

EXTERNAL POLICY

DISPUTE ADMINISTRATION

1 SCOPE

- The purpose of this policy is to provide policy guidelines for the administration and resolution of objections and appeals.
- Request for Correction and Administrative Penalty - Request for Remission (RFR) are excluded from this document. For more information on Administrative Penalty - RFR refer to AS-GN-37-POL01.
- The target audience is **the taxpayer**.

2 POLICY STATEMENT

2.1 GENERAL

- If a taxpayer disagrees with an assessment, he or she may object to the assessment.
- If the taxpayer's objection is partially allowed or selectively allowed or disallowed in full by SARS, he or she has a right to appeal against that decision.
- 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.
- If the case in objection (NOO / ADR1) or appeal (NOA / ADR2) relates to the case that has been referred to the voluntary disclosure programme (VDP), the objection or the appeal will be forwarded to the VDP Unit for finalisation as VDP takes precedent over the Objection or Appeal process.

2.2 REQUEST REASONS FOR AN ASSESSMENT (Section 103(1) rule 3)

2.2.1 GENERAL

- If a taxpayer disagrees with an assessment, he or she may submit a written notice to SARS within 30 days after the date of assessment, requesting for reasons for the assessment.
- There is currently no prescribed form that must be used for requesting reasons.
- Written reasons for the assessment must be provided to the taxpayer within 60 days after receipt of the request. Where adequate reasons for the assessment have already been provided, the taxpayer must be notified thereof in writing within 30 days after receipt of the written request for reasons.

2.3 NOTICE OF OBJECTION

2.3.1 GENERAL

- A taxpayer who is aggrieved by any of the following may submit a notice of objection:
 - An income tax assessment; or
 - The reasons provided by SARS for a income tax assessment; or
 - The decision of SARS with regard to a request for remission of administrative penalties in respect of non-compliance (Section 210 of the Tax Administration Act).
 - **The decision of SARS with regard to request for condonation; or**
 - **Any other decision that may be objected to under a tax act.**
- The requirements for an objection to be valid are as follows:
 - It must be submitted on the prescribed form:
 - NOO – For Personal Income tax (Administrative Penalties and assessed tax), PAYE

(Penalties only) and Corporate Income Taxpayers (Assessed Tax).

Note 1: If an ADR 1 form is received in respect of the above, the ADR1 form will be sent back to the taxpayer to complete a NOO form.

- ADR1 – For Trusts, STC, VAT, PAYE Assessment etc.
- It must be submitted within the prescribed period (refer to 2.3.3)
- It must specify in detail the grounds upon which the objection is made.
 - For administrative penalties, it must specify the transaction number which can be acquired from the Penalty Assessment Notice (AP34).
- 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);
- It must be signed by the taxpayer. 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 ADR1 form:
 - The reason why the taxpayer is unable to sign the objection;
 - That he or she has the necessary power of attorney to sign on behalf of the taxpayer; and
 - That the taxpayer is aware of the objection and agrees with the grounds thereof.

Note 2: In respect of request for remission for penalties the taxpayer must complete one RFR/NOO/NOA form per tax type.

2.3.2 INVALID OBJECTION

- If SARS considers the objection to be invalid the taxpayer must be notified thereof within 60 days from the receipt of the NOO form.
- The taxpayer may within 10 days of that notice, submit an amended objection. Where the amended objection complies with the requirements for a valid objection, SARS will treat it as such.
- If SARS considers an objection to be invalid, and the taxpayer is able to demonstrate on good cause shown that the objection should be accepted as valid, he or she may apply to the Tax Court for an order declaring that the objection must be accepted as valid.

2.3.3 PRESCRIBED PERIOD TO SUBMIT OBJECTION

- A notice objection must be submitted within 30 days after the:
 - date written reasons are given by SARS (or indicated as having already been given) or
 - due date on the notice of assessment.
- If the taxpayer is unable to comply with this period, he or she must state the reasons for failure to submit the objection within the prescribed period.
- Where **Senior SARS Official** is satisfied that reasonable grounds exist for the delay in lodging the objection, SARS may extend the period by a further **21** days.

Note: The period for the lodging of an objection may not be extended:

- beyond **21** days of the date of notice of assessment by SARS, or date that reasons were furnished, unless exceptional circumstances exist which gave rise to the delay;
- where more than 3 years have lapsed from the date of the assessment **or the decision**; or
- where the grounds for the objection are based wholly or mainly on any change in practice generally prevailing, that was applicable on the date of the assessment in dispute.

