

SARS eFiling

Terms & Conditions

THE USE OF THIS WEBSITE IS REGULATED BY THE RULES FOR ELECTRONIC COMMUNICATION PRESCRIBED UNDER SECTION 255(1) OF THE TAX ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011) (the "Rules"). THE RULES WERE ISSUED IN PUBLIC NOTICE GN 644 IN GG 37940 OF THE 25TH OF AUGUST 2014, available [here](#).

THE RULES AS WELL AS THE TERMS AND CONDITIONS HEREUNDER ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THIS WEBSITE OR ANY PART THEREOF.

IF THIS WEBSITE IS USED FOR CUSTOMS AND EXCISE PURPOSES, THE RULES MUST BE READ WITH RULES 59A.11 AND 60.10A UNDER THE CUSTOMS AND EXCISE ACT, 1964 (ACT NO. 91 OF 1964).

IF YOU DO NOT AGREE TO THE RULES OR THESE TERMS AND CONDITIONS, YOU MUST LEAVE THIS WEBSITE NOW, AS FURTHER USE SHALL AUTOMATICALLY BIND YOU.

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms and Conditions, unless the content indicates otherwise, a term which is assigned a meaning in the Rules, has the meaning so assigned, and the following terms have the following meaning –

1. **"access code"** has the meaning assigned in the Rules;
2. **"Act"** means the Tax Administration Act, 2011 (Act No. 28 of 2011);
3. **"ECT Act"** means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002); "eFiler" means a registered user of the eFiling service;
4. **"eFiling service"** means the SARS electronic filing service available through the SARS eFiling web site;
5. **"electronic filing page"** has the meaning assigned in the Rules;
6. **"electronic filing transaction"** has the meaning assigned in the Rules;
7. **"information system"** has the meaning assigned in the Rules;
8. **"registered user"** has the meaning assigned in the Rules;
9. **"Rules"** means the rules for electronic communication prescribed under section 255(1) of the Act and "rule" means a specific Rule;
10. **"SARS"** means the South African Revenue Service;
11. **"SARS eFiling web site"** means the SARS web site located at <http://www.sarsefiling.co.za/>;
12. **"SARS electronic filing service"** has the meaning assigned in the Rules;
13. **"SARS web site"** has the meaning assigned in the Rules;
14. **"Terms and Conditions"** means these terms and conditions;

15. **“User”** means any person who enters or uses the SARS eFiling web site, including an eFiler, notwithstanding the fact that such a person only visited the home page of the SARS eFiling web site; and
16. **“user ID”** has the meaning assigned in the Rules.

1.2. An expression which denotes –

1. any gender includes the other genders;
2. a person includes a natural or juristic person; and
3. the singular includes the plural and vice versa.

2. GENERAL

1. The SARS eFiling web site provides Users with access to and use of information about the eFiling service and eFilers with access to the eFiling service.
2. The eFiling service provides the eFiler with the ability to access, conclude, deliver, receive and read electronic filing transactions.
3. When the eFiler submits a return, as defined in the Act, in the form of an electronic filing transaction to the eFiling service, the eFiling service forwards the return to the relevant tax system and, within a reasonable time, by return electronic filing transaction, confirms to the eFiler, on their electronic filing page, whether such return has been accepted and processed by SARS.
4. In case of a payment to SARS through the eFiling service, provided that the eFiler has complied with all the prescribed procedures for making such payment, the eFiling service will store an electronic filing transaction, containing a record of such payment on the electronic filing page of the eFiler. To enable this functionality, SARS co-operates with various banks (“SARS' banking partners”), who on instruction from the eFiler concludes the payment. The electronic filing transaction is merely a record of such payment. The arrangement for payment to SARS is between the eFiler and the SARS' banking partners. Although SARS' banking partners take reasonable steps to secure payment information and use payment systems that are sufficiently secure with reference to accepted technological standards, SARS shall not be liable for any claims, losses or damages suffered by the eFiler in respect of such arrangement.

3. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in and to the SARS eFiling web site and all technology, material and content made available on and through the SARS eFiling web site (including that of the eFiling service) is owned by SARS or a third party, and is therefore protected by both South African and international intellectual property right laws. In this regard, the User undertakes –

3.1. not to do anything that may infringe any person's intellectual property rights, including but not limited to –

1. reverse engineering, decompiling, disassembling or otherwise attempting to discover the source codes of any technology (including the eFiling service); and
2. unauthorised copying, reproduction, retransmission, distribution, dissemination, sale, publication, or other circulation or exploitation of such technology, material and content; and

3.2. to comply with all laws applicable to any intellectual property rights (including without limitation trade secrets, copyright, trademarks, registered designs, patents and domain name usage).

