



Legal & Policy

Tax Administration

Electronic Communications Guide



South African Revenue Service

ELECTRONIC COMMUNICATIONS GUIDE

Preface

This guide provides users with an understanding of the rules for electronic communication issued under section 255 of the TA Act. The Electronic Communications Rules commenced on 25 August 2014

Although fairly comprehensive, it does not deal with all the legal detail associated with the subject matter and should therefore not be used as a legal reference. It is not an “*official publication*” as defined in section 1 of the Tax Administration Act 28 of 2011 and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a general binding ruling under section 89 of Chapter 7 of the Tax Administration Act. Should an advance tax ruling be required, visit the SARS website for details of the application procedure.

The guide is based on the legislation as at date of issue.

For more information you may –

- visit the SARS web site at **www.sars.gov.za**;
- visit the SARS Tax Administration web page at **<http://www.sars.gov.za/Legal/TaxAdmin/Pages/default.aspx>**;
- visit your nearest SARS branch;
- contact your own tax adviser or tax practitioner;
- contact the SARS Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling internationally, on +2711 602 2093; or
- e-mail your interpretation enquiries to **TAAInfo@sars.gov.za**.

Comments on this guide may be sent to **TAAInfo@sars.gov.za**.

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TABLE OF CONTENTS

Glossary	5
1. Introduction	5
2. Structure of the Electronic Communications Rules	6
3. Interpretation matters	7
3.1. General.....	7
3.2. Relationships	8
3.3. Customs and Excise Act	8
4. Rule 1 – Definitions	9
4.1. Some introductory remarks	9
4.1.1. Definitions and the ECT Act	9
4.1.2. General communications and electronic filing.....	10
4.2. Terms applicable to electronic communications collectively	12
4.2.1. Data message.....	12
4.2.2. Digital signature	13
4.2.3. Electronic address	13
4.2.4. Electronic communication	14
4.2.5. Electronic communicator	14
4.2.6. Electronic signature.....	15
4.2.7. Information system.....	17
4.2.8. Intermediary.....	18
4.2.9. SARS web site.....	19
4.3. Terms specific to electronic filing.....	19
4.3.1. Electronic filing page	20
4.3.2. Electronic filing transaction.....	21
4.3.3. Registered user.....	21
4.3.4. SARS electronic filing service.....	22
5. Rule 2 – General	23
5.1. Purpose	23
5.2. Form of documents	23
5.3. Intermediary.....	23
6. Rule 3 – Delivery and receipt of electronic communications	24
6.1. Purpose	24
6.2. Acknowledgement of receipt	24
6.3. Delivery.....	25
6.3.1. Delivery under the TA Act	25
6.3.2. Delivery under the Electronic Communications Rules	27
6.4. Place of electronic communication	28
6.5. Authentication	29
7. Rule 4 – Provision of SARS electronic filing services	30
7.1. Essentials	30
7.2. Additional enhancements	31
7.3. Limitation of data.....	31
8. Rule 5 – Registration for a SARS electronic filing service	32
8.1. Chapter 3 of the TA Act.....	32
8.1.1. Taxpayer reference number	33
8.1.2. Further requirements.....	33
8.2. Registration under the Electronic Communications Rules	33
8.2.1. Information required for registration.....	34

8.2.2.	Registration period.....	34
8.2.3.	Registration refusal, cancellation or suspension	34
8.3.	Obligations of a registered user.....	34
9.	Rule 6 – user ID and access code	35
10.	Rule 7 – Electronic signatures.....	36
10.1.	Purpose	36
10.2.	Electronic and digital signatures	36
10.3.	Signatures of electronic communicators excluding registered users.....	36
10.4.	Signatures of registered users.....	37
11.	Rule 8 – Security.....	37
12.	Rule 9 – Record retention by electronic communicator	38
12.1.	The TA Act.....	38
12.2.	The ECT Act and the secondary legislation	40
12.3.	Admissibility	41

Glossary

In this guide unless the context indicates otherwise –

- “**1964 Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- “**Commissioner**” means the Commissioner of SARS;
- “**Customs and Excise Rules**” means the rules issued in terms of sections 119A and 120 of the 1964 Act (GN No. 1874 published in GG 16860 on 8 December 1995);
- “**ECT Act**” means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- “**EDI**” means the Electronic Data Interchange system;
- “**Electronic Communication Rules**” or “**Rules**” means the rules for electronic communication issued in terms of section 255 of the TA Act (GN No. 644 published in GG 37940 on 25 August 2014);
- “**Electronic Record Keeping Rules**” means the rules issued in term of section 30(1)(b) of the TA Act (GN No. 787 in GG 35733 on 1 October 2012).
- “**IT**” means information technology; and
- “**TA Act**” means the Tax Administration Act, 2011 (Act No. 28 of 2011).

1. Introduction

The Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001) added section 66(7B) to the Income Tax Act, 1962 (Act No. 58 of 1962), and section 28(7) to the Value-Added Tax Act, 1991 (Act No. 89 of 1991). These sections provided for the issue of rules and regulations prescribing the procedures for submitting returns in electronic format and the requirements for an electronic or digital signature.

The TA Act repealed these sections with effect from 1 October 2012 and section 255 presently deals with the rules for electronic communication.

Extract – Section 255 of the TA Act

- (1) *The Commissioner may by public notice make rules prescribing—*
 - (a) *the procedures for submitting a return in electronic format, electronic record retention and other electronic communications between SARS and other persons;*
 - (b) *requirements for an electronic or digital signature of a return or communication; and*
 - (c) *the procedures for electronic record retention by SARS.*
- (2) *SARS may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature of a person as a valid signature for purposes of a tax Act if a signature is required.*
- (3) *If in any proceedings under a tax Act, the question arises whether an electronic or digital signature of a person referred to in subsection (2) was used with the authority of the person, it must be assumed, in the absence of proof to the contrary, that the signature was so used.*

The broader application of the new section reflects the growing demand for legal certainty in a society where technological leaps and bounds are commonplace.

2. Structure of the Electronic Communications Rules

The structure of the Electronic Communications Rules is influenced by the meaning of the term electronic communication within the South African legislative landscape.

Definition – Section 1 of the ECT Act

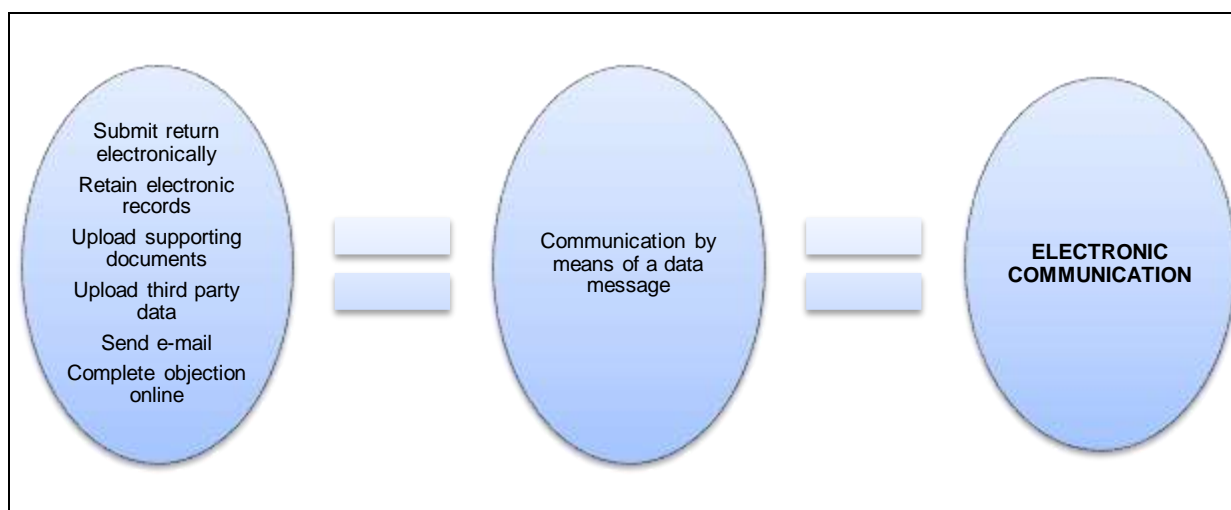
“electronic communication” means a communication by means of data messages;

“data message” means data generated, sent, received or stored by electronic means and includes—

- (a) voice, where the voice is used in an automated transaction; and*
- (b) a stored record;*

“data” means electronic representations of information in any form;

The definitions above result in the following conclusion:



As the common element of the activities listed in section 255 of the TA Act, is the use of an electronic communication, the Electronic Communications Rules (after the definitions contained in rule 1) are –

- introduced by a provision regarding electronic communications collectively (rule 2);
- followed by a more specific rule in relation to the delivery and receipt of an electronic communication (rule 3); and
- rounded off by rules about SARS electronic filing services (rules 4 to 6), electronic signatures (rule 7), security (rule 8) and record retention (rule 9).

