

South African Revenue Service

Dispute Resolution Process Guide for SMMEs



Thank you for walking this journey with us



Welcome to the SARS SMME Tax Workshop

Purpose:

This presentation is merely to provide information in an easily understandable format and is intended to make the provisions of the legislation more accessible

Disclaimer:

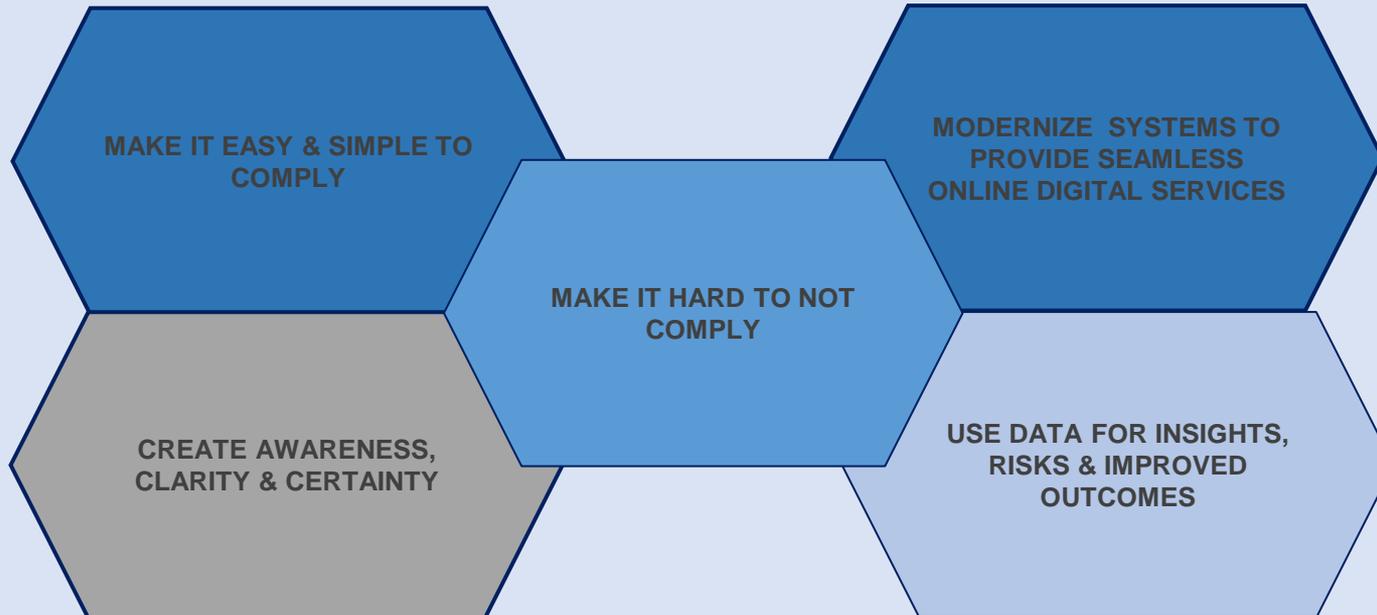
The information therefore has no binding legal effect and the relevant legislation must be consulted in the event of any doubt as to the meaning or application of any provision.



