

SOUTH AFRICAN REVENUE SERVICE

ALTERNATIVE DISPUTE RESOLUTION:

What to do if you dispute your tax assessment

Date of First Issue : 31 October 2014



www.sars.gov.za

What to do if you dispute your tax assessment

New dispute resolution rules¹ have been issued under the Tax Administration Act, 2011. It forms part of a review of the resolution of tax disputes to enhance service delivery. These rules apply from 11 July 2014.

The new rules impact on the following:

- Reasons for assessment
- Objection to an assessment
- Appeal against disallowance of an assessment
- Post-appeal stage
- Procedural applications relating to a dispute
- Pre-hearing formalities

1. Reasons for an assessment

Once an assessment has been raised, you may request reasons therefor in writing within 30 business days from the date of the assessment.

2. Objection to an assessment

If you have received an assessment and you feel aggrieved by it, you may object thereto.

The objection must comply with the following:

- It must be on a Notice of Objection (form NOO² or ADR1) and include substantiating documents.
- It must specify detailed grounds of objection
- It must be signed by you
- It must be delivered to SARS at the address specified on the assessment, within 30 business days after the date of assessment

An objection that does not comply with the requirements may be invalid. In terms of the rules you may submit a revised objection within 20 days of receipt of the notice of invalidity by SARS.

¹ Rules promulgated under section 103 in Notice 550 on 11 July 2014 (GG 37819).

² The NOO is only available on eFiling – thus when you are registered as an eFiler.

3. Appeal against disallowance of an assessment

If you are dissatisfied with the decision of SARS following the objection, you may appeal against that decision.

The Notice of Appeal must be delivered to SARS within 30 business days from the date of receiving notice of SARS's decision in respect of the objection.

The appeal must be on the Notice of Appeal (form NOA³ or ADR2) prescribed by SARS.

You must indicate on the Notice of Appeal in respect of which of the grounds specified in the objection you wish to appeal.

You may also indicate whether you wish to make use of the Alternative Dispute Resolution (ADR) procedures.

4. Post-appeal stage

You may channel your tax dispute with SARS through one of the following:

- Alternative Dispute Resolution (ADR) mechanism, which is intended to be used where both the taxpayer and SARS agree to resolve a particular tax dispute outside of court
- The Tax Board, which has jurisdiction in respect of those matters where the tax in dispute does not exceed R500 000
- The Tax Court, which has jurisdiction over matters where the tax in dispute is in excess of R500 000

5. ADR

The ADR process can be initiated by–

- you, when you indicate in your Notice of Appeal (NOA or ADR2) that you wish to make use of the ADR process. SARS will then inform you within 30 business days of receipt of the Notice of Appeal whether or not it is of the opinion that the matter is appropriate for ADR; or
- SARS, if it is of the opinion that the matter is suitable for ADR, and you agree thereto

6. Period of ADR

ADR proceedings commence 20 business days after the date of receipt by you of SARS's notice that the matter is suitable for ADR.

The parties must finalise the ADR proceedings not later than 90 business days from the date of receipt of the Notice of Appeal, or within a further period as SARS may agree to.

³ The NOA is only available on eFiling – thus when you are registered as an eFiler.

7. Appointment of a facilitator

SARS may, if you and SARS so agree, appoint a senior SARS official to facilitate the proceedings.

8. Reservation of rights

You and SARS participate in ADR proceedings with full reservation of the rights of each party.

ADR proceedings are not intended to be of record.

Similarly, any representation made, or document tendered in the course of such proceedings, is made or tendered without prejudice.

9. Outcome of ADR agreement or settlement

A dispute subjected to the ADR process may be resolved by agreement, or settlement between you and SARS.

SARS must issue an assessment to give effect to the agreement or settlement that was reached between the two parties, within a period of 60 business days from the date of concluding the agreement or settlement.

10. Pre-hearing formalities

If ADR is unsuccessful, the matter will proceed and a number of formalities must be complied with that consist of a number of stages. The purpose thereof is to limit the issues in dispute and to crisply define the remaining issues to be adjudicated on by the Tax Court.

10.1 Stage 1 – Setting of grounds of appeal

- Statement by SARS of grounds of assessment and opposing appeal
- Statement by you to set out your grounds of appeal
- Reply by SARS to your statement of grounds of appeal
- You must apply to the Registrar of the Tax Court for the set down of your appeal

10.2 Stage 2 - Discovery

The purpose of discovery is to enable both you and SARS to obtain documents or information related to the crystallised issues to avoid surprises and enable proper preparation of the case.

10.3 Stage 3 – Pre-trial conference

A pre-trial conference must be held within 60 business days before the date of the hearing determined by the Registrar of the Tax Court.

At the conference both parties must attempt to reach consensus on the evidentiary issues. At the conclusion of the pre-trial conference, SARS must deliver minutes of the conference to you.

10.4 Stage 4 - Hearing

The Registrar will have delivered to you and SARS a written notice of the time and place appointed for the hearing of the appeal, at least 80 business days before that hearing.

You may request the Registrar to subpoena witnesses for the hearing.

SARS must deliver to you and the Registrar a dossier containing all the relevant documents in the dispute.

On the day of the hearing you or your representative will generally commence the proceedings.

The Tax Court may reserve its judgment and you or SARS may appeal to the higher courts if unhappy with the judgment.

11. Further information

For further information about dispute resolution, you may–

- contact your own tax advisor or tax practitioner
- visit your nearest SARS branch office
- contact the SARS National Contact Centre at–
 - 0800 00 7277 if calling locally
 - +2611 602 2093 if calling from outside the Republic
- visit the SARS website at www.sars.gov.za

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Date of this issue: 31 October 2014