The Electronic Communications Rules are structured as follows:

Rule 1	<i>Definitions</i>
Rule 2	<i>General</i>
Rule 3	<i>Delivery and receipt of an electronic communication</i>
Rule 4	<i>Provision of SARS electronic filing services</i>
Rule 5	<i>SARS electronic filing service registration</i>
Rule 6	<i>User ID and access code</i>
Rule 7	<i>Electronic signature</i>
Rule 8	<i>Security</i>
Rule 9	<i>Record retention by an electronic communicator</i>

3. Interpretation matters

3.1. General

When interpreting the Electronic Communications Rules, note the following:

- A defined term in the TA Act has the same meaning when it appears in the Rules even though the Rules do not define it¹.
- If there is an inconsistency between the Rules and the TA Act, the TA Act will prevail.
- If there is an inconsistency between the Rules and the ECT Act, then the Rules will prevail. Although this may be contrary to the general rules of interpretation of statutes, the ECT Act sanctions this.

Extract – Section 4 of the ECT Act

(5) *This Act does **not limit** the operation of any law that **expressly authorises**, prohibits or regulates the use of data messages, including any requirement by or under a law for information to be posted or displayed in a specified manner, or for any information or document to be transmitted by a specified method.*

(own emphasis)

As section 255 of the TA Act “*expressly authorises*” the submission of a return in electronic format, electronic record retention, electronic communications and electronic or digital signatures, the ECT Act does “*not limit the operation*” of the Electronic Communications Rules.

¹ See table in paragraph 4.1.1.

3.2. Relationships

Either the Electronic Communications Rules pertain to electronic communications generally or specifically to electronic communications relating to the submission of returns in electronic format.

Take Note

Rules pertaining to electronic communications in general are also applicable to more specific electronic filing communications but rules dealing with electronic filing do not apply to all electronic communications.

EXAMPLE

- A registered user is a type of electronic communicator. This means that, barring some exceptions, when the term electronic communicator is used in the Rules, it includes a registered user. On the other hand, rules that deal with registered users are not applicable to all electronic communicators.
- In the same way, an electronic filing transaction is a type of electronic communication and, once again, barring some exceptions, when the term electronic communication is used in a rule, the rule will be applicable to electronic filing transactions. Conversely, rules that deal with electronic filing transactions do not apply to all electronic communications.

3.3. Customs and Excise Act

The following extract suggests that the Electronic Communications Rules do not apply in the customs and excise environment.

Definition – Section 1 of the TA Act

“tax Act” means this Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act, the Customs Control Act, 2014 (Act No. 31 of 2014), and the Customs Duty Act

(own emphasis)

Take Note

The Customs and Excise Act is Act No. 91 of 1964 and is hereafter referred to as the 1964 Act.

The 1964 Act is presently in operation but will be partially repealed when the Customs Control and Customs Duty Acts become effective. These Acts have been signed into law but will only become operational at a future date.

In certain instances, provisions of the TA Act are applicable to the 1964 Act. In these cases either –

- the TA Act will expressly provide that certain provisions apply in respect of customs or excise matters; or
- the 1964 Act (or rules or regulations issued in terms thereof) will provide that certain provisions of the TA Act are applicable.

Section 101A of the 1964 Act regulates “*Electronic communication for the purposes of customs and excise procedures*” and sections 119A and 120 allow for rules to be issued under the 1964 Act. These Customs and Excise Rules were first published in Notice R.1874 of GG 16860 of 8 December 1995.

In accordance with the Customs and Excise Rules –

- Customs and Excise Rules are applicable when you submit transactions through the EDI; and
- the Electronic Communications Rules are applicable when you submit transactions through eFiling.

The table below shows the applicable transactions.

Software Product	Transaction	Applicable Rules
EDI	Customs Declarations	Customs and Excise Rules
eFiling	<ul style="list-style-type: none"> • Returns for – <ul style="list-style-type: none"> ➢ excise duties; ➢ Road Accident Fund levies; ➢ air passenger tax; ➢ diamond export levies; and ➢ environmental levies • Payments in respect of the above duties, levies, taxes and customs declarations 	Electronic Communications Rules

4. Rule 1 – Definitions

Rule 1 deals with the definitions of certain terms.

4.1. Some introductory remarks

The effect of some of the concepts discussed above is apparent from the content of Rule 1.

4.1.1. Definitions and the ECT Act

In the definitions section of legislation, legislators sometimes assign a meaning to a term as it is assigned to the same term in a different Act. This practice has arisen from a desire to maintain legislative consistency. Although the Electronic Communications Rules endeavour to be consistent with the ECT Act by among other things using the same terms with like meanings, the definitions of these terms in the Rules are self-contained and do not reference

the ECT Act at all. This provides SARS with the ability to consider future changes to the ECT Act and their implications to the Rules.

Additionally, although the definition for data is identical to the one in the ECT Act, the rest of the terms used in the Rules are terms that –

- are used in the ECT Act but have definitions which, to a greater or lesser extent, deviate from their counterparts;
- are introduced by the Rules; or
- are defined in the TA Act².

The table below provides a summary of the terms and the category within which they fall.

Terms from the ECT Act with identical definitions	Terms from the ECT Act with definitions that deviate	Terms introduced by the Electronic Communications Rules	Terms defined in the TA Act
<ul style="list-style-type: none"> • data 	<ul style="list-style-type: none"> • data message • electronic communication • electronic signature • information system • intermediary 	<ul style="list-style-type: none"> • access code • digital signature • electronic address • electronic communicator • electronic filing page • electronic filing transaction • registered user • SARS electronic filing service • SARS web site • user ID 	<ul style="list-style-type: none"> • assessment • document • information • registered tax practitioner • representative taxpayer • return • SARS • SARS official • tax Act • taxpayer

4.1.2. General communications and electronic filing

As explained in paragraph 3.2, the Electronic Communications Rules pertain to electronic communications collectively or specifically to communications that deal with electronic filing. The rules that deal with electronic communication generally apply to electronic filing but not *vice versa*. The definitions of the terms in the Rules highlight this distinction.

² See discussion in paragraph 3.1.

The table below provides a summary of the terms, the category within which they fall and the relationship between certain terms.

Terms applicable to electronic communications collectively	Terms specific to electronic filing	Relationship
N/A	access code	Term is specific to electronic filing
data	N/A	Term finds general application in the Rules
data message	N/A	Term finds general application in the Rules
digital signature	N/A	Term finds general application in the Rules
electronic address	electronic filing page	The electronic address of a registered user is his/her electronic filing page
electronic communication	electronic filing transaction	<ul style="list-style-type: none"> • An electronic communication by a registered user is an electronic filing transaction. • With the exception of rule 3(2) and 3(3)³, all rules that address electronic communications are applicable to electronic filing transactions. • On the other hand, rules that deal with electronic filing transactions are not applicable to all electronic communications.
electronic communicator	registered user	<ul style="list-style-type: none"> • An electronic communicator who registers for and uses a SARS electronic filing service to send electronic communications to SARS is a registered user and those electronic communications are electronic filing transactions. • With the exception of the following, rules that address electronic communicators are also applicable to registered users: <ul style="list-style-type: none"> ➤ The electronic signature of an electronic communicator differs from that of a registered user⁴. ➤ The requirements for the electronic signature of an electronic communicator under rule 7(1) are not applicable to the signature of a registered user⁵. ➤ Acknowledgement of receipt and delivery of communications under rule 3(2) and 3(3) differs⁶. • On the other hand, rules pertaining to registered users are not applicable to all electronic communicators.
electronic signature	N/A	The requirements for the electronic signature of a registered user and an electronic communicator

³ See discussions in paragraphs 6.2 and 6.3.