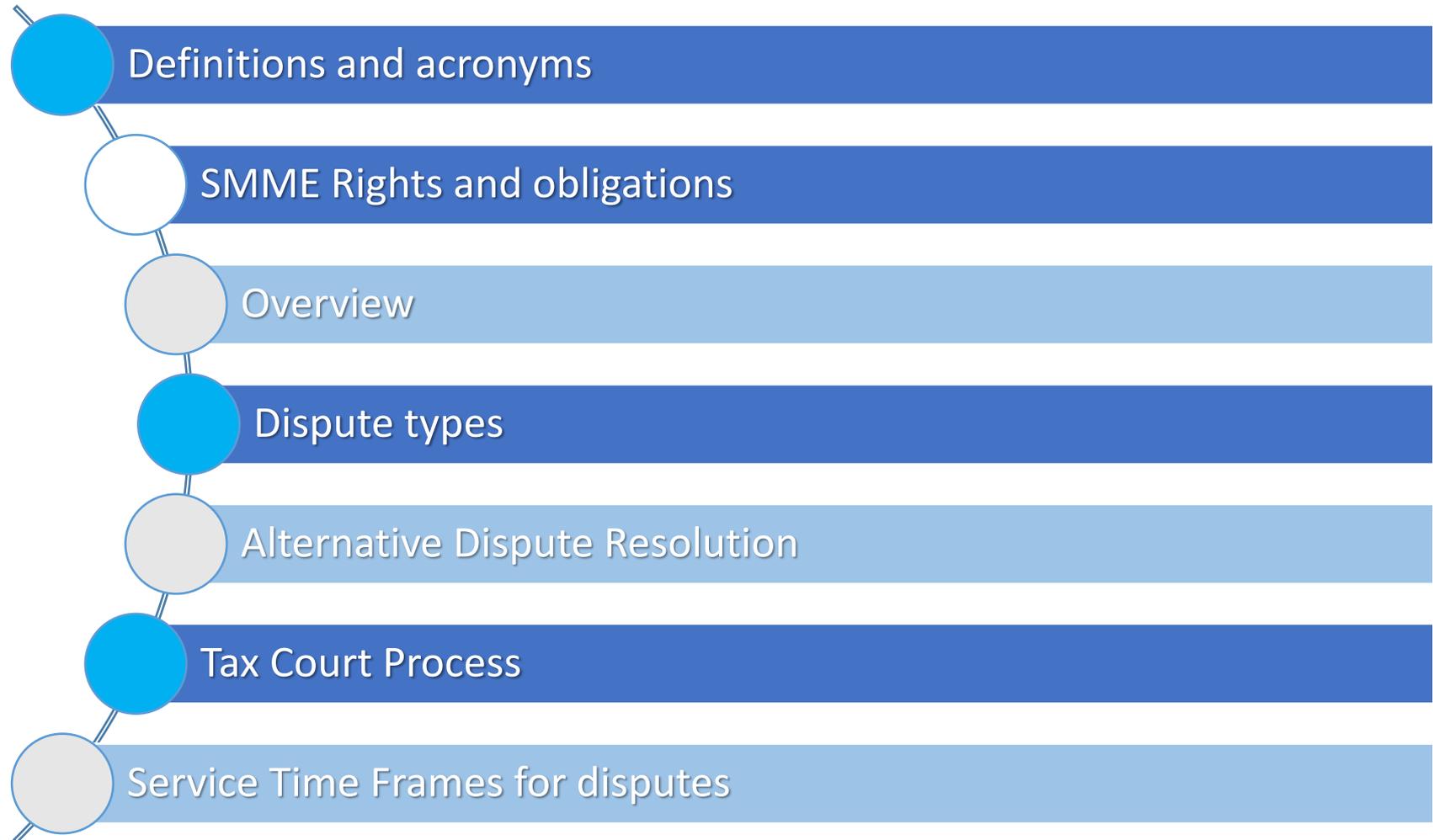
SARS Vision 2024

To build a smart modern SARS with unquestionable integrity, trusted and admired by Government, the public, as well as our international peers.

For the purpose of this presentation, we focus on the following strategic objectives:



Points Of Discussion



Definitions and Acronyms

| Term | Definition |
|--------|---|
| ADR1 | Alternative Dispute Resolution |
| AP34 | Penalty Assessment Notice or Outcome: Notice of Objection |
| ITA34 | Income Tax Assessment Notice |
| NOO | Notice of Objection |
| EMP301 | Payroll Taxes- Notice of Penalty Assessment |
| RFR | Request for Remission |
| ETI | Employment Tax Incentive |
| SMME | Small, Medium and Micro Enterprises |
| DISP01 | An electronic form where dispute details are captured. |

Overview

A dispute resolution process is initiated when a taxpayer is aggrieved by an assessment or not satisfied with a decision taken by SARS if the decision is subject to objection and appeal, they have a right to dispute the assessment or decision.



Chapter 9 of the Tax Administration Act, 2011, and the rules made under section 103 thereof (the Dispute resolution rules), provide the legal framework for these disputes across all tax types found in the various tax Acts administered by SARS, excluding the customs and excise Acts.

Overview

Disputes can be lodged against the following:

- Interest and penalty on late payments
- Assessments in relation to Personal Income Tax (PIT), Corporate Income Tax (CIT),
- Value-Added Tax (VAT),
- Pay-As-You-Earn (PAYE), including Employment Tax Incentive (ETI),
- Unemployment Insurance Fund (UIF),
- and Skills Development Levy (SDL)

Common SMME errors that delay the dispute process

- Submission of incorrect declarations (underestimation) then SARS will raise assessment, and this can lead to a dispute.
- Not adhering to the prescribed time frames for submitting supporting documents and which leads to raising of assessments
- When capturing amount in a return, cents must be excluded otherwise wrong figures are captured in a return which leads to disputes.
- SMME's that fail to submit tax returns are imposed administrative penalties and this might lead to a dispute.
- Taxpayers do not stipulate the exact issues which they are filing an objection against and the legal grounds to support the objection. If this is not clear, the objection is invalidated and delays the objection process.

