

**INTERPRETATION NOTE 15 (Issue 6)**

DATE: 30 August 2024

**ACT : TAX ADMINISTRATION ACT 28 OF 2011**  
**SECTION : SECTIONS 104 AND 107**  
**SUBJECT : EXERCISE OF DISCRETION TO EXTEND THE PERIOD TO LODGE AN OBJECTION OR APPEAL**

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## **Preamble**

In this Note unless the context indicates otherwise –

- **“assessment”** means an assessment as defined in section 1, namely, the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS;
- **“decision”** means a decision referred to in section 104(2);
- **“Income Tax Act”** means the Income Tax Act 58 of 1962;
- **“PAJA”** means the Promotion of Administrative Justice Act 3 of 2000;
- **“rules”** mean 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 the *Government Gazette* 48188 of 10 March 2023;
- **“section”** means a section of the TA Act;
- **“senior SARS official”** means a senior SARS official referred to in section 6(3), that is, the Commissioner, a SARS official who has specific written authority from the Commissioner to exercise certain powers and duties for the purposes of administering the TA Act, or a SARS official occupying a post designated by the Commissioner in writing for such purpose;
- **“TA Act”** means the Tax Administration Act 28 of 2011;
- **“taxpayer”** means a “taxpayer” as defined in section 151; and
- any other word or expression bears the meaning ascribed to it in the TA Act.

### **1. Purpose**

This Note provides guidance on the considerations that a senior SARS official will take into account when exercising a discretion to extend the prescribed period for lodging an objection under section 104(4) or an appeal under section 107(2).

### **2. Background**

A taxpayer who is aggrieved –

- by an assessment made in respect of the taxpayer;<sup>1</sup> or
- by certain decisions made under the TA Act or tax Acts,<sup>2</sup>

may object to and appeal against those assessments or decisions.

An objection against an assessment or decision must be lodged in the manner, under the terms and within the period prescribed in the rules.<sup>3</sup>

A person whose objection has been disallowed may appeal to the tax board or tax court against that outcome and in such event the appeal must be lodged in the manner, under the terms and within the periods prescribed in the TA Act and the rules.<sup>4</sup>

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<sup>1</sup> Section 104(1).

<sup>2</sup> Section 104(2).

<sup>3</sup> Section 104(3).

<sup>4</sup> Section 107(1).

A senior SARS official may, within prescribed limits, extend the period prescribed in the rules within which an objection or appeal must be lodged if satisfied that reasonable grounds exist for the delay.

The objection and appeal procedures, contained in the TA Act and the rules, apply to any dispute under, amongst others, the following tax Acts<sup>5</sup> administered by the Commissioner:

- Diamond Export Levy Act 15 of 2007
- Diamond Export Levy (Administration) Act 14 of 2007
- Employment Tax Incentive Act 26 of 2013
- Estate Duty Act 45 of 1955
- Income Tax Act 58 of 1962
- Mineral and Petroleum Resources Royalty Act 28 of 2008
- Mineral and Petroleum Resources Royalty (Administration) Act 29 of 2008
- Securities Transfer Tax Act 25 of 2007
- Securities Transfer Tax Administration Act 26 of 2007
- Skills Development Levies Act 9 of 1999
- Tax Administration Act 28 of 2011
- Transfer Duty Act 40 of 1949
- Unemployment Insurance Contributions Act 4 of 2002
- Value-Added Tax Act 89 of 1991

The Customs and Excise Act 91 of 1964 contains its own provisions relating to dispute resolution.<sup>6</sup>

### 3. The law

The relevant sections of the TA Act and the rules are reproduced in **Annexure B**.

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<sup>5</sup> The term “tax Act” is defined in section 1 and means the TA Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act.

<sup>6</sup> Section 15(2) of the Carbon Tax Act 15 of 2019 provides that administrative actions, requirements and procedures for purposes of submission and verification of accounts, collection and payment of the carbon tax as an environmental levy or the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in that Act, regulated by the Customs and Excise Act.

## 4. Objection

### 4.1 Period within which to lodge an objection

Section 104(3) requires that an objection to an assessment or decision must be lodged in the manner, under the terms and within the period prescribed in the rules.

Under rule 6(1), an aggrieved taxpayer may, before lodging an objection, request the reasons for the assessment or decision<sup>7</sup> in order to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7. A request for reasons must be delivered<sup>8</sup> to SARS within 30 days from the date of assessment or decision.<sup>9</sup>

Rule 7(1) provides that a notice of objection must be delivered to the Commissioner within 80 days after –

- the date of the assessment or decision when no reasons for the assessment are requested by the taxpayer;
- the delivery of a notice by SARS under rule 6(4) stating that adequate reasons for the assessment or decision had been provided; or
- the delivery of a notice by SARS providing the reasons for the assessment or decision as requested by a taxpayer under rule 6.