2.3.4 OUTCOME OF NOTICE OF OBJECTION

- SARS must deal with the notice of objection in any of the following ways:

- Allow the objection
 - Disallow the objection
 - Partially allow the objection
 - Selectively allow the objection (this is in the case of administrative penalties)
- Where an objection has been allowed in full or withdrawn, the assessment or revised assessment will be final and conclusive.
 - SARS must notify the taxpayer of its decision in writing:
 - in the case where SARS requested further information, within 60 days after receipt of that information; or
 - in any other case, within 90 days after the date of receipt of the taxpayer's objection.
 - Where SARS requires more time to deal with the objection, due to exceptional circumstances or the complexity of the matter or the principle or the amount involved:
 - The above 60 day period may be extended by another 60 days, or the above 90 days period by another 90 days; and
 - The taxpayer must be informed thereof before expiry of the initial 60 or 90 periods, whichever is applicable

2.3.5 REMEDY IF DISSATISFIED WITH DECISION(S) BY SARS:

- If a taxpayer is not satisfied with the with the final decision of SARS in respect of the objection, he or she may appeal against that decision within the prescribed period

2.4 NOTICE OF APPEAL

2.4.1 GENERAL

- Where an objection is disallowed or partially allowed or selectively allowed (in the case of administrative penalties), the taxpayer has the right to lodge an appeal against the disallowance within the prescribed period.
- Requirements for a notice of appeal:
 - It must be submitted on the prescribed form:
 - NOA – For Personal Income tax, Administrative Penalty and Corporate Income Taxpayers in respect of Assessed Tax
 - ADR2 – For Corporate Income Taxpayers in respect of all other taxes not included on the NOA scope above i.e. VAT etc.
 - The taxpayer must indicate which of the grounds specified in his or her objection, he or she is appealing to;
 - For administrative penalties, it must specify the transaction number which can be acquired from the Penalty Assessment Notice (AP34).
 - It must be submitted within the prescribed period (refer to [2.4.2](#))
 - It must be signed by the taxpayer. Should the taxpayer be unable to personally sign the appeal, the person signing on behalf of the taxpayer must declare the following on the NOA or ADR2 form:
 - The reason why the taxpayer is unable to sign the appeal;
 - That he or she has the necessary power of attorney to sign on behalf of the taxpayer; and
 - That the taxpayer is aware of the appeal and agrees with the grounds thereof;
- Where a taxpayer appeals, the matter can be dealt with in one of the following manners:
 - By the Alternative Dispute Resolution (ADR) process – if the taxpayer elects this option

- By the Tax Board
- By the Tax Court
- In the notice of appeal form, the taxpayer may indicate that he or she wishes to make use of the ADR procedures. SARS must inform the taxpayer within 20 days of the receipt of the notice of appeal whether or not it is of the opinion that the matter is appropriate for alternative dispute resolution.
- If the taxpayer has not indicated on the notice of appeal 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:
 - The taxpayer must be notified accordingly within 10 days of the receipt of the notice of appeal;
 - The taxpayer must, within 10 days from the notice from SARS, submit written notification stating whether or not he or she agrees thereto.

2.4.2 PRESCRIBED PERIOD TO SUBMIT AN APPEAL

- A taxpayer must submit a notice of appeal within 30 days after the date of the notice from SARS informing him or her of the decision in respect of the objection.
- If the taxpayer is unable to comply with this period, he or she may request for an extension in writing and state the grounds for failure to submit the appeal within the prescribed period.
- Where SARS is satisfied that reasonable grounds exist for the delay in noting the appeal, SARS may extend this period (in terms of section 107(2)(a) of the Tax Administration Act).

2.5 APPEAL - ALTERNATIVE DISPUTE RESOLUTION – ADR (Section 103(1), rule 7)

2.5.1 GENERAL

- Alternative dispute resolution procedures (ADR) allow for the resolution of tax disputes outside the litigation arena.
- 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.
- SARS must appoint a facilitator to facilitate the process within 15 days of the taxpayer agreeing to the ADR process.
- The facilitator must, after consulting with the taxpayer and the SARS officer(s) responsible for issuing the assessment under dispute:
 - Determine the procedure to be adopted in the dispute resolution process;
 - Determine a place, date and time at which the parties shall convene the ADR meeting; and
 - Notify each party in writing of which written submissions or any other document should be furnished or exchanged (if this is required at all), and when the submissions or documents are required.
- At the conclusion of the meeting the facilitator must record:
 - All issues which were resolved (through the ADR process);
 - Any issue upon which agreement or settlement could not be reached; and
 - Any other point which the facilitator considers necessary.
- The facilitator must deliver the report to the taxpayer and the Commissioner's designated representative within 10 days of the cessation of the ADR process.

