Quick Guide

Alternative Dispute Resolution

Issue 2

Tax Administration

QUICK GUIDE

Alternative Dispute Resolution

Preface

This guide is a practical guide on objection, appeal and resolving tax disputes with SARS.

The ADR process allows a taxpayer and SARS to try to resolve a tax dispute without immediately advancing to the Tax Board or Tax Court. It is less formal, less cumbersome, less adversarial, and generally faster and more cost-effective than engaging in litigation proceedings.

This guide is not an "official publication" as defined in section 1 of the Tax Administration Act 28 of 2011 (TA Act) and accordingly does not create a practice generally prevailing under section 5 of that Act. It does not consider the technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference. This guide is intended as a practical overview. The TA Act and the dispute resolution rules prevail if there is any inconsistency.

It is also not a binding general ruling (BGR) under section 89 of the TA Act. Taxpayers requiring an advance tax ruling[1] or a VAT ruling[2] should visit the SARS website at **www.sars.gov.za**[3] for details of the application procedure.

This guide is based on the legislation as at time of issue.

For more information, assistance and guidance you may –

- visit the **SARS website**;
- contact the SARS National Service Centre (only between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
  - ➢ if calling locally, on 0800 00 7277; or
  - ➢ if calling from abroad, on +27 11 602 2093 visit your local SARS service centre after making an appointment via the **SARS website**;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, after making an appointment via the **SARS website**; or
- contact your own tax advisor or tax practitioner.

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1 For further commentary, see the *Comprehensive Guide to Advance Tax Rulings*.
2 For further commentary, see the *VAT Rulings Process Reference Guide*.
3 Navigate to Legal Counsel ⇨ Legal Counsel Publications ⇨ Find a Guide, and select the category Tax Administration (for the guide relating to advanced tax rulings) **or** Value-Added Tax (VAT) (for the guide relating to VAT rulings).

Comments on this guide may be e-mailed to **policycomments@sars.gov.za**.

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
3 September 2026

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Preamble

In this guide unless the context indicates otherwise –

- **"ADR"** means Alternative Dispute Resolution, which is a less formal process in which SARS and the taxpayer try to resolve the dispute without going directly to litigation;
- **"business day"** is defined in section 1 of the TA Act and means a day that is not a Saturday, Sunday, or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9, excludes the days between 16 December of each year and 15 January of the following year, both days inclusive;
- **"dispute"** is defined in section 142 of the TA Act and means "a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law, which arises pursuant to the issue of an assessment or the making of a 'decision'";
- **"the rules"** means the rules referred to in section 103, which were made by the Minister of Finance, after consultation with the Minister of Justice and Correctional Services, and published in Government Notice 3146 in *Government Gazette* 48188 of 10 March 2023;
- **"settlement"** means a formal compromise that must comply with the TA Act and be approved by a senior SARS official; and
- **"TA Act"** means the Tax Administration Act 28 of 2011.

1. Introduction

Any person[4] who receives an assessment from SARS and disagrees with any of its findings has a right to object[5] within the relevant timeframes. If the objection is disallowed, the taxpayer is entitled to appeal against the decision within 30 business days after delivery of the notice of disallowance or partial disallowance, subject to any permitted extension or condonation.[6]

After submission of a valid appeal, SARS and the taxpayer may, by mutual agreement, attempt to resolve the appeal through the process specified in the rules.[7] A dispute that is subject to an ADR procedure may be resolved by agreement in which either the taxpayer or SARS accepts the other party's interpretation of the facts or the applicable law.

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4 The term "person" is defined in section 1(1) to include an insolvent estate, the estate of a deceased person, any trust, and any portfolio of a collective investment scheme, but excludes a foreign partnership. The inclusion of a company, close corporation, and natural person in the definition must be deduced from the ordinary dictionary meaning of "person" and from the definition of the term in the Interpretation Act 33 of 1957.

5 "Objection" is a formal way to inform SARS that you disagree with an assessment or appealable decision.

6 The word "condonation" means permission for SARS to accept a late objection or appeal should the taxpayer provide acceptable reasons for the delay and the statutory requirements are met.

7 See **www.sars.gov.za/legal-lsec-tadm-pn-2023-03-notice-3146-gg-48188-new-dispute-resolution-rules-promulgated-under-s-103-10-march-2023/** for the rules [Accessed 3 September 2026].

2. Before the ADR process: validity, lateness and payment

2.1 Late objections and appeals

If an objection or appeal is late, the taxpayer must ask SARS to condone the late filing. The taxpayer should explain why the deadline was missed, provide reasons covering the full period of delay, and submit supporting documents if available. SARS will consider the merits of a late dispute only if the late filing is condoned. The longer the delay, the stronger and more complete the explanation should be.[8]

2.2 Invalidity and disallowance are different

An "invalid objection or appeal" means a dispute that does not meet the procedural requirements. SARS will not deal with the merits unless the defect is corrected or condonation is granted. For example, an invalid objection or appeal may be late, incomplete, unclear, or lodged incorrectly. A disallowance means that SARS has considered the objection on its merits and has decided not to allow it, either partly or in its entirety. A taxpayer who disagrees with a disallowance may appeal.

2.3 Suspension of payment

An objection or appeal does not automatically suspend the obligation to pay tax. A taxpayer who wants SARS to pause payment or recovery must submit a separate request for suspension of payment request. This request would effectively pause payment or the recovery of disputed tax while the dispute is underway.

Irrespective of whether SARS grants the suspension request or not, the imposition of interest, and penalties will continue.

3. When and how the ADR process may be initiated

A taxpayer may request the initiation of the ADR process when lodging an appeal against the disallowance or partial disallowance of an objection. The appeal must ordinarily be lodged within 30 business days after delivery of the notice of disallowance, or within an extended period permitted under section 107(2) of the TA Act.