Common SMME errors that delay the dispute process

- Failure to furnish full contact details such as email addresses on the Notice of Appeal or to update the same; resulting in a delay to receive a Notice in terms of Rule 13 of the Tax Administration Act.
- Other general issues that cause a delay in the dispute process are:
 - When taxpayers request a correction on their returns;
 - When taxpayers request a reduced assessment in terms of section 93 of the Tax Administration Act;
 - When taxpayers are auto-assessed, and they omit to file an objection timeously;

Penalty types

❑ Part B – fixed amount

- **Failure to disclose reportable arrangements**
- **Failure, listed in public notice, to comply with obligations in tax legislation other than failures that lead to percentage based, understatement or reportable arrangement penalties, presently failure –**
 - by persons to submit income tax and diamond and export levy returns
 - to meet FATCA reporting obligations
 - to meet OECD CRS obligations

❑ Part C – percentage based

- **Income Tax Act**
 - 10% for late payment of withholding tax on sale of immovable property by non-resident seller
 - 10% for late payment of employees' tax
 - 10% for non-submission of EMP501
 - 10% for underestimation of provisional tax

- 10% for late payment of provisional tax
- 20% for underestimation of taxable turnover by micro business

➤ **Value-Added Tax Act**

- 10% for late payment of VAT
- 10% for late payment of tax on import of goods
- 10% for late payment of excise duty or environmental levy

➤ **Transfer Duty Act**

- 10% for late payment of duty

➤ **Skills Development Levies Act**

- 10% for late payment of levies

➤ **Unemployment Insurance Contributions Act**

- 10% for late payment of contribution

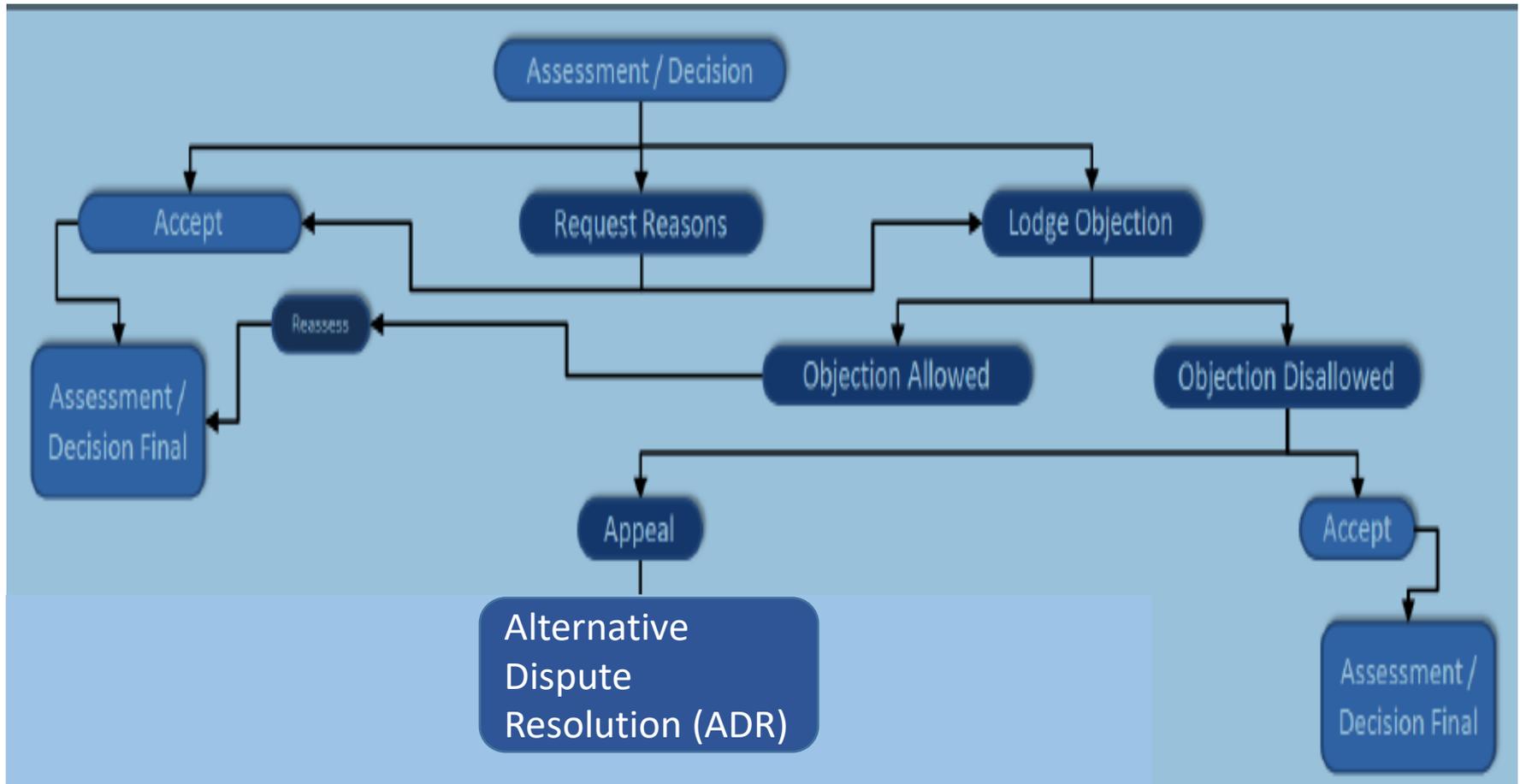
➤ **Securities Transfer Tax Administration Act**

