



# **AUTOMATIC EXCHANGE OF INFORMATION ADMINISTRATIVE PENALTY**

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## 1 PURPOSE

- a) The purpose of this document is to describe the Automatic Exchange of Information (AEOI) administrative penalty which may be imposed on a Reportable Financial Institution (RFI). This document further demonstrates how communication of the penalty is received and extracted via eFiling. Lastly disputing the administrative penalty imposed is also described.

## 2 INTRODUCTION

- a) The Automatic Exchange of Information (AEOI) (also called routine exchange) involves the systematic and periodic transmission of “bulk” taxpayer information by a source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc.). It encompasses periodic reporting of South African and non-South African financial institutions (residing in SA) on all their clients that are identified as being foreign tax residents.
- b) AEOI is a collective term to include the Intergovernmental Agreement (IGA) signed with the United States of America; and the Common Reporting Standards (CRS) via the Organisation for Economic Co-operation and Development (OECD) with its accompanying CRS Regulations. These international agreements were established such that South African Reportable Financial Institutions (RFIs) must report the identified reportable accounts or account holders to South African Revenue Services (SARS). In return SARS will then collate the information received and forward it to the receiving institutions / countries.
- c) To enhance compliance and integrity of the information which will be received from the RFIs, SARS may enforce compliance in terms of Section 210 of the Tax Administration Act. The Act prescribes various types of non-compliance which are subject to fixed administrative penalties. Imposition of compliance in this regard, is the AEOI administrative penalty which will be imposed to a non-compliant RFI. This guide will illustrate when the AEOI penalty is imposed and how the RFI may dispute the penalty.

## 3 WHEN IS THE AEOI PENALTY IMPOSED

- a) A Reporting Financial Institution (RFI) essentially includes South African financial institutions (financial institutions resident in South Africa and/or branches of non-resident financial institutions located in South Africa) that are Depository Institutions; Custodial Institutions; Investment Entities; or Specified Insurance Companies. SARS receives the CRS / FATCA data, from the RFI, via the Third-Party Data platform. Enrolment and activation of this platform is crucial before submission. For further information on enrolment and activation, refer to the following guides:
  - i) GEN-ENR-01-G01 - Guide for the submission of Third-Party Data using the Connect Direct channel - External Guide
  - ii) GEN-ENR-01-G02 - Guide for Submission of Third-Party Data Using the HTTPS Channel - External Guide
- b) The AEOI process requires the identified RFIs to submit a data file, nil file or a FTI01 return to SARS. The nil file or FTI01 return must be completed and submitted when the RFI has identified no reportable accounts. If there are reportable accounts identified by the RFI, a data file must be completed and submitted as per the external Business Requirements Specification (BRS).
- c) For more information on how to submit the data file, nil file or the FTI01 return, please refer to the following external guide and BRS:
  - i) GEN-ENR-01-G04 – How to submit the FTI01 and declare Foreign Tax Information FTI02 – External Guide
  - ii) SARS\_External\_BRS\_2016\_Automatic\_Exchange\_of\_Information\_v\_2\_0\_0-25.
- d) Once identified reportable accounts have been submitted via a data file or no identified reportable accounts has been submitted by submitting the nil return via the FTI01 return or nil file has been completed and submitted as per external BRS, the RFI must submit the FTI02 return to declare the data

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file, nil file or FTI01 form submitted. When the data file, nil file or FTI01 return together with the FTI02 return has been submitted successfully, SARS will record the RFI's submission as **complete**.