⁴ See discussion in paragraph 4.2.6.

⁵ See discussion in paragraph 10.

⁶ See discussions in paragraphs 6.2 and 6.3.

Terms applicable to electronic communications collectively	Terms specific to electronic filing	Relationship
		differ.
information system	N/A	Term finds general application in the Rules
intermediary	N/A	Term finds general application in the Rules
N/A	SARS electronic filing service	Term is specific to electronic filing
SARS web site	N/A	Term finds general application in the Rules
N/A	user ID	Term is specific to electronic filing

A brief discussion of some of these terms, their interaction with the TA Act, their correlation with the ECT Act and their relationships within the Rules follows.

4.2. Terms applicable to electronic communications collectively

Some of the terms, applicable to electronic communications collectively, are discussed below.

4.2.1. Data message

This term is derived from the ECT Act.

Definition – Section 1 of the ECT Act

“data message” means data generated, sent, received or stored by electronic means and includes—

- (a) voice, where the voice is used in an automated transaction; and*
- (b) a stored record;*

It does however deviate slightly from its counterpart in the ECT Act.

Definition – Rule 1

‘data message’ means data generated, sent, received or stored by electronic means;

The Electronic Communications Rules omit the paragraphs contained in the ECT Act as –

- *“voice, where the voice is used in an automated transaction”* refers to voice messages in situations where one follows a voice prompt (such as in a call centre) which is not envisaged by the Rules; and
- *“stored record”* is already included in the body of the definition.

4.2.2. Digital signature

The only time that this term is used in the Electronic Communications Rules is for the purpose of defining it.

Definition – Rule 1

'digital signature' has the meaning assigned to an electronic signature;

This was done for clarity as –

- it is used in the TA Act; and
- the concept of a digital signature is often used to denote encryption rather than a signature for identification purposes.

4.2.3. Electronic address

Although the TA Act uses the phrase “*electronic address*”, it does not define it.

Extract – Section 251 and 252 of the TA Act

Section 251

If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having issued, given, sent or served the communication to the person if—

- (d) *sent to the person's last known **electronic address**, which includes—*
 - (i) *the person's last known **email address**; or*
 - (ii) *the person's last known **telefax number**.*

Section 252

“If a tax Act requires or authorises SARS to issue, give, send or serve a notice, document or other communication to a company, SARS is regarded as having issued, given, sent or served the communication to the company if—

- (d) *sent to the company or its public officer's last known **electronic address**, which includes the—*
 - (i) *last known **email address**; or*
 - (ii) *last known **telefax number**.*

(own emphasis)

The TA Act therefore allows SARS to issue, give, send and serve documents or other communications to the electronic address of a taxpayer and cites e-mail and telefax as examples of such addresses.

The Electronic Communications Rules, in addition to defining an “*electronic address*”, add the electronic filing page to the list of examples. The electronic address of a registered user is therefore his/her electronic filing page.

Definition – Rule 1

*‘electronic address’ means a series of numeric characters, alphabetic characters, symbols or a combination thereof, which identifies a destination, **including the electronic filing page** of a registered user, for an electronic communication;*

(own emphasis)

4.2.4. Electronic communication

An electronic communication by a registered user is an electronic filing transaction.

With the exception of rule 3(2) and (3)⁷, all rules that address electronic communications are applicable to electronic filing transactions. On the other hand, rules for electronic filing transactions are not applicable to all electronic communications.

The definition of an electronic communication is the same as the one in the ECT Act.

Definition – Section 1 of the ECT Act

“electronic communication” means a communication by means of data messages;

For the sake of clarity however, it adds, “*includes a document required under a tax Act*”.

Definition – Rule 1

‘electronic communication’ means a communication by means of a data message and includes a document required under a tax Act;

4.2.5. Electronic communicator

An electronic communicator who registers for and uses a SARS electronic filing service to send electronic communications to SARS is a registered user and those electronic communications are electronic filing transactions.

Definition – Rule 1

‘electronic communicator’ means a person that—

- (a) is a registered user; or*
- (b) is obliged to or has elected to communicate with SARS in electronic form;*

⁷ See discussions in paragraph 6.2 and 6.3.

With the exception of the following, rules that address electronic communicators are also applicable to registered users:

- The electronic signature of an electronic communicator differs from that of a registered user⁸.
- The requirements for the electronic signature of an electronic communicator under rule 7(1) are not applicable to the signature of a registered user⁹.
- Acknowledgement of receipt and delivery of communications under rule 3(2) and (3) differs¹⁰.

On the other hand, rules pertaining to registered users are not applicable to all electronic communicators.

4.2.6. Electronic signature

(a) The legislative position

The following extract suggests that SARS is obliged to require the use of an advanced electronic signature¹¹.

Extract – Section 13 of the ECT Act

(1) *Where the signature of a person is required by law and **such law does not specify the type of signature**, that requirement in relation to a data message is met only if an **advanced electronic signature** is used.*

(own emphasis)

The TA Act does however specify the type of signature that SARS requires.

Extract – Section 255 of the ECT Act

(2) *SARS may, in the case of a return or other document submitted in electronic format, **accept an electronic or digital signature** of a person as a valid signature for purposes of a tax Act if a signature is required.*

(own emphasis)

These sections read with section 4(5) of the ECT Act¹² therefore, allow SARS the discretion to choose whatever kind of signature it requires.

⁸ See discussion in paragraph 4.2.6.

⁹ See discussion in paragraph 10.

¹⁰ See discussions in paragraphs 6.2 and 6.3.

¹¹ An advanced electronic signature is defined in the TA Act as “*an electronic signature which results from a process which has been accredited by the Authority as provided for in section 37*”. The South African Accreditation Authority has accredited AeSign, LAWtrust's Advanced Electronic Signature solution and SAPO Trust Centre Advanced Electronic Signature, as advanced electronic signatures.

¹² See discussion in paragraph 3.1.

SARS does not require the use of an advanced electronic signature as it wants to encourage the use of its electronic services and requiring such a signature may preclude some people from utilising these services¹³.

(b) SARS and the use of electronic signatures

The purpose of a signature is to authenticate the document (or in this case electronic communication) on which it appears.

Extract – Section 250 of the TA Act

(1) *A form, notice, demand or other document issued or given by or on behalf of SARS or a SARS official under a tax Act **is sufficiently authenticated** if the name of SARS or the name or official designation of the SARS official is stamped or printed on it.*

(own emphasis)

The Electronic Communications Rules therefore do not need to regulate the use of an electronic signature by SARS (written for paper but applicable in an electronic setting).

(c) Electronic signature differentiated

Although a registered user is an electronic communicator, certain rules differentiate between the two concepts¹⁴. The definition of an electronic signature is one such instance.

(d) Electronic communicator

The term “*electronic signature*” is derived from the ECT Act.

Definition – Section 1 of the ECT Act

“electronic signature” means data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature;

In the case of an electronic communicator, excluding a registered user, the definition of electronic signature in the Electronic Communications Rules mirrors that of its counterpart in the ECT Act.

Definition – Rule 1

‘electronic signature’, in relation to—

- (a) ***an electronic communicator, excluding a registered user***, means data attached to, incorporated in, or logically associated with other data which is intended by the electronic communicator to serve as a signature;

(own emphasis)

¹³ The use of advanced electronic signatures requires face-to-face verification and additional costs.

¹⁴ See discussion and table in paragraph 4.1.2.

Although the term is defined so broadly that it may include typing your name at the end of an e-mail or clicking on the “/ Accept” button or a similar phrase when concluding an online transaction; it needs to be read in conjunction with the requirements contained in rule 7(1)¹⁵.

(e) Registered user

When a registered user logs into a SARS electronic filing service, such login functions as an electronic signature.