- 10% for late payment of tax

➤ **Mineral and Petroleum Resources Royalty (Administration) Act**

- 10% for underestimation of royalties

FLOW OF DISPUTE RESOLUTION: SUMMARY



Types of Disputes

The following dispute types will be discussed:

- Request for Remission Administrative Penalty Non-Compliance
- Notice of Objection
- Notice of Appeal

The following remedies are available with in the dispute process:

- Request for Reasons
- Suspension of payment

Request for Reasons

What is Request for Reasons?



Where the taxpayer is aggrieved by an assessment issued by SARS and the grounds provided in the assessment do not enable the taxpayer to understand the basis of the assessment to formulate an objection, the taxpayer is entitled to request reasons for the assessment from SARS.

Request for Reasons

How should I request reasons?

A request for reasons must:

- ❖ Be made in the prescribed form and manner;
- ❖ Be submitted to SARS within **30 business days** from the date of assessment.

Can be request via:

- ❖ eFiling and the
- ❖ SARS Branch (by appointment only) for Personal Income Tax (PIT), Company Income Tax (CIT), Value-Added Tax (VAT) and Pay-As-You-Earn (PAYE).

Once it is confirmed that a valid Request for Reasons for assessment items has been submitted, the period within which an objection must be lodged will automatically be extended by the period permitted by the Dispute Resolution Rules.

Request for Reasons

When may I request reasons?

When an original assessment, verification or audit completed by SARS has resulted in a notice of assessment (e.g., ITA34/VAT217/EMP217)

Where RFR for account related items has been finalised with an outcome of either disallowed or partially allowed

Where a decision was taken by SARS to revise the assessment.

Note: Where the Request for Reasons process is used for any other reason than specified above, the Request for Reasons will be declined.

Request for Remission - Administrative Penalty Non-Compliance

A taxpayer can lodge a RFR against Personal Income Tax (PIT), Corporate Income Tax (CIT) administrative penalty assessment.

South African Revenue Service (SARS) will issue a penalty assessment notice (AP34) to notify the taxpayer of the penalties that have been levied for non-compliance.

Penalties for **Personal Income Tax** and **Corporate Income Tax** are levied in terms of chapter 15 of the Tax Administration Act. The Act prescribes the types of non-compliance that is subject to a fixed amount penalty.

Request for Remission - Administrative Penalty Non-Compliance

Currently Penalties are imposed on **individual taxpayers** for the following transgressions:

- Non-submission of income tax return
- The penalties are fixed based (i.e., a fixed rand amount is imposed based on the taxpayer's taxable income).

The administrative non-compliance penalty for the failure to submit a return comprises fixed amount penalties based on a taxpayer's taxable income and can range from **R250** up to **R16 000** a month for each month that the non-compliance continues.

Administrative penalties recur each month that the taxpayer is non-compliant, up to a maximum of 35 months. Each recurring penalty will have a unique transaction number.

Request for Remission - Administrative Penalty Non-Compliance

- Taxpayer can object the imposition of certain other administrative non-compliance penalties or
- interest where the request for remission of such penalty/interest was not allowed or partially allowed.
- Example:
 - Late payment penalties for VAT, PAYE, Unemployment Insurance Fund (UIF) and Skills Development Levies (SDL)
 - Late payment penalties on provisional tax
 - Late payment interest on provisional tax
 - Late payment interest on VAT and PAYE (not UIF or SDL)

Types of Penalty

You have the right to object against the imposition of other tax related penalties

Example

Understatement penalties

Tax free investment penalty

Employment Tax Incentive (ETI) sectorial wage penalty

ETI displacement penalty

Underestimation penalty (Par 20);

Reportable Arrangement Penalty

Notice of objection

What is it?

- Is a formal internal review process for resolving disputes between taxpayer and SARS about SARS' assessment of your tax liability.

Note

- You have the right to object to such an assessment.
- You do not have the right to object to a self-assessment like:
 - Value-Added Tax (VAT) and
 - Pay-As-You-Earn (PAYE),where no assessment has been raised by SARS

Notice of objection

**When can I
lodge an
objection?**

- An objection must be submitted within **30 business** days after the date of the assessment or SARS decision.
- If reasons were requested for the assessment, the objection must be submitted within **30 business** days after:
 - The date of the notice sent by SARS that adequate reasons have been provided and that no further reasons will be provided; or
 - The date SARS provided you with the reasons/further reasons.

