



Managing SARS RFI's, Audits and Resolving disputes

PRESENTED BY

Kreston South Africa

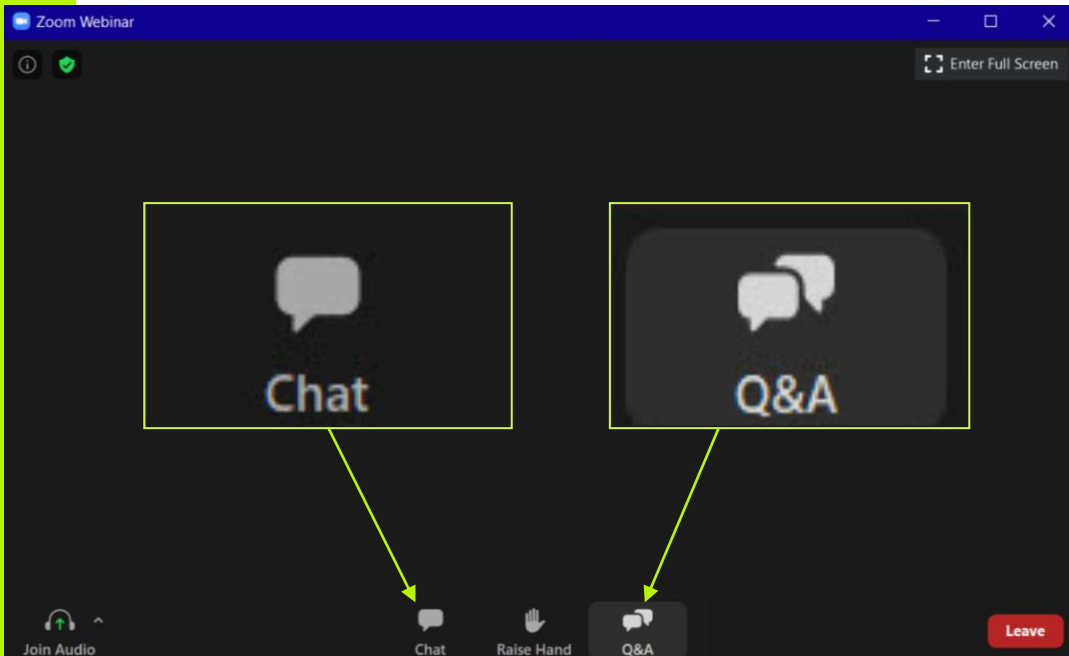
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24 August 2022



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(25 Questions)

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Assessment on Statements of Tax Standards
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ABOUT THE PRESENTER

Johan Heydenrych Kreston South Africa



Johan is a Chartered Accountant who specialised in taxation since 1991. He holds the following qualifications:

- B. Com (Accounting) (Cum Laude)
- B. Com (Accounting) (Hons) (Cum Laude) (Award: "Best student in Audit 700")
- Certificate in the Theory of Accounting
- M. Com (Taxation) (Cum Laude) (Award: "Best M. Com (Tax) student")
- Chartered Accountant (Specialising in Taxation)
- Member of SAICA
- Registered Tax Practitioner

Johan was a tax partner at KPMG from 1997 to 2020 and is currently a partner in the Kreston SA network specialising in taxation.

He provides a wide range of tax services to various clients across industries. These include but are not limited to the following:

- Advice on Tax Risk Management and Tax Governance.
- Tax compliance services including but not limited to ITR 14 and IT 14SD
- Dealing with tax disputes including representing clients at Alternative Dispute Resolution (ADR) hearings.
- Submission of documentation and revised returns under the Voluntary Disclosure Programme.
- Issuing of tax technical opinions on Income Tax, VAT and PAYE. This include preparing briefs to Senior Counsel and submissions of requests for Binding Opinions from SARS.
- Audit support services that includes Normal Tax and Deferred Tax disclosure and disclosure of uncertain tax positions.
- Assistance with implementation of tax reporting for new accounting standards such as IFRIC 23, IFRS 9, IFRS 15 and IFRS 16.
- Facilitation of tax diagnostic sessions with existing and prospective clients.
- Advice on mergers, acquisitions and reorganizations.
- Tax due diligences
- Advice on tax implications of recapitalization transactions, debt restructures, liquidations and deregistration's



ABOUT THE PRESENTERS

Marina Pretorius

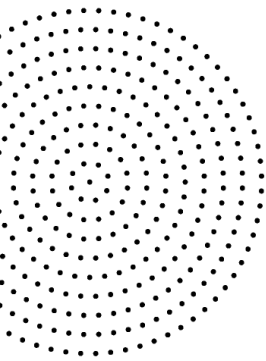
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- Marina joined the Kreston Pretoria team on 1 March 2021 after specialising in tax at KPMG for the last 13 years. She is an experienced tax advisor who holds an H. Dip(Tax) Degree. She completed her articles at Deloitte where she also passed the CA(SA) qualifying examination.
- She worked in the UK on large listed clients for 2 years and joined KPMG tax department in 2007.
- As Associate Director and head of KPMG's Global Compliance Managed Services business unit, she is very experienced in tax and accounting reporting requirements for large multi-nationals.
- This includes ITR 14 disclosures required for multi-nationals as well as submissions of CbC Reports, Master Files and Local Files.

Education and Qualifications

- B. Com (Accounting)
- B. Com (Accounting) (Hons)
- Certificate in the Theory of Accounting
- Passed qualifying CA(SA) exam.
- H.Dip (Tax)
- Registered Tax Practitioner



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1

Introduction: Dealing with SARS RFI's,
Audits and dealing with disputes

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As Tax Practitioners, we protect our clients.

As Tax Practitioners, we protect ourselves.

Per S241 (2) of the TAA, "A senior SARS official may lodge a complaint with a 'recognised controlling body' if a registered tax practitioner has, in the opinion of the official without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit or other document relating to matters affecting the application of a tax Act;

We do this by:

- Having a solid understanding of the requirements of the Income Tax Act, VAT Act and TAA.
- Understanding the rights and obligations of the taxpayer and ensure that SARS and our clients complies with these.
- Anticipate an RFI or Audit in every return we submit.
- Be vigilant of tax uncertain positions, tax aggressive positions and tax illegal positions.
- Think laterally and not one-dimensionally in identifying risks and opportunities on a multi-disciplinary basis.

2

Taxpayer's rights

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Taxpayer's rights



Taxpayer has a constitutional right to just administrative action in terms of section 33 of the Constitution

PAJA enacted (Promotion of Administrative Justice Act 2 of 2000) to give effect to the above right

Tax Administration Act 28 of 2011

Recourse available to the taxpayer:

- SSMO
- Dispute resolution
- Tax Ombud
- Public protector

3

“Verification” and “Audit”

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Difference between “verification” and “audit” (SARS website)



What is verification?

- Verification is a **face-value verification** of the information declared by the taxpayer on the declaration or in a return.
- This involves a comparison of this information against the financial and accounting records and/or other supporting documents to ensure that the declaration/return is a fair and accurate representation of the taxpayer’s tax position.

What is an audit?

- It is an examination of the financial and accounting records and/or the supporting documents of the taxpayer to determine whether the taxpayer has correctly declared his/her tax position to SARS.
- Where the taxpayer has not made a declaration or filed a return, it is an investigation regarding whether the taxpayer’s actions complies with the provisions of the relevant tax legislation.

