by the Commissioner that adequate reasons have been provided or the date that reasons were furnished by the Commissioner, as the case may be; or
 - (ii) in any other case, the date of the assessment.

Commissioner's decision

- 5.(1)(a) Where a taxpayer delivers an objection that does not comply with the requirements of rule 4(a), (b), (c) or (d), the Commissioner may inform the taxpayer by notice within 60 days that he or she does not accept it as a valid objection: Provided that the taxpayer may within ten days of such notice submit an amended objection.
- (b) Where the taxpayer has failed to deliver his or her objection at the address specified in the assessment for this purpose, as required by rule 4(e), the document delivered in terms of rule 4 will be deemed to be invalid.

(2)(a) Where the Commissioner is satisfied that the taxpayer has not furnished all the information, documents or things required to decide on the taxpayer's objection, the Commissioner must, not later than 60 days after receipt of the objection, notify the taxpayer accordingly and request him or her in writing to deliver the information, documents or things as specified in that notice.

(b) The taxpayer must, within 60 days after the date of the notice contemplated in subrule (2)(a), deliver all information, documents or things requested in that notice and as specified in that notice to the Commissioner.

(c) The Commissioner may extend the period in subrule (2)(b) by not more than 30 days, where the Commissioner is satisfied that reasonable grounds exist on which the taxpayer is not able to deliver the information, documents or things specified by the Commissioner within that period and the taxpayer has, before expiry of that period, requested the Commissioner in writing that the period be extended, stating the grounds for the failure to provide such information, documents or things within that period.

(3) The Commissioner must on receipt of the objection contemplated in rule 4, or the information contemplated in subrule (2), alter the assessment or disallow the objection in accordance with section 81(4) of the Act, reduce the assessment in accordance with section 79A of the Act or withdraw the assessment in accordance with section 79B of the Act, and must, subject to subrule (4), notify the taxpayer of his or her decision in writing—

- (a) in the case where the Commissioner requested information under subrule (2), within 60 days after receipt of that information; or
- (b) in any other case, within 90 days after the date of receipt of the taxpayer's objection in terms of rule 4 or amended objection in terms of the proviso to subrule (1)(a), as the case may be.

(4) Where, in the opinion of the Commissioner, more time is required due to exceptional circumstances, the complexity of the matter or the principle or the amount involved, the Commissioner must, before expiry of the period prescribed by subrule (3), inform the taxpayer that he or she will decide on the objection within such longer period which—

- (a) in the case of subrule (3)(a), may not exceed 60 days; or
- (b) in the case of subrule (3)(b), may not exceed 90 days.

Notice of appeal

6. (1) Any taxpayer entitled to object to an assessment and who is dissatisfied with the decision of the Commissioner in terms of section 81(4) of the Act, may appeal against that decision.

(2) A taxpayer who wishes to appeal must, within 30 days after the date of the notice informing him or her of the decision of the Commissioner in terms of section 81(4) of the Act, deliver to the Commissioner a notice of appeal which must be in such form as may be prescribed by the Commissioner in terms of section 65 of the Act and be signed by the taxpayer or his or her representative.

(3) In the taxpayer's notice of appeal in terms of subrule (2), he or she—

- (a) must indicate in respect of which of the grounds specified in his or her objection in terms of rule 4 he or she is appealing; and
- (b) may indicate that he or she wishes to make use of the alternative dispute resolution procedures contemplated in rule 7, should these procedures be available.

Alternative Dispute Resolution**Access**

7. (1) Where—

- (a) the taxpayer has indicated in his or her notice of appeal that he or she wishes to make use of alternative dispute resolution, the Commissioner must inform the taxpayer by notice within 20 days of receipt of the notice of appeal whether or not he or she is of the opinion that the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures contemplated in this rule; or
- (b) the taxpayer has not indicated in his or her notice of appeal that he or she wishes to make use of alternative dispute resolution, and the Commissioner is of the opinion that the matter is appropriate for alternative dispute resolution and may be resolved by way of the procedures contemplated in this rule, he or she must inform the taxpayer accordingly by notice within ten days of receipt of the notice of appeal, and the taxpayer must deliver a notice stating whether or not he or she agrees thereto within ten days of the date of the notice by the Commissioner.

Terms and agreement on alternative dispute resolution

(2)(a) The terms governing the alternative dispute resolution proceedings are set out in Schedule A to these rules.

(b) Where the Commissioner and the taxpayer agree to alternative dispute resolution as contemplated in subrule (1), a dispute may be resolved in accordance with the alternative dispute resolution procedures contemplated in this rule, which will only take place if the taxpayer accepts the terms set out in Schedule A.

Period of dispute resolution

(3)(a) The period within which the alternative dispute resolution proceedings in terms of this rule is conducted commences 20 days after the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6, and ends on the date of termination of the proceedings in the manner provided for in the terms governing the alternative dispute resolution procedures.

(b) The period contemplated in subrule (3)(a) interrupts the periods applicable for purposes of the procedures contemplated in rules 8 to 29 hereafter.

(c) The parties must finalise the alternative dispute resolution proceedings not later than 90 days after the date of receipt by the Commissioner of the notice of appeal, or such further period as the Commissioner may agree to.

The facilitator

(4)(a) The Commissioner may appoint any person, including a person employed by SARS, to facilitate the proceedings in terms of this rule.

(b) Any person appointed to facilitate the proceedings in terms of this rule will be bound to the code of ethics set out in Schedule B to these rules.

(c) The person appointed to facilitate the proceedings in terms of this rule may, if the Commissioner and the taxpayer agree thereto at the commencement of the proceedings, be requested to make a recommendation at the conclusion of the proceedings if no agreement or settlement as contemplated in subrule (7)(a) or (7)(b) below is ultimately reached between the parties, which recommendation will be admissible during any subsequent proceedings including court proceedings.

Proceedings

(5)(a) The proceedings in terms of this rule will be conducted in accordance with the terms set out in Schedule A.

(b) During the proceedings contemplated in this rule, the taxpayer or his or her representative taxpayer :

- (i) may be accompanied by any representative of his or her choice; and
- (ii) must be personally present unless the facilitator, in exceptional circumstances, allows the taxpayer or his or her representative taxpayer to be represented in their absence by a representative of their choice.

Reservation of rights

(6)(a) The taxpayer and the Commissioner may participate in the proceedings contemplated in this rule with full reservation of their respective rights in terms of the procedures contemplated in rules 8 to 29.

(b) Subject to section 4 of the Act and subrule (4)(c), the proceedings in terms of this rule shall not be one of record, and any representation made or document tendered in the course of the proceedings—

- (i) is made or tendered without prejudice; and
- (ii) may not be tendered in any subsequent proceedings as evidence by any other party, except:
 - (aa) with the knowledge and consent of the party who made the representation or tendered the document during the proceedings in terms of this rule;
 - (bb) where such representation or document is already known to, or in the possession of, that party; or
 - (cc) where such representation or document is obtained by that party otherwise than in terms of the proceedings in terms of this rule.

(c) No person may—

- (i) subject to the circumstances listed in paragraph (b)(ii)(aa) to (cc) above, subpoena any person involved in the alternative dispute resolution proceedings in whatever capacity to compel disclosure of any representation made or document tendered in the course of the proceedings; or

- (ii) subpoena the facilitator of the alternative dispute resolution proceedings to compel disclosure of any representation made or document tendered in the course of the proceedings.

Agreement or settlement

(7)(a) A dispute which is subject to the procedures in terms of this rule, may be resolved by agreement whereby either the Commissioner or the taxpayer accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.

(b) Where—

- (i) the Commissioner and the taxpayer are, despite all reasonable efforts, unable to resolve the dispute as contemplated in paragraph (a); and
- (ii) the Commissioner personally or any person designated by the Commissioner for purposes of the regulations issued under section 107B of the Act, is of the opinion that the circumstances of the matter comply with the requirements contemplated in those regulations,

the parties may attempt to settle the matter in accordance with those regulations within the process contemplated in this rule.

(c) Where an agreement contemplated in paragraph (a) or a settlement contemplated in paragraph (b) is concluded, the Commissioner must issue an assessment to give effect to that agreement or settlement, as the case may be, within a period of 60 days after the date of the conclusion thereof.

(d) Where the proceedings are terminated in the manner provided for in the terms governing the alternative dispute resolution procedures, the taxpayer will, unless he or she informs the Commissioner otherwise, be deemed to pursue his or her appeal in the manner contemplated in rules 8 to 29.

Reporting requirements

(8)(a) Any agreement in terms of subrule (7)(a) whereby a dispute which is subject to the procedures in terms of this rule is resolved in whole or in part, must be reported internally in the manner as may be required by the Commissioner.

(b) Any settlement of a dispute in terms of subrule (7)(b) in accordance with the regulations issued in terms of section 107B of the Act, must be reported in the manner prescribed by the Minister of Finance in those regulations.

Appeal to Board or Court

8.(1) Where the provisions of section 83A of the Act apply, the matter will be dealt with by the Board.

(2) The Commissioner must give written notice of the time and place appointed for the hearing of the appeal before the Board, which notice must be delivered to the taxpayer not later than 40 days after receipt of the notice of appeal or termination of alternative dispute resolution proceedings, but at least 21 days before the hearing of the appeal in accordance with the provisions of section 83A(7)(b) of the Act.

(3)(a) The Chairperson of the Board contemplated in section 83A(3) of the Act, must furnish his or her decision to the clerk of the Board contemplated in section 83A(5) of the Act, within 30 days of the hearing of the appeal.

(b) The clerk must by notice in writing furnish the Commissioner and the appellant with a copy of the Board's decision within ten days of the receipt of the decision.

(4) The provisions of rules 9 to 29 apply in respect of any appeal to be heard by the Court.

Limitation of issues in dispute

9. (1) Where the Commissioner and the taxpayer agree that it will be beneficial to attempt to limit the issues in dispute for purposes of the anticipated litigation, the Commissioner may arrange to meet with the taxpayer which meeting may be held at any office of SARS or any other venue as agreed to by the parties, within 90 days after—

- (a) where the alternative dispute resolution procedures were followed in terms of rule 7, the date of termination of the alternative dispute resolution proceedings as contemplated in rule 7(3);
- (b) where the matter was heard by the Board—
 - (i) the date of receipt by the Commissioner of a notice by the taxpayer in terms of section 83A(13)(a); or
 - (ii) the date of the delivery by the Commissioner of a notice in terms of section 83A(13)(b); or

- (c) in any other case, the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6.
- (2) The Commissioner must within 15 days after the meeting contemplated in subrule (1), prepare and deliver to the taxpayer a minute recording—
 - (a) the facts that are common cause;
 - (b) the facts that are in dispute; and
 - (c) the issues the Court is required to decide on:

Provided that where the taxpayer does not agree with the content of the minute, he or she must deliver an additional minute within ten days of the date of the delivery of the minute by the Commissioner recording the facts and issues contemplated in paragraphs (a) to (c) and indicate exactly in what aspects he or she disagrees with the Commissioner's minute.

Statement of grounds of assessment

- 10.** (1) The Commissioner must deliver to the taxpayer a statement of the grounds of assessment—
- (a) where a meeting was held between the Commissioner and the taxpayer as contemplated in rule 9, within 60 days after the last set of minutes of that meeting was delivered by the Commissioner or the taxpayer, as the case may be;
 - (b) where no meeting was held as contemplated in paragraph (a), within 90 days after—
 - (i) where the alternative dispute resolution procedures were followed in terms of rule 7, the date of termination of the alternative dispute resolution proceedings as contemplated in rule 7(3);
 - (ii) where the matter was heard by the Board—
 - (aa) the date of receipt by the Commissioner of a notice by the taxpayer in terms of section 83A(13)(a); or
 - (bb) the date of the delivery by the Commissioner of a notice in terms of section 83A(13)(b); or
 - (iii) in any other case, the date of receipt by the Commissioner of the notice of appeal contemplated in rule 6.
- (2) Where more time is in the opinion of the Commissioner required due to exceptional circumstances, the complexity of the matter or the principle or amount involved, the Commissioner must, before expiry of the period contemplated in subrule (1)(a) or (b),

inform the taxpayer that he or she will deliver the statement of the grounds of assessment within such longer period which may not exceed—

(a) in the case of subrule (1)(a), 60 days; or

(b) in the case of subrule (1)(b), 90 days.

(3) The statement of the grounds of assessment must be in writing and be signed by the Commissioner or his or her representative and must be divided into paragraphs—

(a) setting out a clear and concise statement of the grounds upon which the taxpayer's objection is disallowed ; and

(b) stating the material facts and legal grounds upon which the Commissioner relies for such disallowance.

Statement of grounds of appeal

11. (1) The taxpayer (hereinafter referred to as "the appellant") must, within 60 days after the delivery by the Commissioner of the statement of the grounds of assessment, deliver to the Commissioner a statement of the grounds of appeal.

(2) The statement must be in writing and be signed by the appellant or his or her representative and must be divided into paragraphs—

(a) setting out a clear and concise statement of the grounds upon which the appellant appeals;

(b) stating the material facts and legal grounds upon which the appellant relies for such appeal; and

(c) stating which of the facts and legal grounds alleged in the statement of the grounds of assessment are admitted and which of those facts and legal grounds are denied.

Issues in appeal

12. The issues in any appeal to the Court will be those defined in the statement of the grounds of assessment read with the statement of the grounds of appeal.

Amendments of statement of grounds of appeal

13. (1) The Commissioner and the appellant may agree in writing to the amendment of the statement of the grounds of assessment or the statement of grounds of appeal or both.

(2) The Court, consisting of the President sitting alone, may, on application on notice grant leave to amend the statement of the grounds of assessment or the statement of grounds of appeal, subject to such orders as to postponement and costs as the Court deems appropriate.

Discovery of documents, information or things

14. (1) The Commissioner and the appellant may, within 20 days after delivery of the statement of the grounds of appeal contemplated in rule 11, deliver a notice to the other party requesting him or her to make discovery on oath of all documents, information or things relating to the issues in appeal as contemplated in rule 12.

(2)(a) Any party to whom a notice to discover has been delivered, must make discovery on oath of all documents, information or things relating to any matter in the appeal within 40 days after delivery by that party of that notice, specifying separately—

- (i) the documents, information or things in his or her possession or control, or that of his or her agent;
- (ii) the documents, information or things which were previously in his or her possession or control, or that of his or her agent, but which is no longer so in his or her possession or control or that of his agent; and
- (iii) the documents, information or things in respect of which he or she has a valid objection to produce.

(b) The production or inspection of the documents, information or things takes place at a venue and in a manner as may be agreed between the parties.

(3) If either party believes that there are, in addition to the documents, information or things so disclosed, other documents, information or things which may be relevant to any matter in question in possession of the other party, that party may give notice within ten days of the production or inspection of the documents, information or things in terms of subrule (2)(b) to that other party requiring him or her to make such documents, information or things available for inspection, or to state under oath within ten days that those

documents, information or things are not in his or her possession, in which event he or she must state their whereabouts, if known to him or her.

(4) Any document, information or thing not disclosed may not, save with the leave of the Court granted on such terms as it deems appropriate, be used for any purpose at the appeal by the party who is obliged but failed to disclose it, provided that any other party may use such document, information or thing.

Notice of expert witness

15. Neither party may, save with the leave of the Court or consent of the other party, call any person as a witness to give evidence as an expert upon any matter upon which the evidence of expert witnesses may be received, unless that party has—

- (a) not less than 30 days before the hearing of the appeal delivered notice to the other party and the Registrar of his or her intention to do so; and
- (b) not less than 20 days before the hearing of the appeal delivered to the other party and the Registrar a summary of such expert's opinions and his or her reasons therefor.

Pre-trial conference

16.(1) The Commissioner must arrange for a pre-trial conference to be held—

- (a) where either party was requested to make discovery, within 60 days after all parties who were so requested have delivered their discovery notices; or
- (b) where neither party delivered a notice requesting the other party to make discovery, within 60 days after receipt by the Commissioner of the statement of the grounds of appeal.

(2) During the pre-trial conference the Commissioner and the appellant must attempt to reach consensus on—

- (a) the extent to which sufficient discovery has been made by both parties, the exchange of documents, information or things and the preparation of a paginated bundle of documentation in chronological order;
- (b) the manner in which evidence is to be dealt with, including any agreement on the status of any document, information or thing and whether any document,

information or thing or parts thereof, will serve as evidence of what they purport to be;

- (c) whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent;
- (d) the necessity of any inspection *in loco*;
- (e) the resolution of any preliminary points that either party intends to take;
- (f) expert evidence;
- (g) any other means by which the proceedings may be shortened;
- (h) an estimate of the time required for the hearing; and
- (i) any means by which the dispute may be resolved or settled.

(3) This conference must take place at any office of SARS or any other venue to be agreed between the parties.

(4) The Commissioner must within ten days of the conclusion of the pre-trial conference contemplated in subrule (1), prepare and deliver a minute dealing with the matters set out in subrule (2): Provided that where the appellant does not agree with the content of the minute, he or she must deliver his or her minute to the Commissioner with ten days of the date of the delivery of the minute by the Commissioner.

Date of hearing

17. (1) After delivery of the pre-trial conference minute in terms of rule 16(4), the Commissioner must arrange a date for the hearing of the appeal and inform the Registrar accordingly.