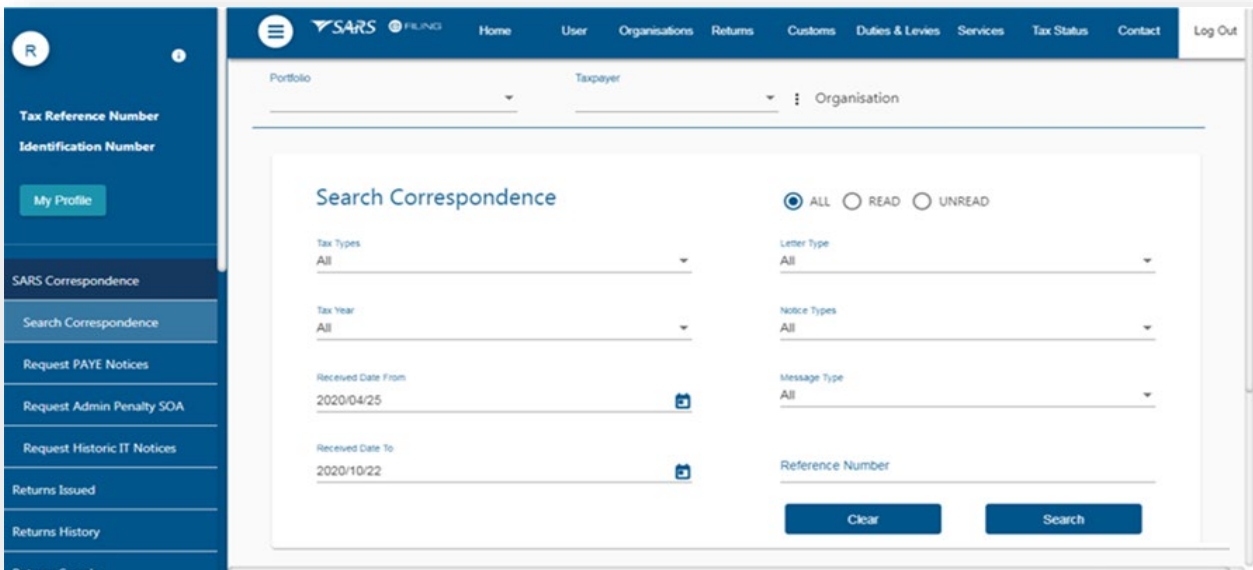
**Note:** Failure of the RFI to submit a data file, nil file or the FTI01 form together with the FTI02 return by the gazetted date, could result in an AEOI administrative penalty being imposed against the identified RFI.

- e) The AEOI administrative penalty levied on the RFI is a monthly recurring penalty which may be levied up to a maximum of 36 months. Each recurring penalty will have a unique transaction number
- f) The following file or returns must be submitted via the relevant channels before the submission of the FTI02 return:
  - i) Nil returns via the completion and submission of the FTI01 form via eFiling;
  - ii) Nil file via the uploading of a file specified as per external BRS; and
  - iii) Full data file submission via HTTPS or Connect Direct.
- g) Refer any other queries relating to FTI to the following email address:
  - i) SARS\_ThirdPartyData\_Support@sars.gov.za.
  - ii) The subject line of the email must be addressed as **FATCA/CRS**.

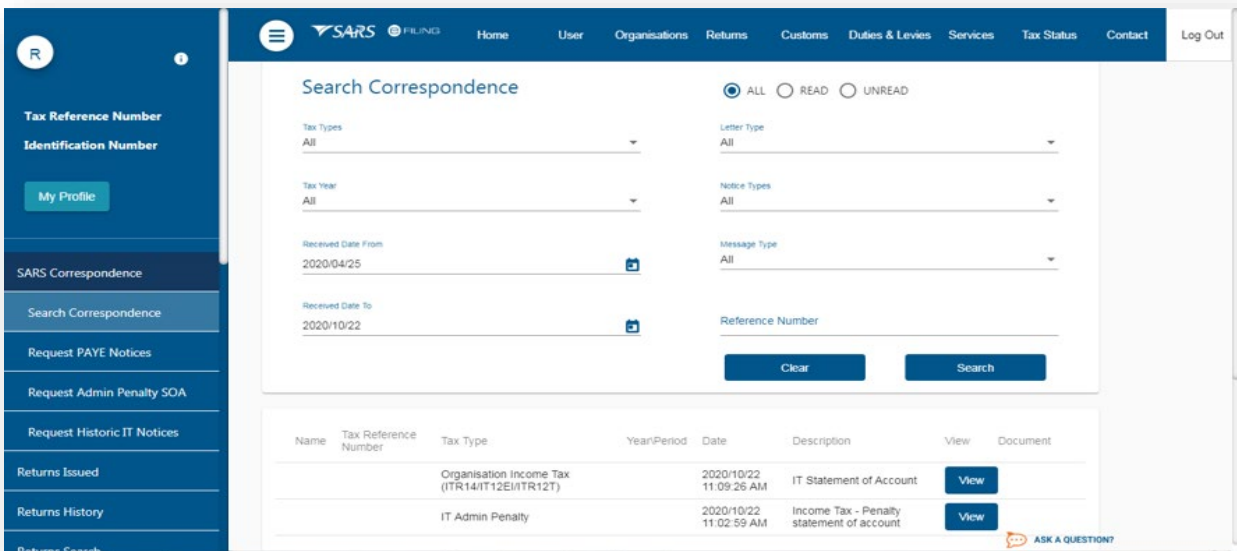
**Note:** The onus is on the RFI to validate the correctness of the submitted data files and ensure that all the data files pertaining to the RFI has been submitted and declared successfully as per the respective regulations and the external BRS.

