



Tax Guide

Rule 56

Version 1	December 2021
Version 2	September 2024



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1. INTRODUCTION

When a taxpayer intends to dispute an assessment or a decision by the South African Revenue Service (SARS), the dispute must be made in terms of prescribed rules. Public Notice 3146 in Government Gazette 48188 issued on 10 March 2023 sets out the prescribed 'rules', as required by section 103(1) of the Tax Administration Act, No. 28 of 2011 (the Tax Administration Act), governing the procedures to lodge an objection and appeal against an assessment or 'decision' (the rules). This includes the conduct and hearing of an appeal before a tax board or tax court.

What is important with respect to this dispute process is that there are a number of prescribed periods, or a prescribed number of days, within which the different steps in the process must be done. For instance, when a taxpayer intends to dispute an assessment, or a decision, by SARS, the dispute process must be initiated within a prescribed number of days after the assessment was delivered by SARS (or the decision). SARS, on the other hand, must also respond within a specified number of days. The rest of the dispute process also requires certain actions to be taken within prescribed periods. The rules allow for these periods, on prior application, to be extended.

Judge Judy Cloete, in Income Tax case number IT 0122/2017, quoted:

“Despite these generous time periods, one sees time and time again that neither SARS nor the taxpayers comply with them; they simply seem to go along in their own way. This is strongly to be discouraged. SARS, in particular, should take the lead and should display efficiency in the conduct of litigation. It should comply with time periods, and where it does not, it should promptly raise that matter in correspondence, providing reasons and seeking written agreements to extensions.”

“Having said that SARS should take the lead, taxpayers themselves should not allow matters to drift. If SARS does not comply with a requirement imposed by the rules, a taxpayer is entitled, in terms of Rule 26 [now 56], to bring an application to compel compliance with the Commissioner’s obligations. That is the way in which a taxpayer prevents the prejudice which can otherwise arise from lengthy delays in the finalisation of tax disputes ...”

SARS, in their Dispute Resolution Guide (date of issue: 23 May 2023) (the Dispute Resolution Guide), states the following:

“The strongest remedy afforded by the rules in the event of non-compliance with certain time periods is an application for default judgment under rule 56 in terms of which a party may give notice to the defaulting party of the intention to obtain a final order if the defaulting party fails to remedy the default within 15 days and if the defaulting party fails to remedy the default within the prescribed period, apply on notice to the defaulting party to the tax court for a final order in favour of the applicant party.”

The Dispute Resolution Guide is based on the rules.

This SAICA guide will focus on the instances where SARS does not comply with a requirement imposed by the rules.

In the rules the emphasis is on the number of days and “day” means a “business day” as defined in section 1 of the TAA. In this Act, “business day” means 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 (Dispute Resolution), excludes the days between 16 December of each year and 15 January of the following year, both days inclusive.

In this guide, whenever the word 'day' is used, it will be a reference to a 'business day'.

The rules refer to the person as the taxpayer or appellant. In this guide, when the word taxpayer is used, it will be to the appellant, the person or the taxpayer.

2. WHAT IS RULE 56?

Rule 56 can simply be explained as follows:

It is relevant where one of the parties to the dispute, that will either be SARS or the taxpayer (or appellant), has failed to comply with:

- a period prescribed under the rules or
- obligation prescribed under the rules or
- an order by the tax court.

This failure, by the party concerned, is referred to as a default.

The one party may then deliver a notice to the defaulting party informing the party of the intention to apply to the tax court for a final order in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice.

If the defaulting party fails to remedy the default within the prescribed period (the 15 days), the other party will then apply, on notice to the defaulting party, to the tax court for a final order under section 129(2).

It is in essence an application for default judgment in the event of non-compliance with rules is made. An application for a default judgment is a procedural application under the rule referred to in section 117. This section gives the tax court jurisdiction to hear and decide procedural matters instituted under the rules.

It must be remembered that, in terms of section 11(4) of the Tax Administration Act, no legal proceedings may be instituted in the High Court against SARS unless the applicant has given SARS written notice of at least 10 business days of the applicant's intention to institute the legal proceedings. The court can of course direct otherwise.

The rule 56 process will now be explained for each step in the dispute process; starting with the objection.

3. THE DISPUTE PROCESS

3.1 Objection against an assessment

The Tax Administration Act, in section 104(1), provides that a taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment. It provides further, in



section 104(3), that a taxpayer entitled to object to an assessment must lodge an objection in the manner, under the terms, and within the period prescribed in the rules.