(2) The Registrar must deliver to the appellant and to the Commissioner a written notice of the time and place appointed for the hearing of the appeal at least 40 days before the hearing of the appeal, or such shortened period as may be agreed between the parties.

Dossier

18.(1) At least 30 days before the hearing of the appeal or as otherwise agreed between the parties in consequence of an agreement in terms of rule 17(2), the Commissioner must deliver to the appellant and the Registrar a dossier containing copies of—

- (a) all returns by the appellant relevant to the year of assessment in issue;
- (b) all assessments issued by the Commissioner relevant to the issues in appeal contemplated in rule 12;

- (c) where applicable, the notice requesting the Commissioner to furnish reasons for the assessment or the decision contemplated in rule 3(1);
 - (d) where applicable, the Commissioner's notice or reasons contemplated in rule 3(2) and (3);
 - (e) the appellant's objection to the assessment in terms of the Act;
 - (f) the notice of appeal in terms of the Act;
 - (g) where applicable, the minutes of the meeting to limit the issues in dispute contemplated in rule 9(2);
 - (h) where applicable, the statement of the grounds of assessment contemplated in rule 10;
 - (i) where applicable, the statement of grounds of appeal contemplated in rule 11; and
 - (j) any order by the Court in terms of rule 13(2) or 26 or both.
- (2) The dossier must be prepared in accordance with the requirements of rule 25.
- (3) The Registrar must deliver copies of the dossier to the Court at least 20 days before the hearing of the appeal or, in consequence of the agreement contemplated in subrule (1), as soon as is reasonably possible after receipt of the dossier from the Commissioner.

Places at which Court sits

19.(1) The Judge President or the President of the Division of the High Court having jurisdiction in the area in which the Court will sit must determine the place and the times of the sittings of the Court by arrangement with the Registrar.

(2) Every appeal must be heard and determined by the Court in the area determined in terms of subrule (1), which is nearest to the residence or principal place of business of the appellant: Provided that the Commissioner may, in the absence of the consent of the appellant, on reasonable grounds and with due notice to the appellant, request the Judge President or President of the High Court having jurisdiction in any other area that the appeal be heard by a Court in such other area.

Procedures not covered by Act and Rules

20. (1) Save as is otherwise provided in these rules, the rules issued in terms of section 43 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply in respect of the general practice and procedure of the Court in so far as such rules are applicable.

(2) In the case of any procedural dispute during any proceedings in terms of the Act and the rules, except for rule 7, the President of the Court alone must decide on the procedures to be followed.

Subpoenas

21.(1) At the request of either party or by the directions of the Court, a subpoena may be issued by the Registrar requiring any person to attend the hearing of the appeal for the purpose of giving evidence in connection with any appeal, and such subpoena may require the person summoned to produce any book, document, information or thing which may be in his or her possession or under his or her control and which is relevant to the issues in dispute contemplated in rule 12.

(2) The rules issued in terms of section 43 of the Supreme Court Act, 1959, governing the service of subpoenas in civil matters in the High Court will *mutatis mutandis* apply in respect of subpoenas issued under this rule.

Procedures in Court

22.(1) At the hearing of the appeal, the proceedings are commenced by the appellant unless the Commissioner takes a point *in limine*.

(2) The appellant or the person appearing on his or her behalf, must present all evidence, including any witnesses, on which his or her appeal may be founded and must adhere to the rules of evidence.

(3) After the case on the part of the appellant has been heard, the Commissioner must in like manner produce all evidence, including any witnesses, where required, in support of the assessment.

(4) At the conclusion of the evidence, the appellant or the person appearing on his or her behalf, and thereafter the Commissioner, may be heard in argument.

(5) The appellant or the person appearing on his or her behalf may reply to any new points raised in the argument presented by the Commissioner or to any other points with the leave of the President of the Court.

(6) The Court must determine the matter in dispute or reserve its decision until a later date.

(7) Where the decision is so reserved, the judgment must be delivered by the President of the Court in the manner he deems fit.

(8) The hearing of an appeal may be adjourned by the Court from time to time to any time and place that the Court deems convenient.

(9) The Registrar must by notice in writing deliver the written judgment of the Court to the Commissioner and the appellant or any person nominated by him or her within 15 days of the receipt thereof.

(10) If neither the appellant nor anyone authorised to appear on his or her behalf appears before the Court at the time and place appointed for the hearing of an appeal, the Court may, upon the request of the Commissioner and upon proof that the prescribed notice of the sitting of the Court has been sent to the appellant or his or her representative, decide the appeal as contemplated in section 83(13) of the Act, unless any question of law arises, in which case the Court may call upon the Commissioner for argument in support of the assessment before giving its decision.

(11) If neither the Commissioner nor anyone authorised to appear on his or her behalf appears before the Court at the time and place appointed for the hearing of an appeal, the Court may, upon the request of the appellant and upon proof that the prescribed notice of the sitting of the Court has been sent to the Commissioner, decide the appeal as contemplated in section 83(13) of the Act, unless any question of law arises, in which case the Court may call upon the appellant for argument in support of the objection before giving its decision.

Withdrawal or concession of appeal

23.(1) The appeal may, at any time before it has been set down for hearing as contemplated in rule 17(2), be—

- (a) withdrawn by the appellant;
- (b) conceded by the Commissioner;
- (c) resolved by an agreement as contemplated in rule 7(7)(a), read with rule 7(7)(c) and 7(8); or
- (d) settled as contemplated in rule 7(7)(b), read with rule 7(7)(c) and 7(8).

(2) Where an appeal has been set down for hearing as contemplated in rule 17(2) or is part-heard—

- (a) it may only be withdrawn by the appellant or conceded by the Commissioner with the consent of the other party, or with leave of the Court consisting of the President of the Court sitting alone, in which event—

- (i) the party who wishes to withdraw or concede an appeal as contemplated above, must deliver a notice of withdrawal or concession to the other party and the Registrar and may include in that notice a consent to pay costs, which consent will have the effect of an order of the Court for those costs; or
- (ii) if no consent to pay costs is included in the notice referred to in subrule (2)(a)(i), the other party may apply for an order for costs—
 - (aa) where the appeal has been set down for hearing as contemplated in rule 17(2) but not yet heard by the Court, to the Court by application on notice in the manner contemplated in Part B; or
 - (bb) where the matter is part-heard, to the Court consisting of the President of the Court sitting alone.
- (b) any agreement as contemplated in rule 7(7)(a) or any settlement as contemplated in rule 7(7)(b)—
 - (i) must relate to the appeal as a whole, including costs; and
 - (ii) may, by consent between the parties or by application by any party on notice in the manner contemplated in Part B, be made an order of the Court.

Postponement or removal of case from roll

24.(1) Where the Commissioner and the appellant agree to postpone the hearing of the appeal which has been set down for hearing as contemplated in rule 17(2), or to have that appeal removed from such roll, the party initiating the proceedings must notify the Registrar thereof in writing.

(2) An application by a party to postpone or remove an appeal from the roll, which is opposed by the other party, may be heard and determined by the President of the Court sitting alone.

Pagination of documents

25.(1) In all proceedings before the Court, the documents that are filed with the Court must be paginated by the party who seeks to put them before the Court and, as far as practical, all the documents must be arranged in chronological order.

(2) All documents must be accompanied by an index and documents filed with the Court must be paginated in accordance with this index, which must contain sufficient information

to enable the Court to identify every document without having to refer to the document itself.

(3) Where additional documents are filed after the index has been completed, those additional documents must be paginated following the original pagination and a supplementary index must be filed listing the additional documents.

Extension of prescribed periods, condonation and non-compliance with rules

26.(1) (a) Any decision by the Commissioner in the exercise of his or her discretion under rules 3(1)(b), 3(2), 3(3), 5(1) and 5(2)(c) will be subject to objection and appeal, and may notwithstanding the procedures contemplated in rules 6 to 18 be brought before the Court by application on notice.

(b) The Court may upon application on notice under this subrule and on good cause shown, in respect of a decision by the Commissioner under:

- (i) rule 3(1)(b) or 5(2)(c), make an order extending the period prescribed therein;
- (ii) rule 3(2) or 3(3), make an order remitting the matter for reconsideration by the Commissioner with or without directions to provide such reasons as in the opinion of the Court are adequate; or
- (iii) rule 5(1), make an order declaring that any objection deemed to be invalid by the Commissioner shall be valid.

(2) Any period contemplated in rules 5 and 8 to 18 may be extended by agreement between the parties and in the absence of any agreement, the Court may upon application on notice and on good cause shown, make an order extending any period prescribed by these rules or fixed or extended by an order of the Court on such terms as the Court deems appropriate.

(3) The Court may order that any period contemplated in rules 5 and 8 to 18 be extended, notwithstanding the fact that the application for extension is made after expiry of the relevant period.

(4) The Court may upon application on notice and on good cause shown, condone any non-compliance with these rules.

(5) Where either party fails to comply with any requirement contained in these rules the Court may, upon application on notice by the other party, order the defaulting party to comply with that requirement within such time as the Court deems appropriate.

(6) Where the defaulting party fails to comply with an order made in terms of subrule (1) or (5), the Court may, upon application on notice by the other party—

- (a) where the defaulting party is the taxpayer, make an order that the assessment against which the taxpayer has objected is confirmed, in which case the assessment shall be final and conclusive;
 - (b) where the defaulting party is the Commissioner, make an order that the objection is allowed and that the Commissioner must alter the assessment in accordance with the objection; or
 - (c) make such other order as the Court deems appropriate.
- (7) In addition to any order in terms of subrules (1) to (5), the Court may make any order as to costs as the Court deems appropriate.
- (8) For purposes of this rule, any reference to "Court" means the President of the Court sitting alone.

Costs

27.(1) Where the Court makes an order as to costs, or at the request of the Commissioner or the taxpayer where a consent to pay costs was made by the other party in terms of these rules, the Registrar may either perform the functions and duties of a taxing master or, at the request of the Court or any party, appoint any person to act as taxing master on such terms and for such period as the Registrar may determine.

(2) The person appointed by the Registrar under subrule (1), must in the Registrar's opinion be fit to perform the functions and duties which are assigned to, or imposed on, a taxing master by these rules.

(3) The Commissioner or the appellant may apply to the President of the Court sitting alone for reconsideration of any items or portions of items in the bill of costs taxed by the Registrar or the person appointed to act as taxing master, and the President's decision as to whether such items or portions of items shall be allowed, reduced or disallowed shall be final.

(4) The fees, charges and rates to be allowed by the Court are, as far as applicable, those fixed by the tariff of fees and charges in cases heard before the Provincial or Local Division of the High Court within whose area of jurisdiction the Court sits.

(5) In making any such order against an appellant, the Court may require the appellant to pay the costs of the Commissioner as appears to the Court to be right and proper.

Witness fees

28.(1) A witness in any proceedings before the Court is entitled to be paid in accordance with the tariff of allowances prescribed by the Minister for Justice and Constitutional Development and published in terms of section 42 of the Supreme Court Act, 1959 (Act No. 59 of 1959), by notice in the *Gazette*.

(2) The Court may, notwithstanding subrule (1), order that no allowances or only a portion of the prescribed allowances be paid to a witness, at the request of any party to the matter before the Court.

Fees payable for transcripts

29. Where any person (other than the Commissioner) has filed with the Registrar a notice of intention to appeal under section 86A(3) of the Act against a decision of the Court, and that person requires a transcript of the evidence, or of a portion of the evidence, given at the hearing of the case by the Court, that person must deposit with the Registrar such sum as in the opinion of the Registrar is sufficient to cover the costs for the transcript, and must pay upon receipt of such transcript the outstanding portion of the fee as determined by the Registrar.

Part B:***Applications on Notice******Definitions***

B1. (1) For purposes of the rules in this Part, any meaning ascribed to any word or expression in the Act or Part A shall, unless the context otherwise indicates, bear the meaning so ascribed.

(2) Rules 19, 23 to 25 and 27 of Part A shall, to the extent applicable, apply *mutatis mutandis* to this Part.

(3) Save as is otherwise provided in the rules of this Part, the general practice and procedure of the Court shall be that of the High Court in so far as such practice and procedure are applicable.

Application of Part B

B2. For purposes of the rules in Part A, any application on notice contemplated in those rules must be brought in the manner contemplated in the rules in this Part.

Notice of motion and founding affidavit

B3. Every application must be brought on notice of motion which must set out in full the order sought and must be supported by a founding affidavit as to the facts upon which the applicant relies for relief.

Delivery of notice of motion and founding affidavit

B4. Copies of the notice of motion and founding affidavit, and all annexures thereto, must be delivered to the Registrar, and the party against which the relief is claimed (hereafter referred to as the respondent) at the address—

- (a) where the respondent is the Commissioner, specified by him or her for this purpose in the assessment; or
- (b) where the respondent is the taxpayer, specified by him or her for this purpose in any request for reasons in terms of rule 3 of Part A, or his or her objection in terms of rule 4 of Part A, whichever is applicable.

Address and due date

B5. In the notice of motion, the applicant must—

- (a) indicate an address, if different from the address contemplated in rule B4, at which he or she will accept notice and delivery of all documents in such proceedings;
- (b) set forth a day, not less than ten days after delivery thereof to the respondent, on or before which the respondent is required to notify the applicant in writing, whether he or she intends to oppose that application; and
- (c) state that if no such notification is given, the application will be set down for hearing on the first available day determined by the Registrar, being not less than 15 days after service of that notice on the respondent.

Set-down for hearing where no intention to oppose

B6. If the respondent does not, on or before the day mentioned for that purpose in the notice in terms rule B5(b), notify the applicant of his or her intention to oppose, the applicant may request the Registrar to place the matter on the roll on the date determined by Registrar in terms of rule B5(c).

Notice of intention to oppose and answering affidavit

B7. If the respondent wishes to oppose the grant of an order sought in the notice of motion, he or she must—

- (a) within the time stated in that notice, give the applicant notice in writing, that he or she intends to oppose the application;
- (b) indicate in that notice contemplated in paragraph (a) an address, if different from the address contemplated in rule B4, at which he or she will accept notice and delivery of all documents in such proceedings; and
- (c) within 15 days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents.

Replying affidavit

B8. (1) Within ten days of delivery of the affidavit and documents referred to in rule B7, the applicant may deliver a replying affidavit.

(2) The Court may in its discretion permit the filing of further affidavits.

Set-down for hearing where no answering affidavit

B9. Where no answering affidavit is delivered within the period referred to in rule B7(c), the applicant may within five days of the expiry of that period apply to the Registrar to allocate a date for the hearing of the application.

Application for date of hearing

B10. Where an answering affidavit is delivered the applicant may, within five days of the delivery of his or her replying affidavit or, if no replying affidavit is delivered, within five days of the expiry of the period referred to in rule B8, apply to the Registrar to allocate a date for the hearing of the application on the first available date suitable to both parties.

Application for set down by respondent

B11.(1) If the applicant fails to apply in terms of rule B10 to the Registrar to allocate a date for the hearing of the application within the periods contemplated therein, the respondent may do so immediately upon the expiry thereof.

(2) Notice in writing of the date allocated by the Registrar shall forthwith be given by the applicant or the respondent, as the case may be, to the other party.

Part C:***Transitional Arrangements******Definitions***

C1. For purposes of the rules in this Part, any meaning ascribed to any word or expression in the Act or Part A shall, unless the context otherwise indicates, bear the meaning so ascribed, and—

- (a) "effective date" means 1 April 2003;
- (b) "the amendment Act" means the Second Revenue Laws Amendment Act, 2001 (Act No. 60 of 2001).

Assessment issued before effective date

C2. Where an assessment was issued in terms of the Act before the effective date and no objection against that assessment was lodged before that date—

- (a) rule 3 of Part A shall apply only where the request for reasons is delivered to the Commissioner after the effective date and that request is delivered to the Commissioner within the period contemplated in rule 3(1)(a) or (b);
- (b) rule 4 of Part A shall only apply to an objection against that assessment, where—

- (i) that objection is lodged within the period prescribed in that rule; or
- (ii) the period of 30 days within which an objection had to be lodged in terms of section 81(1) of the Act, prior to its amendment by the amendment Act, was extended by the Commissioner in terms of section 81(2) of the Act and the last day of that period falls on a date on or after the effective date.

Objection lodged before effective date

C3. (1) Where an objection against an assessment was lodged before the effective date and—

- (a) no notice in terms of section 81(4) of the Act was delivered by the Commissioner before that date, rule 5 of Part A shall only apply in respect of that objection where—
 - (i) the objection complies with the requirements of a valid objection as contemplated in section 81(3) of the Act, prior to its amendment by the amendment Act;
 - (ii) the taxpayer delivers a motivated request to the Commissioner that rule 5 of Part A be applicable in respect of the objection; and
 - (iii) the Commissioner, on good cause shown, agrees thereto in writing in which event the date of delivery to the taxpayer of such decision will, for purposes of rule 5(2) – (4) of Part A, be deemed to be the date of the receipt of the objection contemplated in rule 5(2) – (4) of Part A;or

- (b) a notice in terms of section 81(4) of the Act was delivered by the Commissioner before that date, but no appeal was noted before that date, rule 6 of Part A shall only apply in respect of any appeal against the decision by the Commissioner, where—
 - (i) that appeal is noted within the period prescribed in that rule; or
 - (ii) the period of 30 days within which an appeal had to be noted in terms of section 83(7)(a) of the Act, prior to its amendment by the amendment Act, was extended by the Commissioner in terms of that section and the last day of that period falls on a date on or after the effective date.