Under the previous rules the period to lodge an objection was 30 days. Rule 68(1) provides that if the period for objection prescribed under the previous rules had expired before the commencement date of the rules on 10 March 2023, nothing in the rules may be construed as enabling the objection to be made under the rules by reason only of the fact that a longer period is prescribed under the rules.

The term “day” is defined in rule 1 as follows –

“a ‘business day’ as defined in section 1 of the [TA] Act”.

The term “business day” is defined in section 1 as –

“a day which 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;”.

Since the term “day” in the rules means a “business day” as defined in the TA Act, “business day” will be used for purposes of this Note.

Section 4 of the Interpretation Act<sup>10</sup> governs how the period of days is calculated. It provides that when any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday.

<sup>7</sup> Rule 1 defines assessment to include, for purposes of the rules, a decision referred to in section 104(2).

<sup>8</sup> See meaning of “deliver” in rule 1.

<sup>9</sup> Rule 6(2). The period may be extended – see rule 6(3).

<sup>10</sup> Act 33 of 1957.

An objection that is *not lodged* within the time limit of 80 business days will generally be regarded by SARS as an invalid objection.<sup>11</sup> Under section 104(4), a senior SARS official may extend the period for lodging an objection if satisfied that reasonable grounds exist for the delay in lodging the objection (see 4.3). The extension will run from the expiry of the 80 business day period stipulated in the rules, irrespective of when the application to SARS for the extension was made or granted.

#### 4.2 Considerations taken into account in exercising the discretion to extend the period in which to lodge an objection

The TA Act does not prescribe the manner in which the discretion to extend the period for lodging an objection under section 104(4) should be exercised. The senior SARS official's decision must comply with the requirements for just administrative action which are contained in section 33 of the Constitution of the Republic of South Africa<sup>12</sup> read with the PAJA. The Supreme Court of Appeal stated in *C:SARS and another v Richards Bay Coal Terminal (Pty) Ltd*<sup>13</sup> that –<sup>14</sup>

“In *Zondi*,<sup>15</sup> the Constitutional Court stated that PAJA is not ordinary legislation. It was enacted, pursuant to the provisions of section 33 of the Constitution, to give effect to the right to just administrative action. In applying the PAJA, all decision-makers who enjoy authority to make administrative decisions by any statute must do so in a manner that is consistent with the PAJA.”

Under the PAJA all administrative actions<sup>16</sup> must be procedurally fair. Fair administrative procedure depends on the circumstances of each case.<sup>17</sup>

Just administrative action is a decision in which, amongst others, the decision maker –

- was authorised to do so by the empowering provision,
- complied with any mandatory and material procedures or conditions prescribed by the empowering provision,
- did not take irrelevant considerations into account or fail to consider relevant considerations,
- did not act in bad faith or arbitrarily or capriciously,

and the decision itself is rationally connected to –

- the information before the decision maker, and
- the reasons given for it by that decision maker.<sup>18</sup>

The senior SARS official is therefore required to apply his or her mind and consider all relevant information relating to the application for the extension of the period within which to lodge the objection. Each case will be considered on its own facts. Relevant information includes, amongst others –

- the reasons for the delay;

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<sup>11</sup> Rule 7(1), (2) and (4).

<sup>12</sup> 1996.

<sup>13</sup> [2023] ZASCA 39. See also *C:SARS v Medtronic International Trading SARL* [2023] 2 All SA 297 (SCA).

<sup>14</sup> At paragraph 19.

<sup>15</sup> *Zondi v MEC for Traditional and Local Government Affairs and others* 2005 (3) SA 589 (CC).

<sup>16</sup> See definition in section 1 of PAJA.

<sup>17</sup> Section 3 of PAJA.

<sup>18</sup> Section 6 of PAJA.

- the length of the delay;
- the prospects of success on the merits; and
- any other relevant factor, for example, SARS's interest in the determination of the final tax liability in view of the broader public interest relating to budgeting and fiscal planning.

Despite these factors being relevant to the exercise of a discretion, they are neither all-embracing nor individually decisive and each case must be considered on its own facts and merits.

#### **4.2.1 The reasons for the delay**

An application to SARS for an extension of the period in which to lodge an objection must provide detailed reasons for failure to lodge the objection within the prescribed time period. Without detailed reasons being provided, the senior SARS official will not be in a position to exercise the discretion to extend the period in which the taxpayer has to lodge the objection.

