

Electronic communication with SARS

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South Africa
August 29 2014

The South African Revenue Service (SARS) recently released the new rules for dispute resolution prescribed under section 103 of the Tax Administration Act No 28 of 2011 (TAA). Among the many new features, it is interesting to note the provisions relating to the delivery of documents by a taxpayer to SARS, and specifically with reference to the delivery of documents by electronic means.



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The rules define the term 'deliver' as follows:

'deliver' means to issue, give, send or serve a document to the address specified for this purpose under these rules, in the following manner: ...

(c) by the taxpayer or appellant, by:

(iii) sending it to SARS, the clerk or the registrar by electronic means to an e-mail address or telefax number; ...

The previous dispute resolution rules also provided for the delivery of documents to SARS by electronic means, but contained an important proviso. The definition of 'deliver' in the previous rules read as follows:

'deliver' means:

(d) transmitting the relevant document to the relevant person by electronic means; ...

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.

SARS also recently released the new rules for electronic communication prescribed under section 255(1) of the TAA.

Rule 3(2) of the electronic communication rules provides as follows in respect of the delivery and receipt of electronic communications;

(2) *Delivery of an:*

(a) electronic communication, excluding an electronic filing transaction, is regarded to occur when the complete communication:

(i) enters the information system of SARS, the electronic communicator or the intermediary of the communicator; and

(ii) is capable of being retrieved and processed by SARS or the communicator.

In practice, when communicating with SARS by e-mail, the following circumstances are known to arise:

- ▶ an automated response is received, potentially generated by SARS, to the effect that 'the message could not be delivered';
- ▶ an automated response is received, generated by SARS, to the effect that 'the attachments to the message are too large';
- ▶ an automated response is received, generated by SARS, to the effect that the 'message has not been delivered, but will be delivered to the recipient at a later time'; or
- ▶ no response is received whatsoever, even if a 'read receipt' was requested.

The question is, how would the 'communicator' know whether the message or document has technically been 'delivered'.

The requirements in terms of the electronic communication rules are that the communication must have entered SARS's information system, and the communication must be capable of retrieval and processing by SARS.

Where an automated response is generated, the inference can be made that the communication has entered SARS's information system, but it would not be possible to know whether SARS is technically capable of retrieving the communication. Similarly, where no response is received at all, the 'communicator' would not know whether the requirements for delivery have been met or not.

The issue is really that, without there being some definite indication from SARS that a message or document has been received, the communicator would not know whether 'delivery' has taken place.

In this regard, rule 3 of the electronic communication rules provides as follows:

(1) Where an electronic communicator and a SARS official have not agreed that an acknowledgment of receipt for a communication be given in a particular form or by a particular method, an acknowledgement may be given:

(a) through a communication from a SARS official or the communicator pertaining to that communication, whether automated or otherwise; or

(b) by conduct that indicates that the communication has been received.

Rule 3(1) uses the words "an acknowledgement may be given", but does not say whether such "acknowledgement" necessarily means that the requirements for delivery in rule 3(2) will have been complied with. For example, would an automated response stating that the message has been received but will be delivered to the recipient at a later time, constitute an 'acknowledgment', and if it does, does it mean that the communication has entered SARS's information system and is technically capable of retrieval and processing by SARS?

The rule does not deal with what exactly constitutes an 'acknowledgement', and what the situation is where a communicator does not know whether a response constitutes an 'acknowledgment'.

The question that arises is, where a communicator does not know whether 'delivery' has technically taken place, whether there is a duty on that communicator to somehow elicit a response from SARS, or attempt to deliver the relevant message or document by some other means.

Rule 3(3) of the electronic communication rules provides as follows:

(3) Except for an electronic filing transaction, if an acknowledgement of receipt for the electronic communication in accordance with subrule (1) is not received, the communication must be regarded as not delivered.

The answer appears to be clear: where a communicator does not know whether SARS has received the communication or not because no 'acknowledgement' has been received, the communication is regarded as not delivered.

Where the communicator is as a result forced to attempt delivery by some other means, the communicator will effectively have been deprived of the right to deliver the message or document electronically.

One should however keep in mind that, at least in principle, rule 3 of the electronic communication rules applies equally to communications made by SARS to a taxpayer.

Tags South Africa, Internet & Social Media, Tax, DLA Piper LLP

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