4. ALLOWED USE AND LICENSE

1. SARS hereby grants the User the right to view, download and print the material and content made available on and through the SARS eFiling web site for the purposes of accessing and, upon registration, using the eFiling service, provided that such material and content is only used for personal, educational or non-commercial purposes. No further reproduction or any form of distribution of the material and content is allowed.
2. SARS hereby grants the eFiler the right to use the eFiling service to generate, deliver and store electronic filing transactions in accordance with the Rules and these Terms and Conditions. No further use is allowed.
3. The SARS eFiling web site and the technology, material and content made available on and through it (including that of the eFiling service) shall not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of SARS.
4. Users may only access the SARS eFiling web site, access and use the material and content available on and through the SARS eFiling web site, and eFilers may access and use the eFiling service for legal purposes.
5. The caching of the material and content on the SARS eFiling web site shall only be allowed if –
 1. the purpose of the caching is to make the onward transmission of the material and content from the SARS eFiling web site more efficient;
 2. the cached material and content is not modified in any manner whatsoever;
 3. the cached material and content is updated at least every 12 (twelve) hours; and
 4. the cached material and content is removed or updated when so required by SARS.
6. If any User uses the SARS eFiling web site or the technology, material or content made available on and through it (including that of the eFiling service), in breach of the provisions detailed herein, SARS reserves the right to take whatever action it deems necessary to protect the proprietary and other interests in and to such web site, technology, material and content.
7. Hyperlinks to –
 1. the SARS eFiling web site from any other source shall be directed only at the home page of the SARS eFiling web site.
 2. third party sites, contained on the SARS eFiling web site or within some of the material or content made available by and through the SARS eFiling web site, with information or material produced by other parties, are not controlled by SARS.
8. SARS shall not be liable, in any manner whatsoever, for any damage, loss or liability that results from the use of a hyperlink –
 1. not directed at the home page of the SARS eFiling web site; or
 2. to a third party web sites contained on the SARS eFiling web site.
9. Users may quote from small and reasonable amounts of the material and content made available on and through the SARS eFiling web site only if such material and content is correctly quoted, is placed in inverted commas and is attributed to SARS.
10. Without the prior written consent of SARS, no person may –

1. frame the SARS eFiling web site or the material and content made available on and through it.
2. apart from the use of bona fide search engine operators and the use of the search facility provided on the SARS eFiling web site, use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy the SARS eFiling web site or material or content made available on or through it.

5. ADDITIONAL CONDITIONS OF USE FOR THE SARS EFILING SERVICE

1. On acceptance of an eFiler's application to register for the eFiling service, SARS will supply the eFiler with a user ID and initial access code. Unless otherwise specified by SARS, when the eFiling service is accessed for the first time, the eFiler must change the initial access code to a unique access code of choice.
2. For the purpose of giving effect to rule 6 and 8(1), the eFiler undertakes to –
 1. ensure that the user ID and access code are at all times kept secure and confidential;
 2. without delay, report any compromise or unauthorised disclosure of a user ID or access code to SARS' call centre and to provide SARS with written confirmation thereof within 24 (twenty-four) hours of such notification; and
 3. as soon as practicable when required by SARS, change their access code.
3. In accordance with rule 5(5), the eFiler assumes sole responsibility for the accuracy and correctness of all electronic filing transactions submitted to the eFiling service through the use of the eFiler's user ID and access code.
4. If the eFiler is a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, the eFiler must obtain a written mandate from the taxpayer, which mandate must be provided to SARS and at a minimum –
 1. detail the authority granted to the eFiler by the taxpayer; and
 2. contain an acknowledgement by the taxpayer that any and all liabilities under a tax Act remains with the taxpayer.
5. The eFiler referred to in clause 5.4 above, undertakes to –
 1. submit information to SARS that is a true and correct reflection of the information provided by the taxpayer to the eFiler; and
 2. should the mandate referred to in clause 5.4 change, provide the new mandate to SARS within 3 (three) months of such new mandate taking effect.

6. SERVICES, SOFTWARE AND EQUIPMENT

1. In consideration of rule 4, SARS may upon reasonable notice –
 1. discontinue a feature or change the technology, material or content available on and through the SARS eFiling web site (including those of the eFiling service); or
 2. change the software and hardware required to access and use the SARS eFiling web site or eFiling service.
2. Notwithstanding the foregoing, it is the responsibility of the User to acquire and maintain, at their own expense, the computer hardware, system and information security, software, telecommunications lines and accounts to, as applicable, –
 1. access the SARS eFiling web site or the eFiling service;
 2. download material and content from the SARS eFiling web site;

3. download technology, material or content from the eFiling service; or
4. upload electronic filing transactions to the eFiling service.