Who can be selected for verification?

- Any taxpayer can be selected by SARS for verification for the purpose of proper administration of tax, including on a risk basis.

What steps should I take if I am selected for verification?

- If you are selected for verification, you will be notified by SARS through an official letter. This letter will indicate that you must within 21 business days submit either:
 - The requested relevant material (supporting documents) / IT14SD; or
 - A [Request For Correction \(RFC\)](#).
- The required relevant material will differ depending on the tax type.

What can I expect during the verification?

(SARS website)

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If you are subject to a verification, we will endeavour to conclude verification within 21 business days from the date all required relevant material is received, if your return is for the current filing period.

A letter requesting further relevant material could be issued if the relevant material initially supplied was not sufficient to finalise the verification.

If you have a refund due, the refund will not be paid out while the verification is in progress.

SARS must ensure that the tax position declared is in line with the relevant tax legislation. If it is found to be incorrect, an assessment will be raised.

The levying of understatement penalties must be considered where an understatement occurred. The percentage of a penalty varies from 0% to 200%. Harsher penalties are reserved for culpable repeat offenders or obstructive taxpayers.

Verification process and finalization

(SARS website)



What if I don't respond to the request for relevant material?

- If you do not respond by submitting a [REC](#) or providing the relevant material, a second letter will be sent to you.
- If you still do not respond within the specified timelines, a revised assessment will be issued based on the data at SARS' disposal.
- **Top Tip:** It is better to respond to all queries straight away. Taxpayers found to be obstructive could face higher penalties should it be found that an understatement occurred.

What can I expect when the verification is finalised?

- Where no further risk(s) were identified and no finding was made, a Notification of the finalisation of the verification via eFiling, e-mail or post;
- Where no further risk(s) were identified and a finding was made, a Notice of Assessment of the revised assessment via eFiling, e-mail or post;
- Where further risk(s) were identified, a Referral for Audit Letter
- If you have a refund due, the refund will only be paid once the audit is complete and the specific refund validations were passed.

Typical Request for Information

Description
Consulting, legal and professional fees per ITR14: Include description of each expense/whv expense was incurred: and 3 largest invoices (legal only)
Description
Accruals and provisions (per Trade and other payables note)
Earn-in bonus provision (current liability)
Description
Turnover per VAT returns of [] (for 201607 to 201706 periods) exceeded the VAT turnover of [] declared on the IT14SD (further reconciling difference)
Detailed breakdown of Other Expenses total claimed per the ITR14
Income not taxable by virtue of a double taxation agreement: Explanation as to which DTA was relied upon and the specific provision of the DTA used to claim exemption
Proof that Foreign Income has been included in Taxable Income
Schedule and the Foreign tax certificates (certificates should be issued by the country of origin) for Foreign Tax Credit claimed, containing the following information:

- A detailed breakdown for the following reconciling difference(s) as reflected on the IT14SD submitted and provide reasons as to why the amount should not be included in taxable income.

Description	Amount
Deferred revenue	[]
Other Income subject to VAT	
Admin fees subject to VAT	
Intercompany invoicing not in revenue	

Consider:
VAT, Income Tax, PAYE, CGT,
DTA and foreign taxes

IT 14SD descriptions were not well thought through – now leads to RFI questions on Income Tax

Audit

(SARS website)



Who can be selected for audit?

- Any taxpayer can be selected by SARS for an audit for the purpose of proper administration of tax, including on a risk basis.
- Taxpayers may also be selected for audit on a random or risk basis.

What should I expect if I am referred for an audit?

- If you were subject to a verification and the verification process has been completed, your tax affairs could still be referred for audit as part of the SARS compliance process.
- This does not mean that an audit has commenced.
- You must still await a formal Notification of Audit letter (where the audit has been allocated to a specific auditor).
- An audit is only deemed to commence once a formal Notification of Audit by a specific auditor is issued to the taxpayer.

What can I expect during the audit

You can expect the following:

- The Notification of Audit will indicate the initial scope of the audit;
- A Notification where additional material is required;
- The SARS Auditor will produce an Authorisation Letter where a field audit is conducted;
- Progress reports of the stage of the audit will be issued at intervals of 90 calendar days from the date of the Notification of Audit;
- If you have a refund due, the refund will not be paid out during the execution of the audit.

The progress reports may not apply if SARS is of the view that it will impede or jeopardise the outcome of the audit.

Insist in progress reports.

What can I expect during the audit

- By its nature, an audit is a more intrusive process than a verification and the scope could be extensive.
- The audit could be completed within anything from 30 business days to 12 months, or even longer, depending on the complexity of the matter, the volumes of transactions involved and the level of co-operation by the taxpayer.
SARS can request additional or further relevant material throughout the audit.
- If you do not respond by submitting the relevant material when requested, SARS will raise an assessment based on information readily available or obtained from a third party.
- SARS may make an original, additional, reduced or jeopardy assessment based on an estimate.
- Should you require any further assistance, contact the specific auditor (SARS official) mentioned in the Notification of audit letter.
- **Top Tip:** It is better to respond to all queries straight away. Taxpayers whom are obstructive could face higher penalties should it be found that an understatement occurred.

Provide relevant material
Do not provide material not requested
unless there is a purpose

<https://www.sars.gov.za/individuals/what-if-i-do-not-agree/being-audited-or-selected-for-verification/>

Section 227(a) of the TAA states that one of the requirements of a valid voluntary disclosure is that it must be “voluntary”.

Voluntary Disclosure Programme

At all times, during verification or audit, the taxpayer can approach the Voluntary Disclosure Unit to make a voluntary disclosure. Refer to the [Voluntary Disclosure programme](#) for more guidance on that process.

Extract from SARS Guide

Where an applicant has been given notice of the commencement of an audit or criminal investigation

- which has not been concluded and
- is related to the disclosed default,

such an application is regarded as not being voluntary, unless

- a senior SARS official is of the view, having regards to the circumstances and ambit of the audit or investigation, that the default would not otherwise have been detected during the audit or investigation, and
- is also of the view that the application would be in the interest of good management of the tax system and the best use of SARS' resources.

1	2	3	4	5	
<i>Item</i>	<i>Behaviour</i>	<i>Standard case</i>	<i>If obstructive, or if it is a 'repeat case'</i>	<i>Voluntary disclosure after notification of audit or criminal investigation</i>	<i>Voluntary disclosure before notification of audit or criminal investigation</i>
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%



What is purpose of column if SARS guide states that it is not voluntary?

What column applies if there is an "unrelated" audit?

Reasonable assistance

- An obligation is imposed on the person on whose premises the audit is carried out to provide such reasonable assistance as may be required by SARS to conduct the audit
- This includes the following:
 - Making available appropriate facilities, to the extent that such facilities are available, for example photocopying facilities;
 - Answering questions relating to the audit or investigation; and
 - Submitting relevant material as required
- If SARS uses photocopying facilities at a person's premises, the person may recover from SARS the costs for the use of photocopying facilities
- No person at the premises may without just cause:
 - Obstruct a SARS official from carrying out the audit; or
 - Refuse to give the access or assistance as may be required

- Provide tea, coffee, access to meals
- Be co-operative
- Dedicate person to provide assistance
- If SARS interview staff – be present
- Ensure SARS complies with Safety and Health requirements

Finalization of audit

At the conclusion of the audit, we will endeavour to:

- Where potential adjustments were identified, issue an Audit Findings Letter indicating the grounds for the proposed assessments within 21 business days. SARS will provide the taxpayer at least 21 business days to respond to the Audit Findings Letter.
- Conclude an audit within 90 business days from the date all required relevant material is received.
- Provide a Finalisation of Audit Letter detailing the grounds for the assessment (including the amounts) if it is found that your tax position is incorrect or provide a Finalisation of Audit Letter to conclude the audit where no findings were made.