A list of acceptable reasons cannot be provided and each case must be considered on its own facts. The requirements of reasonable grounds will generally be met if the delay was caused by circumstances beyond the taxpayer's control. Such circumstances may include, for example, illness of the taxpayer or the taxpayer's representative, the taxpayer being abroad at the time of the issue of the notice of assessment or postal delays.

A taxpayer may also, for instance, request an extension if that taxpayer was not in a position to fully formulate and substantiate the grounds of objection within 80 business days because of outstanding information or documentation which would be received only after the expiry of that period.

Whether these circumstances amount to exceptional circumstances and therefore support an extension exceeding 30 business days (see **4.3**) will depend on the facts of the particular case.

The following are examples that will generally not be regarded as a sufficient reason for failure to comply with the requirement to submit an objection in time:

- Ignorance of the law with regard to the period within which an objection must be lodged.
- Failure without good cause by the taxpayer's tax practitioner to lodge the objection on time. The use of a tax practitioner does not absolve the taxpayer from the responsibility of complying with the TA Act.<sup>19</sup>

#### **4.2.2 The length of the delay**

In addition to the reasons for the delay (see **4.2.1**), the taxpayer must justify the period of the delay and the extension sought. The longer the extension sought, the more likely it is that the justification and supporting evidence will need to be more detailed. The extension of the period for lodging an objection is not a right and it is therefore incumbent upon the taxpayer to substantiate the request for the extension.

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<sup>19</sup> Section 153(3).

### 4.2.3 The prospects of success on the merits

A senior SARS official will take into consideration the fact that an objection may have a good prospect of success. However, the merits of a taxpayer's case and the validity of the grounds of objection are not decisive factors and do not detract from the taxpayer's obligation to furnish acceptable reasons for the delay in lodging an objection. In *Mtshali & Others v Buffalo Conservation 97 (Pty) Ltd*<sup>20</sup> the court confirmed that the prospect of success is one of the factors which must be weighed against all the factors but that there are instances in which condonation should not be granted even if there are reasonable prospects of success, for example, a flagrant and gross disregard of the rules.

In ITC 1777, Galgut DJP stated the following:<sup>21</sup>

“In an application to set aside a default judgment or for condonation of a party's failure to comply with a rule of court in time, our law requires the party concerned to show ‘good cause’ for his failure to take the necessary step timeously. To show good cause he must not only explain the reason for his failure. He must also show that he has a reasonable prospect of success on the merits of the litigation at issue; he must have what is called a *prima facie* case ... In these regards the reported cases establish the approach that the stronger the party's case is on his prospects of success, the more lenient the court will be in regard to the excuses for his default; and conversely, the weaker his explanation for his default, the stronger his prospects of success on the merits, in the abovesaid sense, must be.”

### 4.3 Period of extension of time to lodge an objection

Section 104(5) limits the extension of time that a senior SARS official may grant for the lodging of an objection. The extension of the period is prohibited –

- for a period exceeding 30 business days unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay. If there are exceptional circumstances, the period can be extended for more than 30 business days but not exceeding the three years mentioned below. The 30 business days are calculated from the end of the 80 day period referred to in 4.1. In other words, the period for lodging an objection may not exceed 110 business days after the date of assessment or decision, the delivery of a notice under rule 6(4) or the delivery of the notice providing the reasons for the assessment or decision under rule 6;
- if more than three years have lapsed from the date of the assessment or the decision; or
- if the grounds for the objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of the assessment or decision.

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<sup>20</sup> [2017] ZASCA 127.

<sup>21</sup> (2004) 66 SATC 328 (N) at 333.

### *Exceptional circumstances*

The term “exceptional circumstances” is not defined for the purposes of section 104. The ordinary meaning as applied to the subject matter with regard to which it is used should therefore be considered.<sup>22</sup>

The *Merriam Webster Dictionary* defines the word “exceptional” as follows:<sup>23</sup>

- “1 : forming an exception : RARE
- 2 : better than average : SUPERIOR
- 3 : deviating from the norm:...”

The circumstances referred to must thus be of such a nature that they would be considered as being something out of the ordinary and of an unusual nature. In a criminal bail case, the Constitutional Court was required to consider what constituted exceptional circumstances and stated the following:<sup>24</sup>

“In this regard I am not persuaded that there is any ...validity in the complaint raised ... that the term ‘exceptional circumstances’ is so vague that an applicant ... does not know what it is that has to be established. ... In any event, one can hardly expect the lawgiver to circumscribe that which is inherently incapable of delineation. If something can be imagined and outlined in advance, it is probably because it is not exceptional.”

