

# Moves to prevent customs disputes ending up in court

**F**ROM June 4 this year a taxpayer may lodge an internal administrative appeal to the South African Revenue Service (SARS) against decisions taken by the receiver in customs and excise matters.

If the taxpayer is not satisfied with the relief granted to him he can request that the matter be referred for alternative dispute resolution by SARS. These new processes apply only to decisions taken after June 4 2007.

The rationale behind the measures is to resolve such disputes more cost-efficiently and to settle disputes before the taxpayer and the commissioner are in court.

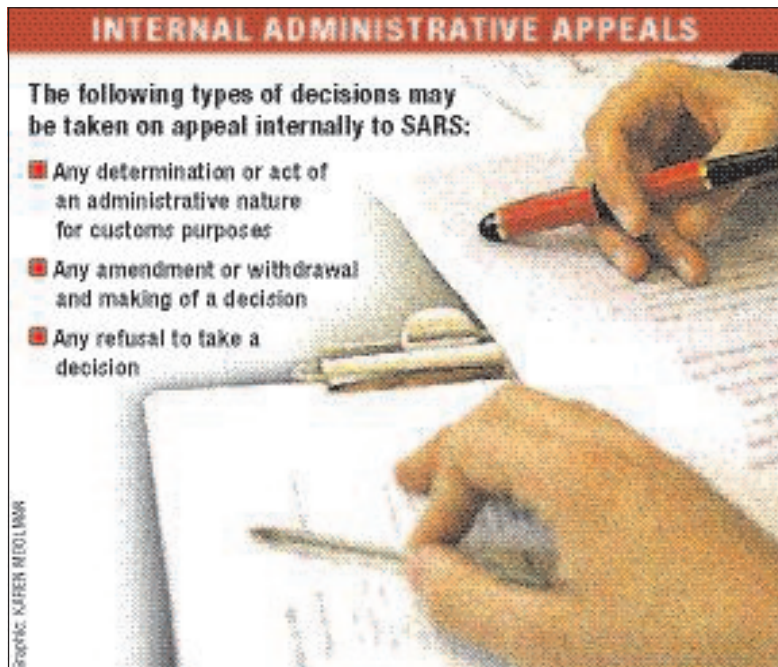
The new processes, however, will not preclude taxpayers that are bent on litigating from instituting legal proceedings.

The following types of decisions may be taken on appeal internally to SARS:

- Any determination or act of an administrative nature for customs purposes;
- Any amendment or withdrawal and making of a decision; and
- Any refusal to take a decision.

The first step is to request written reasons for the decision taken by SARS. This request must be in writing and must be made within 30 days from the date of the decision. The request for reasons is not compulsory, but it is advisable for any taxpayer that wishes to lodge an internal administrative appeal to do so to get a better insight into the mind of the decision-maker. The date of the decision will be the date specified in any notice or communication that SARS issues to the taxpayer.

The 30-day period within which reasons must be requested may be extended by a further 60 days by SARS, provided that the taxpayer can show reasonable grounds for an extension. If SARS considers the grounds to be reasonable, the taxpayer must be informed of the extended time-period within 30 days. SARS must then provide the taxpayer with written reasons for the decision within 60 days. This period



may be extended further if the matter is complicated.

Once the taxpayer gets the reasons from SARS, and is dissatisfied, he may lodge an internal administrative appeal with supporting documentation at the branch office where the decision being appealed against was taken. The grounds for the appeal must be detailed.

The commissioner may reject the appeal or request additional information in writing within 60 days of receipt of the appeal.

The appeal has to be finalised within 90 days of receipt of the appeal and SARS must notify the taxpayer of the outcome in writing.

**W**HEN the appeal concerns a tariff or valuation determination, the same time-lines as discussed above will apply.

The appeal must be delivered to the branch office where the officer made the decision. However, the appeal in these instances, for example of a branch office such as Durban, will only be considered by an authorised officer of the tariff and valuation division in the SARS Operations legal support division at

SARS head-office level.

If a taxpayer is dissatisfied by the decision after he lodged an internal administrative appeal he may apply for alternative dispute resolution. The application must be submitted to SARS within 30 days from the date of the notice informing him of the decision of the internal administrative appeal. The 30 day period may be extended upon application to the commissioner.

Once the commissioner receives the application he must inform the taxpayer within 20 days whether the matter is appropriate for alternative dispute resolution.

The alternative dispute resolution procedure may also be initiated by the commissioner himself in circumstances where he receives a section 96 notice, that is a notice of intention to institute legal proceedings under the Customs Act. The commissioner must notify the sender of the section 96 notice within 10 days of receipt of the notice of his decision whether the matter will be referred to alternative dispute resolution. If the sender of the section 96 notice does not wish to proceed with alternative dispute

resolution he must notify the commissioner within 10 days from the date of the notice by the commissioner. If the person agrees to proceed with alternative dispute resolution instead of litigating pursuant to the section 96 notice, he must deliver the completed notice to SARS within 10 days.

The commissioner must appoint a facilitator who is appropriately qualified to facilitate the process. Within 20 days after a facilitator is appointed a meeting must be held between SARS and the taxpayer for the purpose of resolving the dispute. The taxpayer must be present and may be accompanied by a representative of his choice, such as an employee, lawyer or accountant. The commissioner will be represented by a designated representative.

The facilitator will not function as a decision-maker but will seek a fair, equitable and legal solution and will facilitate an agreement or settlement between SARS and the taxpayer and record the terms of settlement.

The facilitator may only make a recommendation at the end of the proceedings if he was asked to do so at the beginning of the alternative dispute resolution process and if no agreement or settlement is reached. Such a recommendation will however be admissible at any subsequent proceedings. If no settlement is reached, this must be recorded.

Within 10 days of the end of the proceedings the facilitator must present all parties with a report. The proceedings may not be recorded electronically and any representations made will be without prejudice. Any representation or document at the proceedings may not be tendered in any subsequent proceedings as evidence against any party, with certain exceptions.

The new processes will hopefully lead to speedier resolutions of customs-related disputes and should ease the burden on the courts. The shortage of expertise in tax matters that may often lead to unwarranted delays may now be avoided.

**Virusha Subban**

Edward Nathan Sonnenbergs