7. RETENTION OF TRANSACTION INFORMATION

SARS will retain electronic filing transactions for on-line inquiries for a period of 12 (twelve) months after termination of this agreement and for an additional 5 (five) years from the date on which a transaction was performed in an off-line environment.

8. UNAVAILABILITY OF SARS EFILING WEB SITE OR SERVICES

Notwithstanding the undertaking of SARS to provide an effective, secure and reliable eFiling service, such service or the SARS eFiling web site may become unavailable from time-to-time. The unavailability of the eFiling service or the SARS eFiling web site does not exempt an eFiler from their liability under a tax Act and such eFiler must, during the period of unavailability limit their potential risk (including the risk of incurring penalties and interest) by making use of alternative methods to meet their tax commitments.

9. PRIVACY

1. **“Taxpayer information”** is defined and protected by Chapter 6 of the Act and all such information that SARS may electronically collect, collate or store shall only be used in accordance with Chapter 6 and for the purpose of achieving the functions and objectives of SARS as contained in section 3 and 4 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).
2. If a User is not a taxpayer or an eFiler, SARS will only, for purposes of service enhancement, collect, store and use non-personal statistical information about the browsing habits, click-patterns and access by such a User to the SARS eFiling web site, its material and content.
3. Information is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings.
4. Any User who obtains information regarding another person or information that they reasonably believe is not intended for them, must, in accordance with rule 8(2) –
 1. contact the SARS call centre immediately to disclose this fact and the circumstances under which the information was obtained;
 2. follow any processes that SARS prescribes to remove or destroy the information; and
 3. not disclose the information to any other person in any manner whatsoever, or retain the information in any form.

10. SECURITY

1. In accordance with rule 8(1), SARS reserves the right to take whatever action it deems necessary, including without limitation, criminal prosecution and the right to claim damages, to preserve the security of its data and the security and reliable operation of its information systems (which includes the SARS eFiling web site, the eFiling service and, the server and computer network that support the SARS eFiling

web site and eFiling service). Full details of the SARS eFiling web site's security features are available from <http://www.sarsefiling.co.za/SecurityPage.aspx>

2. In addition to criminal prosecution (including for any of the offences detailed in sections 85 to 88 of the ECT Act), any person who is responsible for a security failure or breach as detailed in this clause 10, shall be liable for all resulting liability, loss or damages suffered or incurred by SARS or any third party. The User hereby indemnifies and holds SARS harmless against all claims, losses and damages arising from a failure or breach caused, whether intentionally or negligently, by the User.

11. DISCLAIMER AND LIMITATION OF LIABILITY

1. To the extent permitted by law, SARS (including its employees, suppliers, service providers, partners, affiliates and agents) shall not be liable for any damages, loss or liability of any nature incurred by a person resulting from the use of or inability to use the SARS eFiling web site or the technology, material and content made available on and through it (including that of the eFiling service).
2. The SARS eFiling web site and the technology, material and content available on and through it (including the eFiling service) is supplied without any warranty or guarantee and has not been compiled to meet the User or the eFiler's individual requirements. It is the responsibility of the User, prior to entering into this agreement with SARS, to satisfy themselves that such technology, material and content meets their individual requirements and is compatible with their computer hardware and software.
3. Information, ideas and opinions expressed on the SARS eFiling web site do not constitute the professional advice or the official opinion of SARS. Users are encouraged to obtain their own professional advice before taking any course of action related to such information, ideas or opinions.
4. SARS does not make any warranties or representations that the technology, material and content available on and through the SARS eFiling web site (including that of the eFiling service) will in all cases be true, correct or free from any errors. SARS shall take all reasonable steps to ensure the quality and accuracy of such material and content and that the eFiling service continues to remain error free.

12. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and harmful content available from the SARS eFiling web site to SARS and SARS undertakes to correct or remove such content or any part thereof where SARS determines that such content is untrue, inaccurate, defamatory, illegal, infringing or harmful.

13. INTERCEPTION OF COMMUNICATIONS

The User acknowledges that SARS or a third party network operator may, under the circumstances prescribed in the Regulation of Interception of Communications Act, 2002 (Act No. 70 of 2002), be required to intercept communications or to provide archived or real-time communication-related information about such communications.