In *CIR v Rappa Resources (Pty) Ltd*<sup>25</sup> Ponnann ADP stated that it has been held that it is neither desirable nor possible to lay down a precise rule or definition as to what would constitute exceptional circumstances and that each case is to be considered on its own facts. Reference was made to *MV Ais Mamas Seatrans Maritime v Owners, MV Ais Mamas*<sup>26</sup> where Thring J remarked that:

- “1. What is ordinarily contemplated by the words ‘exceptional circumstances’ is something out of the ordinary and of an unusual nature; something which is excepted in the sense that the general rule does not apply to it; something uncommon, rare or different . . .
2. To be exceptional the circumstances concerned must arise out of, or be incidental to, the particular case.
3. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.
4. Depending on the context in which it is used, the word ‘exceptional’ has two shades of meaning: the primary meaning is unusual or different; the secondary meaning is markedly unusual or specially different.
5. Where, in a statute, it is directed that a fixed rule shall be departed from only under exceptional circumstances, effect will, generally speaking, best be given to the intention of the Legislature by applying a strict rather than a liberal meaning to the phrase, and by carefully examining any circumstances relied on as allegedly being exceptional.”

<sup>22</sup> Kellaway, E A (1995) *Principles of Legal Interpretation of Statutes, Contracts and Wills* at 224. Butterworths. See also *Natal Joint Municipal Pension Fund v Endumeni Municipality*, 2012 (4) SA 593 (SCA).

<sup>23</sup> [www.merriam-webster.com/dictionary/exceptional](http://www.merriam-webster.com/dictionary/exceptional) [Accessed 30 August 2024].

<sup>24</sup> *S v Dlamini; S v Dladla & others; S v Joubert; S v Schietekat* 1999 (7) BCLR 771 (CC), 1999 (4) SA 623 (CC) at 669.

<sup>25</sup> 2023 (4) SA 488 (SCA); 85 SATC 517 at 527.

<sup>26</sup> 2002 (6) SA 150 (C) at 156-157.



It is not possible to provide a list of circumstances which will either always constitute or not constitute exceptional grounds. Taxpayers must consider their particular facts and circumstances and identify appropriate circumstances. Each case must be considered according to its merits in order to determine whether the reasons for requesting an extension of more than 30 business days are exceptional and justify the requested extension above the 80-day period to lodge the objection (see **4.1**).

Generally, the following may be considered to be exceptional circumstances:

- A natural or human-made disaster
- A civil disturbance or disruption in services
- A serious illness or accident
- Serious emotional or mental distress

The mere existence of one of these circumstances is not sufficient. The taxpayer must demonstrate that this circumstance was the cause of the delay.

#### *Three-year period*

The Act prohibits an extension if more than three years have lapsed from the date of the assessment or the decision. See **4.5**.

In *Commissioner for the South African Revenue Service v Brummeria Renaissance (Pty) Ltd and Others*<sup>27</sup> it was noted that it is in the public interest that disputes should come to an end.

#### *Practice generally prevailing*

The extension of the prescribed period is prohibited if the grounds for the objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of the assessment or decision.

The term “practice generally prevailing” is defined in section 1 and has the meaning assigned in section 5. Section 5(1) provides that a practice generally prevailing is a practice set out in an official publication regarding the application or interpretation of a tax Act. An “official publication” is defined in section 1 as a binding general ruling, interpretation note, practice note or public notice issued by a senior SARS official or the Commissioner. It does not include a guide or brochure.

The objection process and timeframes are illustrated in **Annexure A**.

#### **4.4 Applying for an extension of time in which to lodge an objection**

The onus is on the taxpayer to provide motivation supported by documentation and evidence when submitting an application to SARS for an extension of the period in which to lodge an objection. SARS has the right to request further detail and additional information.

In ITC 1795<sup>28</sup> the taxpayer failed to provide proof of the expenses claimed and the Commissioner accordingly denied the objection. The taxpayer then lodged a late appeal and failed to provide valid reasons for the delay in noting the appeal. The court

<sup>27</sup> [2007] 4 All SA 1338 (SCA); 69 SATC 205 at 218.

<sup>28</sup> (2005) 67 SATC 297 (G).

held that based on the facts and circumstances of the case the Commissioner was correct in not entertaining the late lodgement.

In ITC 1883, Satchwell J stated the following:<sup>29</sup>

“The onus is therefore on the appellant to satisfy the court that ‘exceptional circumstances exist which give rise to the delay in lodging the objection’. This means that unusual facts must be proven which have a causal connection to the delay which resulted.”

The court also found that proof of certain facts which caused the delay was required and that while certain arguments had been raised, they had not been based on documents or proof.

