



MANAGE TAXPAYER RECORD RETENTION AUTHORISATION

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1 PURPOSE

- a) The purpose of this policy is to provide clarity to taxpayers regarding:
 - i) Their obligations to apply for authorisation to retain records in a form other than in terms of section 30(1)(a) and (b) of the Tax Administration Act (TAA) read with the Government Notice 787 of 1 October 2012: Electronic form of record keeping in terms of section 30(1)(b) of TAA (Government Gazette No. 35733) (Public Notice), including the obligation to apply to retain electronic records in a location outside of South Africa in accordance with Rule 4 of the Public Notice.
 - ii) How to apply for the above-mentioned authorisation.
- b) This policy only applies to taxes administered in terms of TAA.

2 POLICY STATEMENT

- a) A senior SARS official may authorise the retention of records, books of account or documents in a form acceptable to the official in terms of section 30(1)(c) read with section 30(2) of TAA and the Public Notice.
- b) The senior SARS official may authorise the retention of electronic records, books of account or documents in a location outside of South Africa in accordance with Rule 4 of the Public Notice.

2.1 Legislative requirements

- a) Section 29(1) of TAA places a duty on a person to keep records that:
 - i) enable the person to observe the requirements of a tax Act;
 - ii) are specifically required under a tax Act;
 - iii) are specifically required by the Commissioner by public notice;
 - iv) enables SARS to be satisfied that the person has observed these requirements.
- b) Section 29(2) and (3) of TAA further requires that records be retained for a period of five years from the date of submission of a return or if no return is required, five years from the end of the relevant tax period in which income was received, capital gain or loss was incurred or the occurrence of any other activity that is subject to tax or would have been subject to tax but for the application of a threshold or exemption.
- c) Section 30(1)(a) of TAA allows for records to be kept in their original form in an orderly fashion and in a safe place.
- d) Section 30(1)(b) of TAA indicates that records can be kept in the electronic form as prescribed by the Commissioner in a public notice.
- e) Where records are to be kept in a form not specified in section 30(1)(a) or (b), a senior SARS official may, subject to conditions, in accordance with section 30(2) authorise such form if acceptable.
- f) The Public Notice states that electronic records must be kept in an acceptable electronic form.
- g) An acceptable electronic form is where:
 - i) The integrity of the electronic record satisfies the standard contained in section 14 of the Electronic Communications and Transactions Act (ECT Act);
 - ii) The person required to keep the records is within a reasonable period able to:
 - A) Provide SARS with an electronic copy of the records in a format that SARS is able to readily access, read and correctly analyse;
 - B) Send the records to SARS in an electronic form that is readily accessible by SARS; or
 - C) Provide SARS with a paper copy of the records; and
 - iii) 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 TAA.
- h) The Public Notice further states that the location of records in an electronic form must be at a place physically located in South Africa. A senior SARS official may authorise a person to keep electronic records in a location outside of South Africa if the official is satisfied that:

- i) The electronic system used by the person will be accessible from the person's physical address in South Africa for the duration of the period that the person is obliged to keep and retain records;
 - ii) The locality where the records are proposed to be kept will not affect access to the electronic records;
 - iii) 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;
 - iv) The form in which the records are maintained satisfies all the requirements of the Public Notice apart from the issue of the locality of the storage; and
 - v) The person will be able to provide an acceptable electronic form of the records to SARS on request within a reasonable period.
- i) If a person is to keep records in an electronic form and uses computer software or an electronic platform that is: (i) altered or adapted for that person's environment; (ii) is created or designed for the person; or (iii) is not commonly recognised in South Africa: then the person must additionally keep the following documentation:
- i) Any computer and software manuals that are relevant to accessing and understanding the person's method of electronic record keeping; and
 - ii) Written document that accurately describes the person's system of electronic record keeping, if the aforementioned is not available. This written document must specify 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 format used to store and archive the records that includes a description of media, software and hardware used;
 - E) The physical locality where records are stored or archived;
 - F) If the person carries out internet-based transactions, then also the log files created to identify individual transactions and security measures used to maintain the identity, integrity and authenticity of transactions;
 - G) A data dictionary that explains how records are indexed when created, processed, stored and backed-up; and
 - H) The procedures and protocols in place to prevent the unauthorised deletion, alteration and destruction of records and reports.
- j) If the 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:
- i) Chronological records and explanations of all changes or upgrades to the software and hardware used, including explanations of how the new system can recreate an acceptable electronic form;
 - ii) Where applicable, explanations of migrations of data that may have taken place across either software or hardware;
 - iii) 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 format as applicable; and
 - iv) An explanation of archival and back-up facilities for any electronic systems that are no longer used by the person.
- k) A person who keeps records in an electronic form must ensure that measures are in place for adequate storage of the electronic records for the duration of the period referred to in section 29 of TAA, which include:
- i) The appropriate storage of the media on which the electronic records are recorded;
 - ii) The storage of all electronic signatures, log-in codes, keys, passwords or certificates required to access the electronic records; and
 - iii) Procedures to obtain full access to any electronic records that are encrypted.
- l) The electronic records must be available for inspection by SARS in terms of section 31 of TAA at all reasonable times and at premises physically located in South Africa or accessible from such premises if authorisation was provided for the records to be maintained outside of South Africa.
- m) In the course of an inspection carried out in terms of section 31 of TAA, the electronic system used by the person must be capable of demonstrating positively that the provisions of the Public Notice are compiled with, including, but not limited to validating that the electronic records meet the standard of

integrity as specified in rule 3.2 of the Public Notice and an acceptable electronic form can be displayed or produced.

- n) 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 TAA to be carried out.
- o) The written documentation required to be maintained in terms of rule 5 of the Public Notice must be available at all reasonable times to enable an inspection in terms of section 31 of TAA to be carried out.
- p) Electronic records must be able to be made available for the purpose of an audit or investigation in terms of section 48 of TAA, which includes having the following available on the date and at the time that the audit or investigation is scheduled to start:
 - i) Any electronic signatures, log-in codes, keys, passwords or certificates required to access the electronic records for the purpose of audit or investigations; and
 - ii) The written document and records required to be maintained in terms of rule 5 of the Public Notice.
- q) A person who keeps records in an electronic form must comply with the provisions of the rules of the Public Notice throughout the period that the person is required to retain records in terms of section 29 of TAA.

2.2 Applications

- a) Where a person applies in terms of section 30(2) of TAA to maintain records other than in the form prescribed in section 30(1)(a) and (b), read with the Public Notice, or where a person applies to maintain electronic records in a location outside of South Africa, as required by rule 4 of the Public Notice, such application must be emailed to ElectronicRecords@sars.gov.za.
- b) The application referred to above must include a description of how the form of the applicant’s record retention deviates from the requirements of section 30(1)(a) or (b), a motivation as to why the form in which they retain their records should be acceptable, and, if applicable, a declare that the applicant’s record retention outside of South Africa conforms to the requirements of rule 4 of the Public Notice.
- c) An acknowledgement of receipt will be issued, and further information may be required.

2.3 Outcome

- a) The outcome of the application will be communicated in writing.

3 REFERENCES

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act No.28 of 2011; GN 787 of 1 October 2012: Electronic form of record keeping in terms of subsection 30(1)(b) of TAA (Government Gazette No. 35733)
Other Legislation:	Electronic Communications and Transactions Act No. 25 of 2002
International Instruments:	None

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
None	

4 DEFINITIONS AND ACRONYMS

ECT Act	Electronic Communications and Transactions Act No. 25 of 2002
Public Notice	GN 787 of 1 October 2012: Electronic form of record keeping in terms of subsection 30(1)(b) of TAA (Government Gazette No. 35733)
Records	Means records, books of account or documents that a person is required to kept or retain in terms of section 29 of TAA.
TAA	Tax Administration Act No. 28 of 2011
Tax period	As defined per section 1 of TAA
Senior SARS official	Per section 6(3) of TAA the powers and duties required by this Act to be exercised by a senior SARS official must be exercised by (a) the Commissioner; (b) a SARS official who has specific written authority from the Commissioner to do so; or (c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.

5 DOCUMENT MANAGEMENT

Business Owner	Head: Legal Leveraged Products
Author	Ivonne Vorster
Detail of Change	Initial version