Rule 7 is relevant and provides the period within which an objection against an assessment must be delivered to SARS. Rule 6 allows for a taxpayer who is aggrieved by an assessment to request SARS, prior to lodging an objection, to provide the reasons for the assessment. The taxpayer requires the reasons to enable the taxpayer to formulate an objection.

In other words, the dispute process therefore actually starts with the request for reasons. It is of course possible, although not always advisable, to object without requesting reasons for the assessment. One will do this when the grounds of the assessment, or where the letter of audit findings are reasonably clear.

Once the process has been started by the taxpayer, SARS must then respond, by providing the reasons. Thereafter the taxpayer must then deliver the objection.

SARS may, after receipt of the objection, require a taxpayer to produce the additional substantiating documents necessary to decide the objection. SARS must then notify the taxpayer of the allowance or disallowance of the objection and the basis thereof. If the objection was not allowed, the taxpayer will appeal. Thereafter the matter proceeds to the tax board or tax court, unless the alternative dispute resolution procedure is opted for.

All of these must be done within the prescribed periods and the periods prescribed for them differs. The rules allow for the periods to be extended.

3.2 Decisions that may be objected to

It is not only an assessment that can be objected to as a taxpayer can also be aggrieved by a decision made by or notice issued by SARS. Section 104(2) of the Tax Administration Act states that 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.”*

And then, section 104(3) of the Tax Administration Act provides that a taxpayer entitled to object to a 'decision' must lodge an objection in the manner, under the terms, and within the period prescribed in the rules.

The same process is therefore followed. It is important to remember that section 104(2) doesn't include all SARS decisions. There are therefore certain ones where the taxpayer can't object.

3.3 Decisions and notices that may not be objected to

Where a person is aggrieved with a decision that may not be objected to, or a notice issued by SARS, the taxpayer can take the matter on review.



Section 9 of the Tax Administration Act allows a person to request SARS to withdraw or amend a decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act. This applies to a decision not given effect to in an assessment or a notice of assessment that is not subject to objection and appeal. It allows for the person to request a SARS official, or senior SARS official, to withdraw or amend the decision or notice.

As this is not done under the rules, rule 56 will not apply either. The periods prescribed in the rules are therefore also not relevant here.

It was explained that all the steps in the dispute process have specific periods within which they must be taken. Rule 56 then becomes relevant where one of the parties doesn't comply with the prescribed periods.

The guide will now deal with each of the steps in the process by explaining the prescribed period. One will then know when the period is not complied with and when the rule 56 notice must be delivered. The guide will deal with instances where SARS didn't comply with the period prescribed in the rules and when the taxpayer can then initiate the rule 56 notice.

It starts with where the taxpayer requests reasons for an assessment or decision by SARS.

3.4 The request for reasons for assessment

The prescribed period is 45 days.

3.4.1 The relevant rule

This is dealt with in rule 6(1) to rule 6(3) and it reads as follows:

"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."

The same applies where a taxpayer is aggrieved by a decision. As the process is the same for objection to an assessment, the guide will only refer to an assessment.

3.4.2 When must the request be made?

The request for reasons for the assessment must be delivered to SARS within 30 days from the date of assessment. The period within which the reasons must be requested by the taxpayer is therefore 30 days.

The rules allow for the taxpayer to request that the period of 30 days be extended for a period not exceeding 45 days. In total then, if the period is extended, request reasons for an assessment within 75 days after the date of the assessment. In terms of the rules, SARS "may" extend the period – it is therefore not automatically granted. The SARS official must be satisfied that reasonable grounds exist for the delay in complying with the prescribed period.



Where the taxpayer failed to obtain an extension of a period by agreement with SARS, rule 52(1) allows for the taxpayer to apply to the tax court for an order, on good cause shown, to:

- condone non-compliance with the period; and
- to extend the period for the further period (that the tax court deems appropriate).

See the discussion below with regard to “on good cause shown” requires of the party wishing to apply to the tax court.

3.4.3 Good cause

The following comments made by Judge Heher, in *Madinda v Minister of Safety and Security, Republic of South Africa* (153/07) [2008] ZASCA 34; [2008] 3 All SA 143 (SCA); 2008 (4) SA 312 (SCA) (28 March 2008) are relevant in this regard. The judge said the following:

“‘Good cause’ looks at all those factors which bear on the fairness of granting the relief as between the parties and as affecting the proper administration of justice. In any given factual complex, it may be that only some of many such possible factors become relevant. These may include prospects of success in the proposed action, the reasons for the delay, the sufficiency of the explanation offered, the bona fides of the applicant, and any contribution by other persons or parties to the delay and the applicant’s responsibility therefor.