(2) Any decision of the Commissioner in terms of subrule (1)(a)(iii) is subject to objection and appeal in the manner contemplated in rule 26(1)(a) of Part A.

Appeal noted before effective date

C4. (1) Where an appeal was noted in terms of the Act before the effective date and—

- (a) that appeal has not been set down for hearing by either the Board or the Court—
 - (i) the taxpayer may request that the alternative dispute resolution procedures contemplated in rule 7 of Part A be applicable in respect of the dispute and the Commissioner must consider that request in accordance with rule 7(1) of Part A;
 - (ii) the taxpayer and the Commissioner may agree in writing that all of the procedures contemplated in rules 8 to 29 of Part A and Part B, to the extent applicable, apply in respect of that appeal, which procedures may commence with—
 - (aa) the meeting to limit the issues in dispute as contemplated in rule 9 of Part A to be held on a date to be agreed between the taxpayer and the Commissioner; or
 - (bb) where the taxpayer and the Commissioner agree that a meeting contemplated in rule 9(1) of Part A is not required, the delivery by the Commissioner of a statement of the grounds of assessment as contemplated in rule 10 of Part A on a date to be agreed between the taxpayer and the Commissioner; or
 - (iii) where no agreement contemplated in subparagraph (ii) was reached, the appeal must be—
 - (aa) placed by the Commissioner before the Court in the manner contemplated in rule 17 of Part A as soon as is reasonably possible; and
 - (bb) dealt with in the manner contemplated in rules 18 to 29 of Part A and Part B, to the extent applicable; or
 - (b) that appeal has been set down for hearing by either the Board or the Court but not yet heard by the Board or the Court, rules 8 and 18 to 29 of Part A and Part B, to the extent applicable, must apply in respect of that appeal; or
 - (c) that appeal is part-heard before the Board or in the Court, rules 8, 19(1) and 20 to 29 of Part A and Part B, to the extent applicable, must apply in respect of that appeal.
- (2) For purposes of rule 18 of Part A, the dossier must in addition to any other documents as contemplated in that rule, also contain—

- (a) where the statements contemplated in rules 10 - 11 of Part A have not been delivered, a short statement of case drafted by the Commissioner setting out the issues in appeal based on the grounds of the assessment in issue and the grounds of objection;
- (b) a copy of any agreement contemplated in subrule (1)(a)(ii); and
- (c) copies of all the correspondence relating to the assessment, return, objection and appeal.

SCHEDULE A

THE TERMS OF ALTERNATIVE DISPUTE RESOLUTION ("ADR")

1. Main Rule

ADR is only available if these terms are accepted. Both the Commissioner and the taxpayer have to agree to the ADR process, for any agreement or settlement on resolution to have any effect.

2. Who may initiate ADR?

ADR may be initiated by either the taxpayer in his or her notice of appeal, or the Commissioner subsequent to the receipt of a notice of appeal by the taxpayer.

3. When may a dispute be referred for ADR?

3.1. The taxpayer can request the referral of a dispute for ADR if his or her objection has been disallowed or his or her assessment has been altered in consequence of the objection by the Commissioner, and the taxpayer is dissatisfied with such decision and wishes to appeal to the Tax Board or Tax Court. The Commissioner may then decide whether or not the matter is appropriate for ADR, and inform the taxpayer accordingly within 20 days after receipt of the notice of appeal wherein ADR is requested.

3.2. If the Commissioner is of the opinion that a matter is appropriate for ADR, then he or she must inform the taxpayer within 10 days of the receipt of the notice of appeal. The taxpayer is then required to notify the Commissioner in writing within 10 days of the date of the notice by the Commissioner, whether he or she agrees to ADR.

4. How?

A taxpayer whose objection is disallowed or whose assessment in consequence of the objection has been altered by the Commissioner, and who wishes to appeal to the Tax Board or the Tax Court against such decision must:-

- 4.1. complete the form "Notice of Appeal", indicating "refer to ADR" and sign where provided at the bottom of the notice; and
- 4.2. deliver the completed "Notice of Appeal" form to the address specified in the "Notice of Appeal".

5. When?

Every notice of appeal with a request for the referral of a dispute for ADR must reach the Commissioner within 30 days of the date of the notice of disallowance or the date of the notice of the alteration of the assessment in consequence of the objection.

6. The Facilitator

6.1. Where the Commissioner or the taxpayer, in terms of paragraph 3, has notified the other party that the dispute may be referred for ADR, the Commissioner must appoint a facilitator to facilitate the ADR process within 15 days after receipt of the notice by the taxpayer that he or she agrees to ADR, or the date of the notice by the Commissioner that a matter is appropriate for ADR. The Commissioner must inform the taxpayer who has been appointed as facilitator.

6.2. The facilitator will, in the normal course, be an appropriately qualified officer of SARS and will be bound by a Code of Conduct.

6.3. The facilitator's objective is to seek a fair, equitable and legal resolution of the dispute between the taxpayer and the Commissioner.

6.4. The facilitator cannot make a ruling or decision which binds the Commissioner or the taxpayer, nor may he or she compel the taxpayer and the Commissioner to settle the dispute.

6.5. At the conclusion of the ADR process the facilitator must record the terms of any agreement or settlement reached by the parties, or, if no agreement or settlement is reached, he or she shall record that fact.

6.6. The facilitator has the authority to summarily terminate the process of dispute resolution without prior notice if:-

- 6.6.1 any person fails to attend the meeting referred to in paragraph 8;
- 6.6.2 any person fails to carry out a request made in terms of paragraph 7;
- 6.6.3 he or she is of the opinion that the dispute cannot be resolved;
- 6.6.4. either of the parties agree that the issues in dispute cannot be reconciled in the resolution process; or
- 6.6.5 for any other appropriate reason.

7. Determining the process

The facilitator must, after consulting the taxpayer and the officer(s) of SARS responsible for issuing the assessment under dispute:-

- 7.1. determine the procedure to be adopted in the dispute resolution process;

- 7.2. determine a place, date and time at which the parties shall convene the ADR meeting; and
- 7.3. notify each party in writing which written submissions or any other document should be furnished or exchanged (if this is required at all), and when the submissions or documents are required.

8. ADR Meeting

A meeting between the parties to the dispute must be held for the purpose of resolving the dispute by consent, within 20 days of the appointment of the facilitator, or within such further period as the Commissioner and the taxpayer may agree.

9. Rules for the ADR Meeting

- 9.1. The taxpayer (or the representative taxpayer as contemplated in s 1 of the Act) must be personally present during the ADR meeting and may be accompanied by a representative of his or her choice.
- 9.2. The facilitator may, in exceptional circumstances, excuse the taxpayer or representative taxpayer from personally attending the meeting in which event they may be represented in their absence by a representative of their choice.
- 9.3. The meeting must be concluded:-
 - 9.3.1. at the instance of the facilitator; or
 - 9.3.2. after the parties agree that the meeting shall be concluded.
- 9.4. If both parties and the facilitator agree, the meeting may resume at any other place, date or time (set by the facilitator).
- 9.5. The parties may for the purpose of resolving an issue in dispute, and only if the facilitator agrees, lead or bring witnesses in the ADR process.
- 9.6. The facilitator may require either party to produce a witness to give evidence.
- 9.7. At the conclusion of the meeting the facilitator must record:-
 - 9.7.1. All issues which were resolved (through the ADR process);
 - 9.7.2. Any issue upon which agreement or settlement could not be reached; and
 - 9.7.3. Any other point which the facilitator considers necessary.
- 9.8. The facilitator must deliver the report to the taxpayer and the Commissioner's designated representative within 10 days of the cessation of the ADR process.
- 9.9. The facilitator may, if requested at the commencement of the ADR process, make a recommendation at the conclusion of the proceedings if no agreement or settlement is ultimately reached between the parties.

10. Reservations of rights

10.1. The proceedings may not be electronically recorded, and any representations made in the course of the meeting will be without prejudice.

10.2. Any representation made or document tendered in the course of the dispute resolution proceedings may not be tendered in any subsequent proceedings as evidence by any other party, except in the circumstances contemplated in rule 7(6)(b)(ii) of Part A.

10.3. Neither party, except in the circumstances contemplated in rule 7(6)(b)(ii) of Part A, may subpoena any person involved in the alternative dispute procedure in order to compel disclosure of any representation made or documentation produced in the course of the ADR process. The facilitator may not be subpoenaed under any circumstances.

10.4. Any recommendation made by the Facilitator in terms of paragraph 9.9. above, will be admissible during any subsequent proceedings including court proceedings.

11. Agreement or Settlement

11.1. Any agreement or settlement reached between the parties must be recorded in writing and must be signed by the taxpayer and by the Commissioner's designated official.

11.2. Should the parties not resolve all issues in dispute, the agreement or settlement in paragraph 11.1. must stipulate those areas in dispute:

11.2.1. that are resolved; and

11.2.2. that could not be resolved and on which the taxpayer may continue on appeal to the Tax Board or Tax Court.

11.3. Any agreement or settlement reached through the ADR process has no binding effect in respect of any assessments relating to that taxpayer not actually covered by the agreement or settlement, or any other taxpayer.

12. Days

A day means a business day.

SCHEDULE B**CODE OF CONDUCT FOR FACILITATOR**

The terms of this Code of Conduct will be binding upon every person appointed as a Facilitator ("the Facilitator") by the South African Revenue Service ("SARS") to facilitate the alternative dispute resolution process ("ADR") as contemplated in rule 7 of the rules promulgated under the provisions of section 107A of the Income Tax Act, 1962 (Act No. 58 of 1962).

1. Professionalism

Every Facilitator is duty bound to build the integrity, fairness and efficacy of the ADR process and to preserve the independence and impartiality of the Facilitator.

2. Every Facilitator must:-

- 2.1 Conduct himself or herself with honesty and integrity and with courtesy to all parties;
- 2.2 Act in good faith and with impartiality to all parties;
- 2.3 Either decline on appointment or obtain technical assistance when a case is outside their field of competence;
- 2.4 Duly act within the prescripts of the facilitation process and the law;
- 2.5 Respect time and attempt to bring the dispute to an expeditious conclusion;
- 2.6 Resist the exercise of improper influence from any person outside the facilitation process; and
- 2.7 Continuously seek to upgrade his or her proficiency in the handling of tax disputes, skill and knowledge.

3. Conflict of interest

- 3.1 A Facilitator must immediately disclose to the parties and to SARS any fact that is likely to either affect his or her impartiality or create the impression that his or her impartiality is effected.
- 3.2 A Facilitator should decline an appointment if a conflict of interest exists that will give rise to bias.

3.3 If one of the parties requests the Facilitator to recuse him or herself, the Facilitator may do so if it will facilitate the resolution of the dispute.

3.4 SARS may not remove a facilitator once he or she has commenced with the ADR process, save by the request of the Facilitator or by agreement between both parties.

4. Confidentiality

4.1 Information disclosed to the Facilitator in confidence by a party during the course of the facilitation should be kept by facilitators in the strictest confidence and should not be disclosed to the other party unless authority is obtained for such disclosure from the party that disclosed the information.

4.2 The proceedings and outcome of all processes and related documentation will remain confidential, unless all the parties to the process agree otherwise or disclosure is allowed by any law.

5. Conclusion of Facilitation

Facilitators should reduce all agreements, settlement or a recommendation (if requested by both parties) to writing in a clear and concise format.

6. Quality Control

6.1 The SARS has the right to request parties to submit evaluations of the Facilitation Process, including an assessment of the Facilitator, from any party, which evaluations the SARS is entitled to treat confidentially.

6.2 SARS may remove a Facilitator from the list of facilitators for good reason, which includes the incompetence of the facilitator.

No. R. 467

1 April 2003

REÛLS KRAGTENS ARTIKEL 107A VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO. 58 VAN 1962), UITGEVAARDIG OM DIE PROSEDURE WAT BY INDIENING VAN 'N BESWAAR EN AANTEKEN VAN 'N APPËL TEEN AANSLAE NAGEKOM MOET WORD, PROSEDURES VIR ALTERNATIEWE GESKILBESLEGTING EN DIE AANVOER EN VERHOOR VAN APPËLLE VOOR 'N BELASTINGHOF, VOOR TE SKRYF

Die Minister van Finansies het, kragtens artikel 107A van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), na oorlegpleging met die Minister vir Justisie en Staatkundige Ontwikkeling, die reëls in die Bylae, wat die prosedures wat nagekom moet word by die indiening van besware en aantekens van appëlle teen aanslae, die prosedures vir alternatiewe geskilbeslegting en die aanvoer en verhoor van appëlle voor 'n Belastinghof, voorgeskryf.

Die reëls is van toepassing met ingang van 1 April 2003 ten opsigte van alle aanslae uitgereik, besware ingedien of appëlle aangeteken op of na daardie datum.

Deel B van die Regulasies in Goewernentskennisgewing no. R.105 in *Staatskoerant* No. 1011 van 22 Januarie 1965, word hierby herroep tot die mate wat, hierdie reëls ingevolge Deel C van toepassing is ten opsigte van enige beswaar of appël.

T. A. MANUEL, MP
MINISTER VAN FINANSIES

BYLAE
INHOUDSOPGAWE

Deel A:

Besware, Appèlle en Alternatiewe Geskilbeslegting

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- Reël 2.** Kantoor van die Griffier
- Reël 3.** Redes vir aanslag
- Reël 4.** Beswaar
- Reël 5.** Kommissaris se beslissing
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- Reël 9.** Beperking van geskilpunte
- Reël 10.** Uiteensetting van gronde vir aanslag
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- Reël 17.** Datum van verhoor
- Reël 18.** Dossier
- Reël 19.** Plekke waar Hof sittings hou
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- Reël 21.** Getuiedagvaardings
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Deel B:

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Deel C:

Oorgangsmatreëls

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Reël C2. Aanslae voor effektiewe datum uitgereik

Reël C3. Besware voor effektiewe datum ingedien

Reël C4. Appelle voor effektiewe datum aangeteken

Skedules:

Skedule A: Terme van alternatiewe geskilbeslegting

Skedule B: Gedragskode van fasilliteerder

REËLS WAT DIE PROSEDURE WAT BY INDIENING VAN 'N BESWAAR EN AANTEKEN VAN 'N APPÈL TEEN AANSLAE NAGEKOM MOET WORD, PROSEDURES VIR ALTERNATIEWE GESKILBESLEGTING EN DIE AANVOER EN VERHOOR VAN APPÈLLE VOOR 'N BELASTINGHOF, VOORSKRYF

Deel A:

Besware, Appèlle en Alternatiewe Geskilbeslegting

Woordomskrywings

1.(1) In hierdie reëls, het enige woord of uitdrukking wat in die Wet omskryf is, daardie betekenis en, tensy daar uit die samehang anders blyk, beteken—

“belastingpligtige” ‘n belastingpligtige soos in artikel 1 van die Wet omskryf en sluit in, vir doeleindes van hierdie reëls, enige persoon ten opsigte van wie enige belasting, heffing, reg, tarief of ander bedrag betaalbaar ingevolge enige ander Wet geadministreer deur die Kommissaris, gehef is;

“dag” ‘n dag soos in artikel 83(23) van die Wet bedoel;

“die Wet” die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962);

“dokumente” dokumente soos in artikel 74(1) van die Wet omskryf;

“Griffier” die Griffier van die Hof ingevolge artikel 83(20) van die Wet aangestel en sluit in enige persoon wat gemagtig is om as Griffier op te tree;

“goed” goed soos in artikel 74(1) van die Wet omskryf.

“Hof” die belastinghof ingevolge artikel 83(3) van die Wet ingestel;

“inligting” inligting soos in artikel 74(1) van die Wet omskryf;

“lewer”—

- (a) die oorhandiging van die betrokke dokument aan die betrokke persoon;
- (b) die versending van die betrokke dokument aan die betrokke persoon per geregistreerde pos;
- (c) die versending van die betrokke dokument per faksimile transmissie aan die betrokke persoon;
- (d) die versending van die betrokke dokument aan die betrokke persoon op elektroniese wyse; en

- (e) enige ander wyse van lewering wat deur die Hof bestaande uit die Voorsitter van die Hof alleen, goedgekeur word:

Met dien verstande dat in die geval van paragrawe (c) en (d), die oorspronklik ondertekende dokument binne tien dae na versending per faksimile transmissie of elektroniese versending aan die betrokke persoon oorhandig moet word of aan daardie persoon per geregistreerde pos versend moet word;

“Raad” die belastingraad ingevolge artikel 83A van die Wet ingestel;

“SAID” die Suid-Afrikaanse Inkomstediens soos ingestel deur die Wet op die Suid-Afrikaanse Inkomstediens, 1997 (Wet No. 34 van 1997).

Kantoor van Griffier

2.(1) Die plek van die kantoor van die Griffier word van tyd tot tyd deur die Kommissaris vasgestel en die besonderhede daarvan moet vir algemene inligting in die *Staatskoerant* gepubliseer word.

(2) Die kantoorure van die Griffier is: Maandag tot Vrydag, uitgesluit openbare vakansiedae, van 08h00 tot 16h00.

