



EFFECTIVE DATE
2012.10.01

EXTERNAL FREQUENTLY ASKED QUESTIONS PENALTY MANAGEMENT

1 PURPOSE

- The purpose of these frequently asked questions is to provide guidelines regarding penalties **terms of Chapter 15 of Tax Administration Act 28 of 2011 (the Act)**.
- This document is not intended for use as a legal definition/explanation or standard operating procedure. It is intended only to provide information, and does not constitute an opinion or statement of a practice that is binding on SARS.

2 SCOPE

- This document is intended to provide general information to all taxpayers on penalties, the request for remission process and penalty debt management.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Tax Administration Act, No 28 of 2011: Chapter 15.
Other Legislation:	Promotion of Administrative Justice Act, No. 3 of 2000: Section 6
International Instruments:	None

3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	QUALITY REQUIREMENTS
GEN-PEN-05-POL01	External Policy - Penalties Administration	All

4 DEFINITIONS AND ACRONYMS

Taxpayer	Any person or enterprise conducting business with SARS
PAYE	Pay As You Earn
PIT	Personal Income Tax
SARS	South African Revenue Service
The Act	Income Tax Act No 58 of 1962
AP34	Penalty Assessment Notice
AA88	Agent Appointment Notice
RFR	Request for Remission
ITS	Income Tax System
SOP	Standard Operating Procedure

5 FREQUENTLY ASKED QUESTIONS

5.1 PENALTY MANAGEMENT

QUESTION	ANSWER
1. What are administrative penalties?	An Administrative penalty is a penalty imposed by SARS in respect of any incidence of non-compliance as defined in section 210 of the Tax Administration Act.
2. What are PAYE penalties?	PAYE penalties are imposed in terms of section 213 read with paragraph 14(6) of the Fourth Schedule to the Income Tax Act No.58 of 1962 for failure to submit a fully reconciled, accurate and complete EMP501 to SARS by the due date.
3. For which tax types is the penalty applicable at the moment?	Penalties will be imposed for Personal Income Tax (PIT) and Pay As You Earn (PAYE) Tax related non-compliances only.
4. For which non-compliances will the penalties be imposed?	An exhaustive list of the types of non-compliance targeted for imposition of administrative penalties are listed in the regulations promulgated under section 75B of the Income Tax Act, No 58 of 1962, and amongst others include: <ul style="list-style-type: none"> ▫ Failure to register as a taxpayer ▫ Not informing SARS of any change of address ▫ Failure to submit a return ▫ An employer failing to submit fully reconciled, accurate and complete EMP501 .
5. How are penalties calculated?	The penalty amount in accordance with the regulations, is based on: <ul style="list-style-type: none"> ▫ For PIT administrative penalties, sliding scale as detailed in the fixed amount penalty table. The penalty amount is calculated based on the taxpayer's taxable income bracket. This means that a penalty of R250 for each return not filed will be levied against a taxpayer earning up to R250 000 per annum, and so on. ▫ For PAYE, as a percentage based for 1% of the total PAYE payable per month in respect of the period relating to the outstanding EMP501 up to a maximum of 10% and subject to the circumstances of the case, this penalty may be proportionally remitted depending on the degree of compliance.
6. How will the penalty be levied on a non-compliant taxpayer?	Penalty amounts are systematically levied for one or more reasons provided in FAQ6 above.
7. How is the taxpayer notified of the imposed penalties?	Taxpayers are informed of the penalties imposed on them by means of the Penalty Assessment Notice (AP34).
8. What happens if the taxpayer does not	The penalty recurs if the taxpayer does not remedy/rectify the offence/non-compliance that gave rise to the administrative penalty by the same amount

QUESTION	ANSWER
remedy the offence/non-compliance that gave rise to the administrative penalty?	for every month that the non-compliance has not been remedied / rectified, for up to 35 months or, in the case where a taxpayer's address is unknown, up to 47 months.
9. What must I do if I receive a Penalty Assessment Notice (AP34) from SARS?	<p>A non-compliant taxpayer who receives a Penalty Assessment Notice (AP34) must :</p> <ul style="list-style-type: none"> ▫ For PIT administrative penalties, remedy the non-compliance by submitting the outstanding tax return and/or updating your address with SARS ▫ For PAYE, submit the outstanding EMP501 reconciliations / submit an employees' tax certificates (i.e. Missing IRP5/IT3(a) certificates) and/or rectify the incorrect / inaccurate IRP/IT3(a)s. <p>Furthermore, pay the penalty amount by the due date. This must be paid even though you have remedied your non-compliance.</p>
10. What should I do if I do not agree with the penalty that has been levied against me?	<p>For incorrectly imposed penalties preferably submit either a completed return for the relevant year(s) or period(s) in question or an RFR with the reason "Not Liable" where there are mitigating reasons for non-submission of the return</p> <p>For correctly imposed penalties where only a remission is required submit completed Request for Remission of Penalty (RFR1) form. However, such an application will only be considered if the non-compliance has been remedied on or before the due date mentioned in the notice of the penalty.</p> <p>In the RFR you must explain the exceptional circumstances which led to your non-compliance. The RFR will only be allowed where circumstances beyond your control resulted in your non-compliance.</p> <p>Note: The non-compliance does not need to be remedied where the reason for disputing the penalty is: Not liable, SARS error or Death/Liquidation/Sequestration.</p>
11. How can I verify that my returns/address is up to date?	You can visit any SARS branch or call the SARS Contact Centre on 0800 00 7277 (SARS).
12. How can I verify whether or not I have a penalty?	You can call the SARS Contact Centre on 0800 00 7277 (SARS). You will be requested to provide your Income Tax reference number and identity number for authentication. Once you have been successfully authenticated, the system will indicate whether or not you have an existing penalty.
13. What happens if I lost my old returns?	<p>You urgently need to request a new Income Tax return using any of the following channels:</p> <ul style="list-style-type: none"> ▫ eFiling ▫ Your nearest SARS branch ▫ The SARS Contact Centre on 0800 00 SARS (7277).
14. In what format must my outstanding returns be submitted?	Old Income Tax returns in previous formats will not be accepted by SARS. Outstanding returns must be submitted on the latest ITR12 Income Tax return form. Indicate in the section provided on the first page of the return