Definition – Rule 1

‘*electronic signature*’, in relation to—

(a) a registered user means—

- (i) the user ID and access code of the user; and
- (ii) the **date and time** that the electronic filing transaction was received by the information system of SARS;

(own emphasis)

• Date and time

A SARS electronic filing service can, when enabled¹⁶, provide notifications to registered users when SARS submits electronic filing transactions to their electronic filing page. These notifications can be received via short message service (SMS) or e-mail and provide the user with “*the date and time that the electronic filing transaction was received by the information system of SARS*”.

When a registered user submits a filing transaction to their filing page, the service records the date of submission of the transaction. This can be viewed at subsequent log-ins. If a user requires the time of submission, they can utilise the Print Screen functionality on their computers after submitting the transaction.

• E-mail or SMS notification activation

eFiling allows users to activate e-mail or SMS notifications as follows:

After log-in → Home → Change Details → above Update Details button → “As part of our ongoing efforts to keep you, the taxpayer, informed we send out periodic communications either via email or SMS. Please indicate whether you would like to be included in these communications.” → choose yes button.

4.2.7. Information system

This term is derived from the ECT Act.

Definition – Section 1 of the ECT Act

“*information system*” means a system for generating, sending, receiving, storing, displaying, or otherwise processing data messages and includes the Internet;

¹⁵ See discussion in paragraph 10.3.

¹⁶ See next bullet point.

Internet is not defined in the Rules but does appear in the ECT Act.

Definition – Section 1 of the ECT Act

“Internet” means the interconnected system of networks that connects computers around the world using the TCP/IP¹⁷ and includes future versions thereof;

In the ECT Act—

- an information system denotes a broad concept of which the Internet forms a part; and
- the application of this concept is limited by phrases such as “*outside the control of the originator*”, “*designated or used for that purpose*”, “*under its control*”, “*in the public domain*” and so forth.

The Rules deal with information systems that are actually within the control of SARS, the registered user and the electronic communicator and therefore the Internet is excluded.

Definition – Rule 1

‘information system’ means a system for generating, sending, receiving, storing, displaying, or otherwise processing a data message;

4.2.8. Intermediary

The ECT Act also contains the term “*intermediary*”.

Definition – Section 1 of the ECT Act

“intermediary” means a person who, on behalf of another person, whether as agent or not, sends, receives or stores a particular data message or provides other services with respect to that data message;

Public comment on the draft rules suggested that this more general definition created confusion. The terms “*service provider*” and “*information systems*” were therefore included in the definition in the Electronic Communications Rules to make it clear that the “*person*” referred to in the ECT Act definition is a service provider of the Internet, World Wide Web, e-mail, airtime, file transfer protocol and services of a similar nature.

Definition – Rule 1

*‘intermediary’ means a **service provider** who, on behalf of another person sends, receives or stores data messages or who provides other services with regard to such messages or the **information system** of that person;*

(own emphasis)

¹⁷ The ECT Act defines “TCP/IP” as “*the Transmission Control Protocol Internet Protocol used by an information system to connect to the Internet*”.

4.2.9. SARS web site

Although the ECT Act defines “web site”, “SARS web site” is a new definition introduced by the Electronic Communications Rules.

Definition – Rule 1

‘SARS web site’ means a secure location in the information system of SARS which contains and from which a SARS electronic filing service is accessible;
(own emphasis)

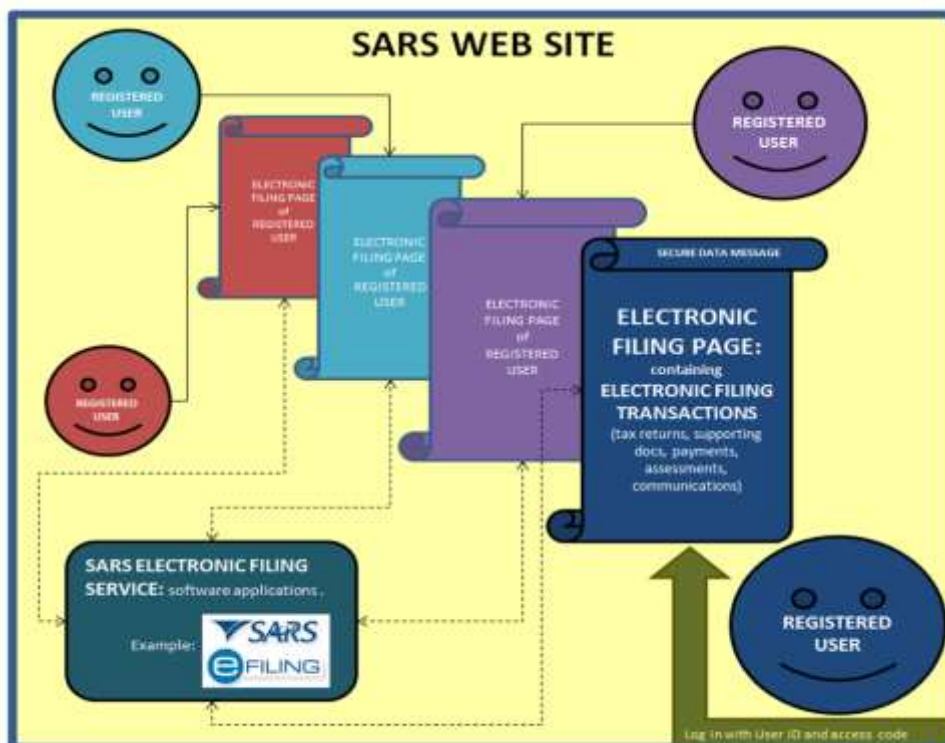
The “secure location in the information system of SARS” is not only www.sars.gov.za, but might also, depending on which SARS electronic filing service you use, be other access points into the information system of SARS.

EXAMPLE

When you utilise certain SARS electronic filing services¹⁸ or submit data to SARS by using for instance file transfer protocols, access to the information systems of SARS does not occur by accessing www.sars.gov.za.

4.3. Terms specific to electronic filing

The following visual representation shows the terms specific to electronic filing. These terms are discussed below.



¹⁸ Such as the Direct Data Flow channel, e@syFile and the like.

Take Note

- An electronic communicator communicates by means of an electronic communication
- A registered user communicates by means of an electronic filing transaction
- The electronic address of a registered user is his/her electronic filing page

4.3.1. Electronic filing page

As stated above, the electronic filing page is the electronic address of a registered user. On the other hand, the electronic address of an electronic communicator, other than a registered user, is an e-mail address or telefax number.¹⁹

Definition – Rule 1

*‘electronic address’ means a series of numeric characters, alphabetic characters, symbols or a combination thereof, which identifies a destination, **including the electronic filing page of a registered user**, for an electronic communication;*

‘electronic filing page’ means a secure data message which—

- (a) is generated by a SARS electronic filing service **in the information system of SARS**;*
- (b) is accessible from a SARS web site, through the use of a registered user’s user ID and access code; and*
- (c) contains electronic filing transactions of that registered user;*

(own emphasis)

The definition of electronic filing page in the Electronic Communications Rules is similar to the definition of “web page” in the ECT Act.

Definition – Section 1 of the ECT Act

*“web page” means a data message **on the World Wide Web**;*

“World Wide Web” means an information browsing framework that allows a user to locate and access information stored on a remote computer and to follow references from one computer to related information on another computer;

(own emphasis)

Both definitions define the page as a data message. Unlike the definition of web page in the ECT Act the location of an electronic filing page in the Rules is specifically “*within the information systems of SARS*” and not on the World Wide Web.

¹⁹ See discussion in paragraph 4.2.3.

4.3.2. Electronic filing transaction

An electronic filing transaction is an electronic communication by a registered user who uses a SARS electronic filing service to communicate with SARS.

Definition – Rule 1

*‘electronic filing transaction’ means an **electronic communication**, generated and delivered through the use of a **SARS electronic filing service** including—*

- (a) a return, the submission of which is supported by a SARS electronic filing service;*
- (b) a document in support of the return;*
- (c) a communication in relation to payment made to SARS;*
- (d) a notice of assessment issued by SARS; and*
- (e) any other electronic communication that is capable of generation and delivery in a SARS electronic filing service;*

(own emphasis)

With the exception of rule 3(2) and 3(3)²⁰, all rules that address electronic communications are also applicable to electronic filing transactions.