The importance of a taxpayer submitting a detailed application to SARS for an extension of time in which to lodge an objection cannot be overemphasised. A properly motivated application for an extension of time in which to lodge an objection does not mean SARS will immediately proceed with considering the underlying objection. SARS must first consider the request for an extension and, if approved, consideration of the underlying objection can proceed.

#### **4.5 Refusal to grant an extension**

A senior SARS official who refuses to grant an extension of the prescribed period to lodge an objection must provide adequate reasons for the decision.

A taxpayer may object and appeal against a decision of a senior SARS official not to grant an extension of the period in which to lodge an objection.<sup>30</sup> Under rule 6(1), an aggrieved taxpayer may, before lodging an objection, request the reasons for the decision<sup>31</sup> in order to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7 (see **4.1**).

Under section 104(5) (see **4.3**) a senior SARS official may not grant an extension of the period to lodge an objection if more than three years have elapsed from the date of the assessment or the decision. In these circumstances, the senior SARS official does not make a decision not to grant an extension, the application to SARS for condonation or an extension is simply denied by operation of law. There could, however, be circumstances in which it would be appropriate for SARS to review the application of three-year period. For example, the SARS official neglected to exclude public holidays from the calculation of business days with the result that factually three years had not so elapsed. SARS therefore accepts that a taxpayer may object and appeal against the denial of a condonation or extension on the basis of the three-year period being exceeded. The lodging of an objection is a critically important procedural requirement for a taxpayer wishing to dispute such a denial.<sup>32</sup> SARS will consider the objection on a case-by-case basis. If the three-year period has factually been exceeded, under section 104(5)(b) a senior SARS official must disallow an objection to not being granted an extension beyond the three-year period.

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<sup>29</sup> 78 SATC 225 at 227.

<sup>30</sup> Section 104(2)(a) and (b).

<sup>31</sup> Rule 1 defines assessment to include, for purposes of the rules, a decision referred to in section 104(2).

<sup>32</sup> *C:SARS v Danwet 202 (Pty) Ltd* 2019 (5) SA 63 (SCA); 81 SATC 91.

#### 4.6 Periods in which to resubmit invalid objections

Rule 7(4) provides that SARS may regard an objection as invalid if a taxpayer did not deliver an objection in the manner and terms set out in rule 7(2).<sup>33</sup> SARS must generally<sup>34</sup> notify the taxpayer and state the grounds for invalidity in a notice which must generally<sup>35</sup> be issued to the taxpayer within 30 business days of delivery of the invalid objection.

A taxpayer that receives a notice of invalidity in respect of an objection lodged within the 80 business day period may, under rule 7(5), submit a new objection within a period of 20 business days of the delivery of the notice without having to apply for an extension. However, if such taxpayer does not submit a new objection or submits a new objection which does not comply with the requirements of rule 7(2) within the 20 business day period, that taxpayer may then submit a new and valid objection only with, if required, an application to SARS for an extension of the period in which to lodge an objection under section 104(4).<sup>36</sup>

### 5. Appeal

#### 5.1 Period within which an appeal against an unsuccessful objection must be lodged

Any taxpayer that is dissatisfied with SARS's decision to disallow the objection in whole or in part under section 106(2), may appeal against that assessment or decision in the manner, under the terms and within the period prescribed in the Act and the rules.<sup>37</sup>

The appeal must be lodged within 30 business days,<sup>38</sup> or the extended period granted pursuant to an application to SARS under section 107(2) (see **5.2**), after the delivery of the notice informing the taxpayer of the decision under section 106(4).

The Supreme Court of Appeal held in *C:SARS v Candice-Jean van der Merwe*<sup>39</sup> that since the relevant assessment was an agreed assessment under section 95(3), which is not subject to objection and appeal, SARS had correctly asserted that the objection was invalid and that an appeal had to be preceded by a valid objection and a decision on such objection. Accordingly, the taxpayer was not entitled to file a notice of appeal, nor to seek default judgment under rule 56 in consequence of SARS's alleged failure to file a statement of grounds of assessment in terms of rule 31 (in response to the taxpayer's invalid notice of appeal).

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<sup>33</sup> An objection that is not lodged within the period of 80 business days will generally be regarded by SARS as an invalid objection.

<sup>34</sup> Under rule 7(4)(a) to (c) the obligation to notify the taxpayer as indicated exists if the taxpayer used a SARS electronic filing service for lodging the objection and has an electronic filing page, if the taxpayer specified an address required under rule 7(2)(c) or if SARS is in possession of the taxpayer's current address.

<sup>35</sup> Under rule 7(4)(a) to (c) the obligation to notify the taxpayer as indicated exists if the taxpayer used a SARS electronic filing service for lodging the objection and has an electronic filing page, if the taxpayer specified an address required under rule 7(2)(c) or if SARS is in possession of the taxpayer's current address.

