

**EXTERNAL**

**FREQUENTLY ASKED QUESTIONS**

**DISPUTE ADMINISTRATION**

## 1 PURPOSE

- These frequently asked questions (FAQ) deal with the basic principles of objections and appeals applicable to individual and corporate taxpayers. This document should not be used as a legal reference.

## 2 SCOPE

- This document applies to users in the following divisions:
  - Assessment Maintenance;
  - Audit;
  - Accounts Maintenance;
  - Taxpayer Service Centres;
  - Contact Centres; and
  - Legal and Policy Division.
- This document excludes:
  - The request for reasons for an assessment;
  - The request to suspend payment of tax;
  - Objections and appeals submitted for other taxes namely:
    - Secondary Tax on Companies (STC);
    - VAT;
    - PAYE, SDL, UIF

## 3 REFERENCES

### 3.1 LEGISLATION

| TYPE OF REFERENCE                           | REFERENCE                                |
|---|--|
| Legislation and Rules administered by SARS: | <b>Tax Administration Act 28 of 2011</b> |
| Other Legislation:                          | <b>None</b>                              |
| International Instruments:                  | <b>None</b>                              |

### 3.2 CROSS REFERENCES

| DOCUMENT #              | DOCUMENT TITLE                                   | QUALITY REQUIREMENTS |
|-------------------------|--|----------------------|
| <b>GEN-DISP-02-POL1</b> | External Policy – <b>Disputes Administration</b> | All                  |

## 4 DEFINITIONS AND ACRONYMS

|                     |  |
|---------------------|--|
| <b>ADR</b>          | Alternative Dispute Resolution   |
| <b>Client</b>       | Any person or enterprise conducting business with SARS   |
| <b>CIT</b>          | Company Income Tax   |
| <b>Commissioner</b> | Is the Commissioner for the South African Revenue Service (SARS). Any reference to a decision taken by “SARS” would be a decision that the Commissioner or a SARS officer may take in terms of the relevant tax act. |
| <b>Day</b>          | Section 83(23) defines ‘day’ as any day other than a Saturday, Sunday, public holiday and the days between and including 16 December and 15 January of the following year.   |
| <b>Date of</b>      | In relation to any assessment, means the date specified in the notice of the   |

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| <b>assessment</b>                | assessment as the due date or, where a due date is not so specified, the date of the notice of assessment   |
| <b>Deliver</b>                   | In terms of rule 1 of the section 107A rules, 'deliver' means-<br>(a) handing the relevant document to the relevant person;<br>(b) sending the relevant document to the relevant person by registered post;<br>(c) telefaxing the relevant document to the relevant person;<br>(d) transmitting the relevant document to the relevant person by electronic means; or<br>(e) any other means of service authorised by the Court consisting of the President of the Court sitting alone:<br>Provided that in the case of paragraphs (c) and (d), the original, signed document must be handed to that person or sent by registered post to that person within ten days of it being so telefaxed or transmitted by electronic means; |
| <b>Dispute</b>                   | means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law  |
| <b>Exceptional Circumstances</b> | This concept is not defined in the Income Tax Act, but it is accepted law that when an Act refers to 'exceptional circumstances' it contemplates something out of the ordinary and of an unusual nature. The South African Constitutional Court has held that the lawgiver cannot be expected to prescribe that which is inherently incapable of delineation - if something can be imagined and outlined in advance; it is probably because it is not exceptional.  |
| <b>PAYE</b>                      | Pay As You Earn   |
| <b>PIT</b>                       | Personal Income Tax   |
| <b>Reasonable Grounds</b>        | The ordinary dictionary meaning of "reasonable" is "having sound judgement; moderate; ready to listen to reason; not absurd; within the limits of reason; not greatly less or more than might be expected; tolerable, fair" (Concise Oxford Dictionary). Essentially, for a decision to be reasonable the Commissioner is required to consider all relevant matters. The Constitutional Court has held that there is no absolute standard of reasonableness – what is "reasonable" would depend on the particular circumstances of each case.   |
| <b>Remit Remission</b> /         | To pardon (an offence); to discharge a portion of debt or payment.  |
| <b>RFR</b>                       | Request for Remission   |
| <b>SARS</b>                      | South African Revenue Service   |
| <b>Settle</b>                    | means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and "settlement" shall be construed accordingly.  |
| <b>The Act</b>                   | <b>Tax Administration Act No. 28 of 2011</b>  |