Notice of objection

How do I lodge an objection?

- An automated dispute management workflow process exists for **CIT, PIT, PAYE and VAT**
- The dispute form to utilise is the Notice of Objection (DISP01), which can only be submitted as follows:
 - Via eFiling
- The DISP01 cannot be emailed or posted to SARS
- Only the electronic submission via eFiling is allowed

Submitting a late objection

The taxpayer must provide grounds (reasons) for the late submission

The grounds for the late submission will be considered first and only if SARS is of the view that reasonable or exceptional grounds existed, will the late submission be condoned

SARS can extend the period of submission of the objection by **30 business** days only if reasonable grounds exist

Where the late submission is condoned, SARS will proceed to consider the grounds for the objection and inform the taxpayer

Where the late submission of the objection is not condoned, the grounds for the objection will not be considered and the taxpayer will be informed

The taxpayer has the right to object against the decision not to condone the late submission of the objection and appeal where that objection is unsuccessful.

Submitting a late objection

Note

No objection will be allowed to be submitted **more than 3 years after the date of the assessment** or the SARS decision taken or if the grounds for the objection are based wholly or mainly on a change in practice generally prevailing which applied on the date of the assessment or decision taken.

Disputing interest and penalties

The following source codes must be utilised when disputing the imposition of certain interest/penalties

9987 – Tax-free investment penalty

9990 – Underestimation of provisional taxpayer (Par20)

9991 – Non-submission of provisional taxpayer(Par20A)

9992 – Omission of Income

9988 – Underpayment of Provisional Taxpayer(89Q(2))

9993 – Late or Non-submission of tax return

Does a taxpayer need to pay the amount of tax in dispute?

Pay now argue later rule: Section 164 of TA Act

- Taxpayers are required to pay a tax debt before a dispute is finalised or resolved, which principle is known as the “pay-now, argue-later”.
- The obligation to pay tax, which arises upon the issue of an assessment, is not “automatically” suspended by an objection or appeal.
- In terms of section 164, the obligation to pay tax or the right of SARS to receive and recover tax, pending objection or appeal is not suspended unless SARS directs otherwise.
- The taxpayer may request SARS to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax.

Suspension of Payment

The suspension of a payment will be disallowed if:

- The objection isn't lodged
- An objection is disallowed and no appeal is lodged
- An appeal to the Tax Board or Tax Court is unsuccessful
- Taxpayer is non-compliant

Suspension of payment

- When you apply for a suspension of payment (SOP), and all the requirements have been met, SARS will inform you of the decision within **30 business** days of receipt of complete and accurate supporting documents.
- SARS will not institute any collection steps from the date which we receive a valid request for suspension of payment, until 10 days after you have been informed that the request has either been declined, or after you receive notice that an already approved suspension of payment has been revoked.
- The above applies, unless there is reasonable belief that there is a risk of dissipation of assets.

What to expect when the objection is finalised?

- SARS will endeavour to:
 - Notify the taxpayer of the allowance or disallowance of the objection and the basis thereof within 60 business days after the delivery of the objection
- Where SARS requested supporting documents, 45 business days after:
 - The delivery of the requested documents; or
 - If the documents were not delivered, the expiry of the period within which the documents should have been delivered.

What to expect when the objection is finalised?

- Where the objection is allowed (partially or in whole), SARS will issue a revised assessment to reflect the outcome of the objection.
- A Notice of Assessment (Example: ITA34, VAT217, EMP217, etc.) will be issued in due course.
- Where the objection was in the form of a DISP01, the Notification of the outcome of the objection and the Notice of Assessment (where applicable) will be made available on eFiling.
- Where the objection was in the form of an ADR1, the Notification of the outcome of the objection and the Notice of Assessment where applicable will be made available via email/post.

Appeal

What is an Appeal

- If you are in disagreement with the decision made by SARS in considering your objection, you have the right to appeal that decision

Appeal

When can I lodge an appeal?

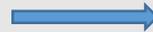
A taxpayer must deliver a notice of appeal within **30 business days** after SARS delivered the notice of disallowance or partial allowance of the objection.

This period may be extended by 21 business days if SARS is satisfied that reasonable grounds exist for the delay; or

The 30 day period may be extended by up to 45 business days if SARS is satisfied that exceptional circumstances exist for the delay.

Appeal

How do I lodge an appeal?