#### **4 HOW TO OBTAIN NOTIFICATIONS OR THE STATEMENT OF ACCOUNT PERTAINING TO THE AEOI ADMIN PENALTY**

- a) SARS will notify the RFIs representative of the initial penalty imposed via SMS and/or an email. The RFI representative will be required to log into the eFiling site and navigate to the Admin Penalty search page to view the AEOI Admin penalty imposed.
- b) To view the AEOI notifications proceed as follows:
  - i) Click on **Returns** displayed on the main menu
  - ii) Click on **SARS Correspondence** displayed on the left menu
  - iii) Click on **Search Notices**
  - iv) The following **Notice Search** page will be displayed:



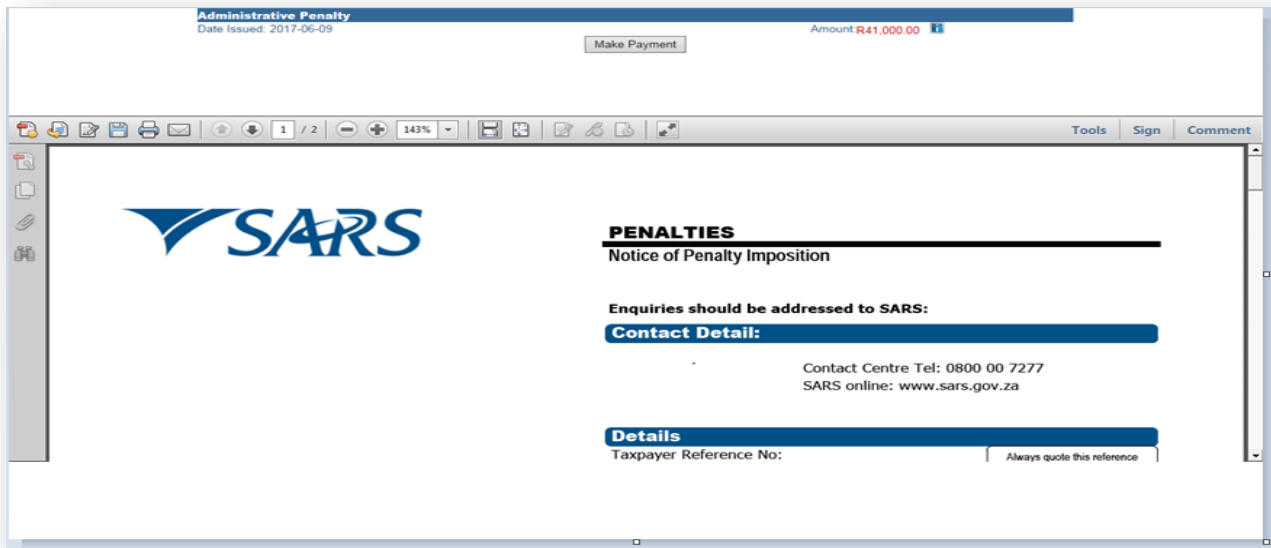
- c) On the **Search Correspondence** page:
- i) Select **AEOI Tax** on the **Tax Type** drop-down list
  - ii) On the **Notice Type** drop-down list, select **AEOI Penalty Notice**
  - iii) Click on **Search**



**Note the following;** the description of your search will yield the following with regards to AEOI Admin penalty.

- The Description will read **Notice of Penalty Imposition AEOI**
- The Notice type will read **AP34AEOI**