## 5 FREQUENTLY ASKED QUESTIONS

| QUESTION  | ANSWER  |
|---|---|
| <b>1. When does a dispute arise?</b>                            | Once a taxpayer has raised an objection and / or an appeal, a dispute will exist between the taxpayer and SARS as there is a disagreement on the interpretation of either the relevant facts involved or the applicable legislation or both.  |
| <b>2. Can a taxpayer request for reasons for an assessment?</b> | Yes. If a taxpayer disagrees with an assessment, he or she may submit a written notice to SARS requesting for reasons for the assessment. The purpose of the reasons is to enable the taxpayer to properly understand the basis of the assessment and assist in the formulation of the grounds to object thereto. |
| <b>3. When will a taxpayer submit a notice of objection?</b>    | A taxpayer can submit a notice of objection (NOO) if he or she is dissatisfied with:  |

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|   | <ul style="list-style-type: none"> <li>The written response to his or her request for reasons of an assessment.</li> <li>The income tax assessment as a result of the ITR12 and IT14 submission</li> <li>The outcome to an application for a request for remission (RFR) of penalties in respect of PIT and PAYE.</li> </ul>   |
| <b>4. When will a taxpayer submit a notice of appeal?</b>       | A taxpayer will submit a notice of appeal when an objection is disallowed or partially allowed or selectively allowed by SARS, and he or she disagrees with the outcome.   |
| <b>5. Is there a prescribed form for a notice of objection?</b> | <p>Yes. A notice of objection must be submitted on a NOO or ADR1 form.</p> <ul style="list-style-type: none"> <li>A NOO must be submitted in the following instances: <ul style="list-style-type: none"> <li>PIT – For assessed tax and administrative penalties;</li> <li>CIT – For assessed tax only;</li> <li>PAYE – For penalties only.</li> </ul> </li> <li>An ADR1 form must be submitted in the following instances: <ul style="list-style-type: none"> <li>Trusts;</li> <li>VAT;</li> <li>PAYE (excluding penalties in terms of paragraph 14(6) of the fourth schedule);</li> <li>STC; and</li> <li>Other taxes</li> </ul> </li> </ul> |
| <b>6. Is there a prescribed form for a notice of appeal?</b>    | <p>Yes. A notice of appeal must be submitted on a NOA or ADR2 form.</p> <ul style="list-style-type: none"> <li>A NOA must be submitted in the following instances: <ul style="list-style-type: none"> <li>PIT – For assessed tax and administrative penalties;</li> <li>CIT – For assessed tax only;</li> <li>PAYE – For penalties only.</li> </ul> </li> <li>An ADR2 form must be submitted in the following instances: <ul style="list-style-type: none"> <li>Trusts;</li> <li>VAT;</li> <li>PAYE (excluding penalties in terms of paragraph 14(6) of the fourth schedule);</li> <li>STC; and</li> <li>Other taxes</li> </ul> </li> </ul>    |
| <b>7. How can a dispute form be obtained from SARS?</b>         | <p>A NOO form or a NOA form can be requested via the following channels:</p> <ul style="list-style-type: none"> <li>eFiling (for registered eFilers).</li> <li>The SARS Contact Centre (on 0800 00 7277)</li> <li>A SARS Branch.</li> </ul> <p>ADR1 or ADR2 can be downloaded from the website or requested from a SARS branch.</p>  |
| <b>8. How can dispute forms be submitted to SARS?</b>           | <p>NOO and NOA forms can be submitted via the following channels:</p> <ul style="list-style-type: none"> <li>eFiling (for registered eFilers).</li> <li>At a SARS Branch</li> <li>By Post</li> </ul>   |