SARS must ensure that the tax position declared is in line with the relevant tax legislation. If it is found to be incorrect, an assessment will be raised.

You can expect an Audit Findings Letter indicating the findings of the audit once completed, unless you waive the right to receive such letter. You need to respond to this Audit Findings Letter within 21 business days indicating your agreement or disagreement with the proposed adjustments, imposition of understatement penalties and/or interest. You must also provide evidence to support your view where you disagree and provide reason(s) and evidence as to why understatement penalties and/or interest should not be imposed.

Finalization of audit

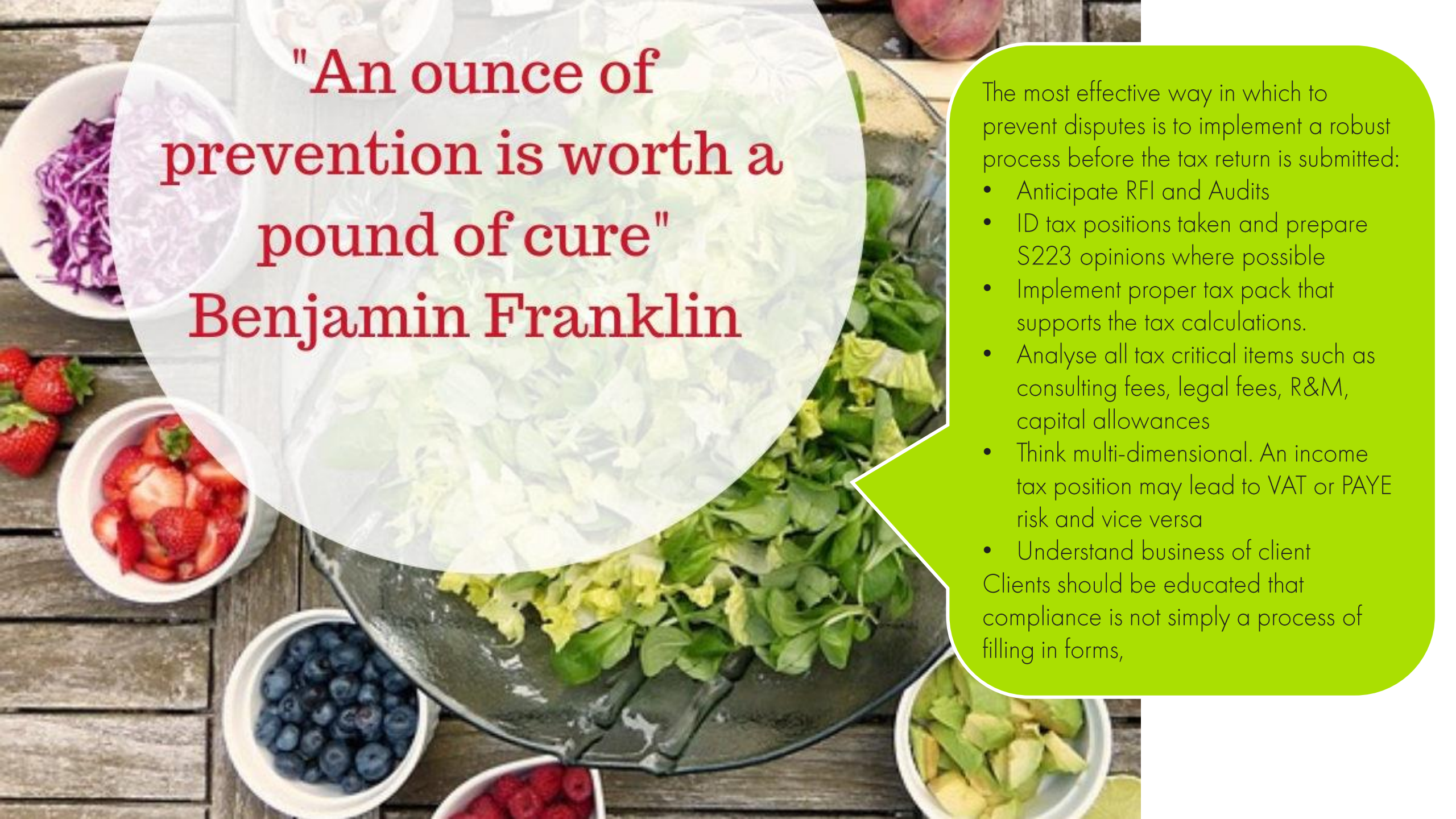
- The response to the Audit Findings Letter will be considered in determining whether the proposed audit findings should remain or not.
- If SARS is still of the view that a revised assessment must be done; or where the taxpayer chose not to respond to the Audit Findings Letter, the imposition of understatement penalties must be considered. The levying of understatement penalties must be considered where an understatement occurred. The percentage of a penalty varies from 0% to 200%. Harsher penalties are reserved for culpable repeat offenders or obstructive taxpayers. Thereafter a revised assessment will be raised.
- A Notice of Assessment and a Finalisation of Audit Letter detailing the grounds of the assessment (including amounts) will be issued via eFiling, email or post. Any refund due to you will be paid out after the completion of the audit, subject to specific refund validations being passed.
- If no finding was made as result of the audit or SARS conceded based on the response by the taxpayer to the Audit Findings Letter, a Finalisation of Audit Letter will be issued via eFiling, email or post.
- If you are aggrieved by the assessment, you can dispute it. Refer to [Objections](#) for more guidance on that process.
- If you are aggrieved by the original assessment based on an estimate, you can submit the complete and correct return within 40 business days from the date of assessment.

4

Commonly found errors leading to
disputes with SARS

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"An ounce of prevention is worth a pound of cure"
Benjamin Franklin

The most effective way in which to prevent disputes is to implement a robust process before the tax return is submitted:

- Anticipate RFI and Audits
 - ID tax positions taken and prepare S223 opinions where possible
 - Implement proper tax pack that supports the tax calculations.
 - Analyse all tax critical items such as consulting fees, legal fees, R&M, capital allowances
 - Think multi-dimensional. An income tax position may lead to VAT or PAYE risk and vice versa
 - Understand business of client
- Clients should be educated that compliance is not simply a process of filling in forms,

Responding to an RFI or an Audit

- Many disputes could have been avoided if more care is taken by tax practitioners when responding to RFI and audits.
- This is an important opportunity to write the narrative that will promote the point of view of the Taxpayer.
- Do not:
 - Simply dump information on SARS
 - Provide convoluted information to SARS
 - Provide unnecessary information to SARS
 - Use poor language that could be misconstrued
 - Be aggressive and confrontational – The SARS official is simply doing his/her job
- Do:
 - Provide information in a concise clearly understandable and neat format to SARS
 - Clarify areas where SARS may interpret information incorrectly
 - Respond timeously and completely to all questions raised
 - Provide background to the nature of the taxpayer's business relating to the query
 - Use simple and easily understandable English
 - Consider the issues raised from a multi-disciplinary perspective.
 - Remember that the "burden of proof" remains on the taxpayer

Section 102 of the TAA

102. Burden of proof.—

- (1) A taxpayer bears the burden of proving—
 - (a) that an amount, transaction, event or item is exempt or otherwise not taxable;
 - (b) that an amount or item is deductible or may be set off;
 - (c) the rate of tax applicable to a transaction, event, item or class of taxpayer;
 - (d) that an amount qualifies as a reduction of tax payable;
 - (e) that a valuation is correct; or
 - (f) whether a 'decision' that is subject to objection and appeal under a tax Act, is incorrect.
- (2) The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS.