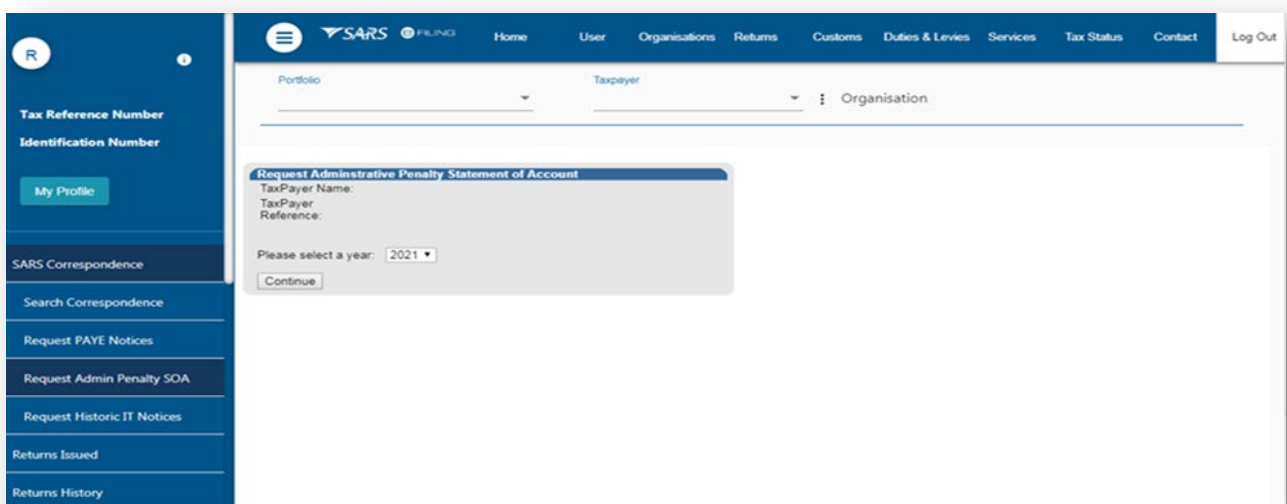
- d) Click on the appropriate **View** hyperlink. The notification letter will be displayed.



Note that the dispute button displayed at the top of the penalty notification letter is not appropriate for disputing this administrative penalty. The prescribed process for disputing an AEOI administrative penalty will be discussed in the next section.