<sup>36</sup> Rule 7(6).

<sup>37</sup> Section 107(1).

<sup>38</sup> Rule 10(1).

<sup>39</sup> [2022] ZASCA 106; 85 SATC 10.

## 5.2 Period of extension of time to lodge an appeal

A senior SARS official may extend the period of 30 business days prescribed by the rules within which to lodge an appeal by –

- 21 business days if satisfied that reasonable grounds exist for the delay in noting the appeal;<sup>40</sup> or
- up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.<sup>41</sup>

The considerations relevant to the exercise of a discretion in extending the period in which to lodge an objection are also applicable to the exercise of a discretion in extending the period to lodge an appeal.<sup>42</sup> As indicated in **4.2**, these factors are neither all-embracing nor individually decisive and each case will be considered on its merits.

The extension, if granted, will run from the expiry of the 30 business day period stipulated in the rules, irrespective of when the application to SARS is made or granted. Therefore, if exceptional circumstances exist and the senior SARS official extends the period by 45 business days it means the taxpayer must appeal the decision within 75 business days [30 days under rule 10(1)(a) and extension to the period of 45 business days under section 107(2)(a)] after the delivery of the notice informing the taxpayer of the decision under section 106(4).<sup>43</sup> Section 4 of the Interpretation Act<sup>44</sup> governs how the period of days is calculated.<sup>45</sup>

Under section 107(2) a senior SARS official may not grant an extension of the period to lodge an appeal if 75 business days have elapsed after the notice of disallowance of the objection under Rule 9. In these circumstances, the senior SARS official does not make a decision not to grant an extension, the application to SARS for condonation or an extension is simply denied by operation of law. There could, however, be circumstances in which it would be appropriate for SARS to review the application of the 75 business day period. For example, the SARS official neglected to exclude public holidays from the calculation of business days with the result that factually 75 business days had not so elapsed. SARS therefore accepts that a taxpayer may object and appeal against the denial of a condonation or extension on the basis of 75 business days having been exceeded. The lodging of an objection is a critically important procedural requirement wishing to dispute such a denial.<sup>46</sup> SARS will consider the objection on a case-by-case basis. If the 75 business day period has factually been exceeded, a senior SARS official must disallow the objection to not being granted an extension to lodge an appeal beyond the 75 business day period.

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<sup>40</sup> Section 107(2)(a).

<sup>41</sup> Section 107(2)(b).

<sup>42</sup> See **4.2**.

<sup>43</sup> We note with respect that this interpretation differs to the judgement in the unreported Case 0018/2016, Gauteng Tax Court, 27 January 2017. The judgement was taken on appeal in *C:SARS v Danwet 202 (Pty) Ltd* 2019 (5) SA 63 (SCA); 81 SATC 91 and was overturned. In the latter case, the SCA found the tax court did not have jurisdiction to hear the matter.

<sup>44</sup> Act 33 of 1957.

<sup>45</sup> See **4.1**.

<sup>46</sup> *C:SARS v Danwet 202 (Pty) Ltd* 2019 (5) SA 63 (SCA); 81 SATC 91.

### 5.3 Applying for an extension of time in which to lodge an appeal

The onus is on the taxpayer to provide motivation supported by documentation and evidence when submitting an application to SARS for an extension of the period in which to lodge an appeal. SARS has the right to request further detail and additional information.<sup>47</sup>

### 5.4 Refusal to grant an extension

A taxpayer may object and appeal against a decision of a senior SARS official not to grant an extension of the period in which to lodge an appeal.<sup>48</sup> Under rule 6(1), an aggrieved taxpayer may, before lodging an objection, request the reasons for the assessment or decision<sup>49</sup> in order to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7 (see **4.1**).

## 6. Conclusion

An objection against an assessment or decision must be lodged within 80 business days of the date of assessment or decision unless the taxpayer requested reasons for the assessment or decision in which case the period runs from a later date. Similarly, an appeal against the disallowance of an objection must be lodged within 30 business days after delivery of the notice of disallowance of the objection.

A senior SARS official may extend the date for lodging an objection by –

- 30 business days if satisfied that reasonable grounds exist for the delay in lodging the objection; and
- between 31 business days and three years if satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection.

No extension can be granted for –

- a delay of more than three years from the date of assessment or decision; or
- grounds of objection that are based wholly or mainly on a change in the practice generally prevailing at the date of assessment or decision.

A senior SARS official may extend the date for lodging an appeal by –

- 21 business days, if satisfied that reasonable grounds exist for the delay; or
- up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.