An automated dispute management workflow process exists for CIT, PIT, PAYE and VAT and can be submitted:



Via eFiling

Late submission of an Appeal

Where the appeal is submitted after the prescribed due date, the taxpayer must provide reasons for the late submission

The reasons for the late submission will be considered and if SARS is of the view that reasonable grounds or exceptional circumstances existed, will the late submission be condoned and the prescribed period extended

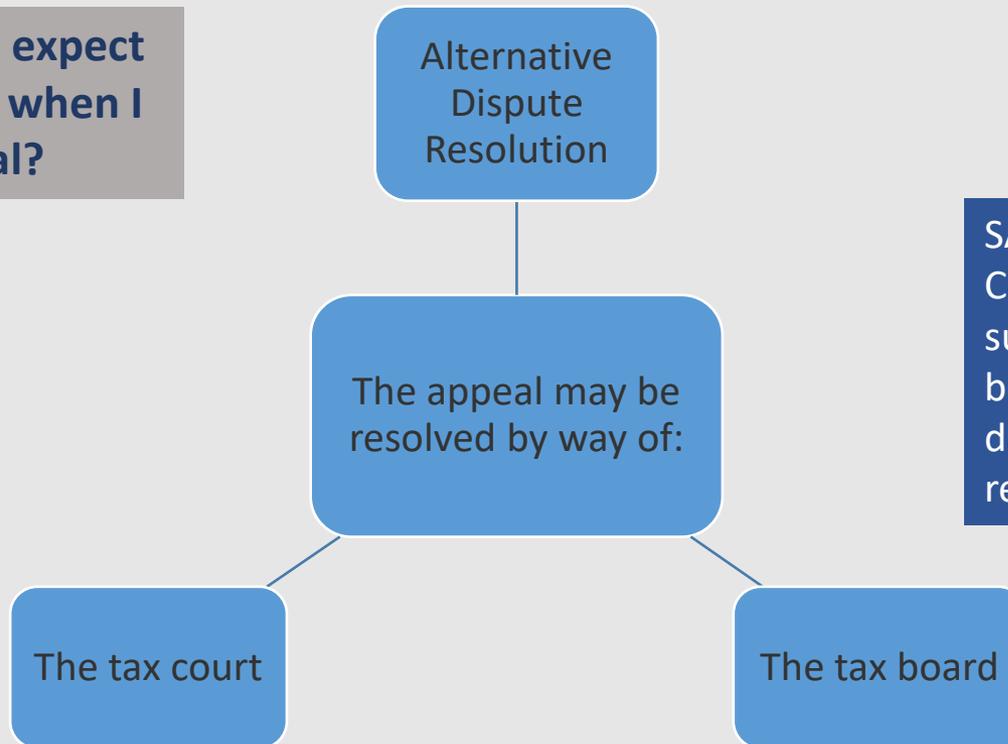
Where the late submission is condoned, SARS will proceed to consider the grounds for the appeal and inform the taxpayer accordingly

Where the late submission of the appeal is not condoned, the grounds for the appeal will not be considered, the taxpayer will be informed accordingly and may then proceed to object to this decision

No appeal can or will be allowed to be submitted more than **75 business days** (initial 30 plus maximum extension of 45 days) after the date of the decision to disallow the objection

Appeal

What can I expect from SARS when I appeal?



SARS endeavours to:
Consider if a matter is suitable for ADR within 30 business days from the date the request was received.

Alternative Dispute Resolution

By mutual agreement, SARS and the taxpayer making the appeal may attempt to resolve the dispute through ADR under procedures specified in the rules.

This procedure creates a structure with the necessary checks and balances within which disputes may be resolved or settled.

The ADR process is less formal and inexpensive than the court process and allows disputes to be resolved within a much shorter period.

It creates a more cost effective remedy for resolving tax disputes.

Alternative Dispute Resolution

- The taxpayer must indicate in the Notice of Appeal whether he/she wishes to make use of the ADR dispute resolution procedures, should these procedures be available.
- SARS may, if satisfied that the matter is appropriate for ADR and that such a matter may be resolved using this process, inform the taxpayer accordingly.
- The taxpayer must within **30 business days** of receipt of such a notice inform SARS whether or not they agree to follow the ADR process.
- Should the ADR proceedings be terminated without resolution the taxpayer must within **20 days** of such termination request the clerk of the Tax Board to set the matter down for formal hearing / Refer to the Tax Court in terms of Rule 25(3).

Dispute Resolution – Tax Court Process

If the jurisdiction of the appeal is less than R1M, the matter proceeds to the Tax Board.

The taxpayer may however elect to refer the appeal to the Tax Court.

This procedure creates a statutory structure with the necessary procedures within which disputes may be resolved or litigated.

The Tax Court Appeal is adjudicated by a High Court Judge and two Assessors.

The right to appeal to the Full Bench is applicable and to the SCA, and Constitutional Court.

The dispute can be resolved by way of settlement, withdrawal or concession.