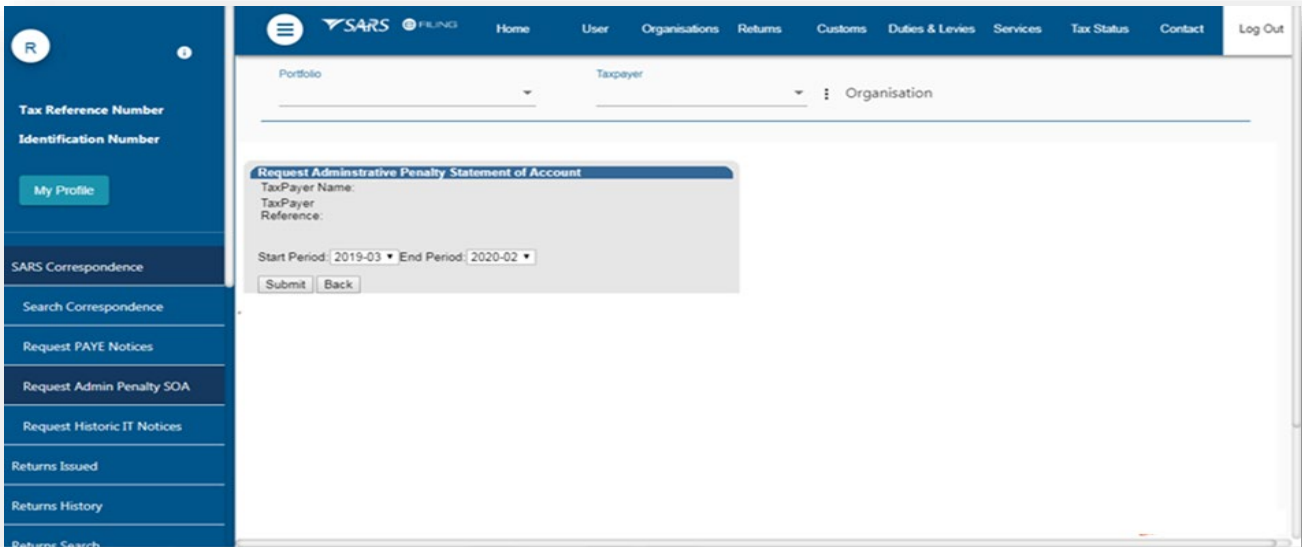
#### 4.1 HOW TO ACCESS THE STATEMENT OF ACCOUNT

- a) To access the AEOI statement of account, proceed as follows:
  - i) Click on **Returns** displayed on the main menu
  - ii) Click on **SARS Correspondence** displayed on the left menu
  - iii) Click on **Request Admin Penalty SOA**
  - iv) The following screen will be displayed

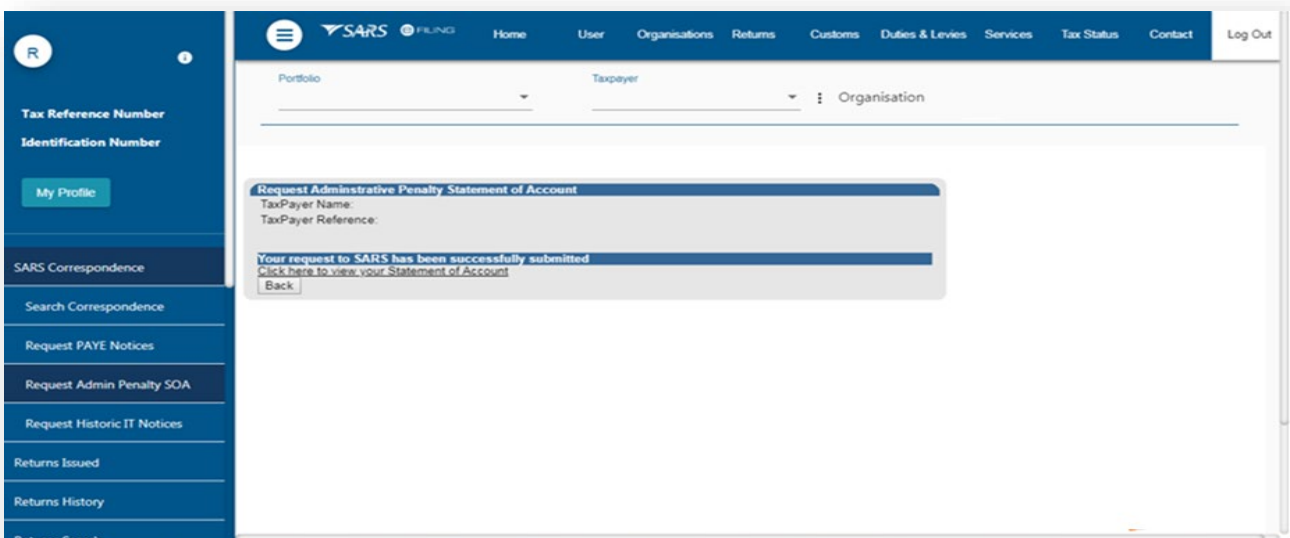


- b) Select the appropriate **Year**
  - i) Note that the AEOI admin penalties are applicable from the 2017 year of assessment onwards.
  - i) Click on **Continue**.

- c) Note that once the year has been selected, the **Start Period** and **End Period** drop down list will contain the months of the financial period of the year selected.
- d) Also note that the AEOI Admin Penalty SOA may be requested even though the RFI has not received the penalty notice via eFiling.