The approach to "record keeping" is that it will provide a defensible position for every tax position taken

5

Taxpayer's right to a refund
(S190 and S191)

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Basics

When is a taxpayer entitled to a refund?

- When the refund is correctly stated in an assessment; and
- If a taxpayer made a mistake and paid an amount greater than what is contained in an assessment

When can SARS withhold paying a refund?

- If verification, inspection or audit is necessary to confirm the accuracy of the refund – until this has been finalised (S190(2))

If a taxpayer provides acceptable security SARS **must** release a refund before verification, inspection or audit is finalised. (S190(3))

A decision not to authorise a refund is subject to objection and appeal (S190(6))

SARS generally ignores S190(3)
Subject of many complaints to Tax Ombud

Underestimation penalty

$$A = [(B \times C) - D - E] \times 20\%$$

Where:

A = The underestimation penalty (cannot be negative)

B = Final Income Tax Liability

C = 80% if $B > R1$ million and
90% if $B \leq R1$ million

D = 1st provisional tax payment

E = 2nd provisional tax payment

Par 19(3) and 19(5) of 4th Schedule

- (3) The Commissioner may call upon any provisional taxpayer to
- justify any estimate made by the provisional taxpayer in terms of subparagraph (1), or
 - to furnish particulars of the provisional taxpayer's income and expenditure or
 - any other particulars that may be required, and,
- if the Commissioner is dissatisfied with the said estimate, he or she may increase the amount thereof to such amount as he or she considers reasonable, which increase of the estimate is not subject to objection and appeal.
- (5) Any estimate or increase made by the Commissioner under the provisions of sub-paragraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part.

If taxpayer makes a top-up payment to par 19(3), then no underestimation penalty can be charged

6

Request for remittance of penalties

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Only for fixed amount penalty,
Reportable Arrangement penalty
and percentage based penalty

Request for remittance of penalties (S215)

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A person who is aggrieved by a penalty assessment notice may, on or before the date for payment in the penalty assessment, request SARS to remit the penalty in accordance with Part E

The request must include the following:

A description of the circumstances which prevented the person from complying with the relevant obligation under a tax Act in respect of which the penalty has been imposed; and

The supporting documents and information (where relevant)

Decision by SARS not to remit a penalty is subject to objection and appeal

Part E: Remittance of Fixed amount penalty or Reportable Arrangement penalty (S217)



SARS may remit the fixed amount or reportable arrangement penalty, or a portion thereof

If a penalty has been imposed for:

- A first incidence of non-compliance; or
- Non-compliance leading to a fixed amount penalty, if the duration of the non-compliance < 5 business days,

If SARS is satisfied that:

- Reasonable grounds for the non-compliance exist; and
- The non-compliance in issue has been remedied

For fixed amount penalty, the maximum amount that can be remitted is R2 000

For reportable arrangement penalty, the maximum amount that can be remitted is R 100 000

Remittance percentage based penalty (S217)



SARS may remit the percentage based penalty, or a portion thereof, if SARS is satisfied that:

- The penalty has been imposed
 - in respect of a first incidence of non-compliance, **or**
 - involved an amount of less than R2 000;
- Reasonable grounds for the non-compliance exist; and
- The non-compliance in issue has been remedied

What is deemed to be “first incidence of non-compliance”? (S208)

- Incidence of non-compliance by a person if no “penalty assessment” was issued during the preceding 36 months (involving an incidence of non-compliance of the same or different kind”)

Remittance of penalty in exceptional circumstances (S218)

- Taxpayer was **incapable of complying with legislation**
- SARS must remit the penalty, or part thereof in the case of:
 - A natural or human-made disaster;
 - A civil disturbance or disruption in services;
 - A serious illness or accident;
 - Serious emotional or mental distress;
 - Any of the following acts by SARS:
 - a capturing error;
 - a processing delay;
 - provision of incorrect information in an official publication or media release issued by the Commissioner;
 - delay in providing information to any person; or
 - failure by SARS to provide sufficient time for an adequate response to a request for information by SARS;
 - Serious financial hardship, such as -
 - Natural person - Lack of basic living requirements; or
 - Business - An immediate danger that the continuity of business operations and the continued employment of its employees are jeopardised

IMPORTANT: Section 215(5)

If specific waiver requirements in a specific act

215. Procedure to request remittance of penalty

(5) If a tax Act other than this Act provides for remittance grounds for a 'penalty', SARS may despite the provisions of section 216, 217 or 218 remit the 'penalty' or a portion thereof under such grounds.

E.g. Underestimation of provisional tax

E.g. Par 20(2) of the 4th Schedule dealing with underestimation penalties (provisional tax) reads as follows:

"Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1) was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the penalty or a part thereof."

7

Understatement penalty (S222)

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Calculated on “shortfall”

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Also applies to assessed losses
SARS argues that it even applies to overstatement of mining capex

What is the shortfall? It is the sum of:

The difference between the amount of 'tax' properly chargeable for the tax period and the amount of 'tax' that would have been chargeable for the tax period if the 'understatement' were accepted;

The difference between the amount properly refundable for the tax period and the amount that would have been refundable if the 'understatement' were accepted;

The difference between the amount of an assessed loss or any other benefit to the taxpayer properly carried forward from the tax period to a succeeding tax period and the amount that would have been carried forward if the 'understatement' were accepted, multiplied by the tax rate.

The tax rate is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period


Understatement penalty % table (S223)

Behaviour	Standard Case	If obstructive, or if it is a 'repeat case'	Voluntary disclosure after notification of audit or investigation	Voluntary disclosure before notification of audit or investigation
Substantial understatement	10%	20%	5%	0%
Reasonable care not taken in completion of return	25%	50%	15%	0%
No reasonable grounds for tax position taken	50%	75%	25%	0%
'Impermissible avoidance arrangement'	75%	100%	35%	0%
Gross negligence	100%	125%	50%	5%
Intentional tax evasion	150%	200%	75%	10%

* Subject to an objection and appeal process

The Tax Administration Act

Section 102(2) of the TAA



“The burden of proving whether ... the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS.”