2.5.2 OUTCOME OF ADR

- Any agreement or settlement reached between the parties must be recorded in writing and must be signed by the taxpayer and by the Commissioner's designated official.
- Should the parties not resolve all issues in dispute, the agreement or settlement must stipulate the areas in dispute:
 - That are resolved; and
 - That could not be resolved and on which the taxpayer may continue on appeal to the Tax Board or Tax Court.
- Where an agreement or a settlement is concluded, SARS must issue an assessment to give effect to that agreement or settlement, as the case may be, within a period of 60 days after the date of the conclusion thereof.

2.6 APPEAL TO THE TAX BOARD (Section 109; Section 103(1) rule 8)

2.6.1 GENERAL

- Where an ADR is not pursued or it is unsuccessful, the taxpayer's appeal will first be heard by the Tax Board where:
 - The amount of tax (i.e. excluding interest and penalties) involved does not exceed the amount fixed by the Minister by notice in the Gazette (currently R500 000); or
 - The Commissioner and the taxpayer agree thereto; or
 - No objection to the jurisdiction of the Board to hear the appeal is made at or before the commencement of the hearing of the appeal.
- Where, in view of the grounds of the dispute or legal principles involved, the SARS representative or the Chairperson of the Tax Board is of the opinion that the appeal should rather be heard by the Tax Court, the matter must be referred to SARS Head Office for this purpose. The hearing before the Tax Court will then start afresh.

2.6.2 PRESCRIBED PERIOD FOR HEARING BEFORE THE TAX BOARD

- The appeal must be placed before the Tax Board within 40 days after:
 - The ADR process was terminated, or
 - Where there was no ADR, after receipt of the notice of appeal by SARS.
- A taxpayer will be informed by the clerk of the Board of the time and place of the hearing at least 21 days before the hearing of the appeal by the Tax Board.

2.6.3 THE HEARING OF THE APPEAL BEFORE THE TAX BOARD

- The procedure before the Tax Board is generally inexpensive and informal. The taxpayer, in the case of a natural person who has the capacity to act, may appear in person or in any other case, be represented by his representative taxpayer. The taxpayer or his representative taxpayer may be represented by a legal or other representative only with the permission of the Chairperson. SARS will normally be represented by an officer from the SARS Branch Office concerned.
- During the hearing of the appeal the Chairperson will determine the procedures as he or she sees fit, subject to each party having the opportunity to put his or her case to the board in a reasonable manner.
- The decision of the board must be recorded in writing by the Chairperson, with a short statement of the facts of the case as found by the board and the reasons for its decision.

- If the taxpayer, or his authorized representative fails to appear before the board at the time and place appointed for the purpose, the board may confirm the assessment in respect of which the appeal has been lodged if:
 - It is requested by the SARS representative and
 - Proof is provided that the prescribed notice of the sitting of the board had been submitted to the taxpayer,

The taxpayer will thereafter, not be entitled to request that the appeal be referred to the tax court (in terms of **section 113 (10)**).

Note: these provisions will not apply if the Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are provided by the taxpayer within 7 days from the date on which the appeal was set down for hearing

- If the SARS representative fails to appear before the board at the time and place appointed for the purpose, the board may, at the request of the taxpayer, allow the taxpayer's appeal. SARS will thereafter not be entitled to refer the appeal to the tax court (in terms of **section 113 (11)**).

Note: these provisions will not apply if the Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are provided by the SARS representative within 7 days from the date on which the appeal was set down for hearing

- If the taxpayer has failed to state the grounds of his objection and appeal in definite terms, the Board may, upon the opening of the proceedings, decide what shall be considered to constitute the grounds of the objection and appeal.

2.6.4 DECISION OF TAX BOARD

- The Chairperson of the Board must furnish his or her decision to the clerk within **60** days of the hearing of the appeal.
- The clerk must furnish the SARS representative and the taxpayer with written notice of the Board's decision within 10 days of the receipt of the decision.

2.6.5 REMEDY IF DISSATISFIED WITH THE OUTCOME OF THE APPEAL BEFORE THE TAX BOARD:

- If the taxpayer or SARS does not accept the ruling of the Tax Board, the appeal may be referred to the Tax Court in terms of **section 115 (1)** of the Tax **Administration Act**.
- The appeal will be heard afresh by the Tax Court. However, where the decision of the Tax Board is substantially confirmed, the Tax Court may order costs against the party who did not accept the outcome of the Tax Board's decision.