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|  | <p>ADR1 or ADR2 can be submitted via the following channels:</p> <ul style="list-style-type: none"> <li>• At a SARS Branch</li> <li>• By Post</li> </ul>   |
| <p><b>9. What is the prescribed period to submit a notice of objection?</b></p>                                | <p>A taxpayer must submit a notice of objection within 30 days from the:</p> <ul style="list-style-type: none"> <li>• date of the assessment</li> <li>• date written reasons are given by SARS (or indicated as having already been given)</li> </ul> <p><b>Note:</b> If the taxpayer is unable to comply with this period, he or she must state the reason for failure to submit the objection within the prescribed period.</p>  |
| <p><b>10. What is the prescribed period to submit a notice of appeal?</b></p>                                  | <p>A taxpayer must submit a notice appeal within 30 days from the date of the notice from SARS informing him or her of the decision in respect of the objection.</p> <p><b>Note:</b> If the taxpayer is unable to comply with this period, he or she must state the reason for failure to submit the appeal within the prescribed period.</p>  |
| <p><b>11. What are the requirements for an objection to be valid?</b></p>                                      | <ul style="list-style-type: none"> <li>• It must be submitted on the prescribed form namely NOO or ADR1.</li> <li>• It must be submitted within the prescribed period;</li> <li>• It must specify in detail the grounds upon which it is made;</li> <li>• It must specify the address at which the taxpayer will accept notice and delivery of SARS's decision in respect of such objection and all documents (in terms of the proceedings contemplated in rule 26);</li> <li>• It must be signed by the taxpayer.</li> </ul>  |
| <p><b>12. What are the requirements for an appeal to be valid?</b></p>   | <ul style="list-style-type: none"> <li>• It must be submitted on the prescribed form namely NOA or ADR2.</li> <li>• It must be submitted within the prescribed period;</li> <li>• The taxpayer must indicate which of the grounds specified the notice of objection, he or she is appealing to;</li> <li>• It must be signed by the taxpayer or taxpayer's representative.</li> </ul>  |
| <p><b>13. What if the taxpayer is unable to personally sign the NOO or the NOA form?</b></p>                   | <p>Should the taxpayer be unable to personally sign the objection, the person signing on behalf of the taxpayer must declare the following on the NOO or the NOA form:</p> <ul style="list-style-type: none"> <li>• That he or she is signing on behalf of the taxpayer;</li> <li>• That he or she has a power of attorney to sign on behalf of the taxpayer;</li> <li>• That the taxpayer is aware of the objection/appeal and agrees with the grounds thereof;</li> <li>• The reason why the taxpayer is unable to sign the notice of objection / appeal.</li> </ul> |
| <p><b>14. If SARS determines that the objection is invalid, can the taxpayer re-submit that objection?</b></p> | <p>Yes. The taxpayer may within 10 days of the notice from SARS indicating that the objection is invalid, submit an amended objection. The amended objection will be accepted if it complies with the requirements for a valid objection.</p>  |

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| 15. What are administrative penalties?   | These are penalties raised for offences which constitute non-compliance (e.g. non-submission of an income tax return).   |
| 16. What does the term 'Partially allowed' mean?   | Administrative penalties recur for each month that the taxpayer is non-compliant, up to a maximum of 35 months. Each recurring penalty will have a unique transaction number. The term 'partially allowed' applies when the user dealing with the objection / appeal case only allows certain transactions to be remitted  |
| 17. Are supporting information required for an objection?  | <p>Yes. The taxpayer must attach <b>supporting information</b> to substantiate the grounds for the objection.</p> <p>The taxpayer can select the following reasons on the NOO form when objecting to administrative penalties. The user must exercise his or her judgement to determine if the supporting <b>information</b> provided by the taxpayer are sufficient to support the reason for objecting::</p> <ul style="list-style-type: none"> <li>▫ Serious illness / death (e.g. hospitalisation).</li> <li>▫ Not liable to submit a return.</li> <li>▫ SARS error. This may include the following: <ul style="list-style-type: none"> <li>○ Capturing error;</li> <li>○ Processing delay;</li> <li>○ Provision of incorrect information in an official publication issued by SARS;</li> <li>○ Delay in providing sufficient time for an adequate response to a request for information by SARS.</li> </ul> </li> <li>▫ If the reason 'Other' is indicated, a description and proof is required. The circumstances may include the following: <ul style="list-style-type: none"> <li>○ Natural or human-made disaster;</li> <li>○ Serious illness or accident;</li> <li>○ Serious emotional or mental distress;</li> <li>○ Serious financial hardship; and</li> <li>○ Any other circumstance of analogous seriousness.</li> </ul> </li> </ul> |
| 18. Can SARS request for further information when dealing with an objection?   | Yes. Where SARS requires further information to decide on the objection case, additional information will be requested from the taxpayer.  |
| 19. When is verification of an objection required?   | <p>Verification will be required for the objection case if:</p> <ul style="list-style-type: none"> <li>• The revised assessment has resulted in a reduced liability;</li> <li>• Administrative penalties have been reduced (i.e. allowed or selectively allowed); or</li> <li>• The objection case relates to an enforcement audit.</li> </ul>   |
| 20. How will the taxpayer be notified of the outcome of the objection?   | A letter will be issued to the taxpayer notifying him of the outcome to the objection. If the objection is disallowed or partially allowed or partially allowed, the reason(s) for the disallowance will be stated in the letter.  |
| 21. Can a taxpayer object to both administrative penalties imposed and to the income tax assessment on the same NOO form?              | <p>Yes. In relation to PIT where the taxpayer has submitted a NOO form and has objected to both administrative penalties imposed and to the income tax assessment, one case will be created on SARS Service Manager.</p> <p><b>Note:</b> For CIT the taxpayer can only object to income tax assessment. For PAYE the taxpayer can only object to penalties.</p>  |
| 22. On Service Manager, how will an objection resulting from an Enforcement audit be allocated to the auditor who dealt with the audit | An objection resulting from an Audit related audit will be allocated to the objection's coordinator in the relevant office who must in turn allocate the objection case to the relevant auditor who dealt with the audit.  |
| 23. When lodging an appeal,  | No. When lodging an appeal, the taxpayer cannot change his grounds or  |