On the other hand, rules for electronic filing transactions are not applicable to all electronic communications.

The definition lists examples of electronic filing transactions. In no way is the list encompassing or exhaustive but it is included to demonstrate what could constitute such a transaction.

EXAMPLE

Notices of objections or appeals against assessments are examples of paragraph (e).

4.3.3. Registered user

A registered user is an electronic communicator who uses a SARS electronic filing service to communicate with SARS and the communications are electronic filing transactions.

Definition – Rule 1

‘electronic communicator’ means a person that—

- (a) **is a registered user**; or*
- (b) is obliged to or has elected to communicate with SARS in electronic form;*

(own emphasis)

²⁰ See discussions in paragraphs 6.2 and 6.3.

With the exception of the following, rules that address electronic communicators are also applicable to registered users:

- The electronic signature of an electronic communicator differs from that of a registered user²¹.
- The requirements for the electronic signature of an electronic communicator under rule 7(1) are not applicable to the signature of a registered user²².
- Acknowledgement of receipt and delivery of communications under rule 3(2) and (3) differ²³.

On the other hand, rules pertaining to registered users are not applicable to all electronic communicators.

Most SARS electronic filing services allow a person to register as an individual, company or a tax practitioner.

Definition – Rule 1

*‘registered user’ means a person, including a **registered tax practitioner or a person referred to in section 240(2)(d) of the Act**, registered under rule 5;*

(own emphasis)

SARS is mindful that not all taxpayers are able to utilise IT. For this reason, the only instances in which a taxpayer is obliged to become a registered user and consequently “*communicate with SARS in electronic form*”, is when they are obliged to submit—

- returns for dividends tax; and
- third party data.

Other than in these instances, it is up to the taxpayer to either register for any electronic filing service or visit a Contact Centre to interact with SARS. However, after registration, a user is expected to utilise such service continually. Should a user, for instance, manually submit an objection or appeal, it may not receive the requisite attention.

4.3.4. SARS electronic filing service

This term does not exclusively refer to eFiling.

Definition – Rule 1

*‘SARS electronic filing service’ means a **software application**, available on a SARS web site, which enables SARS and registered users to generate and deliver electronic filing transactions;*

(own emphasis)

²¹ See discussion in paragraph 4.2.6.

²² See discussion in paragraph 10.3.

²³ See discussions in paragraphs 6.2 and 6.3.

SARS has provided other software applications that enable taxpayers to meet their tax obligations electronically.

EXAMPLES

- eFiling (both the computer and phone applications)
- e@syFile
- Third party data submission channels
- Other applications that SARS may develop in future

5. Rule 2 – General

5.1. Purpose

This rule serves as a general introduction to how an electronic communicator must communicate with SARS.

5.2. Form of documents

Rule 2(2) requires that a document in electronic form must be readable by the information system of SARS. The web site **www.sars.gov.za** contains a wealth of information on the form and format that electronic communications should take.

EXAMPLE

Information on methods of uploading large volumes of data is readily available when you visit: **https://www.sars.gov.za** → Businesses and Employers → Modernised 3rd party data Platform.

5.3. Intermediary

Chapter XI of the ECT Act deals with the limitation of the liabilities of service providers under certain circumstances. The Electronic Communications Rules define such service providers as intermediaries. Rule 2(3) removes SARS as an additional party to any dispute between a communicator and their intermediary leaving SARS free to focus on its main objective being that of tax collection.

6. Rule 3 – Delivery and receipt of electronic communications

6.1. Purpose

The ECT Act allows parties who communicate electronically to agree on the legal ramifications of doing so. Should they not agree, the default position is contained in Chapter III, Part 2 of the ECT Act (entitled Communication of data messages)²⁴.

Extract – Section 21 of the ECT Act

*This Part only applies if the parties involved in generating, sending, receiving, storing or otherwise processing data messages **have not reached agreement on the issues provided for therein.***

(own emphasis)

The purpose of rule 3 is to address and provide clarity on the pertinent issues addressed in these sections of the ECT Act.

6.2. Acknowledgement of receipt

Rule 3(1) allows an electronic communicator and a SARS official to agree on the form that an acknowledgement of receipt can take.

Extract – Rule 3

- (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.*

(own emphasis)

Failing agreement, the default position coincides with what is contained in the ECT Act.

Extract – Section 26 of the ECT Act

- (2) *An acknowledgement of receipt may be given by—*
- (a) ***any communication** by the addressee, whether automated or otherwise: or*
 - (b) ***any conduct** of the addressee, sufficient to indicate to the originator that the data message has been received.*

(own emphasis)

²⁴ Chapter III, Part 2 encompasses sections 21 to 26. It addresses variation by agreement; formation and validity of agreements; time and place of communication dispatch and receipt; expression of intent or other statement; attribution of data messages; and acknowledgement of receipt of data messages.

Electronic communications envisaged by the TA Act and the Electronic Communications Rules are e-mails, telefaxes and electronic filing transactions²⁵. In the case of telefaxes, the printout provided by the telefax machine would qualify as an automated communication.

In the case of e-mail, automated communications take the form of read and delivery receipts. All the communicator has to do is activate the functionality. It is indeed in the interest of an electronic communicator to do so as rule 3(3) deems an acknowledgement of receipt a manifestation of delivery. Without it, delivery has not happened.

Although an electronic filing transaction is an electronic communication, certain rules differentiate between these concepts. The acknowledgement of receipt of a communication is one such instance.

Take Note

Not all SARS electronic filing services have the ability to provide automated communications and therefore, the requirement of rule 3(3) is not set for electronic filing transactions.

6.3. Delivery

The concept of delivery is addressed in both the TA Act and the Electronic Communications Rules. In the Rules, delivery is influenced by whether you are sending an electronic filing transaction or another electronic communication.

6.3.1. Delivery under the TA Act

Sections 251 to 254 of the TA Act are relevant to the concept of delivery and receipt.

Extract – Sections 251 to 254 of the TA Act

Section 251

If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having issued, given, sent or served the communication to the person if—

- (d) *sent to the person's **last known electronic address**, which includes—*
 - (i) *the person's last known email address; or*
 - (ii) *the person's last known telefax number.*

Section 252

If a tax Act requires or authorises SARS to issue, give, send or serve a notice, document or other communication to a company, SARS is regarded as having issued, given, sent or served the communication to the company if—

- (d) *sent to the company or its public officer's **last known electronic address**, which includes the—*
 - (i) *last known email address; or*
 - (ii) *last known telefax number.*

²⁵ See discussion in paragraph 4.2.3.

Section 253

- (1) A notice, document or **other communication** issued, given, sent or served in the manner referred to in section 251 or 252, is **regarded as received by the person to whom it was delivered or left**, or if posted it is regarded as having been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the addressed place.
- (2) Subsection (1) **does not apply** if—
 - (a) **SARS is satisfied that the notice, document or other communication was not received or was received at some other time**; or
 - (b) **a court decides that the notice, document or other communication was not received or was received at some other time**.
- (3) If SARS is **satisfied** that—
 - (a) a notice, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner referred to in section 251 or 252 (excluding paragraphs (a) and (b) thereof)—
 - (i) has not been received by the addressee; or
 - (ii) has been received by that person considerably later than it should have been received; and
 - (b) the person has in consequence **been placed at a material disadvantage**,

the notice, document or other communication must be **withdrawn** and be issued, given, sent or served **anew**.

Section 254

- (1) A notice of assessment or other notice or document issued to a person under a tax Act is **not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 251 or 252** if the person had effective knowledge of the fact of the notice or document and of its content.
- (2) A notice of assessment or other notice or document issued under a tax Act is **not to be considered invalid or ineffective** by reason of defects **if it is, in substance and effect, in conformity with this Act**, and the person assessed or affected by the notice or document is designated in it according to common understanding.