The process to initiate the ADR proceedings is as follows:

- The taxpayer initiates the ADR proceedings by indicating in the notice of appeal that ADR is requested.
- SARS will inform the taxpayer within 30 business days after lodgement of the appeal whether the matter is suitable for ADR proceedings.
- SARS may also identify a matter as appropriate for ADR proceedings even if the taxpayer did not request it in the notice of appeal.
- SARS will notify the taxpayer, who must then state within 30 business days after delivery of that notice whether the taxpayer agrees to the ADR procedures.

Either the taxpayer or SARS may initiate the ADR process, but SARS determines whether the matter is suitable for ADR proceedings.

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[8] See Interpretation Note 15 "Exercise of Discretion to Extend the Period to Lodge an Objection or Appeal". The latest version, unless indicated otherwise, is available on the SARS website at **www.sars.gov.za**.

4. The ADR process

The ADR process is governed by the dispute resolution rules promulgated under section 103 and Chapter 9 of the TA Act. It is intended to be fair, lawful and practical. The ADR process must be completed within the required 90-business-day period, unless an extension applies.

5. Facilitator and fairness

A facilitator is required only if the parties agree to use one. The facilitator may be a SARS official, must be acceptable to both parties, and is bound by a code of conduct. The facilitator seeks to support a fair, equitable and lawful resolution. The parties may agree not to use a facilitator and instead hold party-to-party ADR discussions.

Usually, the ADR matter will be assigned to an ADR consultant who has not previously been involved in the matter. The facilitator will help the parties identify the issues, discuss the facts and law, and explore possible resolutions. Importantly, the facilitator does not decide the dispute, force either party to agree or act as a judge.

6. What happens during an ADR proceeding

The events that occur during an ADR proceeding may be as follows:

- The facilitator arranges an informal ADR meeting and notifies the parties. If no facilitator is used, the parties arrange the meeting.
- Both parties explain their positions and may provide supporting documents and information.
- The facilitator and the parties endeavour to narrow the issues and resolve the dispute.
- ADR proceedings may not be electronically recorded.
- Representations made during ADR proceedings are without prejudice and may not be used against a party in subsequent proceedings, subject to the applicable rules and law.
- The taxpayer should disclose all relevant facts during the ADR process.

7. Representation

The taxpayer may represent themselves. Alternatively, with SARS's agreement, the taxpayer may be represented by a tax practitioner or another representative of choice, ordinarily while the taxpayer remains present. In exceptional circumstances, the facilitator may agree that the taxpayer may be excused and represented in their absence.

8. Burden of proof

The taxpayer generally bears the burden of proving that SARS's assessment or appealable decision is incorrect and should provide the facts, documents, and legal reasons supporting the dispute.

SARS bears the burden of proof in certain specified matters, including the facts on which an understatement penalty is based and whether an estimated assessment is reasonable.

9. Possible outcomes

Pursuant to an ADR proceeding, the outcome may be as follows:

- Resolved by agreement

  The outcome is recorded and signed by the taxpayer and the SARS representative. SARS issues a revised assessment if applicable.

- Resolved by settlement

  The formal compromise must comply with the TA Act and be approved by a senior SARS official. SARS issues a revised assessment if applicable.

- Partially settled

  A partial settlement means that only some issues are resolved. Unresolved issues may continue through the appeal process.

- Not resolved

  The taxpayer may continue with the appeal to the Tax Board or Tax Court, depending on the matter.

10. Tax Board or Tax Court

If the ADR process is not used or does not resolve the dispute, the appeal may proceed to the Tax Board or Tax Court. The Tax Board deals with matters in which the tax in dispute does not exceed R1 000 000.

Generally, the Tax Court is used for more complex, higher-value, or legally significant matters.

11. Dispute or complaint?

In the event of a dispute or complaint, the process will be as follows:

- Use the objection and appeal process if you disagree with an assessment or appealable decision.
- Use the SARS complaint process for service, delay, administrative, or process problems.
- Approach the Tax Ombud if the matter falls within its mandate and the SARS complaint process has been used, unless compelling circumstances apply.

12. Taxes covered

ADR procedures may apply to the following taxes and related measures administered by SARS:

- Diamond Export Levy
- Donations Tax
- Employment Tax Incentive
- Estate Duty
- Income Tax, including PAYE and Capital Gains Tax
- Mineral and Petroleum Resources Royalties

- Skills Development Levy
- Transfer Duty
- Value-added Tax

13. Objection, appeal and court escalation

STEPS	STAGE	WHAT HAPPENS
1	**Assessment or appealable decision issued**	The taxpayer disagrees with SARS and lodges an objection.
2	**Objection validity check**	SARS checks whether the objection meets the procedural requirements.
3A	**Invalid objection**	Correct the defect, request condonation if applicable, or challenge the invalidity decision.
3B	**Valid objection**	SARS considers the merits of the objection, which may be allowed in full, partly allowed, or disallowed.
4	**Appeal decision**	If the taxpayer does not accept a partial or full disallowance, an appeal may be lodged within the required period, and an ADR proceeding may be requested.
5	**The ADR process outcome**	The dispute may be resolved by agreement, settlement, or partial settlement. If not resolved, the appeal proceeds to the appropriate formal forum.
6	**Formal forum**	The Tax Board handles qualifying disputes not exceeding R1 million, while the Tax Court addresses complex, higher-value, or legally significant matters. A withdrawn or abandoned dispute concludes the process.

14. Conclusion

A taxpayer may request ADR proceedings when lodging an appeal against the disallowance or partial disallowance of an objection. The ADR process is governed by the rules and is intended to be fair, lawful, and practical.