Redes vir aanslag

3.(1)(a) Enige belastingpligtige wat met enige aanslag ontevrede is mag, by wyse van skriftelike kennisgewing aan die Kommissaris gelewer binne 30 dae na die datum van die aanslag, die Kommissaris versoek om redes vir die aanslag te verskaf. Die skriftelike kennisgewing moet die adres spesifiseer waar die belastingpligtige kennisgewing en lewering van daardie redes en alle dokumente ingevolge die prosedures in Reël 26 bedoel, sal aanvaar.

(b) Op versoek van die belastingpligtige, kan die Kommissaris die tydperk in paragraaf (a) voorgeskryf verleng vir 'n verdere tydperk van nie meer as 60 dae, indien die Kommissaris tevrede is dat redelike gronde bestaan vir die versuim om aan die tydperk te voldoen.

(2) Waar die Kommissaris van mening is dat voldoende redes reeds voorsien is, moet die Kommissaris, binne 30 dae vanaf ontvangs van die kennisgewing in subreël (1) bedoel, die belastingpligtige dienooreenkomstig skriftelik

daarvan in kennis stel, welke kennisgewing na die dokumente waarin die bedoelde redes verskaf is moet verwys.

(3) Waar na die mening van die Kommissaris voldoende redes nog nie verskaf is nie, moet die Kommissaris skriftelike redes vir die aanslag binne 60 dae na ontvangs van die kennisgewing in subreël (1) bedoel, voorsien: Met dien verstande dat waar na die mening van die Kommissaris meer tyd benodig word weens uitsonderlike omstandighede, die ingewikkeldheid van die aangeleentheid of die beginsel of bedrag betrokke, moet die Kommissaris voor verstryking van die 60 dae tydperk, die belastingpligtige in kennis stel dat skriftelike redes nie later nie as 45 dae na die datum van verstryking van die eerste 60 dae tydperk, voorsien sal word.

Beswaar

4. 'n Belastingpligtige wat deur 'n aanslag veronreg voel, kan beswaar teen 'n aanslag aanteken, welke beswaar—

- (a) in die formaat wat die Kommissaris ingevolge artikel 65 van die Wet mag voorskryf, moet wees;
- (b) in skrif moet wees wat die gronde waarop dit gemaak is, in besonderhede uiteensit;
- (c) 'n adres moet spesifiseer waar die belastingpligtige kennis en lewering van die Kommissaris se besluit ten opsigte van die beswaar en alle dokumente ingevolge die prosedures in reël 26 bedoel, sal aanvaar;
- (d) deur die belastingpligtige onderteken moet wees: Met dien verstande dat waar die belastingpligtige nie in staat is om die beswaar persoonlik te onderteken nie, moet die persoon wat namens die belastingpligtige onderteken, in 'n aanhangsel tot die beswaar—
 - (i) die rede uiteensit waarom die belastingpligtige nie in staat is om die beswaar te onderteken nie;
 - (ii) bevestig dat hy of sy die nodige volmag het om namens die belastingpligtige te teken; en
 - (iii) bevestig dat die belastingpligtige bewus is van die beswaar en met die gronde daarvan saamstem; en

- (e) aan die Kommissaris gelewer moet word by die adres in die aanslag vir die doel gespesifiseer, binne 30 dae na—
 - (i) in geval waar die belastingpligtige ingevolge reël 3 redes versoek het, óf die datum van die kennisgewing deur die Kommissaris dat voldoende redes verskaf is, óf die datum waarop redes deur die Kommissaris verskaf is, na gelang van die geval; of
 - (ii) in enige ander geval, die datum van die aanslag.

Kommissaris se beslissing

5.(1)(a) Waar 'n belastingpligtige 'n beswaar indien wat nie aan die vereistes van reël 4(a), (b), (c) of (d) voldoen nie, kan die Kommissaris die belastingpligtige per kennisgewing binne 60 dae in kennis stel dat hy of sy dit nie as 'n geldige beswaar aanvaar nie: Met dien verstande dat die belastingpligtige binne tien dae na daardie kennisgewing 'n gewysigde beswaar kan indien.

(b) Waar die belastingpligtige nie, soos deur reël 4(e) vereis, sy of haar beswaar by die adres in die aanslag vir hierdie doel gespesifiseer gelewer het nie, word die dokument ingevolge reël 4 gelewer geag ongeldig te wees.

(2)(a) Waar die Kommissaris tevrede is dat die belastingpligtige nie al die inligting, dokumente of goed wat nodig is om oor die belastingpligtige se beswaar te beslis, ingedien het nie, moet die Kommissaris nie later nie as 60 dae na ontvangs van die beswaar, die belastingpligtige dienooreenkomstig in kennis stel en hom of haar skriftelik versoek om die inligting, dokumente of goed in die kennisgewing gespesifiseer, te lewer.

(b) Die belastingpligtige moet, binne 60 dae na die datum van die kennisgewing in subreël (2)(a) bedoel, al die inligting, dokumente of goed soos in die kennisgewing versoek en gespesifiseer, aan die Kommissaris lewer.

(c) Die Kommissaris kan die tydperk in subreël (2)(b) verleng met nie meer as 30 dae nie, waar die Kommissaris tevrede is dat redelike gronde bestaan waarom die belastingpligtige nie die inligting, dokumente of goed soos deur die Kommissaris gespesifiseer binne die bepaalde tydperk kan verskaf nie en

die belastingpligtige, voor die verstryking van die tydperk, die Kommissaris skriftelik versoek het om die tydperk te verleng waarin die gronde waarom die inligting, dokumente en goed nie binne die bepaalde tydperk verskaf kan word nie uiteengesit word.

(3) Die Kommissaris moet na oorweging van die beswaar in reël 4 bedoel, of die inligting in subreël (2) bedoel, ingevolge artikel 81(4) van die Wet die aanslag wysig of die beswaar van die hand wys, of ingevolge artikel 79A van die Wet die aanslag verminder of ingevolge artikel 79B van die Wet die aanslag terugtrek, en moet behoudens subreël (4), die belastingpligtige van sy of haar besluit skriftelik in kennis stel—

- (a) in die geval waar die Kommissaris ingevolge subreël (2) inligting versoek het, binne 60 dae na ontvangs van die inligting; of
- (b) in enige ander geval, binne 90 dae na die datum van ontvangs van die belastingpligtige se beswaar ingevolge reël 4 of gewysigde beswaar ingevolge die voorbehoudsbepaling by subreël (1)(a), na gelang van die geval.

(4) Waar na die mening van die Kommissaris meer tyd benodig word weens uitsonderlike omstandighede, die ingewikkeldheid van die aangeleentheid, die beginsel of die bedrag betrokke, moet die Kommissaris voor die verstryking van die tydperk deur subreël (3) voorgeskryf, die belastingpligtige inlig dat hy of sy oor die beswaar sal beslis binne so 'n langer tydperk as wat—

- (a) in die geval van subreël 3(a), nie 60 dae oorskry nie; of
- (b) in die geval van subreël 3(b), nie 90 dae oorskry nie.

Kennisgewing van appèl

6.(1) 'n Belastingpligtige wat geregtig is om teen 'n aanslag beswaar aan te teken en wat met die beslissing van die Kommissaris ingevolge artikel 81(4) van die Wet ontevrede is, kan appèl teen die beslissing aanteken.

(2) 'n Belastingpligtige wat wil appelleer moet, binne 30 dae na die datum van die kennisgewing wat hom of haar van die beslissing van die Kommissaris ingevolge artikel 81(4) van die Wet in kennis stel, 'n kennisgewing van appèl aan die Kommissaris lewer wat in die vorm is as wat die Kommissaris

Ingevolge artikel 65 van die Wet mag voorskryf en wat deur die belastingpligtige of sy of haar verteenwoordiger onderteken is.

(3) In die belastingpligtige se kennisgewing van appèl ingevolge subreël (2)—

- (a) moet hy of sy aandui ten opsigte van welke gronde in sy of haar beswaar ingevolge reël 4, hy of sy appelleer; en
- (b) kan hy of sy aandui of hy of sy van die alternatiewe geskilbeslegtingsprosedures in reël 7 bedoel wil gebruik maak, indien die prosedures beskikbaar is.

Alternatiewe geskilbeslegting

Beskikbaarheid

7.(1) Waar—

- (a) die belastingpligtige in sy of haar kennisgewing van appèl aangedui het dat hy of sy van alternatiewe geskilbeslegting gebruik wil maak, moet die Kommissaris die belastingpligtige binne 20 dae na ontvangs van die kennisgewing van appèl by wyse van kennisgewing inlig of hy of sy van mening is dat die aangeleentheid vir alternatiewe geskilbeslegting geskik is en deur middel van die prosedures in hierdie reël bedoel opgelos kan word; of
- (b) die belastingpligtige in sy of haar kennisgewing van appèl nie aangedui het dat hy of sy van alternatiewe geskilbeslegting gebruik wil maak nie, en die Kommissaris van mening is dat die aangeleentheid vir alternatiewe geskilbeslegting geskik is en deur middel van die prosedures in hierdie reël bedoel opgelos kan word, moet hy of sy die belastingpligtige binne tien dae vanaf ontvangs van die kennisgewing van appèl dienooreenkomstig per kennisgewing in kennis stel, en die belastingpligtige moet binne tien dae vanaf die datum van die kennisgewing deur die Kommissaris 'n kennisgewing lewer waarin hy of sy daartoe toestem of nie.

Terme van en ooreenkoms oor alternatiewe geskilbeslegting

(2)(a) Die terme wat die alternatiewe geskilbeslegting verrigtinge reël is uiteengesit in Skedule A tot hierdie reëls.

(b) Waar die Kommissaris en die belastingpligtige op alternatiewe geskilbeslegting ooreenkom soos in subreël (1) bedoel, kan 'n geskil ooreenkomstig die alternatiewe geskilbeslegtingsprosedures in hierdie reël bedoel besleg word, wat slegs sal plaasvind indien die belastingpligtige die terme uiteengesit in Skedule A, aanvaar.

Tydperk van geskilbeslegting

(3)(a) Die tydperk waarbinne die alternatiewe geskilbeslegting verrigtinge ingevolge hierdie reël plaasvind, begin 20 dae na die datum van ontvangs deur die Kommissaris van die kennisgewing van appèl in reël 6 bedoel, en eindig op die datum van beëindiging van die verrigtinge op die wyse soos bepaal in die terme wat die alternatiewe geskilbeslegtingsprosedure reël.

(b) Die tydperk in subreël (3)(a) bedoel, onderbreek die toepaslike tydperke vir doeleindes van die prosedures in reëls 8 tot 29 hieronder bedoel.

(c) Die partye moet die alternatiewe geskilbeslegting verrigtinge finaliseer nie later nie as 90 dae na die datum van ontvangs deur die Kommissaris van die kennisgewing van appèl, of binne so 'n langer tydperk as waartoe die Kommissaris toestem.

Die fasiliteerder

(4)(a) Die Kommissaris kan 'n persoon, insluitend 'n persoon wat by SAID in diens is, aanstel om die verrigtinge ingevolge hierdie reël te fasiliteer.

(b) Enige persoon wat ingevolge hierdie reël aangestel is om die verrigtinge te fasiliteer, sal gebonde wees aan die gedragskode uiteengesit in Skedule B tot hierdie reëls.

(c) Die persoon aangestel om die verrigtinge ingevolge hierdie reël te fasiliteer kan, as die Kommissaris en die belastingpligtige by die aanvang van die verrigtinge daartoe instem, versoek word om aan die einde van die verrigtinge

'n aanbeveling te maak indien geen ooreenkoms of skikking in subreël (7)(a) of (7)(b) hieronder bedoel uiteindelik tussen die partye bereik word nie, welke aanbeveling gedurende enige daaropvolgende verrigtinge, insluitende hofverrigtinge, toelaatbaar is.

Verrigtinge

(5)(a) Die verrigtinge ingevolge hierdie reël geskied ooreenkomstig die terme uiteengesit in Skedule A.

(b) Die belastingpligtige of sy of haar verteenwoordigende belastingpligtige—

- (i) kan tydens die verrigtinge in hierdie reël bedoel, deur 'n verteenwoordiger van sy of haar keuse vergesel word; en
- (ii) moet tydens die verrigtinge in hierdie reël bedoel persoonlik teenwoordig wees, tensy die fasiliteerder, in uitsonderlike omstandighede, die belastingpligtige of die verteenwoordigende belastingpligtige toelaat om in hul afwesigheid deur 'n verteenwoordiger van hul keuse verteenwoordig te word.

Voorbehoud van regte

(6)(a) Die belastingpligtige en die Kommissaris kan aan die verrigtinge in hierdie reël bedoel, deelneem met volle voorbehoud van hulle onderskeie regte ingevolge die prosedures beoog in reëls 8 tot 29.

(b) Behoudens artikel 4 van die Wet en subreël (4)(c), is die verrigtinge ingevolge hierdie reël nie een van rekord nie, en enige voorlegging gemaak of dokument ingedien in die verloop van hierdie verrigtinge—

- (i) word sonder benadeling gemaak of aangebied; en
- (ii) mag nie in enige daaropvolgende verrigtinge as bewysstuk deur enige ander party aangebied word nie, behalwe—
 - (aa) met die kennis en toestemming van die party wat tydens die verrigtinge ingevolge hierdie reël die voorlegging gemaak het of dokument aangebied het;
 - (bb) waar daardie voorlegging of dokument alreeds bekend is aan, of in besit is van, daardie party; of

(cc) waar daardie voorlegging of dokument deur daardie party verkry word op 'n ander wyse as ingevolge die verrigtinge in terme van die reël.

(c) Geen persoon mag—

- (i) behoudens die omstandighede in subreël (b)(ii)(aa) tot (cc) hierbo uiteengesit, enige persoon by die alternatiewe geskilbeslegting verrigtinge betrokke, in watter hoedanigheid ookal, dagvaar om openbaarmaking van enige voorlegging gemaak of enige dokument aangebied tydens die verrigtinge, af te dwing nie; of
- (ii) die fasiliteerder van die alternatiewe geskilbeslegtingverrigtinge dagvaar om openbaarmaking van enige voorlegging gemaak of dokument aangebied tydens die verrigtinge, af te dwing nie.

Ooreenkoms of skikking

(7)(a) 'n Geskil wat aan die prosedures ingevolge hierdie reël onderhewig is, kan opgelos word by ooreenkoms waar óf die Kommissaris óf die belastingpligtige, in geheel of gedeeltelik, die ander party se uitleg van die feite of die reg van toepassing op die feite of beide, aanvaar.

(b) Waar—

- (i) die Kommissaris en die belastingpligtige, ten spyte van alle redelike pogings, nie daartoe in staat is om die geskil, soos in paragraaf (a) bedoel te besleg nie; en
- (ii) die Kommissaris persoonlik, of 'n persoon wat deur die Kommissaris vir doeleindes van die regulasies kragtens artikel 107B van die Wet uitgereik aangewys is, van mening is dat die omstandighede van die aangeleentheid aan die vereistes in daardie regulasies bedoel, voldoen,

kan die partye poog om die skikking ooreenkomstig daardie regulasies te bewerkstellig binne die proses in hierdie reël bedoel.

(c) Waar 'n ooreenkoms in paragraaf (a) of 'n skikking in paragraaf (b) bedoel, bereik word, moet die Kommissaris 'n aanslag uitreik om uitvoering te gee aan daardie ooreenkoms of skikking, na gelang van die geval, binne 'n tydperk van 60 dae na die datum van die bereiking daarvan.

(d) Waar die verrigtinge op die wyse wat in die terme ingevolge waarvan die alternatiewe geskilbeslegting geskied bepaal word, beëindig word, word die belastingpligtige geag sy of haar appèl voort te sit op die wyse in reëls 8 tot 29, tensy hy of sy die Kommissaris andersins inlig.

Verslagdoeningsvereistes

(8)(a) 'n Ooreenkoms ingevolge subreël (7)(a), waarby 'n geskil wat aan die prosedures ingevolge hierdie reël onderhewig is, in geheel of gedeeltelik besleg is, moet intern oor verslag gedoen word op die wyse wat deur die Kommissaris vereis mag word.

(b) 'n Skikking van 'n geskil ingevolge subreël (7)(b) ooreenkomstig die regulasies kragtens artikel 107B van die Wet uitgereik, moet oor verslag gedoen word op die wyse deur die Minister van Finansies ingevolge daardie regulasies voorgeskryf.

Appèl na Raad of Hof

8.(1) Waar die bepalings van artikel 83A van die Wet van toepassing is, word die aangeleentheid deur die Raad verhoor.

(2) Die Kommissaris moet skriftelik kennis gee van die tyd en plek vasgestel vir die aanhoor van die appèl deur die Raad, welke kennisgewing nie later nie as 40 dae na ontvangs van die kennisgewing van appèl of beëindiging van die alternatiewe geskilbeslegtingsverrigtinge, maar minstens 21 dae voor die verhoor van die appèl kragtens die bepalings van artikel 83A(7)(b) van die Wet, aan die belastingpligtige gelewer moet word.

(3)(a) Die Voorsitter van die Raad in artikel 83A(3) van die Wet bedoel, moet sy of haar beslissing binne 30 dae van die aanhoor van die appèl aan die klerk van die Raad in artikel 83A(5) van die Wet bedoel, verskaf.

(b) Die klerk moet by wyse van skriftelike kennisgewing die Kommissaris en die appellant van 'n afskrif van die Raad se besluit voorsien binne tien dae na ontvangs van daardie beslissing.