The Tax Administration Act S223(3)

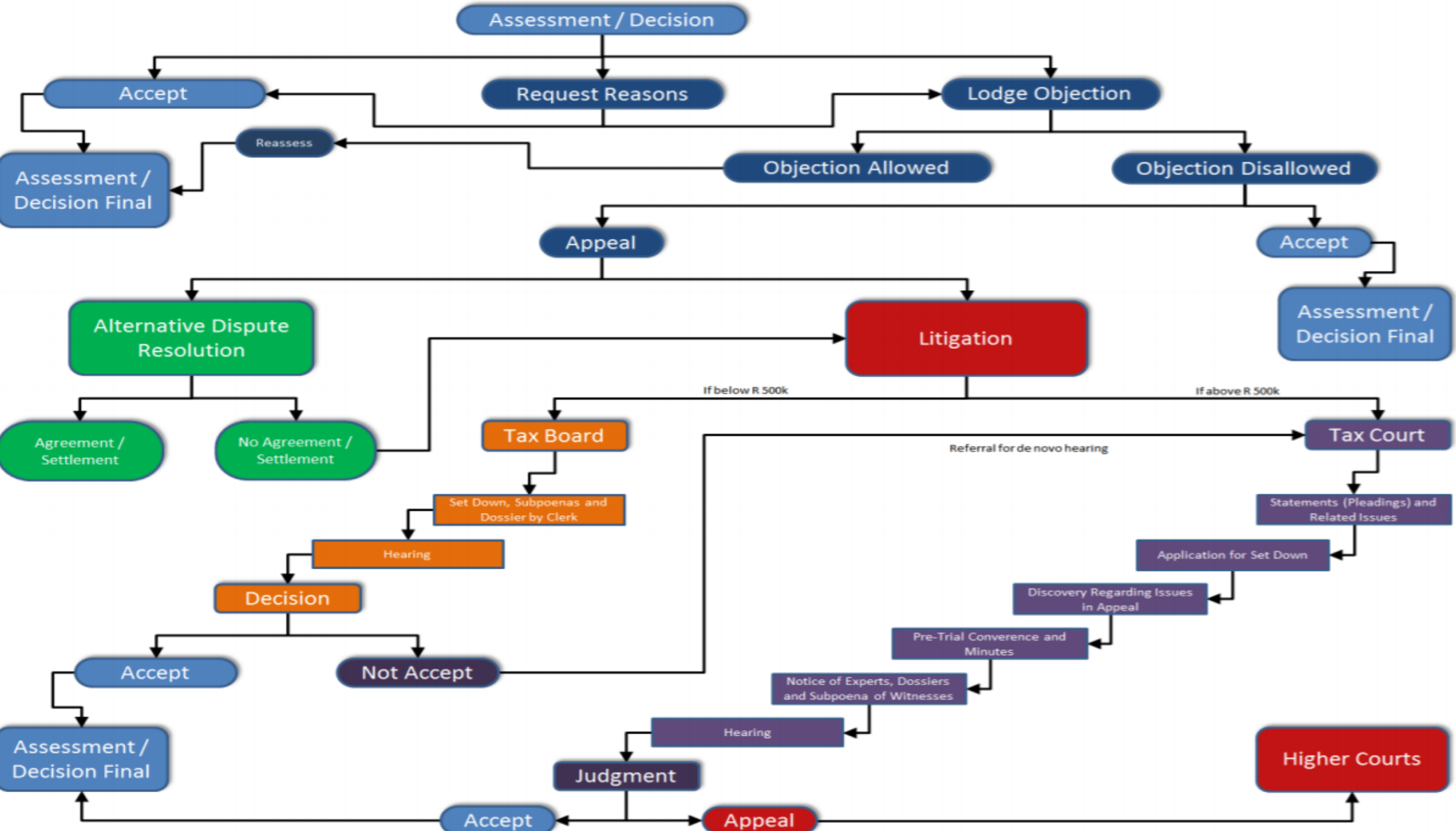
- (3) SARS must remit a 'penalty' imposed for a '**substantial understatement**' if SARS is satisfied that the taxpayer—
- (a) made full disclosure of the arrangement, as defined in section 34, that gave rise to the prejudice to SARS or the fiscus by no later than the date that the relevant return was due; and
 - (b) was in possession of an opinion by an independent registered tax practitioner that—
 - (i) was issued by no later than the date that the relevant return was due;
 - (ii) was based upon full disclosure of the specific facts and circumstances of the arrangement and, in the case of any opinion regarding the applicability of the substance over form doctrine or the anti-avoidance provisions of a tax Act, this requirement cannot be met unless the taxpayer is able to demonstrate that all of the steps in or parts of the arrangement were fully disclosed to the tax practitioner, whether or not the taxpayer was a direct party to the steps or parts in question; and
 - (iii) confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.

'**substantial understatement**' means a case where the prejudice to SARS or the fiscus exceeds the greater of five per cent of the amount of 'tax' properly chargeable or refundable under a tax Act for the relevant tax period, or R1 000 000;

8

Dispute Resolution: Basic Process
Chapter 9 of TAA





9

Request for reasons

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What to do before objecting?

- Request reasons related to the grounds for the assessment if insufficient reasons were provided by SARS in the letter of audit findings.
 - Enables the taxpayer to object against the assessment
- The taxpayer does not need to lodge an objection until a the reasons for the assessment is received from SARS.
 - (30 business days start from date of receipt of reasons from SARS)
- Request for reasons:
 - Must be made in the prescribed form
 - Must specify an address at which the taxpayer will accept delivery of the reasons, and
 - Must be delivered to SARS within 30 days from the date of assessment (can request that this period be extended by another 45 days)
 - SARS must provide the reasons within 45 days after delivery of the request for reasons (period can be extended in the case of exceptional circumstances or based on the complexity of the matter or principle or value involved)

Request for reasons: The law

Government Notice 550 as published in Government Gazette 37819

6. Reasons for assessment

- (1) A taxpayer who is aggrieved by an assessment may, prior to lodging an objection, request SARS to provide the reasons for the assessment required to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7.
- (2) The request must-
 - (a) be made in the prescribed form and manner;
 - (b) specify an address at which the taxpayer will accept delivery of the reasons; and
 - (c) be delivered to SARS within 30 days from the date of assessment.
- (3) The period within which the reasons must be requested by the taxpayer may be extended by SARS for a period not exceeding 45 days if a SARS official is satisfied that reasonable grounds exist for the delay in complying with that period.
- (4) Where a SARS official is satisfied that the reasons required to enable the taxpayer to formulate an objection have been provided, SARS must, within 30 days after delivery of the request, notify the taxpayer accordingly which notice must refer to the documents wherein the reasons were provided.
- (5) Where in the opinion of a SARS official the reasons required to enable the taxpayer to formulate an objection have not been provided, SARS must provide the reasons within 45 days after delivery of the request for reasons.
- (6) The period for providing the reasons may be extended by SARS if a SARS official is satisfied that more time is required by SARS to provide reasons due to exceptional circumstances, the complexity of the matter or the principle or the amount involved.
- (7) An extension may not exceed 45 days and SARS must deliver a notice of the extension to the taxpayer before expiry of the 45 day period referred to in subrule (5).

Request for reasons: Template letter

The South African Revenue Services

Taxpayer Name and Tax Reference Number

We refer to the notice of assessment issued to [taxpayer name and tax reference] dated [date must be within 30 business days of date of assessment] of which a copy is attached as Annexure A for your convenience. Please find attached as Annexure B a duly completed Power of Attorney from the taxpayer authorising us to act on its behalf in lodging an objection against this assessment.