QUESTION	ANSWER
	what year of assessment the return is in respect of. If you submit an old return it will be mailed back to you with a copy of the latest ITR12 return for you to complete and re-submit. The return will not be marked as 'submitted' until the properly completed new format return is received. That means you can still be penalised – or that an existing penalty will continue to be levied until such time as the return is submitted in the correct format.
15. Why won't SARS accept old format Income Tax returns?	Each year the Income Tax process changes due to changes to the tax laws and tax rates. Over the past few years SARS has significantly enhanced its Income Tax return process including reducing the Income Tax return from twelve pages to only two, and doing away with the need for supporting documents. The entire Income Tax system is now automated and developed to manage the process. If we were to allow people to submit returns from three, four or even ten years ago, then SARS would have to retain costly manual processes for each of the different years of assessment.
16. Does it mean that my previous year's Income Tax return will be assessed using the current Income Tax laws and provisions?	No. Your old returns will be assessed using the income and deduction allowances applicable to the relevant year of assessment. SARS's Income Tax calculation system is able to calculate tax accurately using the new returns for any year since 1975.
17. I have an outstanding return for 2006 when SARS still required supporting documents with Income Tax returns. Must I now submit these supporting documents?	No. You must use the latest return format (ITR12) for Income Tax Return. You do not need to submit supporting document. However, you are required by law to retain these for a period of five years after you submit your return.

5.2 REQUEST FOR REMISSION

QUESTION	ANSWER
1. What is a Request for Remission (RFR)?	Request for remission of the penalty is a means for the taxpayer to dispute the penalty that was levied against his/her account, and to request that the penalty be waived.
2. Where can I obtain a RFR form?	The RFR form will be in a bar-coded format and is available: <ul style="list-style-type: none"> ▫ On eFiling: This channel is available to registered eFilers ▫ At a SARS branch: Request a form by visiting the nearest branch office ▫ On request from the SARS Contact Centre: Call 0800 00 SARS (7277), to have a RFR1 posted to you. ▫ On e@syfile: This channel is available to registered e@syfilers who wish to dispute the PAYE penalty
3. How can I submit my RFR?	Make your submission via: <ul style="list-style-type: none"> ▫ eFiling: This channel is available to registered eFilers ▫ The nearest SARS branch: The RFR1 form is available at your

	<ul style="list-style-type: none"> local branch for completion and submission ▫ Manual submission: The completed RFR1 form can be submitted via post or at the drop-off box at your nearest SARS branch office. ▫ On e@syfile: This channel is available to registered e@syfilers who wish to dispute the PAYE penalty
4. Will my RFR be considered if I have not remedied the non-compliance for which the penalty was raised?	No. In order for a RFR to be considered, the relevant non-compliance must have been remedied at the time when the RFR is submitted (except in the instance where the taxpayer's reason for dispute is not liable to file an Income Tax return or due to a SARS error or death/liquidation/sequestration). Please refer to point 8 above.
5. Can I dispute both Income Tax and PAYE penalties transactions on a single RFR1?	No. The dispute process for penalties is tax specific. This means that Income Tax and PAYE transactions must be disputed using a separate RFR1 forms.
6. What if my RFR was not allowed?	The taxpayer may object to the outcome of the RFR if he/she does not agree with the outcome. The objection must be lodged on the prescribed Notice of Objection form (NOO). This form is available on eFiling, e@syfile (For disputing PAYE penalty) at any SARS branch or on request from the SARS Contact Centre.

6 QUALITY RECORDS

Number	Title
AP34	Penalty Assessment Notice
AA88	Third party Appointment Notice
RFR1	Request for Remission form

7 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Group Executive: Compliance Centres Operations
Policy Owner:	Executive: EBE - Assessment and Services Portfolio
Author:	Tebogo Mogosoana
Detail of change from previous revision:	Revision 5 – Document updated from AS-GN-46-FAQ1 to GEN-PEN-05-FAQ1 and Updates to the PAYE penalty solution. Revision 6: Updated the document with the Tax Administration Act requirements and removal of debt management related information.
Template number and revision	POL-TM-12 - Rev 4