(4) Die bepalings van reëls 9 tot 29 is van toepassing op enige appèl wat deur die Hof aangehoor word.

Beperking van geskilpunte

9.(1) Waar die Kommissaris en die belastingpligtige ooreenkom dat dit voordelig sal wees om te poog om die geskilpunte vir doeleindes van die beoogde litigasie te beperk, kan die Kommissaris 'n vergadering met die belastingpligtige reël, welke vergadering by enige van die kantore van SAID of enige ander kantoor soos wat die partye mag ooreenkom gehou kan word, binne 90 dae na—

- (a) waar die alternatiewe geskilbeslegtingsprosedure ingevolge reël 7 gevolg was, die datum waarop daardie alternatiewe geskilbeslegtingsverrigtinge beëindig is, soos in reël 7(3) bedoel;
- (b) waar die aangeleentheid deur die Raad verhoor is—
 - (i) die datum waarop 'n kennisgewing vanaf die belastingpligtige ingevolge artikel 83A(13)(a) deur die Kommissaris ontvang is; of
 - (ii) die datum waarop 'n kennisgewing ingevolge artikel 83A(13)(b) deur die Kommissaris gelewer is; of
- (c) in enige ander geval, die datum waarop die kennisgewing van appèl in reël 6 bedoel, deur die Kommissaris ontvang is.

(2) Die Kommissaris moet, binne 15 dae na afloop van die vergadering in subreël (1) bedoel, 'n notule opstel en aan die belastingpligtige lewer, wat uiteensit—

- (a) die feite wat gemeensaak is;
- (b) die feite wat in geskil is; en
- (c) die geskilpunte waaroor die Hof moet beslis:

Met dien verstande dat waar die belastingpligtige nie met die inhoud van daardie notule saamstem nie, moet hy of sy 'n addisionele notule, binne tien dae vanaf die datum van lewering van die notule deur die Kommissaris lewer, waarin die feite en geskilpunte in paragrafe (a) tot (c) bedoel, genotuleer word en waarin presies aangedui word in welke opsigte hy of sy nie met die notule van die Kommissaris saamstem nie.

Uiteensetting van gronde vir aanslag

10.(1) Die Kommissaris moet aan die belastingpligtige 'n uiteensetting van die gronde vir die aanslag lewer—

- (a) waar 'n vergadering tussen die Kommissaris en die belastingpligtige in reël 9 bedoel gehou is, binne 60 dae na die datum waarop die laaste notule van daardie vergadering deur die Kommissaris of die belastingpligtige, na gelang van die geval, gelewer is;
- (b) waar geen vergadering in paragraaf (a) bedoel gehou is nie, binne 90 dae na—
 - (i) waar die alternatiewe geskilbeslegtingsprosedure ingevolge reël 7 gevolg is, die datum waarop daardie alternatiewe geskilbeslegtingsverrigtinge beëindig is, soos in reël 7(3) bedoel; of
 - (ii) waar die aangeleentheid deur die Raad aangehoor is—
 - (aa) die datum waarop 'n kennisgewing deur die belastingpligtige ingevolge artikel 83A(13)(a) deur die Kommissaris ontvang is; of
 - (bb) die datum waarop 'n kennisgewing ingevolge artikel 83A(13)(b) deur die Kommissaris gelewer is; of
- (c) in enige ander geval, die datum waarop die kennisgewing van appèl in reël 6 bedoel deur die Kommissaris ontvang is.

(2) Waar die Kommissaris van mening is dat 'n langer tydperk weens buitengewone omstandighede, die ingewikkeldheid van die aangeleentheid, die beginsel of die bedrag betrokke benodig word, moet die Kommissaris, voor die verstryking van die tydperk in subreël (1)(a) of (b) bedoel, die belastingpligtige in kennis stel dat hy of sy die uiteensetting van die gronde van aanslag binne sodanige verlengde tydperk sal lewer, welke tydperk—

- (a) in die geval van subreël (1)(a), nie 60 dae oorskry nie; of
- (b) in die geval van subreël (1)(b), nie 90 dae oorskry nie.

(3) Die uiteensetting van die gronde van aanslag moet op skrif wees en deur die Kommissaris of sy of haar verteenwoordiger onderteken wees en moet in paragrawe opgedeel word wat—

- (a) 'n kort en duidelike uiteensetting bevat van die gronde waarop die belastingpligtige se beswaar van die hand gewys is; en
- (b) die wesenlike feite en regsgronde bevat op sterkte waarvan die Kommissaris daardie beswaar van die hand gewys het.

Uiteensetting van gronde van appèl

11.(1) Die belastingpligtige (hierna "die appellant" genoem) moet binne 60 dae nadat die Kommissaris die uiteensetting van die gronde van aanslag gelewer het, aan die Kommissaris 'n uiteensetting van die gronde van appèl lewer.

(2) Die uiteensetting moet op skrif wees en deur die appellant of sy of haar verteenwoordiger onderteken wees en moet in paragrawe opgedeel word wat—

- (a) 'n kort en duidelike uiteensetting bevat van die gronde waarop die appellant appelleer;
- (b) die wesenlike feite en regsgronde bevat waarop die appellant sy appèl berus;
- (c) uiteensit welke van die feite en regsgronde aangevoer in die uiteensetting van die gronde van aanslag, erken word en welke van daardie feite en regsgronde ontken word.

Geskilpunte onder aan appèl

12. Die geskilpunte in 'n appèl na die Hof, is dié omskryf in die uiteensetting van die gronde van aanslag gelees met die uiteensetting van die gronde van appèl.

Wysiging van gronde van aanslag of gronde van appèl

13.(1) Die Kommissaris en die appellant kan skriftelik ooreenkom tot die wysiging van die uiteensetting van die gronde van die aanslag of die uiteensetting van gronde van appèl, of beide.

(2) Die Hof, bestaande uit die Voorsitter wat alleen sit, kan, op aansoek by mosie toestem tot die wysiging van die uiteensetting van die gronde van aanslag of die uiteensetting van gronde van appèl, behoudens enige bevel vir uitstel en koste as wat die Hof billik ag.

Blootlegging van dokumente, inligting of goed

14.(1) Die Kommissaris en die appellant kan, binne 20 dae na lewering van die uiteensetting van die gronde van appèl in reël 11 bedoel, 'n kennisgewing aan die ander party lewer wat hom of haar versoek om onder eed alle dokumente, inligting of goed wat op die geskilpunte op appèl in reël 12 bedoel, betrekking het, bloot te lê.

(2)(a) 'n Party aan wie 'n kennisgewing om blootlegging gelever is, moet alle dokumente, inligting of goed rakende enige geskilpunt wat deel van die appèl vorm, onder eed blootlê binne 40 dae na lewering deur daardie party van die kennisgewing, wat afsonderlik aandui—

- (i) die dokumente, inligting of goed in sy of haar besit of beheer, of die van sy of haar agent;
- (ii) die dokumente, inligting of goed wat voorheen in sy of haar besit of beheer was, of dié van sy of haar agent, maar wat nie meer in sy of haar besit of beheer, of dié van sy of haar agent, is nie; en
- (iii) die dokumente, inligting of goed ten opsigte waarvan hy of sy 'n regmatige beswaar het om bloot te lê.

(b) Die verskaffing of inspeksie van die dokumente, inligting of goed vind plaas op sodanige plek en op so wyse soos wat die partye mag ooreenkom.

(3) Indien enige van die partye van oordeel is dat, bykomend tot die dokumente, inligting of goed aldus blootgelê, verdere dokumente, inligting of goed wat ter sake mag wees in die geding ter sake in besit is van die ander party, kan daardie party van die ander party per kennisgewing binne tien dae vanaf die verskaffing of inspeksie van die dokumente, inligting of goed ingevolge subreël (2)(b), eis dat daardie verdere dokumente, inligting of goed ter insae voorgelê moet word, of dat hy of sy binne tien dae onder eed verklaar dat daardie dokumente, inligting of goed nie in sy of haar besit is nie,

in welke geval hy of sy, indien dit aan hom of haar bekend is, moet vermeld waar daardie dokumente, inligting of goed is.

(4) Enige dokument, inligting of goed wat nie blootgelê is nie, kan nie, behalwe met verlof van die Hof toegelaat op sodanige voorwaardes as wat die hof mag goeddink, vir enige doel by die verhoor van die appèl gebruik word deur die party wat versuim het om dit bloot te lê nie, met die voorbehoud dat die ander party wel daardie dokument, inligting of goed mag gebruik.

Kennisgewing van deskundige getuies

15. Geen party mag, behalwe met verlof van die Hof of met die toestemming van die ander party, iemand roep om as deskundige getuie te getuig oor enige aangeleentheid waarvoor deskundige getuienis aangehoor kan word nie, tensy daardie party—

- (a) minstens 30 dae voor die verhoor van die appèl 'n kennisgewing van sy of haar voorneme om dit te doen, aan die ander party en die Griffier gelewer het; en
- (b) minstens 20 dae voor die verhoor van die appèl 'n opsomming van daardie deskundige se menings en redes daarvoor aan die ander party en die Griffier gelewer het.

Voorverhoorkonferensie

16.(1) Die Kommissaris moet reël vir die plaasvind van 'n voorverhoorkonferensie—

- (a) waar enige van die partye versoek is om bloot te lê, binne 60 dae nadat alle partye wat aldus versoek is, hul blootleggingsverklarings gelewer het; of
- (b) waar geen van die partye versoek is om bloot te lê nie, binne 60 dae na die Kommissaris die uiteensetting van die gronde van appèl ontvang het.

(2) Tydens die voorverhoorkonferensie moet die Kommissaris en die appellant poog om ooreenstemming te bereik oor—

- (a) die mate wat voldoende blootlegging deur die partye gemaak is, die uitruil van dokumente, inligting of goed en die voorbereiding van 'n gepagineerde bundel van dokumentasie in chronologiese volgorde;
- (b) die wyse waarop getuienis mee gehandel moet word, insluitende enige ooreenkoms oor die status van enige dokument, inligting of goed en of enige dokument, inligting of goed, of gedeelte daarvan, wat sal dien as bewys van wat dit voorgee om te wees;
- (c) of getuienis by wyse van beëdigde verklaring toegelaat sal word met of sonder die reg van die ander party om die deponent te kruisondervra;
- (d) die noodsaaklikheid van 'n inspeksie ter plaatse;
- (e) die afhandeling van enige voorafgaande geskilpunte wat enige van die partye van voornemens is om te neem;
- (f) deskundige getuienis;
- (g) enige ander wyse waarop die voorgenome prosedures verkort kan word;
- (h) 'n aanduiding van die tyd benodig vir die verhoor; en
- (i) enige wyse waarop die geskil tussen die partye besleg of geskik kan word.

(3) Die konferensie moet by enige kantoor van SAID of enige ander plek waarop die partye ooreenkom, plaasvind.

(4) Die Kommissaris moet binne tien dae nadat die voorverhoorkonferensie afgesluit is soos in subreël (1) bedoel, 'n notule voorberei en lewer waarin met die aangeleenthede in subreël (2) bedoel gehandel word: Met dien verstande dat waar die appellant nie met die inhoud van die notule saamstem nie, hy of sy binne tien dae na die Kommissaris daardie notule gelewer het, sy of haar notule aan die Kommissaris moet lewer.

Datum van verhoor

17.(1) Na lewering van die notule van die voorverhoorkonferensie ingevolge reël 16(4), moet die Kommissaris reëlings tref vir 'n verhoordatum vir die aanhoor van die appèl en die Griffier dienooreenkomstig in kennis stel.

(2) Die Griffier moet aan die appellant en die Kommissaris minstens 40 dae voor die aanhoor van die appèl of sodanige verkorte periode waartoe die partye ooreenkom, 'n skriftelike kennisgewing lewer waarin die aangewese tyd en plek van verhoor vermeld word.

Dossier

18.(1) Die Kommissaris moet minstens 30 dae voor die aanhoor van die appèl, of sodanige verkorte tydperk tussen die partye ooreengekom ingevolge reël 17(2), aan die appellant en die Griffier 'n dossier lewer wat afskrifte bevat van—

- (a) alle opgawes van die appellant relevant tot die tydperk van aanslag in geskil;
- (b) alle aanslae deur die Kommissaris uitgereik relevant tot die geskilpunte onder appèl in reël 12 bedoel;
- (c) waar van toepassing, die kennisgewing waarin die Kommissaris versoek word om redes vir die aanslag of sy beslissing te verskaf soos in reël 3(1) bedoel;
- (d) waar van toepassing, die Kommissaris se kennisgewing of redes soos reël 3(2) en reël 3(3) bedoel;
- (e) die appellant se beswaar teen die aanslag ingevolge die Wet;
- (f) die kennisgewing van appèl ingevolge die Wet;
- (g) waar van toepassing, die notule van die vergadering gehou om die geskilpunte te beperk soos in reël 9(2) bedoel;
- (h) waar van toepassing, die uiteensetting van die gronde waarop die aanslag berus soos in reël 10 bedoel;
- (i) waar van toepassing, die uiteensetting van die gronde waarop die appèl berus soos in reël 11 bedoel; en
- (j) enige bevel van die Hof ingevolge reël 13(2) of 26, of beide.

(2) Die dossier moet in ooreenstemming met die vereistes in reël 25 vervat, voorberei word.

(3) Die Griffier moet afskrifte van die dossier aan die Hof verskaf minstens 20 dae voor die aanhoor van die appèl of, ingevolge 'n ooreenkoms kragtens

subreël (1) bereik, so spoedig redelik moontlik na ontvangs van die dossier vanaf die Kommissaris.

Plekke waar Hof sitting hou

19.(1) Die plekke en tye waar die Hof sitting hou, word deur die Regter-president of die President van die Afdeling van die Hoë Hof wat regsbevoegdheid het in die gebied waar die Hof sit gereël, in samewerking met die Griffier.

(2) Elke appèl moet aangehoor en besleg word deur die Hof binne die gebied bepaal ingevolge subreël (1), wat naaste aan die woonplek of die hoofplek van besigheid van die appellant is: Met dien verstande dat die Kommissaris, by ontstentenis van die toestemming van die appellant, op redelike gronde en met behoorlike kennis aan die appellant, die Regter-president of President van die Hoë Hof wat regsbevoegdheid het in 'n ander gebied, kan versoek dat die appèl in die ander regsgebied aangehoor word.

Prosedures nie deur die Wet en of die reëls gedek nie

20.(1) Behoudens waar andersins in hierdie reëls bepaal word, is die reëls uitgereik kragtens artikel 43 van Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), van toepassing ten aansien van die algemene praktyk en prosedure van die Hof vir sover daardie reëls van toepassing is.

(2) In die geval van 'n prosesregtelike geskil tydens enige verrigtinge ingevolge die Wet en die reëls, behalwe reël 7, besluit die Voorsitter van die Hof alleen oor die prosedures wat gevolg moet word.

Getuiedagvaardings

21.(1) Op versoek van enige van die partye of vanweë 'n versoek gerig deur die Hof, reik die Griffier 'n getuiedagvaarding uit waarin 'n persoon vereis word om die verhoor van die appèl by te woon ten einde getuienis in verband

met 'n appèl te lewer, en daardie getuiedagvaarding kan die persoon wat gedagvaar is gelas om enige boek, dokument, inligting of goed wat in sy of haar besit of onder beheer mag wees, en wat relevant is tot die geskilpunte soos in reël 12 bedoel, voor te lê.

(2) Die reëls uitgereik kragtens artikel 43 van Wet op die Hooggeregshof, 1959, wat die bestelling van dagvaardings in siviele sake in die Hoë Hof reël is *mutadis mutandis* van toepassing met betrekking tot dagvaardings kragtens hierdie reëls uitgereik.

Hofprosedures

22.(1) By die aanhoor van die appèl, word die verrigtinge deur die appellant begin, tensy die Kommissaris 'n punt *in limine* opper.

(2) Die appellant of die persoon wat namens hom of haar verskyn, moet alle getuienis aanbied, insluitende die roep van enige getuies, waarop sy of haar beswaar gebaseer is, en moet gehoor gee aan die algemene reëls van bewysreg.

(3) Na aanhoor van die appellant se saak moet die Kommissaris op dergelike wyse getuienis aanbied insluitende, waar nodig die roep van getuies, ter ondersteuning van die aanslag.

(4) Na aanhoor van al die getuienis kan die appellant of die persoon wat namens hom of haar optree, en daarna die Kommissaris, argumente voordra.

(5) Die appellant of sy of haar verteenwoordiger mag na argument deur die Kommissaris gelewer, repliek lewer op enige nuwe punte deur die Kommissaris voorgehou of ten aansien van enige ander punte met verlof van die Hof.

(6) Die Hof moet oor die aangeleenthede in geskil beslis of sy beslissing tot 'n latere datum voorbehou.

(7) Wanneer 'n beslissing aldus voorbehou word, word die uitspraak gelewer op die wyse wat die Voorsitter van die Hof paslik ag.

(8) Die aanhoor van die appèl kan van tyd tot tyd deur die Hof verdaag word na enige tyd en plek wat die Hof gepas ag.

(9) Die Griffier moet die skriftelike uitspraak van die Hof aan die Kommissaris en die appellant of 'n persoon deur hom of haar aangewys, by skriftelike kennisgewing lewer binne 15 dae vanaf ontvangs daarvan.