We submit that the grounds provided in the assessment do not sufficiently enable us to understand the basis of the assessment and to formulate an objection against the said assessment. In terms of Rule 6 of Government Notice 550 as published in Government Gazette 37819, the taxpayer is entitled to, *"prior to lodging an objection, request SARS to provide the reasons for the assessment required to enable the taxpayer to formulate an objection in the form and manner referred to in rule 7."*

We kindly request SARS to provide said reasons for the assessment within 45 days of the date of delivery of this letter.

Upon receipt of the required reasons for assessment we record our intention to deliver a notice of objection within 30 business days after the date of delivery of the reasons requested under rule 6. (Refer Rule 7 of Government Notice 550).

Please do not hesitate to contact the undersigned should you require any additional information.

Kind regards

Name of Tax Practitioner

Tax Practitioner Ref Number

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Objection

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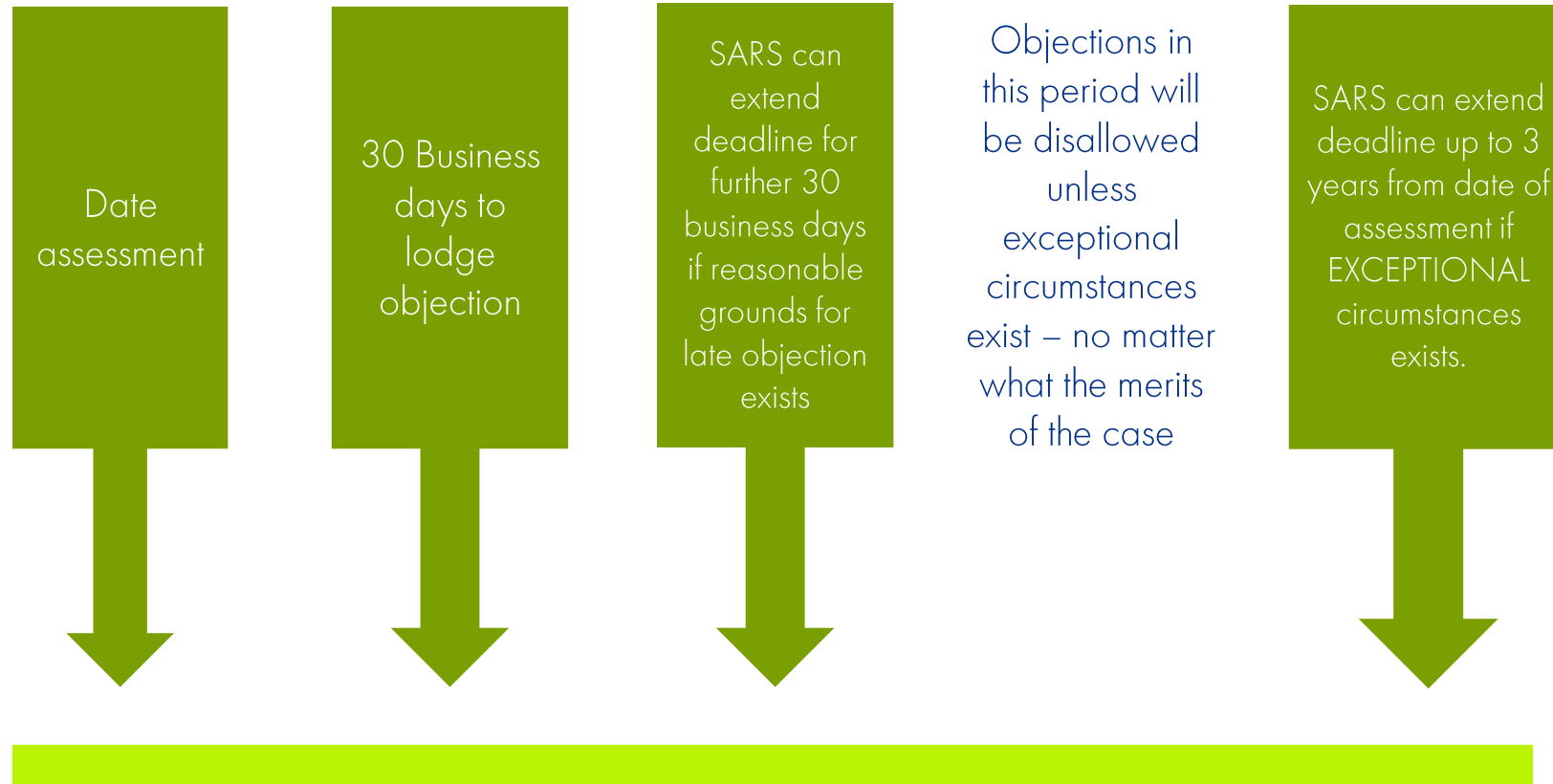
Definition of “days” in Public Notice 550

Means business day as defined in the TA Act, i.e.

- 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 (*and these rules*), excludes the days between 16 December of each year and 15 January of the following year, both days inclusive



Timeline



How to object

The TAA prescribes that an objection must:

- Be lodged within 30 business days after the date of assessment (note that the SARS guide incorrectly refers to 21 business days; might be extended by a SSO);
- Be lodged in the prescribed form (either a DISP01 – Notice of objection or ADR1 form);
- Specify the grounds of objection in full;
- Specify an address at which the taxpayer will accept notice and delivery of documents for purposes of the dispute;
- Be signed by the taxpayer or duly authorised representative;
- Be delivered at the SARS address specified for this purpose in the assessment

Lodging an objection: Template letter

The South African Revenue Services

Taxpayer Name and Tax Reference Number

We refer to the notice of assessment issued to [taxpayer name and tax reference] dated [date must be within 30 business days of date of assessment or from the date that SARS provided reasons for the assessment i.t.o. Rule 6 of Public Note 550] of which a copy is attached as Annexure A for your convenience. We also refer to the Notice of Objection (N001) form duly completed on eFiling. The purpose of this letter is to provide the reasons and grounds for the objection and should be regarded as an integral part of the N001 form submitted on eFiling.

Background facts

An additional assessment was issued by SARS on [date]. This additional assessment was issued subsequent to a formal audit conducted by SARS and is issued in terms of the letter of audit findings dated [insert date]. [If SARS provided reasons for the assessment in terms of Rule 6 of Public Note 550, please refer to these reasons].

The subject matter of the dispute is as follows:

[Provide the background to the dispute. E.g. the company is engaged in the construction industry and SARS disputes a S24C claim, or the company received income subject to the Consumer Protection Act that SARS regarded as taxable.]

[If there is a dispute in facts, use this opportunity to highlight the difference in facts as described in the SARS letter of audit findings or the SARS reason for assessment.]

[Top Tip: Be specific to the matter under dispute. Do not deviate to matters that are not being assessed by SARS. Make sure all information is True, Helpful and Relevant]

Lodging an objection: Template letter

Summary of items under dispute

[Summarise the specific items in the additional assessment that is being disputed. E.g. specifically state if the taxpayer accepts the revised normal tax assessment but only disputes the levy of understatement penalty.]