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| <p>can the grounds for appeal differ from those grounds raised on the notice of objection?</p> | <p>add new grounds. The taxpayer must indicate which of the grounds specified in his or her objection that he or she is appealing to.</p>   |
| <p>24. How will an appeal matter be dealt with?</p>  | <p>Where a taxpayer appeals, the matter can be dealt with in one of the following manners:</p> <ul style="list-style-type: none"> <li>• By the Alternative Dispute Resolution (ADR) process – if the taxpayer elects this option</li> <li>• By the Tax Board</li> <li>• By the Tax Court</li> </ul>   |
| <p>25. What does ADR mean?</p>   | <p>ADR is acronym for Alternative Dispute Resolution.</p>   |
| <p>26. What is the purpose of ADR?</p>   | <p>The purpose of Alternative Dispute Resolution procedures (ADR) is to allow for the resolution of tax disputes outside the litigation arena.</p>  |
| <p>27. Is the ADR process compulsory for all appeals?</p>                                      | <p>No. The taxpayer must indicate on the notice of appeal form whether he or she prefers this option.</p> <p>If the taxpayer has not indicated on the notice of appeal form that he or she wishes to make use of the alternative dispute resolution procedure, and SARS it is of the opinion that the matter is appropriate for alternative dispute resolution:</p> <ul style="list-style-type: none"> <li>• The taxpayer must be notified accordingly within 10 days of the receipt of the notice of appeal;</li> <li>• The taxpayer must, within 10 days from the notice from SARS, submit written notification stating whether or not he or she agrees thereto</li> </ul>  |
| <p>28. How does ADR affect a taxpayer's right to appeal to the Tax Board or the Tax Court?</p> | <p>This option is available in addition to a taxpayer's right to appeal to the Tax Court or Board, and any delays caused through the ADR procedure will not affect this right</p>   |
| <p>29. When is it inappropriate to settle a dispute?</p>                                       | <p>Circumstances where it is inappropriate to settle a dispute:</p> <ul style="list-style-type: none"> <li>• If in the opinion of SARS, the action on the part of the taxpayer which relates to the dispute, constitutes tax evasion or fraud</li> <li>• The settlement would be contrary to the law or a clearly established practice of SARS on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;</li> <li>• It is in the public interest to have judicial clarification of the issue and the case is suitable for this purpose;</li> <li>• The pursuit of the matter through the courts will significantly promote compliance and the case is suitable for this purpose; or</li> <li>• The taxpayer has not complied with the provisions of any Act administered by SARS and SARS is of the opinion that the non-compliance is of a serious nature.</li> </ul> |
| <p>30. When is it appropriate to settle a dispute</p>  | <p>SARS may, where it will be to the best advantage of the state, settle a dispute in whole or in part, on a basis that is fair and equitable to both the taxpayer and SARS.</p> <ul style="list-style-type: none"> <li>• SARS must have regard to a number of factors, including: <ul style="list-style-type: none"> <li>▫ Whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of SARS' resources;</li> <li>▫ The cost of litigation in comparison to the possible benefits with</li> </ul> </li> </ul>   |