(own emphasis)

Take Note

- The TA Act will always prevail over the Rules²⁶. It is therefore important to take note of these sections and understand how they apply in an electronic environment .
- As a minor procedural defect should not invalidate proceedings, if a person has effectively received an electronic communication then a formal defect in delivery does not affect its validity.
- Delivery made to the person/company's last known electronic address is regarded as having been received. Despite this, SARS may accept that a notice was not received or was received later.

²⁶ See discussion in paragraph 3.1.

- If a person can show that an electronic communication was not received and because of this the person has been placed at a material disadvantage, then SARS may withdraw the communication and re-issue a fresh one.

6.3.2. Delivery under the Electronic Communications Rules

Although an electronic filing transaction is an electronic communication, certain rules differentiate between the two concepts²⁷. The delivery of a communication is one such instance.

In both cases, the communication must enter the information system to which it is sent. This reflects the position in relation to receipt of a data message in the ECT Act.

Extract – Sections 23 of the ECT Act

A data message—

- (b) *must be regarded as having been received by the addressee when the complete data message **enters an information system** designated or used for that purpose by the addressee and **is capable of being retrieved and processed** by the addressee;*

(own emphasis)

In the case of an electronic filing transaction, the information system will of course always be that of SARS as this is where the electronic filing page of a registered user is situated.

(a) Electronic communications, excluding electronic filing transactions

As with the above position in the ECT Act, an electronic communication, excluding an electronic filing transaction, must additionally be capable of retrieval and processing.

Take Note

The electronic communicator who corresponds by e-mail will at this point find it useful to activate the delivery and read receipt functionality of the e-mail that they are sending, as this will assist them in determining when the e-mail was actually delivered and read.

(b) Electronic filing transactions

In addition to an electronic filing transaction entering the information system of SARS, the registered user must correctly submit the transaction within the SARS electronic filing service and SARS must correctly submit it to the electronic filing page of the registered user.

²⁷ See discussion in paragraph 4.1.2.

The reason for the variation from the normal electronic communication requirements can be best illustrated by the examples below.

EXAMPLE

- When a registered user completes a return and saves it, the return enters the information system of SARS but is not capable of being processed. It is only when the registered user presses the submit button that the electronic filing service will be in a position to process the return²⁸.
- When SARS processes a notice of assessment or other document, it does so within the information system of SARS and can save it to any of its many information systems. However, it is only when it is correctly submitted to the electronic filing page of the registered user that it will be successfully delivered²⁹.

6.4. Place of electronic communication

The default position in the ECT Act is that electronic communications are sent from and delivered to the parties' usual place of business.

Extract – Sections 23 of the ECT Act

A data message—

- (c) *must be regarded as having been sent from the **originator's usual place of business or residence** and as having been received at the **addressee's usual place of business or residence**;*

(own emphasis)

The Electronic Communications Rules mirrors the ECT Act in this regard.

Extract – Rule 3

- (4) *If an electronic communication is delivered in accordance with this rule, the communication is regarded as sent from and delivered to the **usual place of business** or residence of SARS or the electronic communicator.*

(own emphasis)

The usual place of business or residence of a person would be the physical address listed in the details provided when registering for tax.

²⁸ For date and time of submission, refer to the discussion in paragraph 4.2.6(e).

²⁹ As discussed in paragraph 4.2.6(e), registered users can activate the e-mail and SMS functionality available on electronic filing services to receive notifications of electronic filing transactions delivered to their electronic filing page.

6.5. Authentication

The TA Act allows SARS to accept that returns and documents are from whom they, on face value, purport to be.

Extract – Sections 250 of the TA Act

- (2) *A return made or purporting to be made or signed by or on behalf of a person is regarded as duly made and signed by the person affected unless the person proves that the return was not made or signed by the person or on the person's behalf.*
- (3) *Subsection (2) applies to other documents submitted to SARS by or on behalf of a person.*

The Electronic Communications Rules echo this presumption.

Extract – Rule 3

- (5) *Where an electronic communication is delivered to SARS from the electronic address of an electronic communicator the communication is regarded as sent by the communicator personally.*

It serves as a reminder that –

- an electronic communication can be a return or “*other documents submitted to SARS by or on behalf of a person*” by means of a SARS electronic filing service (i.e. it is an electronic filing transaction) or otherwise; and
- the onus is on the electronic communicator to guard against the risks of someone else using their electronic address (e-mail, electronic filing page and the like).

Take Note

SARS will not presume that an electronic communication from the cleaner's electronic address is one from the Public Officer of the company for which the cleaner works.

However, should an electronic filing transaction be delivered to the electronic filing page of a company, SARS will presume that such has been done by the registered user of that company.

For this reason, companies should consider implementing delegations of authority when registered users are not able to attend to electronic filing transactions.

7. Rule 4 – Provision of SARS electronic filing services

The obligations of SARS in relation to the provision of electronic filing services are clear from rule 4(1).

Extract – Rule 4

- (1) SARS must provide **effective, secure and reliable** SARS electronic filing services.
(own emphasis)

7.1. Essentials

The essentials for providing such a service are described in rule 4(2).

Extract – Rule 4

- (2) A SARS electronic filing service **must**—
- (a) provide a registered user with the ability to—
 - (i) create a user ID and access code;
 - (ii) use the user ID and access code to access, conclude, deliver, receive and read electronic filing transactions on the user's electronic filing page; and
 - (iii) cancel the user's SARS electronic filing service; and
 - (b) ensure that all electronic filing transactions on a user's electronic filing page remain complete and unaltered except for the **addition of endorsements and changes which arise in the normal course of communication, storage and display**, for the period required by a tax Act.
- (own emphasis)

Although SARS will ensure that electronic filing transactions “remain complete and unaltered”, the “addition of endorsements and changes which arise in the normal course of communication, storage and display” is allowed.

The ECT Act has the following to say about integrity of information in relation to originality and the production of documents for information:

Extract – Sections 14 and 17 of the ECT Act

Section 14

- (2) For the purposes of subsection (a), the integrity must be assessed—
- (a) by considering whether the information has remained complete and unaltered, **except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display**;
 - (b) in the light of the purpose for which the information was generated; and
 - (c) having regard to all other relevant circumstances.

Section 17

- (3) For the purposes of subsection (1), the integrity of the information contained in a document is

maintained if the information has remained complete and unaltered, except for—

- (a) **the addition of any endorsement;** or
- (b) **any immaterial change, which arises in the normal course of communication, storage or display.**

(own emphasis)

Both the Rules and the ECT Act therefore recognise the inevitability of changes to data during the normal course of business and seek to avoid the cost of having to duplicate data.

Take Note

An audit trail to track endorsements and changes is an essential part of any legitimate IT system.

7.2. Additional enhancements

SARS has demonstrated its continual commitment to modernise its systems, particularly in the electronic filing environment. Enhancements are commonplace and some of these are described in rule 4(3)(a) and (b). As they are not available in all the filing services, they are listed as discretionary.

Extract – Rule 4

- (3) A SARS electronic filing service **may**—
 - (a) provide a taxpayer with the ability to—
 - (i) authorise a registered user, who is a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, to perform an electronic filing transaction on behalf of the taxpayer; and
 - (ii) at any time thereafter, terminate such authority;
 - (b) provide the registered user, authorised under paragraph (a)(i), with the ability to terminate the authority provided by the taxpayer; and

(own emphasis)

7.3. Limitation of data

Due to the competing interests of registered users, notwithstanding the amount of bandwidth at its disposal, SARS may need to restrict the amount of data that a person can upload to a SARS electronic filing service at any given time. It will however only do so when it is entirely necessary, so once again this item is listed as discretionary.

Extract – Rule 4

- (3) A SARS electronic filing service **may**—
 - (c) **limit the amount of data** that can be submitted by the registered user on the electronic filing page.

(own emphasis)

Take Note

To enable registered users to upload data effectively guidelines are available on www.sars.gov.za (from the home page → Business and Employers → Modernised 3rd party data Platform).

8. Rule 5 – Registration for a SARS electronic filing service

Registration for a SARS electronic filing service is preceded by registration with SARS and in this regard certain provisions of the TA Act are important.

8.1. Chapter 3 of the TA Act

Chapter 3 of the TA Act³⁰ deals with registration with SARS.