On behalf of the Taxpayer, with respect to the [XXX] year of assessment, we formally object against the following:

- The inclusion of an amount of Rx in the taxable income in terms of section [x] of the Income Tax Act.
- The inclusion of an amount of Rx as a Capital Gain in terms of par [x] of the 8th Schedule to the Act.
- The levy of an understatement penalty of Rx in terms of section 222 of the Tax Administration Act.
- The levy of interest on the underpayment of provisional tax of Rx in terms of section 89quat of the Income Tax Act.
- The levy of an underestimation penalty of Rx in terms of par 20 of the 4th Schedule to the Income Tax Act.

The law

[Provide the sections in the Act that applies to the matter under dispute. Also add any additional information that supports the legal contentions made by the taxpayer, e.g. case law, Advance Tax Rulings, Foreign Case law etc.]

Application of the law

[Apply the law to the Taxpayer's specific situation. Highlight areas in law or in facts where the taxpayer disputes any SARS contentions.]

Lodging an objection: Template letter

Summary

In summary, we kindly request that SARS allows the following objections:

[Repeat the specific items on the tax assessment being objected to and summarise in a sentence the grounds on which the objections are based.]

[Top Tip: Once the objection letter is completed, reconsider if the grounds of objection are complete. One is precluded from adding further grounds of objections on appeal. Also ensure that the language used is clear and not subject to misinterpretation.]

Please do not hesitate to contact the undersigned should you require any additional information.

Kind regards

Name of Tax Practitioner

Tax Practitioner Ref Number

Outcome of an objection

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Often not complied to
by SARS

SARS must notify the taxpayer of its decision in writing:

Within 60 days after delivery of
the taxpayer's objection, or

Within 45 days in the case
where SARS requested
substantiating documents

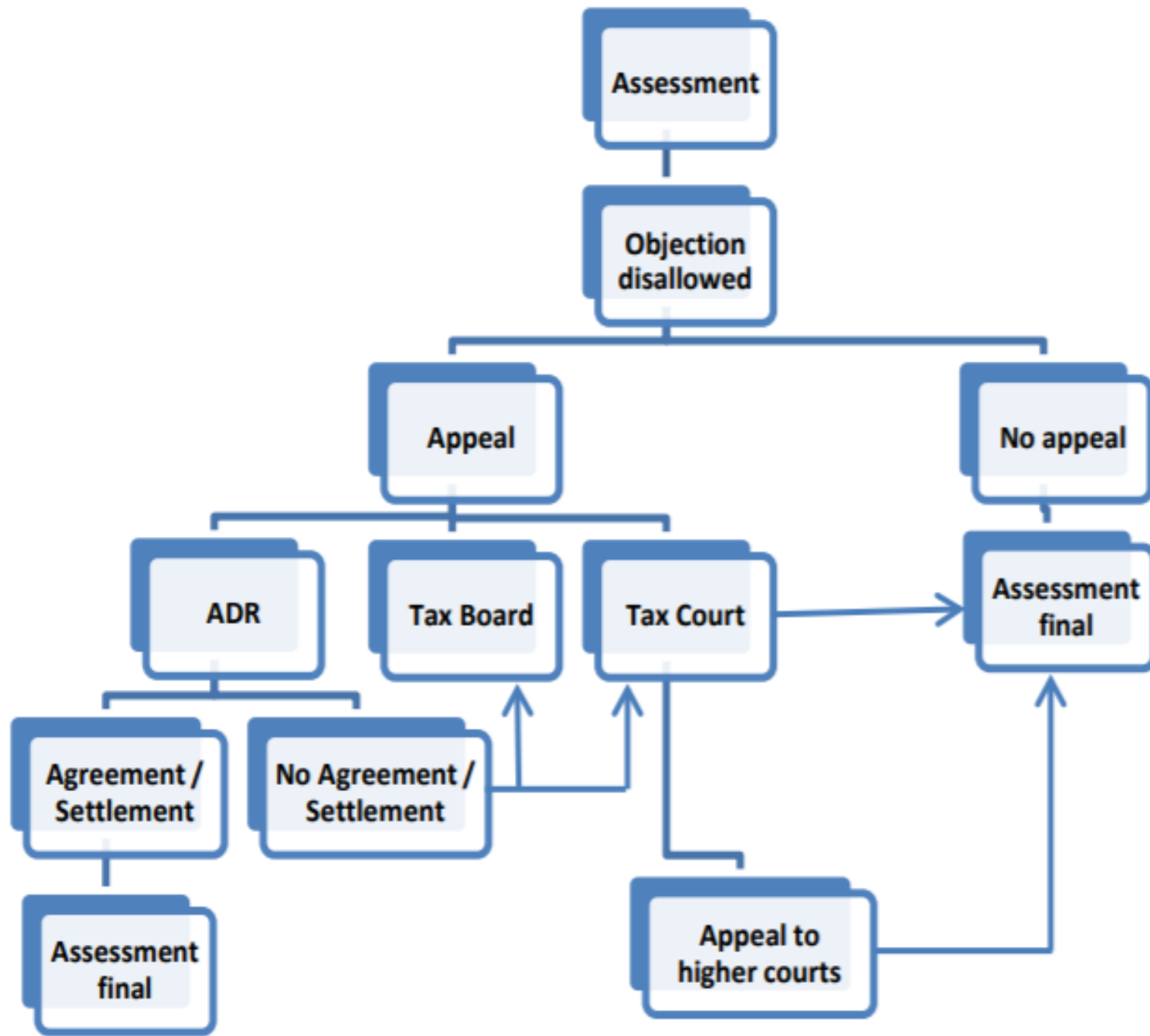


60 day period can be extended by up to 45 days in exceptional
circumstances or based on the complexity and principle and value
involved

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Appeal

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Appeal process

There is a specific process to follow to lodge a valid appeal. The TAA prescribe that an appeal:

- Must be in the prescribed form (either on the ADR2 form or the Notice of Appeal (NOA));
- Must be delivered to SARS within 30 business days after the date of the notice of the disallowance or partial allowance of an objection at the address prescribed in the notice (unless condonation of late submission is allowed);
- Must be signed by the taxpayer or duly authorised representative;
- Must indicate in respect of which grounds specified in the objection the taxpayer is appealing;
- Must indicate whether or not the taxpayer wishes to make use of the ADR procedures to resolve the dispute, should these procedures be available; and
- Must contain a request for a representative, when the 'appellant' wants to be represented at the hearing by another person.

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Suspension of payment

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Suspension of payment

- The suspension could be disallowed or revoked if:
 - After the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious;
 - The taxpayer is employing dilatory tactics in conducting the objection or appeal;
 - On further consideration of the factors referred to above, the suspension should not have been given; or
 - There is a material change in any of the factors referred to above, upon which the decision to suspend payment of the amount involved was based
- During the period commencing on the day that:
 - SARS receives a request for suspension; or
 - A suspension is revoked,
- And ending 10 business days after notice of SARS' decision or revocation has been issued to the taxpayer, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets

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SARS Service Monitoring Office (SSMO)

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SARS Service Monitoring Office (SSMO)