Dispute Resolution – Tax Court Process

- The tax court does not have the same status as the High Court but is a tribunal (special court) **created by statute** and only has the powers afforded to it by law.
- The tax court is presided over by judges of the High Court and appointed Assessors.
- The tax court has **jurisdiction** over the following matters:
 - Tax appeals against an assessment or decision where the tax in dispute exceeds R1million
 - Important tax principles are involved (test case)
- The Tax appeal is launched afresh (de novo) if a taxpayer or SARS is dissatisfied with the ruling of the tax board
- Interlocutory applications in respect of the disputed assessment is adjudicated in the Tax Court before a Judge of the High Court.
- The **Registrar of the Tax Court** is responsible for the administration of the Tax Court.

Important rules to note

- SARS must file the Rule 31 Statement of Grounds of Assessment and Opposing Appeal within **45 days** after either date of appeal or the date of termination of ADR.
- The taxpayer has **45 days** to file its answer to this, as its Statement of Grounds of Appeal in terms of Rule 32. If the taxpayer fails to do so within **45 days**, SARS may file a Notice to compel the taxpayer to file it within **15 days**.

Important rules to note

- If the taxpayer after **15 days** again fails to file the Rule 32 pleading, SARS may proceed with an application for default judgment against the taxpayer without further notice to the taxpayer.
- If ADR was terminated, and the taxpayer elects to proceed to the Tax Court, the taxpayer needs to file a Notice in terms of Rule 25(3), that he/she/it intends to appeal to the Tax Court. If this is not done within 20 days after the date of termination of the ADR process, the appeal becomes final.

Service Time Frames

Unless otherwise agreed, and where no exceptional circumstances arise that warrant an extension to the responding period, SARS will:

- Provide reasons within 45 business days from the date of receipt of the request.
- Make a decision in objections within 60 business days from the date of lodging an objection.
- Decide on the suitability of a case for Alternative Dispute Resolution (ADR) in ADR requests, and inform you accordingly within 30 business days from the date of receipt of the request.

Service Time Frames

The following time frames are applicable to each dispute type:

- Finalise ADR proceedings within 90 business days from the date of commencement of the ADR, or within a further period as may be agreed with SARS.
- If SARS does not concede an appeal, or if no agreement is reached after Alternative Dispute Resolution Proceedings are held, a taxpayer is at liberty to give notice to the Tax Board for consideration of the tax matter.

Please Note: A taxpayer may elect not to proceed to the Tax Board and elect to rather proceed to the Tax Court. In this instance, the taxpayer must file a Notice in terms of Rule 25(3)(b) indicating that the taxpayer will proceed with its appeal in the Tax Court.

How to lodge a Complaint

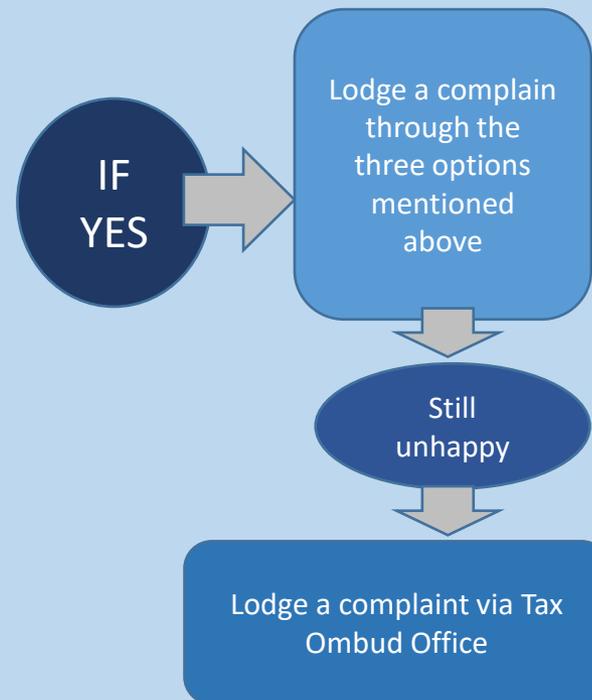
There are three options available to send your complaint:

- 1) eFiling
- 2) SARS Branch
- 3) SARS Complaints Management Office(CMO) on 0860 12 12 16

Is your complaint about:

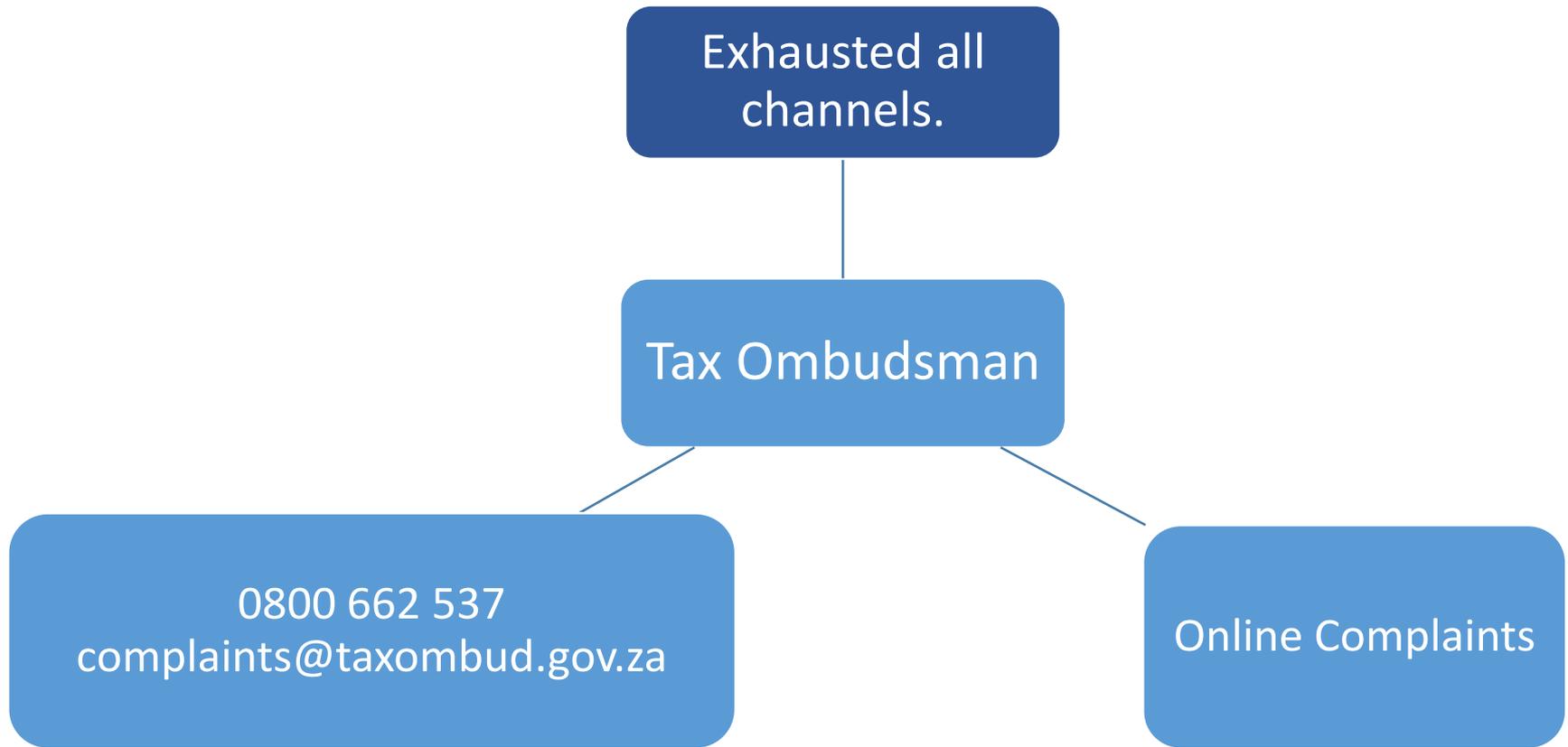
- Quality or speed of service e.g. process took too long?
- Unresolved issues e.g. dispute not finalised?
- Missing documentation e.g. submitted documents lost?

- Behaviour/competencies e.g. staff is rude?
- Experience/environment e.g. no parking at Branch?
- Legal/Policy e.g. no debit card accepted for payment?



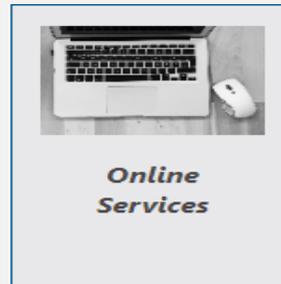
Tax Ombudsman Complaints

After all the internal channels are exhausted including Complaints process and the SMME has adhered to turn around times. The SMME may approach Tax Ombudsman.



SARS Online Query System(SOQS)

For any related queries or submission of the supporting documents use the following channel:



Use our Digital Channels



Request your Tax Number



Submit Supporting Documents



Submit a Payment Allocation



Report New Estates Case



Register a Representative



Tax Compliance Status Request



Tax Compliance Status Verification



Search for a VAT Vendor



Trust Registration



SARS Notices

Go digital

Remember to use our Digital Channels

- **We've made it easier for you**

- Go Digital!**

- Register for eFiling via **sars.efiling.co.za**
 - SARS Online Query System **via sars.gov.za**

- **Visit and follow us on our Social Media platforms**

- Linked In



Facebook



Twitter



- For more information, visit the:

- SMME webpage on the SARS website: www.sars.gov.za . This can be accessed on landing page
 - SARS YouTube channel: www.youtube.com/sarstv

Thank you
Re a leboha
Re a leboga
Ndza Khensa
Dankie
Ndi a livhuwa
Ngiyabonga
Enkosi
Ngiyathokoza



Thank you for walking this journey with us