**Legal Counsel**  
**SOUTH AFRICAN REVENUE SERVICE**

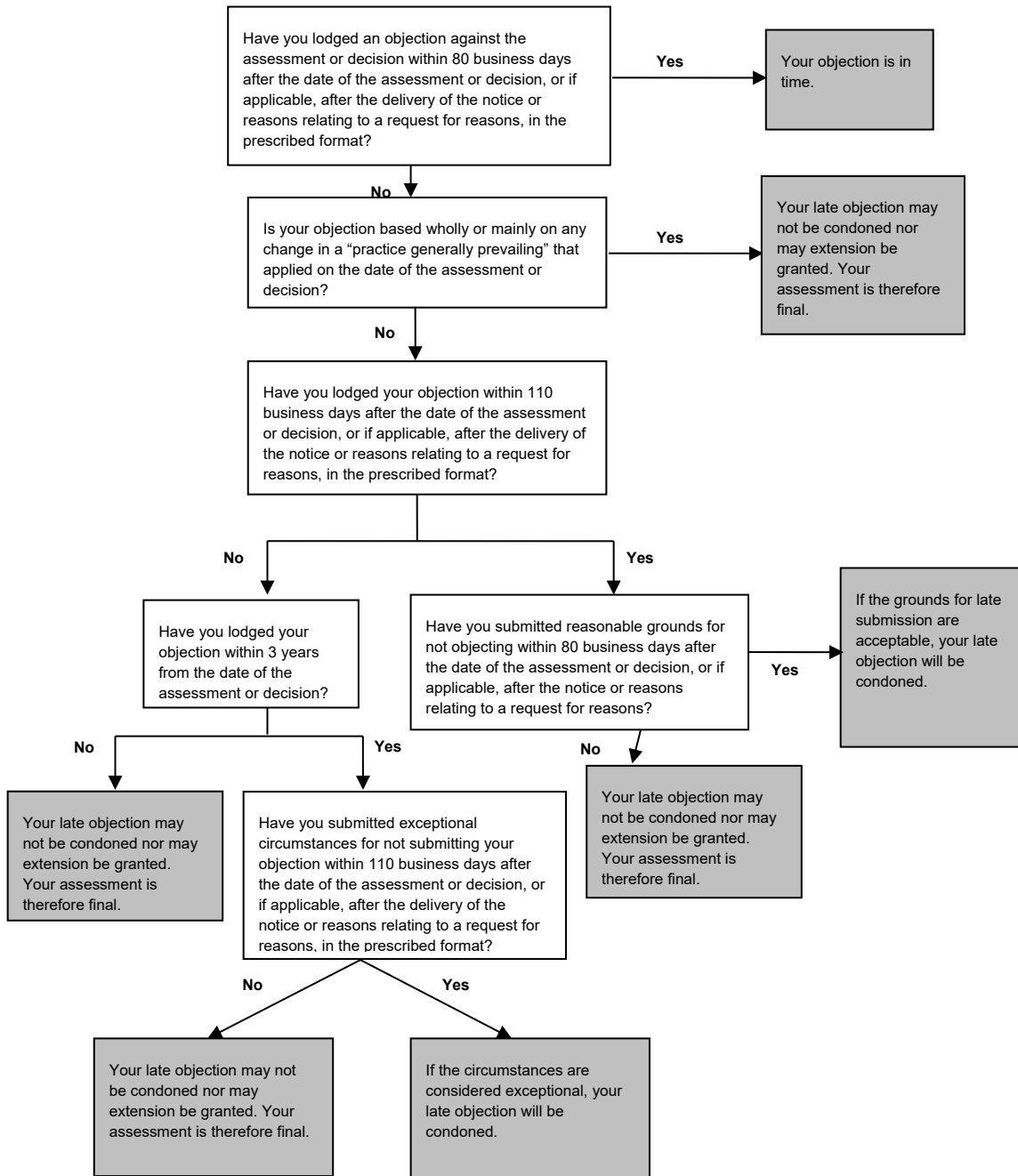
<sup>47</sup> See **4.4** for more detail – same principles apply.

<sup>48</sup> Section 104(2)(b) and section 107(2). See **4.5** for more detail.

<sup>49</sup> Rule 1 defines assessment to include, for purposes of the rules, a decision referred to in section 104(2).

**Annexure A – Objection process and timeframes**

The objection process and timeframes can be illustrated as follows:



## Annexure B – The law

### Definition of “date of assessment” in section 1

“date of assessment” means—

- (a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or
- (b) in the case of self-assessment by the taxpayer—
  - (i) if a return is required, the date that the return is submitted; or
  - (ii) if no return is required, the date of the last payment of the tax for the tax period or, if no payment was made in respect of the tax for the tax period, the effective date;

### Section 104

**104. Objection against assessment or decision.**—(1) A taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment.

(2) The following decisions may be objected to and appealed against in the same manner as an assessment—

- (a) a decision under subsection (4) not to extend the period for lodging an objection;
- (b) a decision under section 107(2) not to extend the period for lodging an appeal; and
- (c) any other decision that may be objected to or appealed against under a tax Act.