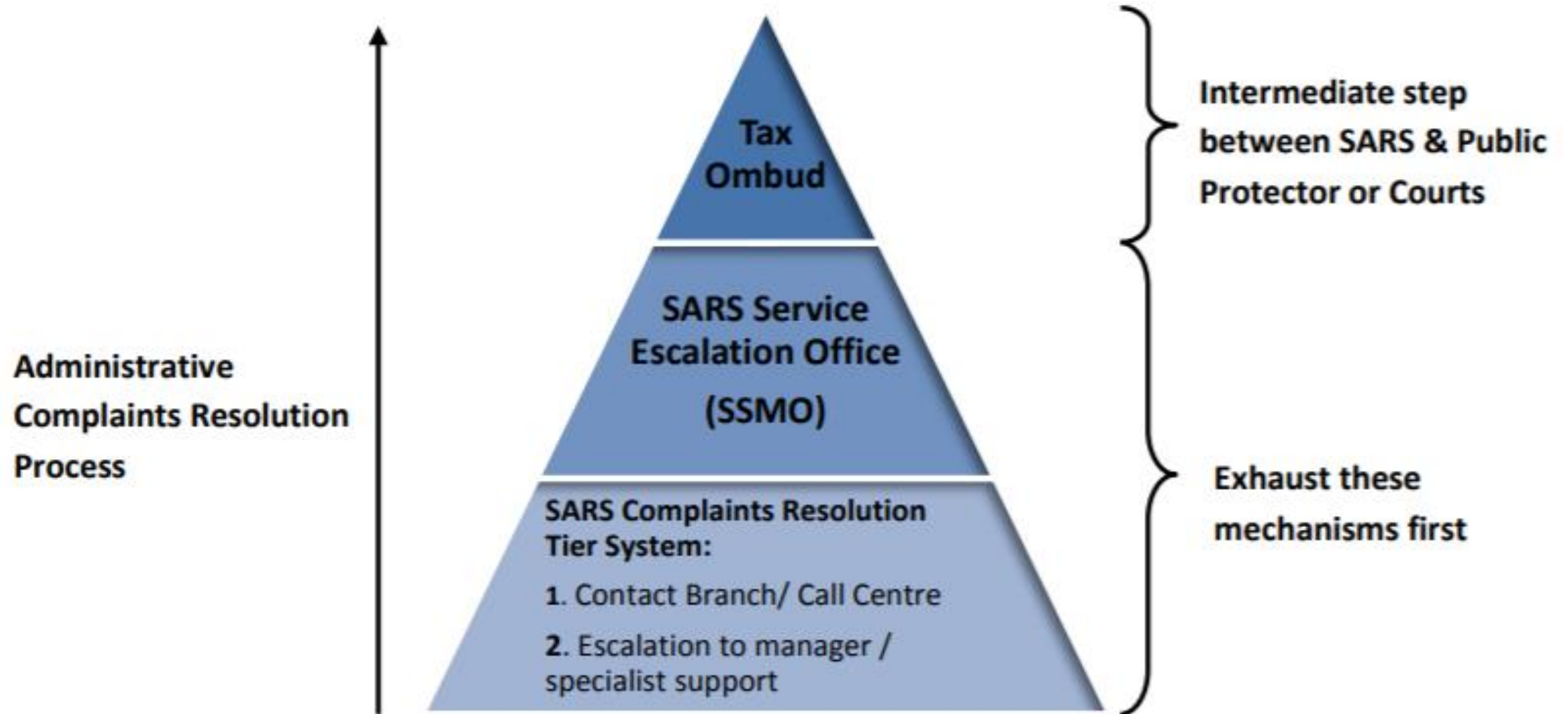
The taxpayer must first take up the complaint with either the relevant SARS contact centre or branch - service request number will be issued

If the taxpayer's complaint is not resolved within a reasonable time in accordance with internally prescribed turnaround times, the taxpayer can then approach the SSMO

SSMO validates the service request number to ensure that the complaint has not been dealt with within the internal turnaround time and that the taxpayer has indeed approached either the contact centre or branch office first

Aims to resolve the matter within 15 working days and, if not possible, it will continuously update the complainant with progress

Source: SARS tax guide on dispute resolution



14

Tax Ombud

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Mandate (S16)



Review and address a complaint related to service, procedure or administrative process; and

Review systemic issues related to service, procedure or administrative process

The Tax Ombud must:

- Review complaints and resolve ito mediation or conciliation (if relevant);
- Act independently when resolving a complaint;
- Follow informal, fair and cost-effective procedures when resolving a complaint;
- Provide information to taxpayers related to its mandate and procedure to lodge a complaint;
- Facilitate access to mechanisms within SARS to address complaints; and
- Identify and review systemic issues related to service, procedure or administrative process

Limitations on authority (S17)

The Tax Ombud cannot review:

- Legislation or tax policy;
- SARS policy (unless it relates to service, procedure or administrative process);
- Matters subject to objection and appeal, unless it relates to the administration thereof; or
- A decision, proceeding or matter before the tax court



Review of a complaint (S18)



The Tax Ombud may only review a request if the taxpayer has exhausted the available complaints resolution mechanisms in SARS -
UNLESS: there are compelling circumstances for not doing so



When will this be the case?

Tax Ombud will consider:

- Whether the request raises systemic issues;
- Whether exhausting the complaints resolution mechanisms will cause undue hardship to the taxpayer; or
- Whether exhausting the complaints resolution mechanisms is unlikely to produce a result within a reasonable period of time

Resolution and recommendation (S20)

Tax Ombud's recommendation is not binding on the taxpayer or SARS

However, if not accepted
by the taxpayer or SARS

- Reasons must be provided to the Tax Ombud within 30 days of notification
- May be included in the Tax Ombud's report to the Minister or Commissioner

Examples of matters that can be referred to the Tax Ombud

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Service

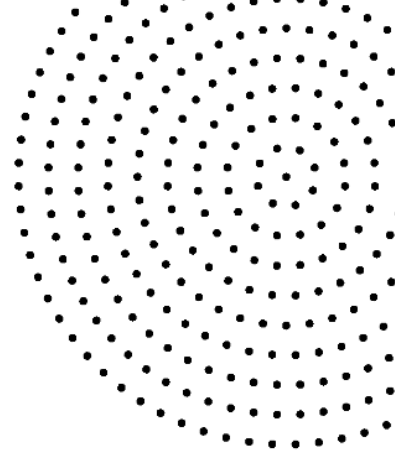
- Unhelpful, unprofessional or rude call centre agents or branch employees failing to provide requested information

Administrative

- Issuing a notice of assessment which does not have required information such as the name of assessed person or date of assessment

Procedural

- Conducting an assessment without providing the concerned taxpayer with a notice of assessment; or
- Issuing a "third party appointment" (instructing your bank pay money to SARS from your bank account) without giving taxpayers ten days' notice



THANK YOU

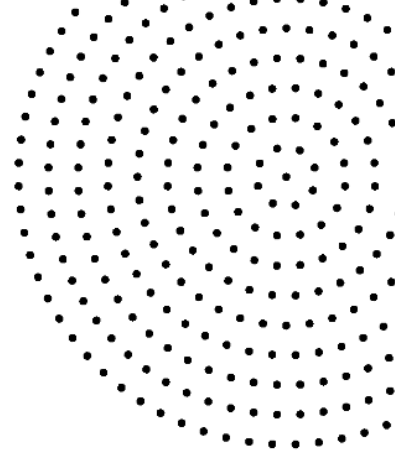
For joining us.
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SEE YOU AGAIN

21 September 2022
Wednesday

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CPD Code – FP29GH

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A logo for 'tax happy hour' featuring a clock face integrated into the letter 'o' of 'hour', with a smiling mouth below it.