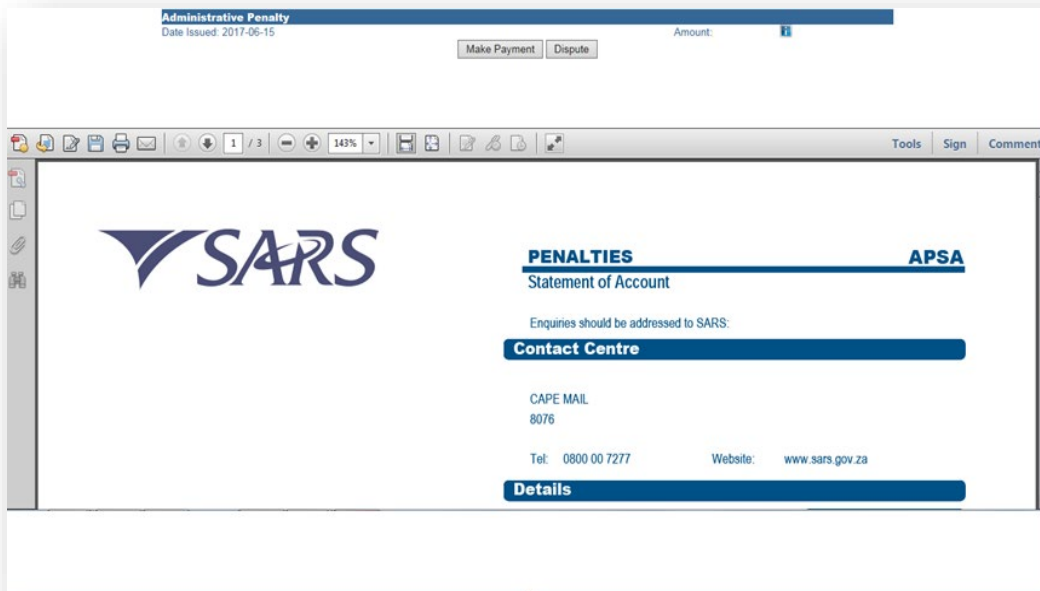
- e) Select the appropriate **Start Period** and **End Period**.
- f) Click on the **Submit** button.
- g) If there is a Statement of Account issued to the RFI, the following screen will be displayed:



- h) Select **Click here to view your Statement of Account** hyperlink to view the Statement of Account.
- i) Note that if there is no Statement of Account, the following message will be displayed:

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- i) **“There are no previously issued Penalty Statements of Account for you on record”**
- j) If the taxpayer has both PIT and AEOI Admin Penalties, the **Dispute** button displayed is for the PIT Admin Penalties only as the AEOI Dispute process is a manual process. More on the AEOI dispute process is discussed in section 5 below.



## 5 DISPUTING AN AEOI ADMIN PENALTY

- a) A dispute is invoked when a taxpayer is not in agreement with the imposed penalty. The dispute process for the AEOI is slightly different in that it is a manual process. The taxpayer/representative must download the dispute form (DISP02) from the SARS website [www.sars.gov.za](http://www.sars.gov.za) and then complete it. (Completing the DISP02 form is covered in the section below)
- b) Once the DISP02 form has been completed, the taxpayer/representative must submit the completed DISP02 form together with supporting documents to one of the following SARS channels:
- i) SARS Branch Office
  - ii) SARS Mail Centre
- c) Note that the LBC clients must submit the completed DISP02 form together with supporting documents to the following email address:
- i) [AEOIDisputesLBC@sars.gov.za](mailto:AEOIDisputesLBC@sars.gov.za)
- d) The supporting documents must include for example all the (email) communication made to SARS by the RFI of the challenges experienced during the submission of the data file or FTI01 form and the declaration (FTI02 form) where the RFI was not able to declare due to technical challenges. Furthermore, any other relevant documentation pertaining to the RFI not being able to comply on time may also be submitted.
- e) If the RFI is of the view that they have been incorrectly classified as and RFI for the purpose of these regulations, a legal opinion must be attached to the remittance/dispute.

## 5.1 TYPES OF DISPUTES

- a) There are three ways in which an RFI may lodge a dispute. They are:
- i) Request for Remittance (1<sup>st</sup> step in the dispute process)
  - ii) Notice of Objection (2<sup>nd</sup> step in the dispute process where the remittance request is disallowed or selectively allowed)
  - iii) Notice of Appeal: Alternate Dispute Resolution/Litigation (3<sup>rd</sup> step in the process where the notice of objection is disallowed or selectively allowed)
- b) Note - it is important that the dispute process above is followed and that each step is exhausted before proceeding to the next step else SARS will invalidate the dispute if the correct sequence is not followed
- c) **Request for Remittance** - A Request for Remission (RFR) can be submitted when a taxpayer disputes any administrative penalties levied due to non-compliance. If the Request for Remission is disallowed or only a portion was allowed, the taxpayer/representative may still object to the decision made by SARS and even appeal the decision if he/she disagrees with the outcome of the objection process.
- i) Please note that the tax representative/ taxpayer cannot use the objections process before the RFR is submitted and considered.
- d) **Notice of Objection** - An administrative penalty is levied on an RFI for non-compliance. The RFI can lodge an objection against the decision to not remit the penalty through the Notice of Objection (NOO process). The prescribed form for lodging an objection is the DISP02 form.
- e) **Notice of Appeal:** An RFI can lodge an appeal against the decision by SARS to not remit a penalty through the notice of appeal process. The prescribed form for lodging an Appeal is the DISP02 form.