2.7 APPEAL TO THE TAX COURT (Section **107**; Section **103** rules 9 to 29)

2.7.1 GENERAL

- The Tax Court will hear all cases where:
 - The tax involved exceeds the amount fixed by the Minister by notice in the Gazette (currently R 500 000);
 - The taxpayer or SARS is not satisfied by the outcome of the appeal before the Tax Board and wishes to pursue the appeal; and
 - There is a tax principle involved, irrespective of the monetary value of the appeal.
- This is a formal court process and the taxpayer can represent him or herself or can be represented in court by a legal representative or any other person with the necessary power of attorney signed by the

taxpayer concerned.

- The appeal goes through several stages as per rules 9 – 29 of section 103. These rules are listed below:
 - Rule 9. Limitation of issues in dispute
 - Rule 10. Statement of grounds of assessment
 - Rule 11. Statement of grounds of appeal
 - Rule 12. Issues in appeal
 - Rule 13. Amendments of grounds of assessment or grounds of appeal
 - Rule 14. Discovery of documents, information or things
 - Rule 15. Notice of expert witness
 - Rule 16. Pre-trial conference
 - Rule 17. Date of hearing
 - Rule 18. Dossier
 - Rule 19. Places at which Court sits
 - Rule 20. Procedures not covered by the Act and Rules
 - Rule 21. Subpoenas
 - Rule 22. Procedures in Court
 - Rule 23. Withdrawal or concession of appeal
 - Rule 24. Postponement or removal of case from the roll
 - Rule 25. Pagination of documents
 - Rule 26. Extension of prescribed periods, condonation and non-compliance
 - Rule 27. Costs
 - Rule 28. Witness fees

2.8 CIRCUMSTANCES WHERE IT IS INAPPROPRIATE TO SETTLE A DISPUTE (Section 145)

- It will be inappropriate and not to the best advantage of the state to settle the dispute where:
 - No circumstances contemplated in Section 146 exist (refer to 2.9 below) and:
 - If in the opinion of SARS, the action on the part of the taxpayer which relates to the dispute, constitutes tax evasion or fraud; or
 - 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; or
 - 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;
 - It is in the public interest to have judicial clarification of the issue and the case is suitable for this purpose;
 - The pursuit of the matter through the courts will significantly promote compliance and the case is suitable for this purpose.

2.9 CIRCUMSTANCES WHERE IT IS APPROPRIATE TO SETTLE A DISPUTE (Section 146)

- 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.
- SARS must have regard to a number of factors, including:
 - Whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of SARS' resources;
 - The cost of litigation in comparison to the possible benefits with reference to:
 - The prospects of success in a court;
 - The prospects of the collection of the amounts due; and
 - The costs associated with collection.

- Whether there are any:
 - Complex factual or quantum issues in contention; or
 - Evidentiary difficulties
 Which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;
- 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
- 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.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act No 28 of 2011
Other Legislation:	None
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
GEN-DISP-02-FAQ1	External Frequently Asked Questions: Dispute Administration	All
GEN-PEN-05-POL1	External Policy - Penalties Administration and Debt Management	All

4 DEFINITIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
ADR1	Alternative Dispute Resolution – Notice of Objection
ADR2	Alternative Dispute Resolution – Notice of Appeal
AP34	Administrative Penalty Assessment Notice
Client	Any person or enterprise conducting business with SARS
CIT	Company Income Tax
Commissioner	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.
Day	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.
Date of assessment	In relation to any assessment, means the date specified in the notice of the assessment as the due date or, where a due date is not so specified, the date of the notice of assessment
Deliver	In terms of rule 1 of the section 107A rules, ‘deliver’ means- (a) handing the relevant document to the relevant person; (b) sending the relevant document to the relevant person by registered post; (c) telefaxing the relevant document to the relevant person; (d) transmitting the relevant document to the relevant person by electronic means; or (e) any other means of service authorised by the Court consisting of the President of the Court sitting alone: 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
Dispute	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.
Exceptional Circumstances	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.
PAYE	Pay As You Earn
PIT	Personal Income Tax
Reasonable Grounds	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.
Remit / Remission	To pardon (an offence); to discharge a portion of debt or payment.
RFR	Request for Remission
SARS	South African Revenue Service
SDL	Skills Development Levy
Settle	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.
The Act	Income Tax Act No 58 of 1962
UIF	Unemployment Insurance Fund
VAT	Value Added Tax

5 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Group Executive: Assurance Audit
Policy Owner:	Executive: Enterprise Business Enablement – Assessment and Services Portfolio
Author:	Tebogo Mogosoana
Detail of change from previous revision:	<ul style="list-style-type: none"> Revision 4: Updated the document with Tax Administration Act changes.
Template number and revision	POL-TM-02 - Rev 9