(3) A taxpayer entitled to object to an assessment or ‘decision’ must lodge an objection in the manner, under the terms, and within the period prescribed in the ‘rules’.

(4) A senior SARS official may extend the period prescribed in the ‘rules’ within which objections must be made if satisfied that reasonable grounds exist for the delay in lodging the objection.

(5) The period for objection must not be so extended—

- (a) for a period exceeding 30 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection;
- (b) if more than three years have lapsed from the date of assessment or the ‘decision’; or
- (c) if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the ‘decision’.

### Section 107(1) to (3)

**107. Appeal against assessment or decision.**—(1) After delivery of the notice of the decision referred to in section 106 (4), a taxpayer objecting to an assessment or ‘decision’ may appeal against the assessment or ‘decision’ to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the ‘rules’.

(2) A senior SARS official may extend the period within which an appeal must be lodged for—

- (a) 21 business days, if satisfied that reasonable grounds exist for the delay; or
- (b) up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.

(3) A notice of appeal that does not satisfy the requirements of subsection (1) is not valid.

### Definition of “deliver” in rule 1

“**deliver**” means to submit, lodge, issue, give, send or serve a document to the address specified for this purpose under these rules, in the following manner:

- (a) by SARS, the clerk or the registrar, in the manner referred to in section 251 or 252 of the Act, except the use of ordinary post;
- (b) by SARS, if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, by posting it on the electronic filing page of the taxpayer or appellant; or
- (c) by the taxpayer or appellant, by—
  - (i) handing it to SARS, the clerk or the registrar;
  - (ii) sending it to SARS, the clerk or the registrar by registered post;
  - (iii) sending it to SARS, the clerk or the registrar by electronic means to an e-mail address or telefax number; or
  - (iv) if the taxpayer or appellant uses a SARS electronic filing service to dispute an assessment, submitting it through the SARS electronic filing service.

### Rule 7 – Objection against assessment

(1) A taxpayer who may object to an assessment under section 104 of the Act, must deliver a notice of objection within 80 days after—

- (a) delivery of a notice under rule 6(4) or the reasons requested under rule 6; or
- (b) where the taxpayer has not requested reasons, the date of assessment.

(2) A taxpayer who lodges an objection to an assessment must—

- (a) complete the prescribed form in full;
- (b) set out the grounds of the objection in detail including—
  - (i) specifying the part or specific amount of the disputed assessment objected to;
  - (ii) specifying which of the grounds of assessment are disputed; and
  - (iii) submitting the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment;
- (c) if a SARS electronic filing service is not used, specify an address at which the taxpayer will accept delivery of SARS’s decision in respect of the objection as well as all other documents that may be delivered under these rules;
- (d) sign the prescribed form or ensure that the prescribed form is signed by the taxpayer’s duly authorised representative; and
- (e) deliver, within the 80 day period, the completed form at the address specified in the assessment or, where no address is specified, the address specified under rule 2.

(3) The taxpayer may apply to SARS under section 104(4) for an extension of the period for objection.

(4) Where a taxpayer delivers an objection that does not comply with the requirements of subrule (2), SARS may regard the objection as invalid and must notify the taxpayer accordingly and state the ground for invalidity in the notice within 30 days of delivery of the invalid objection, if—

- (a) the taxpayer used a SARS electronic filing service for the objection and has an electronic filing page;
- (b) the taxpayer has specified an address required under subrule (2)(c); or



(c) SARS is in possession of the current address of the taxpayer.

(5) A taxpayer who receives a notice of invalidity in respect of an objection lodged within the 80 day period may within 20 days of delivery of the notice submit a new objection without having to apply to SARS for an extension under section 104(4).

(6) If the taxpayer fails to submit a new objection or submits a new objection which fails to comply with the requirements of subrule (2) within the 20 day period, the taxpayer may thereafter only submit a new and valid objection together with, if required, an application to SARS for an extension of the period for objection under section 104(4).

### **Rule 10(1) – Appeal against assessment**

(1) A taxpayer who wishes to appeal against the assessment to the tax board or tax court must deliver a notice of appeal in the prescribed form and manner within—

- (a) 30 days after delivery of the notice of disallowance of the objection under rule 9; or
- (b) the extended period pursuant to an application under section 107(2).