(10) As nòg die appellant nòg enigeen wat gemagtig is om namens die appellant te verskyn, voor die Hof verskyn op die tyd en plek vir die verhoor van die appèl vasgestel, kan die Hof op versoek van die Kommissaris en by bewys dat die voorgeskrewe kennisgewing van die sitting van die Hof wat aan die appellant of sy of haar verteenwoordiger gestuur is, oor die aangeleentheid beslis soos in artikel 83(13) van die Wet bedoel, tensy 'n regspraak ontstaan, in welke geval die Hof die Kommissaris kan versoek om argumente ter staving van die aanslag aan te voer alvorens die Hof uitspraak gee.

(11) Indien nòg die Kommissaris nòg enigeen wat gemagtig is om namens hom of haar voor die Hof te verskyn op die tyd en plek vir die verhoor van die appèl vasgestel, kan die Hof op versoek van die appellant en by bewys dat die voorgeskrewe kennisgewing van die sitting van die Hof wat aan die Kommissaris gestuur is, oor die aangeleentheid beslis, tensy 'n regspraak ontstaan, in welke geval die Hof die appellant kan versoek om argumente ter staving van die beswaar teen die aanslag aan te voer alvorens die Hof uitspraak gee.

Terugtrek of toegee van appèl

23.(1) Die appèl kan ter eniger tyd alvorens dit vir verhoor geplaas is soos in reël 17 (2) bedoel—

- (a) deur die appellant teruggetrek word;
- (b) deur die Kommissaris toegegee word;
- (c) by wyse van 'n ooreenkoms in reël 7(7)(a) gelees met reël 7(7)(c) en 7(8) bedoel, besleg word; of
- (d) geskik word soos in reël 7(7)(b) gelees met reël 7(7)(c) en 7(8) bedoel.

(2) Waar 'n appèl egter reeds vir verhoor geplaas is soos in reël 17(2) bedoel of indien dit deelsverhoor is—

- (a) kan dit slegs deur die appellant teruggetrek word of deur die Kommissaris toegegee word met die toestemming van die teenparty of

met verlof van die Voorsitter van die Hof wat alleen sit, in welke geval—

- (i) die party wat die appèl wil terugtrek of toegee soos hierbo bedoel moet 'n kennisgewing van terugtrekking of kennisgewing van toegewing aan die teenparty en die Griffier lewer, en kan in daardie kennisgewing 'n toestemming om koste te betaal insluit, welke toestemming die uitwerking van 'n bevel van die Hof ten opsigte van daardie koste sal hê; of
- (ii) indien geen toestemming om koste te betaal by die kennisgewing in subreël (2)(a)(i) bedoel vervat is nie, kan die ander party aansoek doen vir 'n bevel vir koste—
 - (aa) waar die appèl vir verhoor geplaas is soos in reël 17(2) bedoel, maar nog nie deur die Hof aangehoor is nie, by die Hof by wyse van kennisgewing van mosie op die wyse in Deel B bedoel; of
 - (bb) waar die aangeleentheid deelsverhoor is, by die Hof bestaande uit die Voorsitter van die Hof wat alleen sit;
- (b) sal 'n ooreenkoms in reël 7(7)(a) bedoel of 'n skikking in reël 7(7)(b) bedoel—
 - (i) betrekking moet hê op die appèl as 'n geheel, waarby koste ingesluit word; en
 - (ii) by ooreenkoms tussen die partye of by wyse van kennisgewing van mosie deur enige party op die wyse in Deel B bedoel, 'n bevel van die Hof gemaak kan word.

Uitstel en verwydering van sake van hofrol

24.(1) Waar die Kommissaris en die appellant ooreenkom dat 'n saak wat geplaas is vir verhoor soos in reël 17(2) bedoel uitgestel word, of dat die saak van die rol verwyder word, moet die party wat die verrigtinge inisieer die Griffier skriftelik daarvan in kennis stel.

(2) 'n Aansoek deur 'n party om uit te stel of 'n appèl van die rol te verwyder, wat deur die ander party teengestaan word, kan deur die Voorsitter van die Hof wat alleen sit verhoor en beslis word.

Paginerings van dokumentasie

25.(1) In alle verrigtinge voor die Hof, moet die dokumente wat aan die Hof voorgelê word deur die party wat dit voor die Hof plaas gepagineer word en, sover dit prakties moontlik is, moet alle dokumente chronologies georden wees.

(2) Alle dokumentasie moet vergesel word van 'n indeks en dokumente wat aan die Hof voorgelê word moet gepagineer word ooreenkomstig die indeks, welke indeks voldoende inligting moet bevat om die Hof in staat te stel om elke dokument te identifiseer sonder dat dit nodig is om na die fisiese dokument self te verwys.

(3) Waar addisionele dokumente voorgelê word nadat die indeks alreeds voltooi is, moet daardie addisionele dokumentasie gepagineer word in ooreenstemming met die oorspronklike paginasie en 'n aanvullende indeks moet geliasseer word waarin die aanvullende dokumentasie gelys word.

Verlenging van voorgeskrewe tydperke, kondonasie en nie-nakoming

26.(1)(a) Enige beslissing van die Kommissaris in die uitoefening van sy of haar diskresie ingevolge reëls 3(1)(b), 3(2), 3(3), 5(1) en 5(2)(c) is aan beswaar en appèl onderworpe, en kan ondanks die prosedures in reëls 6 tot 18 voor die Hof dien by wyse van kennisgewing van mosie.

(b) Die Hof kan by aansoek by wyse van kennisgewing van mosie ingevolge hierdie subreël en op goeie gronde aangetoon ten opsigte van 'n beslissing van die Kommissaris ingevolge—

- (i) reël 3(1)(b) of 5(2)(c), 'n bevel maak waarin die voorgeskrewe tydperk verleng word;
- (ii) reël 3(2) of 3(3), 'n bevel maak waarin die aangeleentheid na die Kommissaris terugverwys word vir herooring met of sonder aanwysings om sodanige redes te verskaf wat na die oordeel van die Hof voldoende is; of

(iii) reël 5(1), 'n bevel maak waarin enige beswaar wat volgens die Kommissaris ongeldig geag is, geldig verklaar word.

(2) Enige tydperk in reëls 5 en 8 tot 18 bedoel kan by ooreenkoms tussen die partye verleng word en die Hof kan, in die afwesigheid van 'n ooreenkoms, by wyse van 'n aansoek by kennisgewing van mosie en op goeie gronde aangetoon, 'n bevel uitvaardig waarin die voorgeskrewe tydperk verleng word op sodanige terme as wat die Hof gepas ag.

(3) Die Hof kan gelas dat enige tydperk, beoog in reëls 5 en 8 tot 18, verleng word ondanks die feit dat die aansoek vir die verlenging van die tydperk na die verstryking van die betrokke tydperk gebring word.

(4) Die Hof kan by wyse van kennisgewing van mosie en op goeie gronde aangetoon, enige nie-nakoming van die reëls kondoneer.

(5) Waar enige van die partye versuim om aan enige van die vereistes in die reëls vervat te voldoen, kan die Hof op 'n aansoek by wyse van kennisgewing van mosie deur die ander party, 'n bevel maak waarin die party wat versuim beveel word om aan daardie vereiste te voldoen binne sodanige tydperk as wat die Hof gepas ag.

(6) Waar 'n versuimende party in gebreke bly om aan 'n bevel ingevolge subreël (1) of (5) verleen, te voldoen, kan die Hof by wyse van 'n aansoek van kennisgewing van mosie deur die ander party—

(a) waar die versuimende party die belastingpligtige is, 'n bevel maak waarin die aanslag, waarteen die belastingpligtige beswaar aangeteken het, bekragtig word, in welke geval die aanslag finaal en afdoende word;

(b) waar die versuimende party die Kommissaris is, 'n bevel maak waarin die beswaar teen die aanslag gehandhaaf word en die Kommissaris gelas om die aanslag in ooreenstemming met die beswaar te wysig; of

(c) 'n bevel maak wat die Hof gepas ag.

(7) Bykomend tot enige bevel ingevolge subreëls (1) tot (5) verleen, kan die Hof 'n bevel maak ten aansien van koste soos wat die Hof gepas ag.

(8) By die toepassing van hierdie reël, beteken enige verwysing na "Hof" die Voorsitter van die Hof wat alleen sit.

Koste

27.(1) Waar die Hof 'n bevel vir koste verleen, of op versoek van die Kommissaris of die belastingpligtige in gevalle waar die teenparty toegestem het tot koste soos in die reëls bedoel, kan die Griffier of self die funksies en pligte van 'n takseermeester verrig of, op versoek van die Hof of enige party, enige persoon aanstel om as takseermeester op te tree op die voorwaardes en vir 'n tydperk as wat die Griffier bepaal.

(2) Die persoon kragtens subreël (1) deur die Griffier aangestel, moet na die mening van die Griffier bevoeg wees om die funksies en pligte wat kragtens hierdie reëls toegeken word aan, of opgelê word op 'n takseermeester uit te voer.

(3) Die Kommissaris of die appellant kan by die Voorsitter van die Hof wat alleen sit aansoek doen om hersiening van enige items of gedeeltes van items in die kosterekening wat deur die Registrateur of die persoon aangestel om as takseermeester op te tree, getakseer is en die Voorsitter se beslissing om daardie items of gedeeltes van items toe te laat, te verminder of af te keur, is finaal.

(4) Die gelde, vorderings en tariewe wat deur die Hof toegestaan is, is sover dit van toepassing is, dié wat in die tarief van gelde en vorderings in sake wat deur die Provinsiale of Plaaslike Afdeling van die Hoë Hof binne wie se regsgebied die Hof sy sitting hou verhoor word, voorgeskryf word.

(5) By uitvaardiging van so 'n bevel teen die appellant, kan die Hof die appellant beveel om die koste van die Kommissaris te betaal, soos die Hof dit redelik en billik ag.

Getuiefooie

28.(1) 'n Getuie in enige verrigtinge voor die Hof is geregtig op betaling in ooreenstemming met die tariewe of toelaes soos voorgeskryf deur die Minister vir Justisie en Staatkundige Ontwikkeling en gepubliseer ingevolge artikel 42 van die Wet of Hooggeregshof, 1959, by kennisgewing in die *Staatskoerant*.

(2) Die Hof kan, ondanks subreël (1), op versoek van enige van die partye tot die aangeleentheid, beveel dat geen toelaes of slegs 'n gedeelte van die voorgeskrewe toelae aan 'n getuie betaal word.

Foie betaalbaar vir transkripsies

29. Indien enige persoon (behalwe die Kommissaris) by die Griffier 'n kennisgewing van voorneme om te appelleer teen 'n beslissing van die Hof ingevolge artikel 86A(3) geliaseer het en daardie persoon 'n transkripsie van die getuienis of 'n gedeelte van die getuienis tydens die verhoor van die saak in die Hof gelewer benodig, moet daardie persoon 'n bedrag by die Griffier deponeer wat na oordeel van die Griffier voldoende is om die koste van die transkripsie te dek, en moet daardie persoon by ontvangs van die transkripsie die uitstaande bedrag deur die Griffier bepaal, betaal.

DEEL B:

Kennisgewing van Mosie

Woordomskrywings

B1.(1) By die toepassing van die reëls in hierdie Deel, het enige woord of uitdrukking wat in die Wet of Deel A omskryf is, tensy daar uit die samehang anders blyk, daardie betekenis.

(2) Reëls 19, 23 tot 25 en 27 van Deel A sal, tot die mate wat dit toepaslik is, *mutatis mutandis* van toepassing wees op hierdie Deel.

(3) Behoudens waar andersins in die reëls van hierdie Deel bepaal word, is die algemene praktyk en prosedure van die Hof dié van die Hoë Hof in soverre daardie reëls en prosedure van toepassing is.

Toepassing van Deel B

B2. By die toepassing van die reëls in Deel A, moet enige aansoek by wyse van kennisgewing van mosie in daardie reëls bedoel, gebring word op die wyse in die reëls in hierdie Deel bedoel.

Kennisgewing van mosie en ondersteunende eedsverklaring

B3. Elke aansoek moet by wyse van kennisgewing van mosie geskied welke kennisgewing volledige besonderhede moet bevat van die bevel wat aangevra word, en deur 'n beëdigde verklaring ondersteun word waarin die feite waarop die applikant sy aansoek om regshulp rugsteun, vervat word.

Lewering van kennisgewing van mosie en ondersteunende eedsverklaring

B4. Afskrifte van die kennisgewing van mosie en ondersteunende eedsverklaring, en alle aanhangsels daarby aangeheg, moet aan die Griffier en die party teen wie die regshulp aangevra word (hierna "die respondent" genoem), gelewer word, by die adres—

- (a) waar die respondent die Kommissaris is, soos aangedui vir dié doel deur hom of haar in die aanslag; of
- (b) waar die belastingpligtige die respondent is, soos aangedui deur hom of haar vir dié doel in enige versoek vir redes ingevolge reël 3 van Deel A, of sy of haar beswaar ingevolge reël 4 van Deel A, welke een van toepassing is.

Adres en vervaldatum

B5. In die kennisgewing van mosie moet die applikant—

- (a) 'n adres vir lewering aandui, indien daardie adres verskil van die adres in reël B4 bedoel, waar hy of sy kennis en lewering van alle dokumente in daardie verrigtinge sal ontvang;
- (b) 'n dag bepaal, minstens tien dae na lewering daarvan aan die respondent, waarbinne daardie respondent die applikant skriftelik in

kennis moet stel van sy voorneme om daardie aansoek te opponeer;
en

- (c) meld dat indien geen kennis gegee word nie, die aansoek geplaas sal word om aangehoor te word op die eerste beskikbare dag deur die Griffier bepaal, maar nie later nie as 15 dae na lewering van die aansoek aan die respondent.

Plasing vir verhoor waar geen voorneme om te opponeer

B6. Indien die respondent nie op of voor die dag vir dié doel in die kennisgewing ingevolge reël B5(b) vermeld, die applikant in kennis stel van sy of haar voorneme om te opponeer nie, kan die applikant die Griffier versoek om die aangeleentheid op die rol te plaas op die datum deur die Griffier ingevolge reël B5(c) bepaal.

Kennisgewing van voorneme om te opponeer en beantwoordende eedsverklaring

B7. Indien die respondent van voorneme is om die aansoek van die gevraagde regshulp in die kennisgewing van mosie te opponeer, moet hy of sy—

- (a) binne die tydperk in die kennisgewing vermeld, die applikant skriftelik in kennis stel dat hy of sy van voorneme is om die aansoek te opponeer;
- (b) in daardie kennisgewing in paragraaf (a) bedoel, 'n adres verskaf indien die adres verskil van die adres in reël B4 bedoel, waar hy of sy kennis en lewering van alle dokumente in daardie verrigtinge sal ontvang; en
- (c) binne 15 dae na die applikant in kennis gestel is van sy of haar voorneme om die aansoek te opponeer, sy of haar beantwoordende verklaring, indien enige, tesame met enige relevante dokumentasie lewer.

Repliserende eedsverklaring

B8.(1) Binne tien dae na lewering van die eedsverklaring en dokumente in reël B7 bedoel, kan die applikant 'n repliserende verklaring lewer.

(2) Die hof mag in die uitoefening van sy diskresie die liasseering van verdere verklarings magtig.

Plasing vir verhoor waar geen beantwoordende eedsverklaring

B9. Waar geen beantwoordende verklaring binne die tydperk in reël B7(c) voorgeskryf gelewer is nie, kan die applikant binne vyf dae na verstryking van daardie tydperk, aansoek doen by die Griffier vir die toekenning van 'n datum vir die aanhoor van die aansoek.

Aansoek om datum vir verhoor

B10. Waar 'n beantwoordende eedsverklaring gelewer is, kan die applikant binne vyf dae na lewering van sy of haar repliserende verklaring of, indien geen repliserende eedsverklaring geliasseer word nie, binne vyf dae na verstryking van die tydperk in reël B8 bedoel, aansoek doen by die Griffier vir die toekenning van 'n datum vir die aanhoor van die aansoek.

Aansoek om plasing deur respondent

B11.(1) Indien die applikant versuim om ingevolge reël B10 by die Griffier aansoek te doen vir die toekenning van 'n datum vir die aanhoor van die aansoek binne die tydperke vermeld, kan die respondent onmiddellik na verstryking van daardie tydperk aansoek doen vir die toekenning van 'n datum.

(2) Skriftelike kennis van die datum wat deur die Griffier toegeken is, moet deur die applikant of die respondent, na gelang van die geval, aan die ander party gegee word.

Deel C:
Oorgangsmatreëls

Woordomskrywings

C1. By die toepassing van die reëls in hierdie Deel, het enige woord of uitdrukking wat in die Wet of Deel A omskryf is, daardie betekenis en, tensy daar uit die samehang anders blyk, beteken—

- (a) “die Wysigingswet” die Tweede Wysigingswet op Inkomstewette, 2001 (Wet No. 60 van 2001);
- (b) “effektiewe datum” 1 April 2003.

