



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*
- ❖ *Download the [complaints form](#) from our website: www.taxombud.gov.za, or request a manual form.*
- ❖ *Physical address: Menlyn Corner, 2nd Floor, 87 Frikkie de Beer Street, Menlyn*
- ❖ *Postal address: P O Box 12314, Hatfield, 0028*



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THANK YOU