## 5.2 HOW TO COMPLETE THE DISP02 FORM

- a) This section aims at assisting the user in completing the DISP02 form for lodging a dispute against the AEOI admin penalty imposed on the RFI. The DISP02 form is not hosted on e-Filing however must be downloaded from the SARS website [www.sars.gov.za](http://www.sars.gov.za).
- b) The next section will unpack each question on the DISP02 form and describe the information required.

### 5.2.1 AEOI PENALTY REMITTANCE / DISPUTE



- a) **Taxpayer reference no:** Complete the RFIs tax reference number. It may be the Personal Income Tax (PIT) tax reference number, Trust tax reference number or the Company Income Tax (CIT) tax reference number.
- b) **Select the type of dispute:** Select the appropriate type of dispute from the list below
- i) Request for Remittance
  - ii) Notice of Objection
  - iii) Notice of Appeal: Alternate Dispute Resolution
  - iv) Notice of Appeal: Refer to Litigation

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- c) **Indicate the type of taxpayer:** Select the appropriate type of taxpayer from the list provided below:
- i) Individual
  - ii) Company / Trust
  - iii) Partnership

### 5.2.2 CONTACT DETAILS

Contact Details			
Home Tel No.	<input type="text"/>	Cell No.	<input type="text"/>
Bus Tel No.	<input type="text"/>		
Email	<input type="text"/>		
Web Address	<input type="text"/>		

- a) **Home Tel No:** Complete the home telephone number of the RFI.
- b) **Cell No:** Complete the cell number of the RFI.
- c) **Bus Tel No:** Complete the business telephone number of the RFI.
- d) **Email:** Complete the email address of the RFI.
- e) **Web Address:** Complete the business web address of the RFI.

### 5.2.3 PARTICULARS OF THE PERSON REPRESENTING THE TAXPAYER

Particulars of the Person Representing the Taxpayer	
Surname	<input type="text"/>
First Name	<input type="text"/>
Initials	<input type="text"/>
Capacity	<input type="text"/>

- a) **Surname:** Complete the surname of the RFI tax representative.
- b) **First name:** Complete the full name of the RFI tax representative.
- c) **Initials:** Complete the initials of the RFI tax representative.
- d) **Capacity:** Complete the capacity of the RFI tax representative.

### 5.2.4 ADDRESS FOR DELIVERY OF CORRESPONDENCE

Address for Delivery of Correspondence		
Is your Postal Address same as your Residential Street Address? If Yes, then complete residential information	Y <input type="checkbox"/> N <input type="checkbox"/>	Mark here with an "X" if this is a "care of" address <input type="checkbox"/>

- a) **Is your Postal Address the same as your residential address?** Select either "Yes" or "No"



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<b>FTI</b>	Foreign Tax Information
<b>FTI01</b>	Foreign Tax Information Nill Form
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>FATCA</b>	Foreign Account Tax Compliance Act
<b>FFI</b>	South African Foreign Financial Institutions
<b>SARS</b>	South African Revenue Service
<b>AEOI</b>	Automatic Exchange of Information
<b>GIIN</b>	Global Intermediary Identification Number
<b>RFI</b>	Reportable Financial Institution

## DISCLAIMER

**Completion Note:** Applicable to External Guides only.

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation or seek a formal opinion from a suitably qualified individual.

**For more information about the contents of this publication you may:**

- i) Visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za);
- ii) Make a booking to visit the nearest SARS branch;
- iii) Contact your own Customs agent / Excise representative / tax advisor / tax practitioner;
- iv) If calling from within South Africa, contact the SARS Contact Centre on 0800 00 SARS (7277); or
- v) If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).