Extract – Sections 22 – 24 of the TA Act

Section 22

- (1) A person—
- (a) obliged to apply to; or
 - (b) who may voluntarily, register with SARS under a tax Act must do so in terms of the requirements of this Chapter or, if applicable, the relevant tax Act.
- (2) A person referred to in subsection (1) must—
- (a) apply for registration within the period provided for in a tax Act or, if no such period is provided for, 21 business days of so becoming obliged or within the further period as SARS may approve in the prescribed form and manner;
 - (b) apply for registration for one or more taxes in the prescribed form and manner; and
 - (c) provide SARS with the further particulars and any documents as SARS may require for the purpose of registering the person for the tax or taxes.
- (3) A person registered or applying for registration under a tax Act may be required to submit biometric information in the prescribed form and manner if the information is required to ensure—
- (a) proper identification of the person; or
 - (b) counteracting identity theft or fraud.
- (4) A person who applies for registration in terms of this Chapter and has not provided all particulars and documents required by SARS, may be regarded not to have applied for registration until all the particulars and documents have been provided to SARS.
- (5) Where a taxpayer that is obliged to register with SARS under a tax Act fails to do so, SARS may register the taxpayer for one or more tax types as is appropriate under the circumstances.

Section 23

A person who has been registered under section 22 **must communicate to SARS** within 21 business days **any change** that relates to—

- (a) postal address;
- (b) physical address;

³⁰ Being sections 22 – 24.

- (c) *representative taxpayer;*
- (d) *banking particulars used for transactions with SARS;*
- (e) *electronic address used for communication with SARS; or*
- (f) *such other details as the Commissioner may require by public notice.*

Section 24

- (1) SARS may allocate a **taxpayer reference number** in respect of one or more taxes to each person registered under a tax Act or this Chapter.
- (2) SARS may register and allocate a taxpayer reference number to a person who is not registered.
- (3) A person who has been allocated a taxpayer reference number by SARS must include the relevant reference number in all returns or other documents submitted to SARS.
- (4) SARS may regard a return or other document submitted by a person to be invalid if it does not contain the reference number referred to in subsection (3) and must inform the person accordingly if practical.

8.1.1. Taxpayer reference number

The taxpayer reference number is an essential instrument to identify a taxpayer and is used to link taxpayer information contained in the various databases of SARS. Most importantly, it is used to facilitate the exchange of information between SARS and taxpayers. For this reason, a person cannot apply for registration to a SARS electronic filing service without a taxpayer reference number. A taxpayer who wants to register for a filing service for the first time must therefore take cognisance of Chapter 3 of the TA Act, which culminates in the allocation of a taxpayer reference number once SARS has processed the application.

Only after registration with SARS, can a taxpayer apply for registration to a SARS electronic filing service. Upon registration with a filing service, the registered user will be linked to their taxpayer reference number through their user ID and access code.

8.1.2. Further requirements

A further requirement in section 23 of the TA Act is to communicate to SARS any changes to the particulars provided by the taxpayer that may occur over time. This is easy to do through a SARS electronic filing service.

Generally, a filing service will provide a link on a registered user's electronic filing page that leads to that user's particulars. All the user will need to do is update the particulars and submit the modified page. However, in respect of some changes such as, for example, banking details, stricter requirements will apply to counteract fraud and to ensure, in the context of refunds paid by SARS into bank accounts, that SARS pays the refund to the correct taxpayer.

8.2. Registration under the Electronic Communications Rules

Against the backdrop of registration with SARS in accordance with the TA Act, rule 5 deals with the process of registering for a filing service.

8.2.1. Information required for registration

In addition to the taxpayer reference number, a taxpayer must submit the registration information required by a SARS electronic filing service. This information may vary depending on the type of tax for which that filing service was developed.

8.2.2. Registration period

To the extent possible, the TA Act aligns the periods within which a person must apply to register as a taxpayer. Should a taxpayer desire or be required to register for a SARS electronic filing service, such registration must be factored into the time that the taxpayer allocates for this activity.

Take Note

Provided the taxpayer can supply the particulars and documents required by a filing service, activation occurs within 24 hours.

8.2.3. Registration refusal, cancellation or suspension

Whether a person is obliged to apply or voluntarily applies for registration to a SARS electronic filing service, it should be borne in mind that it is an application for registration. Registration is contingent on the conditions in the rule below.

Extract – Rule 5

- (1) *For purposes of utilising a SARS electronic filing service, a person must—*
- (a) *apply for registration on a SARS web site and provide SARS with the particulars and documents as SARS may require for the registration;*
 - (b) *create and secure the person’s own user ID and access code in compliance with the security requirements of the SARS electronic filing service; and*
 - (c) *accept and abide by the general conditions of use set out in these rules.*

If SARS determines that a taxpayer has not complied with the requirements of registration, they will not be registered. SARS may also cancel or suspend a SARS electronic filing service should a registered user contravene any of the requirements. As there may be situations where cancellation or suspension is an inappropriate sanction for contravention of the requirements, it is a discretionary matter.

8.3. Obligations of a registered user

Registered users are accountable for the electronic filing transactions performed using their user ID and access code.

Extract – Rule 5

- (5) *Upon registration and while using a SARS electronic filing service, a registered user is liable for all activities and electronic filing transactions performed using that user ID and access code.*

SARS electronic filing services assist registered users who log into a filing service and then leave their device unattended; to comply with this obligation by automatically terminating a session should the electronic filing page not register activity for a prolonged period³¹.

In this regard, users are reminded—

- to save progress³² continually, as information may be lost should the session last too long; and
- that saving a return or other document on a filing service does not complete delivery³³. Only submission achieves delivery.

The TA Act also tempers the requirement by allowing a person to prove that they did not submit the return or document.

Extract – Section 250 of the TA Act

- (2) *A return made or purporting to be made or signed by or on behalf of a person is regarded as duly made and signed by the person affected **unless the person proves that the return was not made or signed by the person or on the person's behalf.***
- (3) *Subsection (2) applies to other documents submitted to SARS by or on behalf of a person.*
(own emphasis)

9. Rule 6 – user ID and access code

Rule 6 generally describes the obligations of registered users in relation to their user ID and access code.

To avoid the aggravation of a registered user having to prove to SARS that they did not submit a return or document³⁴, rule 6(2) sets requirements in relation to the use of the user ID and access code.

Extract – Rule 6

- (2) *The registered user—*
- (a) *must gain access to a SARS electronic filing service by using only that user's own user ID and access code;*
 - (b) *must ensure that adequate measures have been introduced, and must continually exercise utmost care, to retain control over and confidentiality of the user ID and access code;*
 - (c) *must prevent disclosure of the user ID and access code to an unauthorised person; and*
 - (d) *may not under any circumstances share an access code in any manner with anyone, including a SARS official.*

³¹ In other words the system times-out.

³² Especially when completing tax returns.

³³ See discussion in paragraph 6.3.2(b).

³⁴ In accordance with section 250(2) and (3) of the TA Act.

A strong password greatly reduces the chance of, and is the first line of defence against security breaches. It is therefore not surprising that the Electronic Communications Rules includes the setting of minimum standards for the creation of access codes.

Extract – Rule 6

(4) *An applicant for a SARS electronic filing service or a registered user who is required to change an access code must create a code that meets the **minimum security requirements** of the SARS electronic filing service and cannot easily be surmised.*

(own emphasis)

Presently, the access code must be a minimum of six characters long and contain at least one lower and one upper case letter, one digit and one special character. This may change if safety considerations dictate that they should be stricter.

10. Rule 7 – Electronic signatures

10.1. Purpose

Although an electronic filing transaction is an electronic communication and a registered user is an electronic communicator, certain rules differentiate between these concepts³⁵. One such instance is rule 7, which sets the requirements for signing an electronic communication other than an electronic filing transaction.

10.2. Electronic and digital signatures

The TA Act mentions both electronic and digital signatures and because these terms are not necessarily interchangeable, the Electronic Communications Rules specifically inform the reader that when the TA Act refers to a digital signature, it is specifically in the context of identification³⁶.

