

DRAFT

SOUTH AFRICAN REVENUE SERVICE

No.

JUNE 2021

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

In terms of section 30(1)(b) of the Tax Administration Act, 2011, I, Edward Christian Kieswetter, Commissioner for the South African Revenue Service, hereby prescribe, in the Schedule hereto, the electronic form in which records, books of account and documents that are required to be kept or retained in terms of section 29 of the Tax Administration Act, 2011, must be held.

E C KIESWETTER

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

SCHEDULE

1. General

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

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

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

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

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

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

2. Authority to keep records in electronic form

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

3. Acceptable electronic form

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

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

(a) the integrity of the electronic record satisfies the standard contained in section 14 of the Electronic Communications and Transactions Act;

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

(i) provide SARS with an electronic copy of the records in a format that [SARS] is [able to] readily accessible, readable and correctly [analyse]analysable, including—;

(ii) **send [the] records to SARS in an electronic form that is readily accessible by SARS; or**

(iii) **provide SARS with a paper copy of the records]**

(i) database records in delimited, Microsoft Excel or similar format; and

(ii) records that substantiate database records, such as supplier invoices, purchase orders, bank statements, in portable document or similar format; and

- (c) the records kept in an electronic form may be accessed by SARS for the purpose of performing a function referred to in section 3 of the Act.

4. Location of records

4.1. Records retained in an electronic form must be kept and maintained at a place physically located in South Africa.

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

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

for the duration of the period that the person is obliged to keep and retain records;

- (b) the locality where the records are proposed to be kept will not affect access to the electronic records;
- (c) there is an international tax agreement for reciprocal assistance in the administration of taxes in place between South Africa and the country in which the person proposes to keep the electronic records;
- (d) the form in which the records are maintained satisfies all the requirements of these rules apart from the issue of physical locality of the storage; and
- (e) the person will be able to provide an acceptable electronic form of the records to SARS on request within a reasonable period.

5. System documentation explanation

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

5.2. If a person keeps records in an electronic form and uses computer software or an electronic platform that is altered or adapted for that person's environment, is created or designed for the person or is not commonly recognised in South Africa, then the person must keep the documentation described in this rule.

5.3. A person referred to in rule 5.2 must—

- (a) keep any computer and software manuals that are relevant to accessing and understanding the person's method of electronic record keeping; and
- (b) if the documents referred to in rule 5.3(a) do not adequately describe the person's system of electronic record keeping, then the person must prepare and keep a written document that accurately describes the person's system of electronic record keeping.

5.4. The written document referred to in rule 5.3(b) must contain a description of the following—

- (a) how transactions are created, processed and stored;
- (b) how and what reports are generated;
- (c) how often electronic records are stored;
- (d) the form[**at**] used to store and archive the records, that includes a description of the media, software and hardware used;
- (e) the physical locality where records are stored or archived;
- (f) a data dictionary that explains how records are indexed when created, processed, stored or backed-up; and
- (g) the procedures and protocols in place to prevent the unauthorised deletion, alteration and destruction of records and reports.

5.5. If **[the]an** electronic record consists of any non-electronic record that is converted to an electronic form, or of any electronic record that is converted to another electronic form, a separate record must be kept of the following—

- (a) a chronological record and explanation of all changes or upgrades to the software and hardware used, including explanations of how the new system can recreate an acceptable electronic form;
- (b) where applicable, explanations of migrations of data that may have taken place across either software or hardware;
- (c) a detailed record of the controls which maintain the integrity of an old system together with a record of the records processed to an electronic or another electronic form[**at**] as applicable; and
- (d) an explanation of archival and back-up facilities for any electronic systems that are no longer used by the person.

5.6. If a person carries out internet-based transactions, the written document or record referred to in rule 5.3 and 5.5 must also contain a description of the—

- (a) log files created to identify individual transactions; and
- (b) security measures used to maintain the identity, integrity and authenticity of transactions.

6. Storage, back-up and conversion

A person who keeps records in an electronic form must ensure that measures are in place for the adequate storage of the electronic records for the duration of the period referred to in section 29 of the Act, which include—

- 6.1. the appropriate storage of the media on which the electronic records are recorded;
- 6.2. the storage of all electronic signatures, log-in codes, keys, passwords or certificates required to access the electronic records; and
- 6.3. procedures to obtain full access to any electronic records that are encrypted.

7. Inspection of electronic system by SARS

- 7.1. A person who keeps or retains electronic records must have the electronic records available for inspection by SARS in terms of section 31 of the Act—
- (a) at all reasonable times; and
 - (b) at premises physically located in South Africa, or accessible from such premises or natural person under rule 4.2(a), as the case may be **[if authority in terms of rule 4.2 has been granted]**.
- 7.2. In the course of an inspection carried out in terms of section 31 of the Act, the electronic system used by the person who keeps records in an electronic form**[at]**, must be capable of demonstrating positively that the provisions of these rules are complied with, including, but not limited to, validating that—
- (a) the electronic records meet the standard of integrity referred to in rule 3.2(a); and
 - (b) an acceptable electronic form can be displayed or produced.
- 7.3. Any electronic signatures, log-in codes, keys, passwords or certificates required to access the electronic records must be available at all reasonable times to enable an inspection in terms of section 31 of the Act to be carried out.
- 7.4. The written document and records required to be maintained in terms of rule 5 must be available at all reasonable times to enable an inspection in terms of section 31 of the Act to be carried out.

8. Making electronic records available for audit or investigation

Electronic records must be able to be made available for the purpose of an audit or investigation in terms of section 48 of the Act, which includes having the following available on the date and at the time that the audit or investigation is scheduled to start—

- 8.1. any electronic signatures, log-in codes, keys, passwords or certificates required to access the electronic records for the purpose of audit or investigation; and
- 8.2. the written document and records required to be maintained in terms of rule 5.

9. Duration of keeping or retaining electronic records

A person who keeps records in an electronic form must be able to comply with the provisions of these rules throughout the period that the person is required to keep records in terms of section 29 of the Act.