



OFFICE OF THE  
**TAX OMBUD**

*Ensuring fairness*

**APEAL PROCEDURE**

**Office of the Tax Ombud**  
**Fundiswa Ngqeleni**  
**Senior Legal Specialist**

# Decision on Objection

## Section 106(2)

- SARS makes a decision to allow, disallow or partially allow the Objection.

## Section 106(4) & (5)

- SARS must notify the Taxpayer of the decision;
- SARS must provide basis for the decision; and
- SARS must provide the Taxpayer with a summary of the procedures for appeal.

# Notice of Appeal

## Section 107(1)

- The Taxpayer may appeal against the decision to disallow or partially allow an objection.
- An appeal to an objection that was allowed in full is invalid.

## Section 107(3)

- An appeal that does not comply with the form, manner and prescribed period is invalid.

# Notice of Appeal (Cont.)

## Rule 10(2)

The Notice of appeal must:

- be in the prescribed form (NOA or ADR2) that differs for different tax types;
- specify the address at which the Taxpayer will accept delivery of documents if the Taxpayer is an e-filer;

# Notice of Appeal (Cont.)

Specify in detail:

- The grounds of the objection.
- The grounds for disputing the decision on the objection.
- Any new ground on which the Taxpayer is appealing, but the new grounds may not constitute a new objection.
- Be signed by the Taxpayer or its duly authorised representative.
- Indicate whether or not the Taxpayer wants to make use of the ADR procedure.

# Appeal Timeframes

## Rule 10(1)(a)

- The Notice of appeal must be submitted within 30 days after the notice of disallowance/partial allowance was delivered to the Taxpayer.

## Section 107(2)

- The 30 day period may be extended by:
- 21 days if reasonable circumstances for the delay;
- 45 days if exceptional circumstances for the delay.

# Appeal Timeframes (Cont.)

In other words SARS does not have a discretion to attend to an appeal submitted more than 75 days after delivery of the notice of disallowance/partial allowance. Any appeal lodged after this timeframe will be invalid.

# Types of Appeal Forums

An appeal to the decision on objection can be referred to:

- Alternative Dispute Resolution (ADR);
- Tax Board; or
- Tax Court.



# ADR

- The purpose of ADR is to reach agreement without spending money and time on formal Court Proceedings.
- The facilitator is a SARS official who must act independently and facilitate settlement discussions between the parties.
- A facilitator can make a recommendation but cannot make binding findings.
- Discussions in the ADR meeting cannot be used in subsequent Tax Board or Tax Court proceedings.

# ADR (Cont.)

## Rule 13

- An appeal can only be referred to ADR by agreement between the parties.
- SARS must notify the Taxpayer within 30 days after receipt of the NOA/ADR2 whether or not the matter is suitable for ADR;
- If the Taxpayer did not elect ADR on the NOA/ADR2 form, the Taxpayer must within 30 days after receipt of the notice that the matter is suitable for ADR notify SARS that they agree.

# ADR (Cont.)

## Rule 15(3), 13(1) & (2)

SARS must finalise the ADR within 90 days of the date on which:

- SARS notified the Taxpayer the matter is suitable for ADR where the Taxpayer elected; or
- The Taxpayer agreed to the ADR procedure after SARS notified them the case is suitable for ADR where they did not elect.

# ADR (Cont.)

## Rule 25(1) & (2)

- The 90 day period may be extended before expiry on agreement between the parties.
- If the period is not extended, the ADR will automatically be terminated on the day after lapse.

## Rule 19(3) and 25(3)

The ADR will be terminated if:

- a party fails to attend the ADR meeting;
- a party fails to furnish information requested by the other party;

# ADR (Cont.)

the matter cannot be settled; or

the 90 period lapses with no agreement for extension.

- The Taxpayer must within 20 days after termination inform SARS that they want to refer the matter to the Tax Board or Tax Court.

Rule 56 and Section 129(2)

- If the Taxpayer does not notify SARS of intention to proceed to Tax Board or Tax Court, SARS can only finalise the Appeal by obtaining default judgement against the Taxpayer.

# Tax Board and Tax Court

- If the parties do not agree to use the ADR procedure; or
- If the ADR procedure was terminated and the Taxpayer notified SARS that it wants to proceed with the appeal, SARS must refer the matter to:
  - Tax Board if the amount in dispute is less than R500,000.
  - The Chairperson of the Tax Board is an independent person appointed by SARS;

Both parties present their cases to the Chairperson who makes a binding finding.

# Tax Board and Tax Court (Cont.)

- Tax Court if the amount in dispute is higher than R500,000.
- Formal Court sitting where the presiding officer is an independent person;
- Both parties present their cases to the Presiding Officer who makes a binding finding.
- These two forums are governed by their own procedures and there are remedies available to a Taxpayer if SARS does not comply and therefore OTO does not have mandate to attend to complaints relating thereto.

# Appeals Process Flow

Where the amount in dispute is under R500,000.

- a) Decision to disallow/partially allow the objection;
- b) ADR if suitable (local SARS Legal Dept);
- c) Tax Board;
- d) Tax Court;
- e) High Court;
- f) Supreme Court of Appeal.



# Appeals Process Flow (Cont.)

Where the amount in dispute is over R500,000.

- a) Decision to disallow/partially allow the objection;
- b) ADR if suitable (Head Office SARS Legal Dept);
- c) Tax Court;
- d) High Court;
- e) Supreme Court of Appeal.

# How to contact the OTO

- ❖ *Phone: 0800 662 837 or (+27) 12 431-9105*
- ❖ *Fax: (+ 27) 12- 452-5013 or 0102083054*
- ❖ *Email: [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)*
- ❖ *Download the [complaints form](#) from our website: [www.taxombud.gov.za](http://www.taxombud.gov.za), or request a manual form.*
- ❖ *Physical address: Menlyn Corner, 2<sup>nd</sup> Floor, 87 Frikkie de Beer Street, Menlyn*
- ❖ *Postal address: P O Box 12314, Hatfield, 0028*



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**THANK YOU**