14. ENTIRE AGREEMENT AND SEVERABILITY

1. If required, SARS may upon reasonable notice, change these Terms and Conditions and therefore such Terms and Conditions are displayed on the SARS eFiling web site together with their effective date. The User will be bound by the Terms and Conditions in effect at the time that such User last accessed the SARS eFiling web site.
2. Where a written mandate as described in clauses 5.4 and 5.5.2 is issued on or before the date of any changes to clauses 5.4 and 5.5, such changes shall only take effect in respect of that mandate 3 (three) months after the date on which such mandate is issued.
3. The Rules, these Terms and Conditions and hyperlinks to copyright notices and legislation contained therein, constitute the entire agreement between SARS and the User and supersedes all prior or implied agreements, whether oral or in writing relating to the subject matter hereof. The fact that some or all of the hyperlinks may be non-operational shall not play a role in determining the validity of or affect the interpretation of the agreement.
4. The agreement as described above is concluded in Pretoria (Republic of South Africa) and, in any judicial proceedings, the User consents to the jurisdiction of a competent Court in this area.
5. No representation, warranty, change, waiver, discharge, promise or the like that is not recorded herein shall be valid unless reduced to writing and signed by an authorised representative of the person against which such representation, warranty, change, waiver, discharge or promise is sought to be enforced.
6. Any indulgence that SARS may grant, shall not constitute a waiver of any of SARS' rights, and SARS shall not thereby be precluded from exercising any rights which may have arisen in the past or which might arise in the future.
7. Any provision or clause of these Terms and Conditions which is or becomes invalid, illegal or unenforceable for any reason whatsoever shall, to the extent that such provision or clause is invalid, unlawful or unenforceable, be treated as pro non scripto, and the remaining provisions and clauses shall remain of full force and effect.

15. APPLICABLE LAW

These Terms and Conditions, including all transactions concluded on the SARS eFiling web site, and all matters arising therefrom or in connection therewith are governed by and interpreted in accordance with the laws of the Republic of South Africa.

16. LEGAL COSTS

SARS shall not be liable for any costs incurred by Users in obtaining professional advice relating to these Terms and Conditions.

17. SARS DISCLOSURES

The following information is disclosed by SARS in the interests of facilitating and enhancing the User's access to and use of the information available on the SARS eFiling web site and the eFiler's access to and use of the eFiling services:

1. The full name and legal status of the web site owner: South African Revenue Service (SARS), an organ of state for the Republic of South Africa, established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997).

2. Street address: 299 Bronkhorst Street , Nieuw Muckleneuk, 0181, South Africa.
3. Postal address: Private Bag X923, Pretoria 0001.
4. Physical address for the receipt of legal service of documents: 299 Bronkhorst Street, Nieuw Muckleneuk, 0181, South Africa.
5. Main business: The provision of the eFiling service.
6. The address of the SARS eFiling web site is: <http://www.sarsefiling.co.za/>.
7. SARS' manual published in terms of section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) may be downloaded from www.sars.gov.za.
8. Management: AGM: Business Systems (eFiling Business Owner) Tel: (012) 422 4000.
9. Users may lodge complaints concerning the SARS eFiling web site by calling the SARS Contact Centre on 0800 00 7277.

SOME NOTES

All the terms and conditions have been rewritten. In particular what is of concern is the following under **additional terms of use No 5**:

If the e-Filer is a registered tax practitioner or a person referred to in section 240(2)(d) of the Act, the e-Filer must obtain a written mandate from the taxpayer, **which mandate must be provided to SARS** and at a minimum –

1. **detail the authority** granted to the e-Filer by the taxpayer; and
2. **contain an acknowledgement by the taxpayer** that any and all liabilities under a tax Act remains with the taxpayer.

In the light of these changes how must Tax Practitioners who are e-Filers on behalf of taxpayers handle this mandate issue? I assume that form TPPOA is the form to use. What would the procedure be? I assume that SARS would require this mandate to be filed in the following instances handled by the Tax Practitioner:-

1. Provisional tax
2. Tax Return processing and submission

The issue that I am raising is this:-

“the e-Filer must obtain a written mandate from the taxpayer, **which mandate must be provided to SARS and at a minimum –** “

What is meant by “**must be provided to SARS**”. Does this mean that the Tax Practitioner’s must submit (provided to) to SARS a mandate to cover everything? This wording is confusing, because if this is the case then SARS must provide a facility for this. If this is not the case then SARS should change the words. I think

what SARS may be trying to say is that the Tax Practitioner should have a signed mandate in his or her possession which passes the risk of the return back to the taxpayer before any e-Filing can be done.

At the time of writing I am still waiting for an answer from SARS.

It appears that this term also applies to a person mentioned in S240 (d) of the TAA.

S 240 (d) provides the advice or completes or assists in completing a document solely—

- (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and connected persons in relation to that employer; or
- (ii) under the direct supervision of a person who is registered as a tax practitioner in terms of subsection (1).