10.3. Signatures of electronic communicators excluding registered users

Because an electronic signature can be an electronic image of a signature, a symbol or even a typed name at the bottom of an e-mail³⁷, the simple act of signing on the dotted line may be slightly more challenging within the electronic environment. The challenge, of course, is that of confidentiality and security, including authenticity, evidential weight and data integrity.

Rule 7 therefore enhances the definition of an electronic signature as contained in the ECT Act by introducing additional requirements.

Extract – Rule 7

(1) *Other than the use of a user ID and access code for the signing of electronic filing transactions, if a provision of a tax Act requires a document to be signed by or on behalf of an electronic communicator, that signing may be effected by means of an electronic signature if the*

³⁵ See discussion in paragraph 4.1.2.

³⁶ See discussion in paragraph 4.2.2.

³⁷ The ECT Act defines an electronic signature as “*data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature*”.

electronic signature is—

- (a) *uniquely linked to the signatory;*
 - (b) *capable of identifying the signatory and indicating the signatory's approval of the information communicated;*
 - (c) *capable of being accepted by the computers or equipment forming part of the information system of SARS; and*
 - (d) *reliable and appropriate for the purpose for which the information was communicated.*
- (2) *When considering the use of an electronic signature an electronic communicator must specifically consider the level of confidentiality, authenticity, evidential weight and data integrity afforded by the signature.*

These requirements are not as rigorous as those of an advanced electronic signature³⁸ and can be achieved relatively easily while—

- addressing the confidentiality and security concerns surrounding an electronic signature; and
- allowing an electronic communicator the freedom to choose the method of applying an electronic signature to their electronic communication.

10.4. Signatures of registered users

For filing transactions, the requirements are contained in the definition under rule 1³⁹.

Definition – Rule 1

'electronic signature', in relation to—

- (b) *a registered user means—*
 - (i) *the user ID and access code of the user; and*
 - (ii) *the date and time that the electronic filing transaction was received by the information system of SARS;*

Provided the registered user complies with the Electronic Communications Rules, SARS is comfortable that its “*secure and reliable SARS electronic filing services*”⁴⁰ provide sufficient confidentiality and security to enable the user ID and access code to function as an electronic signature.

11. Rule 8 – Security

To enable SARS to provide “*secure and reliable SARS electronic filing services*”⁴¹, it must protect its information systems and data. To this end, rule 8(1) enables SARS to do whatever may be necessary in this regard.

³⁸ For the reasons set out in paragraph 4.2.6(a).

³⁹ See discussion in paragraph 4.2.6(e).

⁴⁰ See rule 4(1).

⁴¹ See rule 4(1).

Extract – Rule 8

- (1) *SARS may take whatever action necessary to preserve the security of its data, as well as the security and reliable operation of its information systems, a SARS web site and a SARS electronic filing service.*

The confidentiality of taxpayer information⁴² and SARS confidential information⁴³ is of utmost importance to not only SARS but also the legislation that regulates it. Section 67 of the TA Act therefore specifically deals with and is entitled “General prohibition of disclosure”.

Extract – Section 67 of the TA Act

- (3) *In the event of the disclosure of SARS confidential information or taxpayer information contrary to this Chapter [6], the person to whom it was so disclosed may not in any manner disclose, publish or make it known to any other person who is not a SARS official.*

Rule 8(2) additionally places an obligation on anyone who has received information⁴⁴ to declare this to SARS and work with SARS to rectify the situation; the purpose being to ensure that SARS is always put in a position where it can investigate the source of the problem and determine corrective actions required.

Extract – Rule 8

- (2) *A person who obtains information regarding another person or information that the person obtaining the information reasonably believes is not intended for that person must—*
- (a) *notify SARS accordingly without delay and disclose the circumstances under which the information was obtained;*
 - (b) *follow the processes that SARS prescribes to destroy or remove the information from the information system of the person;*
 - (c) *not disclose to another person nor retain in any manner or form the information so obtained; and*
 - (d) *retain the record of the receipt of the information.*

12. Rule 9 – Record retention by electronic communicator

Rule 9 must be viewed against the backdrop of the TA Act and other applicable tax Acts⁴⁵.

12.1. The TA Act

Section 29(1) of the TA Act describes the general record keeping obligations of a person.

⁴² Described in section 67(1)(b) of the TA Act as “any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information.”

⁴³ See section 68(1) of the TA Act.

⁴⁴ Whether taxpayer information, SARS’ confidential information or any other information that is not meant for them.

⁴⁵ Tax Act is defined in the TA Act as “this Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act, the Customs Control Act, 2014 (Act No. 31 of 2014), and the Customs Duty Act, 2014 (Act No. 30 of 2014)”.

Extract – Section 29 of the TA Act

- (1) *A person must keep the records, books of account or documents that—*
- (a) *enable the person to observe the requirements of a tax Act;*
 - (b) *are specifically required under a tax Act or by the Commissioner by public notice; and*
 - (c) *enable SARS to be satisfied that the person has observed these requirements.*

Take Note

In addition to this general record keeping obligation, some tax Acts include specific record keeping requirements unique to the type of tax regulated by that Act.

The TA Act also addresses the form of record retention.

Extract – Section 30 of the TA Act

- (1) *The records, books of account, and documents referred to in section 29, must be kept or retained—*
- (a) *in their original form in an orderly fashion and in a safe place;*
 - (b) *in the form, including electronic form, as may be prescribed by the Commissioner in a public notice; or*
 - (c) *in a form specifically authorised by a senior SARS official in terms of subsection (2).*

Electronic form of record keeping is regulated by the Electronic Record Keeping Rules. These rules require that electronic records must be kept in compliance with section 14 of the ECT Act (which deals with originality) and must, within a reasonable time, be accessible to and readable by SARS, particularly for inspections and audits. Other requirements deal with the location of the records, the maintenance of system documentation and measures for storage, back-ups and conversions.

12.2. The ECT Act and the secondary legislation

The Electronic Record Keeping Rules requires that records be kept in compliance with section 14 of the ECT Act.

Extract – Section 14 of the ECT Act

- (1) *Where a law requires information to be presented or retained in its original form, that requirement is met by a data message if—*
 - (a) *the integrity of the information from the time when it was first generated in its final form as a data message or otherwise has passed assessment in terms of subsection (2); and*
 - (b) *that information is capable of being displayed or produced to the person to whom it is to be presented.*
- (2) *For the purposes of subsection 1(a), the integrity must be assessed—*
 - (a) *by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display;*
 - (b) *in the light of the purpose for which the information was generated; and*
 - (c) *having regard to all other relevant circumstances.*

The Electronic Communications Rules additionally require compliance with section 16 of the ECT Act.

Extract – Section 16 of the ECT Act

- (1) *Where a law requires information to be retained, that requirement is met by retaining such information in the form of a data message. if—*
 - (a) *the information contained in the data message is accessible so as to be usable for subsequent reference;*
 - (b) *the data message is in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and*
 - (c) *the origin and destination of that data message and the date and time it was sent or received can be determined.*
- (2) *The obligation to retain information as contemplated in subsection (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received.*

12.3. Admissibility

The ECT Act has the following to say about the admissibility of data messages.

Extract – Section 15 of the ECT Act

- (4) *A data message made by a person in the ordinary course of business, or a copy or printout of or an extract from such data message certified to be correct by an officer in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organisation or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.*

The Electronic Communications Rules are consistent with the ECT Act.

Extract – Rule 9

- (2) *An electronic communication made by SARS or an electronic communicator in the ordinary course of business is on its production in proceedings under a tax Act admissible in evidence against a person and rebuttable proof of the facts therein contained.*
- (3) *Where a copy or printout of, or an extract from, the communication referred to in subrule (2) is used, such copy, printout or extract must be certified to be correct by SARS or the representative taxpayer of the communicator.*
- (4) *The certification by the representative taxpayer of the communicator under subrule (3) must include the particulars specified in rules 3 to 6 of the public notice issued under section 30(1)(b) of the Act.*

An electronic communication itself or a copy, printout or extract from the communication dealt with in accordance with rule 9(4) represents a rebuttable presumption of the facts therein contained.