Aanslae voor effektiewe datum uitgereik

C2. Waar ‘n aanslag ingevolge die Wet voor die effektiewe datum uitgereik is en geen beswaar teen daardie aanslag voor daardie datum aangeteken is nie—

- (a) is reël 3 van Deel A slegs van toepassing waar die versoek om redes aan die Kommissaris gelewer word na die effektiewe datum en daardie versoek gelewer is aan die Kommissaris binne die tydperk in reël 3(1)(a) of (b) bedoel;
- (b) is reël 4 van Deel B slegs van toepassing ten opsigte van ‘n beswaar teen so ‘n aanslag, waar—
 - (i) daardie beswaar ingedien word binne die tydperk in daardie reël voorgeskryf; of
 - (ii) die tydperk van 30 dae waarbinne ‘n beswaar ingedien moes word ingevolge artikel 81(1) van die Wet, voor die wysiging deur die Wysigingswet, deur die Kommissaris ingevolge artikel 81(2) van die Wet verleng is en die laaste dag van daardie tydperk op ‘n datum op of na die effektiewe datum val.

Besware voor effektiewe datum ingedien

C3. (1) Waar ‘n beswaar teen ‘n aanslag voor die effektiewe datum ingedien is en—

- (a) geen kennisgewing ingevolge artikel 81(4) van die Wet deur die Kommissaris voor daardie datum gelewer is nie, is reël 5 van Deel A slegs van toepassing ten opsigte van daardie beswaar, waar—
- (i) die beswaar aan die vereistes vir 'n geldige beswaar, soos in artikel 81(3) van die Wet bedoel voor die wysiging deur die Wysigingswet, voldoen;
 - (ii) die belastingpligtige 'n gemotiveerde versoek aan die Kommissaris lewer dat reël 5 van Deel A ten opsigte van daardie beswaar van toepassing moet wees;
 - (iii) die Kommissaris op goeie gronde aangetoon daartoe instem, in welke geval, vir doeleindes van reël 5(2) tot 5(4) van Deel A, die datum waarop sodanige beslissing aan die belastingpligtige gelewer word geag word die datum van ontvangs van die beswaar soos beoog in reël 5(2) tot 5(4) van Deel A te wees; of
- (b) 'n kennisgewing ingevolge artikel 81(4) van die Wet deur die Kommissaris gelewer is voor daardie datum, maar geen appèl voor daardie datum aangeteken is nie, is reël 6 van Deel A slegs van toepassing ten opsigte van 'n appèl teen 'n beslissing van die Kommissaris, waar—
- (i) daardie appèl binne die tydperk in daardie reël voorgeskryf aangeteken is; of
 - (ii) die tydperk van 30 dae waarbinne 'n appèl ingevolge artikel 83(7) van die Wet, voor wysiging deur die Wysigingswet, aangeteken moes word deur die Kommissaris ingevolge daardie artikel verleng is en die laaste dag van daardie tydperk op 'n datum op of na die effektiewe datum val.
- (2) Enige beslissing van die Kommissaris ingevolge subreël (1)(a)(iii) is aan beswaar en appèl onderhewig op die wyse in reël 26(1)(a) van Deel A bedoel.

Appèlle voor die effektiewe datum aangeteken

C4.(1) Waar 'n appèl ingevolge die Wet voor die effektiewe datum aangeteken is en—

- (a) daardie appèl nie vir verhoor hetsy deur die Raad of voor die Hof geplaas is nie—
- (i) kan die belastingpligtige versoek dat die alternatiewe geskilsbeslegtingsprosedures in reël 7 van Deel A bedoel van toepassing is ten opsigte van die geskil en die Kommissaris moet daardie versoek ingevolge reël 7(1) van Deel A oorweeg;
 - (ii) kan die belastingpligtige en die Kommissaris skriftelik ooreenkom dat al die prosedures in reëls 8 tot 29 van Deel A, Deel B, sover toepaslik, van toepassing is ten opsigte van daardie appèl, welke prosedures kan begin met—
 - (aa) die vergading om die geskilpunte te beperk soos in reël 9 van Deel A bedoel, wat gehou moet word op 'n datum tussen die belastingpligtige en die Kommissaris ooreengekom; of
 - (bb) waar die belastingpligtige en die Kommissaris ooreenkom dat 'n vergadering in reël 9(1) van Deel A nie nodig is nie, die lewering deur die Kommissaris van 'n uiteensetting van die gronde van die aanslag soos in reël 10 van Deel A bedoel, op 'n datum tussen die belastingpligtige en die Kommissaris ooreengekom; of
 - (iii) waar geen ooreenkoms in subparagraaf (ii) bereik is nie, moet die appèl—
 - (aa) deur die Kommissaris voor die Hof geplaas word op die wyse in reël 17 van Deel A bedoel, so spoedig as wat redelikerwys moontlik is; en
 - (bb) mee gehandel word op die wyse in reël 18 tot 29 van Deel A en Deel B, bedoel, sover toepaslik; of
- (b) daardie appèl vir verhoor deur hetsy die Raad of die Hof geplaas is, maar nog nie deur die Raad of die Hof verhoor is nie, is reëls 8 en 18 tot 29 van Deel A en Deel B, sover toepaslik, van toepassing ten opsigte van daardie appèl; of
- (c) daardie appèl deelsverhoor is voor die Raad of die Hof, is reëls 8, 19(1) en 20 tot 29 van Deel A en Deel B, sover toepaslik, van toepassing ten opsigte van daardie appèl.

(2) By die toepassing van reël 18 van Deel A, moet die dossier, addisioneel tot enige ander dokumente in daardie reël bedoel, ook insluit—

- (a) waar die verklarings soos beoog in reëls 10 -11 van Deel A nie gelewer is nie, 'n kort verklaring van die saak waarin die gronde van die aanslag in geskil en die gronde van beswaar uiteengesit word;
- (b) 'n afskif van enige ooreenkoms in subreël (1)(a)(ii) bedoel; en
- (c) afskrifte van al die korrespondensie wat op die aanslag, opgawe, beswaar en appèl betrekking het.

SKEDULE A**TERME VAN ALTERNATIEWE GESKILBESLEGTING****1. Hoofreël**

Alternatiewe geskilbeslegting kan slegs plaasvind indien hierdie terme aanvaar word. Beide die Kommissaris en die belastingpligtige moet toestem tot die alternatiewe geskilbeslegting prosedure, alvorens enige ooreenkoms of skikking bereik, enige regswerking het.

2. Wie mag alternatiewe geskilbeslegting inisieer?

Alternatiewe geskilbeslegting kan deur of die belastingpligtige in sy KENNISGEWING VAN APPÈL of deur die Kommissaris na ontvangs van 'n kennisgewing van appèl deur 'n belastingpligtige geïnisieer word.

3. Wanneer mag 'n geskil verwys word vir alternatiewe geskilbeslegting?

3.1. Die belastingpligtige kan versoek dat 'n geskil vir alternatiewe geskilbeslegting verwys word, in gevalle waar sy of haar beswaar van die hand gewys is, of waar sy of haar aanslag as gevolg van die beswaar gewysig is, deur die Kommissaris, en die belastingpligtige ontevrede is met sodanige beslissing en begerig is om appèl na die Belastingraad of Hof aan te teken. Die Kommissaris moet in sulke omstandighede, besluit of die aangeleentheid geskik is vir alternatiewe geskilbeslegting, en die belastingpligtige binne 20 dae na ontvangs van die kennisgewing van appèl dienooreenkomstig in kennis stel.

3.2. Indien die Kommissaris van mening is dat die aangeleentheid geskik is vir alternatiewe geskilbeslegting, moet hy of sy die belastingpligtige binne 10 dae in kennis stel na ontvangs van die kennisgewing van appèl. Die belastingpligtige moet die Kommissaris daarna skriftelik in kennis stel binne 10 dae van die datum van bovermelde kennisgewing deur die Kommissaris, of hy of sy toestem tot alternatiewe geskilbeslegting.

4. Hoe?

'n Belastingpligtige wie se beswaar van die hand gewys is of wie se aanslag as gevolg van die beswaar deur die Kommissaris gewysig is, en wie begerig is om na die Belastingraad of die Belastinghof te appelleer teen sodanige afwysing moet:-

- 4.1. die vorm "Kennisgewing van Appèl" voltooi, aandui in die spasie "verwys na alternatiewe geskilbeslegting" en die dokument aan die einde daarvan onderteken; en
- 4.2. die voltooide "Kennisgewing van Appèl" vorm lewer by die adres vermeld in die "Kennisgewing van Appèl".

5. Wanneer ?

Elke kennisgewing van appèl met 'n versoek dat die geskil vir alternatiewe geskilbeslegting verwys moet word, moet die Kommissaris binne 30 dae na die datum van die kennisgewing van die afwysing van beswaar of die kennisgewing van die wysiging van die aanslag as gevolg van die beswaar, bereik.

6. Die Fasiliteerder

6.1. Waar die Kommissaris of die belastingpligtige, in terme van paragraaf 3, die ander party in kennis gestel het dat die geskil vir alternatiewe geskilbeslegting verwys mag word, moet die Kommissaris 'n fasiliteerder aanstel om die alternatiewe geskilbeslegting proses te fasiliteer binne 15 dae na ontvangs van die kennisgewing vanaf die belastingpligtige dat hy of sy instem tot alternatiewe geskilbeslegting, of die datum van die kennisgewing vanaf die Kommissaris dat die aangeleentheid geskik is vir alternatiewe geskilbeslegting. Die Kommissaris moet die belastingpligtige in kennis stel wie as fasiliteerder aangestel is.

6.2. Die fasiliteerder, in die gewone loop van sake, sal 'n beampte in diens van die SAID wees wat oor die gepaste kwalifikasies beskik en sal onderhewig wees aan 'n Gedragskode.

6.3. Die fasiliteerder het ten doel dat 'n billike, regverdigde en regsgeldige oplossing van die geskil tussen die belastingpligtige en die Kommissaris bereik word.

6.4. Die fasiliteerder is nie by magte om 'n besluit of beslissing te maak wat die Kommissaris of die belastingpligtige bind nie, en hy of sy mag nie die Kommissaris of belastingpligtige verplig om 'n geskil te skik nie.

6.5. By die afsluiting van die alternatiewe geskilbeslegting proses moet die fasiliteerder die terme van enige ooreenkoms of skikking bereik tussen die partye aanteken, of, indien geen ooreenkoms of skikking bereik is nie, sodanige feit aanteken.

6.6. Die fasiliteerder is by magte om die alternatiewe geskilbeslegting proses summier te beëindig sonder vooraf kennis indien:-

6.6.1. enige persoon versuim om 'n vergadering, soos na verwys in paragraaf 8, by te woon;

6.6.2. enige persoon versuim om 'n versoek, gerig in terme van paragraaf 7, na te kom;

6.6.3. hy of sy van mening is dat die geskil nie opgelos kan word nie;

6.6.4. enige van die partye saamstem dat die geskil nie deur die geskilbeslegting proses opgelos kan word nie; of

6.6.5. vir enige ander gepaste rede.

7. Raamwerk van die proses

Die fasiliteerder moet na konsultasie met die belastingpligtige en die betrokke beampte(s) van die SAID wat verantwoordelik is vir die uitreiking van die aanslag onderhewig aan geskil:-

7.1. die prosedure bepaal waarbinne die geskilbeslegting proses plaasvind;

7.2. 'n plek, datum en tyd bepaal waar die partye byeen sal kom vir die alternatiewe geskilbeslegting vergadering; en

7.3. elke party skriftelik in kennis stel ten aansien van watter skriftelike voorleggings of enige ander dokumentasie voorgelê of uitgeruil moet word (indien nodig), en wanneer die voorleggings of dokumentasie benodig word.

8. ADR Vergadering

'n Vergadering tussen die partye tot die geskil, ten einde te poog om die geskil op te los, moet binne 20 dae na aanstelling van die fasiliteerder gehou

word of binne sodanige verdere periode as waartoe die Kommissaris en die belastingpligtige mag ooreenkom.

9. Reëls vir die ADR vergadering

9.1. Die belastingbetaler (of die verteenwoordigende belastingbetaler soos beoog in artikel 1 van die Wet) moet persoonlik teenwoordig wees by die alternatiewe geskilbeslegting vergadering en mag vergesel word deur 'n verteenwoordiger van sy of haar keuse.

9.2. Die fasiliteerder mag, in uitsonderlike omstandighede, die belastingbetaler of die verteenwoordige belastingbetaler verskoon van persoonlike bywoning van die vergadering in welke gevalle hulle in hul afwesigheid deur 'n verteenwoordiger van hul keuse verteenwoordig mag word.

9.3. Die vergadering moet afgesluit word:

9.3.1. op versoek van die fasiliteer; of

9.3.2. nadat alle partye instem dat die vergadering afgesluit word.

9.4. Indien beide partye en die fasiliteerder ooreenkom, kan die vergadering na enige ander plek, op 'n ander datum of tyd voorgesit word (soos vasgestel deur die fasiliteerder).

9.5. Die partye mag, ten einde 'n geskilpunt op te los, en slegs indien die fasiliteerder toestem, getuies lei of beskikbaar stel, tydens die alternatiewe geskilbeslegting proses.

9.6. Die fasiliteerder mag enige van die partye versoek om 'n getuie te roep om getuienis te lewer.

9.7. By die beëindiging van die vergadering moet die fasiliteerder die volgende notuleer:

9.7.1. Alle geskilpunte wat opgelos is (deur middel van die geskil beslegtings proses);

9.7.2. Enige aspek waaroor ooreenstemming of 'n skikking nie bereik kon word nie; en

9.7.3. Enige ander aspek wat die fasiliteerder nodig ag.

9.8. Die fasiliteerder moet die verslag aan die belastingbetaler en aan die Kommissaris se aangewese verteenwoordiger binne 10 dae na die beëindiging van die alternatiewe geskilbeslegting proses oorhandig.

9.9. Die fasiliteerder mag, indien versoek by die aanvang van die alternatiewe geskilbeslegting proses, 'n aanbeveling maak by die beëindiging van die proses waar geen ooreenkoms of skikking uiteindelik deur die partye bereik is nie.

10. Voorbehoud van regte

10.1. Die verrigtinge mag nie elektronies opgeneem word nie, en enige voorlegging wat in die verloop van die vergadering gemaak is, sal geag word gemaak te wees sonder benadeling van regte.

10.2. Enige voorlegging gemaak of dokument ingedien in die verloop van die geskil beslegtings proses mag nie in enige daaropvolgende verrigtinge as bewysstuk deur enige ander party aangebied word nie, behalwe in die uitsonderingsgevalle beoog in reël 7(6)(b)(ii) van Deel A.

10.3. Geen persoon, behalwe in die uitsonderingsgevalle beoog in reël 7(6)(b)(ii) van Deel A, mag enige persoon by die geskilbeslegtings proses betrokke, dagvaar om openbaarmaking van enige voorlegging gemaak of dokumentasie aangebied tydens die alternatiewe geskilbeslegtings proses af te dwing nie. Die fasiliteerder mag onder geen omstandighede gedagvaar word nie.

10.4. Enige aanbeveling wat deur die fasiliteerder gemaak word in terme van paragraaf 9.9 hierbo vermeld sal toelaatbaar wees gedurende enige daaropvolgende verrigtinge insluitende hofverrigtinge.

11. Ooreenkoms

11.1. Enige ooreenkoms of skikking bereik tussen die partye moet skriftelik genotuleer word en onderteken word deur die belastingbetaler en die Kommissaris se gemagtigde verteenwoordiger.

11.2. Indien die partye nie in staat is om al die geskilpunte op te los nie of om 'n skikking te bereik nie, moet die ooreenkoms of skikking ingevolge paragraaf 11.1 die geskilpunte aantoon:

11.2.1. ten aansien waarvan ooreenstemming bereik is; en

11.2.2. ten aansien waarvan geen ooreenstemming bereik is nie en ten opsigte waarvan die belastingpligtigenog mag voortgaan mee op appèl na die Belastingraad of Belastinghof.

11.3. Enige ooreenkoms of skikking bereik deur middel van die alternatiewe geskilbeslegtings proses het geen bindende effek ten aansien van enige aanslae betreffende die belastingpligtige wat nie in die ooreenkoms of skikking ingesluit is nie, of enige ander belastingpligtige.

12. 'n Dag beteken 'n besigheidsdag.

SKEDULE B**GEDRAGSKODE vir FASILITEERDERS**

Die terma van hierdie Gedragskode is bindend ten aansien van elke persoon wat aangestel is as 'n Fasiliteerder ("die Fasiliteerder") deur die Suid Afrikaanse Inkomstediens ("SAID") om die alternatiewe geskilbeslegtings proses te fasiliteer soos beoog in reël 7 van die reëls uitgevaardig in terme van die bepalings van artikel 107A van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962).

1. Profesionalisme

Elke Fasiliteerder is verplig om die integriteit, effektiwiteit en doeltreffendheid van die alternatiewe geskilbeslegtings proses te bevorder en om die onafhanklikheid en onpartydigheid van die Fasiliteerder te bewaar.

2. Elke fasiliteerder moet:-

- 2.1 Hom- of haarself op 'n eerlike, eerbare en vriendlike wyse teenoor alle partye gedra;
- 2.2 In goeie trou en onpartydig teenoor alle partye optree;
- 2.3 'n Aanstelling van die hand wys alternatiewelik tegniese bystand bekom wanneer 'n aangeleentheid buite sy of haar area van bevoegdheid val;
- 2.4 Getrou binne die raamwerk van die fasiliteeringsproses en die reg optree;
- 2.5 Tyd respekteer en poog om 'n dispuut so gou dienlik moontlik af te handel;
- 2.6 Die uitoefening van onbehoorlike beïnvloeding van enige persoon buite die fasiliteeringsproses weerstaan; en
- 2.7 Op 'n voortdurende basis poog om sy of haar kennis en vaardighede ten aansien van die hantering van belastinggeskille te verbeter.