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|   | <p>reference to:</p> <ul style="list-style-type: none"> <li>o The prospects of success in a court;</li> <li>o The prospects of the collection of the amounts due; and</li> <li>o The costs associated with collection.</li> </ul> <ul style="list-style-type: none"> <li>□ Whether there are any: <ul style="list-style-type: none"> <li>o Complex factual or quantum issues in contention; or</li> <li>o Evidentiary difficulties</li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>• Which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts; <ul style="list-style-type: none"> <li>□ A situation where a participant or a group of participants in a tax avoidance arrangement has accepted SARS' position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or</li> <li>□ Whether the settlement of the dispute will promote compliance by the taxpayer or a group of taxpayers or a section of the public in a cost-effective way.</li> </ul> </li> </ul> |
| <p><b>31. Can a company or trust utilise the NOO / NOA form to submit an objection / appeal?</b></p>  | <p>Yes, a company may utilise the NOO / NOA to submit dispute relating to Assessed tax in respect of Income Tax.</p> <p>In respect of PAYE penalties a company or trust may utilise NOO / NOA to submit an objection or appeal.</p>  |
| <p><b>32. When is an individual taxpayer not liable to file an income tax return?</b></p>   | <ul style="list-style-type: none"> <li>• For the 2007 tax year, an individual taxpayer is not liable to file a return if his or her income does not exceed R60 000.</li> <li>• For the 2008 tax year and onwards, an individual taxpayer is not liable to file a return if his/her employment income is less than R120 000. The following conditions must be met in order for this rule to apply: <ul style="list-style-type: none"> <li>□ The total income must be less than R120 000</li> <li>□ The income must be derived from employment i.e. IRP5 only (IT3a is excluded as it can be income other than employment income. As no tax was withheld, the user will need to assess it)</li> <li>□ The income must be derived from a SINGLE source only (i.e. one employer)</li> </ul> </li> </ul>  |
| <p><b>33. Is the NOO and NOA form available in other languages?</b></p>   | <p>No, the NOO and NOA forms are currently available in English only.</p>  |
| <p><b>34. Can the Administrative Penalties section of the NOO form be used to submit an objection against any other type of penalty / interest?</b></p> | <ul style="list-style-type: none"> <li>• No, the Administrative Penalties section of the NOO form must not be used to submit an objection against in other type of penalty/interest.</li> <li>• If a taxpayer wants to object to interest – Interest on underpayment of provisional tax) or any other type of penalty – Penalties on late payment of provisional tax), on the NOO form select the Assessment Type 'Income Tax' and then complete the application section of the form.</li> </ul>   |
| <p><b>35. When capturing a NOO / NOA form for an objection / appeal against Penalties, is it necessary to capture the</b></p>                           | <ul style="list-style-type: none"> <li>• Yes, for PIT when capturing a NOO / NOA form, the user must capture the transaction number of each Administrative Penalty that the taxpayer is objecting / appealing to.</li> </ul>   |



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| transaction number of each penalty imposed?  | <ul style="list-style-type: none"> <li>The transaction number can be obtained from the AP34 notice (it is the number reflected in the column for 'transaction description') or from Administrative Penalty Account on the Income Tax System.</li> <li>For PAYE penalties the taxpayer does not have to complete the transaction number.</li> </ul> |
| 36. Can a taxpayer withdraw a Notice of Objection?   | Yes, a taxpayer can withdraw a Notice of Objection. The request must be submitted in writing.  |
| 37. Must an objection meet all the requirements of Rule 4 of the Regulations promulgated in terms of section 103(1) of the Tax Administration Act? | Yes, an objection must meet all the requirements of Rule 4 of the Regulations promulgated in terms of section 103(1) of the Tax Administration Act. If all the requirements are not met, the objection will be considered as invalid.  |

## 6 QUALITY RECORDS

| Number | Title                      |
|--------|----------------------------|
| ITR12  | Personal Income Tax return |
| NOO    | Notice of Objection        |
| NOA    | Notice of Appeal           |
| RFR1   | Request for Remission      |

## 7 DOCUMENT MANAGEMENT

| Designation                              | Name / Division   |
|--|---|
| Business Owner:                          | Chief Officer: Legal and Policy   |
| Process Owner:                           | Executive: Enterprise Business Enablement – Assessment and Services Portfolio                                       |
| Author:                                  | Tebogo Mogosoana  |
| Detail of change from previous revision: | <ul style="list-style-type: none"> <li>Revision 5 – Updated with the Tax Administration Act requirements</li> </ul> |
| Template number and revision             | POL-TM-12 - Rev 4   |