3. Botsing van belange

- 3.1 'n Fasiliteerder moet onmiddellik aan die partye en die SAID enige feit bekend maak wat moontlik 'n rol kan speel in sy of haar onafhanklikheid, of die indruk kan skep dat sy of haar onafhanklikheid geaffekteer is.
- 3.2 'n Fasiliteerder moet 'n aanstelling van die hand wys indien daar 'n botsing van belange bestaan wat aanleiding mag gee tot vooroordeel.
- 3.3 Indien enige van die partye die Fasiliteerder versoek om hom- of haarself te rekuseer, mag die Fasiliteerder instem tot sodanige versoek indien dit tot voordeel is van die beslegting van die geskil.
- 3.4 Die SAID mag nie 'n Fasiliteerder verwyder in gevalle waar hy of sy reeds met die alternatiewe geskilbeslegtings proses begin het nie, tensy sodanige versoek afkomstig is van of die Fasiliteerder of geskiet by wyse van toestemming deur beide partye.

4. Vertroulikheid

- 4.1 Inligting wat in vertroue aan die Fasiliteerder, deur enige van die partye, geopenbaar is gedurende die fasiliteringsproses moet streng vertroulik gehanteer word en mag nie aan die teenparty geopenbaar word nie tensy sodanige openbaarmaking geskied met die goedkeuring van die party wat die inligting aldus geopenbaar het.
- 4.2 Die verrigtinge en die uitslag van alle verrigtinge en verwante dokumentasie sal vertroulik bly tensy alle betrokke partye tot die verrigtinge andersins toestem, of indien openbaarmaking deur enige reg toegelaat is.

5. Finaliseering van Fasiliteringsproses

Fasiliteerders moet alle ooreenkomste, skikkings of aanbevelings (in gevalle waar die partye dit versoek het) op skrif stel in 'n duidelike en bondige formaat.

6. Kwaliteitskontrole

- 6.1 Die SAID het die reg om betrokke partye te versoek om evalueerings verslae ten aansien van die fasiliteringsproses, insluitende die Fasiliteerder, te lewer, welke evalueerings verslae as vertroulike inligting deur die SAID hanteer mag word.
- 6.2 Die SAID mag vir grondige redes 'n Fasiliteerder van die lys van Fasiliteerders verwyder, welke redes die onbevoegheid van die Fasiliteerder mag insluit.
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No. R. 468

1 April 2003

CIRCUMSTANCES UNDER WHICH THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE MAY SETTLE A DISPUTE BETWEEN THE COMMISSIONER AND ANY PERSON, AS CONTEMPLATED IN SECTION 107B OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 1962), AND SECTION 93A OF THE CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964)

By virtue of the power vested in me by section 107B of the Income Tax Act, 1962, and section 93A of the Customs and Excise Act, 1964, I, Trevor Andrew Manuel, Minister of Finance, hereby prescribe in the Schedule hereto the circumstances under which the Commissioner for the South African Revenue Service may settle a dispute between the Commissioner and any person, notwithstanding any provision contained in the relevant Act or any other Act administered by the Commissioner, where such a settlement would be to the best advantage of the state.

**T. A. MANUEL, MP
MINISTER OF FINANCE**

SCHEDULE

Definitions

1. For the purposes of these regulations, any word or expression to which a meaning has been assigned in the Act shall, unless the context otherwise indicates, bear the meaning so assigned, and—

“dispute” means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;

“SARS” means the South African Revenue Service;

“settle” means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and “settlement” shall be construed accordingly; and

"the Act" means the Income Tax Act, 1962, or the Customs and Excise Act, 1964, as the case may be.

Purpose of regulations

2. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of these regulations is, therefore, to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Circumstances where the Commissioner may not settle a dispute

3. It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner,—

- (a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in regulation 4 exist;
- (b) the settlement would be contrary to the law or a clearly established practice of SARS on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;
- (c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;
- (d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or
- (e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances under which the Commissioner may settle a dispute

4. The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*—

- (a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of SARS's resources;
- (b) the cost of litigation in comparison to the possible benefits with reference to—
 - (i) the prospects of success in a court;
 - (ii) the prospects of the collection of the amounts due; and
 - (iii) the costs associated with collection;
- (c) whether there are any—
 - (i) complex factual or quantum issues in contention; or
 - (ii) evidentiary difficulties,which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;
- (d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or
- (e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Process of settlement

5. (1) A dispute may be settled, as contemplated in regulation 4, by the Commissioner personally or any SARS official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated SARS official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Agreement in terms of which dispute is resolved

6. (1) All disputes settled in whole or in part, as contemplated in regulation 4, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

- (a) how each particular issue was settled;
- (b) relevant undertakings by the parties;
- (c) treatment of that issue in future years;
- (d) withdrawal of objections and appeals; and
- (e) arrangements for payment.

(2) The Commissioner has the right to recover any outstanding amounts in full where the person concerned fails to adhere to any agreed payment arrangement.

(3) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

Rights and obligations of parties

7. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(3) SARS must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(4) Subject to regulation 8, SARS must adhere to the secrecy provisions with regard to the information relating to the person concerned and SARS may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(5) SARS must, where the dispute is not ultimately settled, explain the further rights of objection and appeal to the person concerned.

Reporting requirements

8. (1) The Commissioner must—

- (a) maintain a register of all disputes settled in the circumstances contained in these regulations; and
 - (b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.
- (2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—
- (a) be in such format which, subject to section 4(1)(b) of the Act, does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
 - (b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.

No. R. 468

1 April 2003

OMSTANDIGHEDEN WAARONDER DIE KOMMISSARIS VIR DIE SUID-AFRIKAANSE INKOMSTEDIENS 'N GESKIL TUSSEN DIE KOMMISSARIS EN ENIGE PERSOON KAN BESLEG, SOOS IN ARTIKEL 107B VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO. 58 VAN 1962) EN ARTIKEL 93A VAN DIE DOEANE- EN AKSYNSWET, 1964 (WET NO. 91 VAN 1964), BEDOEL

Kragtens die bevoegdheid aan my verleen deur artikel 107B van die Inkomstebelastingwet, 1962, en artikel 93A van die Doeane- en Aksynswet, 1964, skryf ek, Trevor Andrew Manuel, Minister van Finansies hiermee in die Bylae hierby, die omstandighede voor waaronder die Kommissaris vir die Suid-Afrikaanse Inkomstediens 'n geskil tussen die Kommissaris en enige persoon kan besleg, ondanks enige bepaling in die betrokke Wet of enige ander Wet deur die Kommissaris geadministreer, waar die beslegting tot die beste voordeel van die staat sal wees.

**T. A. MANUEL, LP
MINISTER VAN FINANSIES**

BYLAE

Woordomskrywings

1. By die toepassing van hierdie regulasies, tensy uit die samehang anders blyk, dra enige woord of uitdrukking waaraan 'n betekenis in die Wet toegeskryf is die betekenis aldus daaraan toegeskryf, en beteken—

“die Wet” die Inkomstebelastingwet, 1962, of die Doeane- en Aksynswet, 1964, na gelang van die geval;

“geskil” 'n verskil oor die uitleg van óf die relevante feite wat betrokke is óf die reg wat daarop van toepassing is, of van beide die feite en die reg;

“SAID” die Suid-Afrikaanse Inkomstediens;

“besleg” om 'n geskil op te los deur 'n aanspreeklikheid wat betwis word te skik, anders as waar óf die Kommissaris óf die betrokke persoon die ander party se uitleg van die feite of

die reg van toepassing op daardie feite, of beide die feite en die reg, aanvaar, en "beslegting" word dienooreenkomstig uitgelê.

Doel van regulasies

2. (1) Die basiese beginsel in die reg is dat dit die plig van die Kommissaris is om belastinge, regte, heffings, tariewe en ander bedrae ingevolge die wette deur die Parlement ingestel aan te slaan en te vorder en om nie daardie belastinge, regte, heffings, tariewe of ander bedrae behoorlik hefbaar en betaalbaar, op te sê nie.

(2) Omstandighede mag egter vereis dat die strengheid en onbuigsaamheid van die basiese beginsel getemper word waar dit tot die beste voordeel van die staat sal wees.

(3) Die doel van hierdie regulasies is derhalwe om die omstandighede voor te skryf waaronder dit ongepas is en waaronder dit gepas sal wees dat die basiese reël getemper word en dat 'n besluit geneem word om 'n geskil te besleg.

Omstandighede waar die Kommissaris nie 'n geskil kan besleg nie

3. Dit is nie gepas en tot die beste voordeel van die staat om 'n geskil te besleg nie waar, na die mening van die Kommissaris,—

- (a) die handeling aan die kant van die betrokke persoon wat met die geskil verband hou, opsetlike belastingontduiking of bedrog daarstel en geen van die omstandighede in regulasie 4 bedoel, teenwoordig is nie;
- (b) die beslegting in stryd sal wees met die reg of 'n duidelik gevestigde praktyk van SAID op die aangeleentheid, en geen uitsonderlike omstandighede bestaan om 'n afwyking van die reg of praktyk te regverdig nie;
- (c) dit in die openbare belang is om 'n geregtelike opklaring van die geskilpunt te verkry en die saak vir die doel gepas is;
- (d) die voortsetting van die aangeleentheid deur die howe nakoming van die belastingwette wesenlik sal bevorder en die saak vir die doel gepas is; of
- (e) die betrokke persoon nie aan die bepalinge van enige Wet wat deur die Kommissaris geadministreer word, voldoen het nie en die Kommissaris van mening is dat die nie-nakoming van 'n ernstige aard is.

Omstandighede waaronder die Kommissaris 'n geskil kan besleg

4. Die Kommissaris kan, waar dit tot die beste voordeel van die staat sal wees, 'n geskil in geheel of gedeeltelik besleg, op 'n basis wat regverdig en billik vir beide die betrokke persoon en SAID is, na in agneming van *inter alia*—

- (a) of daardie beslegting in die belang van goeie bestuur van die belastingstelsel, algemene billikheid en die beste gebruik van SAID se hulpbronne sal wees;
- (b) die koste van litigasie in verhouding tot die moontlike voordele met verwysing na—
 - (i) die kanse op sukses in 'n hof;
 - (ii) die kanse op invordering van die bedrae verskuldig; en
 - (iii) die koste wat met invordering verband hou;
- (c) of daar enige—
 - (i) komplekse feitelike of *quantum* kwessies in geskil is; of
 - (ii) bewysregtelike probleme bestaan,wat voldoende is om die saak problematies in uitkoms te maak of ongeskik is vir beslissing deur middel van die alternatiewe geskilbeslegtingsprosedures of die howe;
- (d) 'n geval waar 'n deelnemer of 'n groep deelnemers in 'n belastingontduikingsreëling die posisie van die Kommissaris in die geskil aanvaar het, in welke geval die beslegting onderhandel kan word op 'n gepaste wyse om bestaande strukture en reëlins te ontbind; of
- (e) of die beslegting van die geskil nakoming van die belastingwette deur die betrokke persoon of 'n groep belastingpligtiges of 'n gedeelte van die publiek op 'n koste effektiewe wyse sal bevorder.

Proses van beslegting

5. (1) 'n Geskil kan besleg word, soos in regulasie 4 bedoel, deur die Kommissaris persoonlik of deur 'n SAID beampte wat deur die Kommissaris vir daardie doel aangewys is.

(2) Die Kommissaris of die betrokke aangewese SAID beampte moet toesien dat hy of sy nie 'n persoonlike, gesins-, sosiale, besigheids-, professionele, diens- of finansiële verhouding met die betrokke persoon het of op enige stadium gehad het nie.

Ooreenkoms ingevolge waarvan geskil besleg is

6. (1) Alle geskille in geheel of gedeeltelik besleg, soos in regulasie 4 bedoel, moet deur 'n skriftelike ooreenkoms tussen die partye, in die vorm as wat die Kommissaris mag voorskryf, bevestig word en moet besonderhede insluit oor—

- (a) hoe elke spesifieke geskilspunt besleg is;
- (b) relevante ondernemings deur die partye;
- (c) hantering van daardie punte in toekomstige jare;
- (d) terugtrekking van besware en appèlle; en
- (e) reëlins vir betaling.

(2) Die Kommissaris is geregtig om enige uitstaande bedrae ten volle te verhaal waar die betrokke persoon nalaat om aan enige betalingsreëling te voldoen.

(3) Enige beslegting is voorwaardelik daarop dat alle wesenlike feite wat op die tyd van die beslegting aan die betrokke persoon bekend is, ten volle geopenbaar word.

Regte en verpligtinge van partye

7. (1) Die betrokke persoon moet ten alle tye alle relevante feite gedurende gesprekke tydens die proses om 'n geskil te besleg, openbaar.

(2) Die skriftelike ooreenkoms verteenwoordig die finale ooreengekome posisie tussen die partye en is in volle en finale beslegting van al of die betrokke aspekte van die geskil ter sprake tussen die partye.

(3) SAID moet aan die terme van die ooreenkoms voldoen, tensy dit aan die lig kom dat wesenlike feite nie geopenbaar is nie of waar daar bedrog of wanvoorstelling van die feite was.

(4) Behoudens regulasie 8, moet SAID aan die geheimhoudingsbepaling voldoen met betrekking tot inligting wat met die betrokke persoon verband hou en SAID mag nie die terme van enige ooreenkoms aan derde partye bekendmaak nie, tensy deur die wet of die betrokke persoon daartoe gemagtig.

(5) SAID moet, waar die geskil uiteindelik nie besleg word nie, die verdere regte van beswaar en appèl aan die betrokke persoon verduidelik.

Verslagdoeningsvereistes**8. (1) Die Kommissaris moet—**

- (a) 'n register hou van alle geskille wat in die omstandighede in hierdie regulasies vervat, besleg is; en
- (b) die proses ingevolge waarvan elke geskil besleg is ten volle dokumenteer, welke dokument namens die Kommissaris en die betrokke persoon onderteken moet word.

(2) Die Kommissaris moet op 'n jaarlikse grondslag 'n opsomming aan die Ouditeur-generaal en die Minister van Finansies voorsien van alle geskille wat in geheel of gedeeltelik gedurende die 12 maande tydperk wat deur daardie opsomming gedek word, besleg is, wat—

- (a) in so 'n formaat is wat, behoudens artikel 4(1)(b) van die Wet, nie die identiteit van die betrokke persoon openbaarmaak nie, en gelewer moet word op 'n tyd wat die Kommissaris en die Ouditeur-generaal of Minister van Finansies, na gelang van die geval, kan ooreenkom; en
 - (b) besonderhede vervat van die aantal geskille wat besleg of gedeeltelik besleg is, die bedrag van inkomste verbeur en geraamde bedrag van besparing in koste van litigasie, wat aangedui moet word ten opsigte van hoofklasse van belastingpligtiges of gedeeltes van die publiek.
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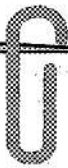
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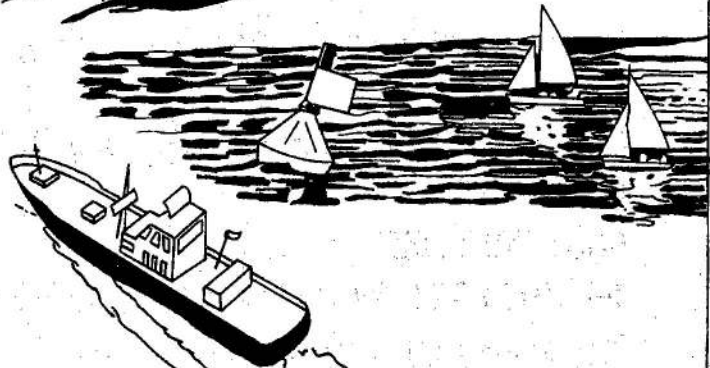
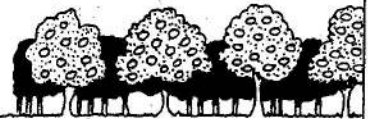
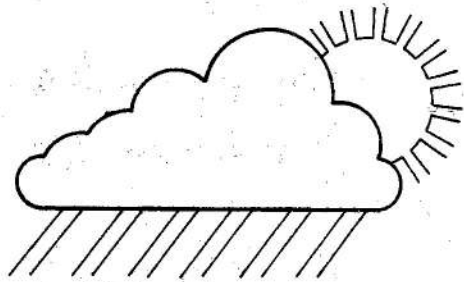
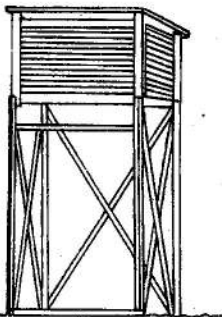
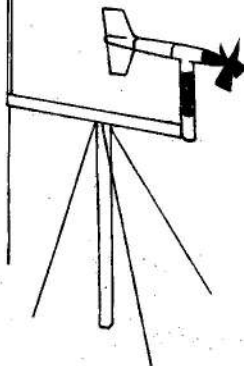
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