‘Good cause for the delay’ is not simply a mechanical matter of cause and effect. The court must decide whether the applicant has produced acceptable reasons for nullifying, in whole, or at least substantially, any culpability on his or her part which attaches to the delay in serving the notice timeously. Strong merits may mitigate fault; no merits may render mitigation pointless.

One other factor in connection with ‘good cause’ in s 3(4)(b)(ii) is this: it is linked to the failure to act timeously. Therefore, subsequent delay by the applicant, for example in bringing his application for condonation, will ordinarily not fall within its terms. Whether a proper explanation is furnished for delays that did not contribute to the failure is part of the exercise of the discretion to condone in terms of s 3(4), but it is not, in this statutory context, an element of ‘good cause’.”

Absence of prejudice has often been regarded as an element of good cause in the context of earlier legislation. It was, no doubt, also an element in determining where the interests of justice lay in the terms of section 57 of South African Police Service Act, No 68 of 1995. However, in this Act the legislature has deemed it appropriate to treat absence of unreasonable prejudice as a specific factor of which an applicant must satisfy the court. The identification of separate requirements of good cause and absence of unreasonable prejudice may be intended to emphasise the need to give due weight to both the individual’s right of access to justice and the protection of state interest in receiving timeous and adequate notice.

Applications for condonation should in general be brought as soon after the default as possible. Thereby possible further prejudice to the other party and misconception as to the intentions and *bona fides* of the applicant can be reduced. A delay in making the application should be fully explained. The failure to do so may adversely affect condonation or it may merely be a reason to censure the applicant or his or her legal advisers without reducing the force of the application.



What happens where the reasons given by SARS are not adequate to enable the taxpayer to formulate its objection to the assessment in question?

In such an instance SARS didn't fail to comply with a period in the rules and the rule 52(2)(a) is then relevant. It allows the taxpayer (or appellant) to apply to a tax court because SARS failed to provide the reasons required to enable the taxpayer to formulate an objection.

Principally the taxpayer is not in a position to object and the reasons provided by SARS didn't enable the taxpayer to do so. The application then made to the tax court is for an order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection.

The rules don't prescribe the period within which the taxpayer must do this application. Rule 56(1) allows for the taxpayer to make an application to the court if SARS then failed to comply with the period prescribed the order of the tax court.

And what is the case if SARS doesn't provide the reasons within the prescribed period?

Following the request for reasons, SARS can respond in one of two ways; they:

- can notify the taxpayer that the reasons required to enable the taxpayer to formulate an objection have already been provided (typically in the letter of audit findings); or
- must provide the taxpayer with reasons.

SARS can of course also request for the period to be extended. Under rule 6(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.

Where SARS didn't notify the taxpayer, within the 30-day period, that the reasons required to enable the taxpayer to formulate an objection have been provided; or where the period for providing the reasons was not extended by SARS, the reasons should be provided by SARS to the taxpayer within 45 days after the delivery of the request for reasons.

If the taxpayer didn't receive the reasons, SARS has then failed to comply with a period prescribed under the rules.

It then is after the expiry of the 45-day period that the taxpayer will want to send the rule 56 notice.

4. OBJECTION AGAINST ASSESSMENT

4.1 The relevant rule

It was explained earlier in this guide that a taxpayer, who is entitled to object to an assessment or 'decision', must lodge the objection in the manner, under the terms, and within the period prescribed in the 'rules'. This is in terms of section 104 of the Tax Administration Act. Rule 7 deals with an objection against an assessment.



4.2 The period

The prescribed period is 80 days.

Rule 7(1) provides that a taxpayer who may object to an assessment, must deliver the notice of objection within 80 days. This period of 80 days starts:

- (a) after 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.

Essentially the 80-day period starts running from receipt, by the taxpayer, of the notice from SARS that reasons were provided, or of the reasons provided by SARS. Where the taxpayer didn't request reasons, the 80-day period starts the day after the date of assessment.

Where the objection is delivered after the 80-day period, SARS can regard the objection as invalid.

The rules allow that the taxpayer may apply to SARS for an extension of the period for objection. The extension of the period is granted in terms of section 104(4) of the Tax Administration Act. In practice, the SARS system allows for the request for an extension of the period to be made together with the objection. It is therefore not a separate request.

4.3 What happens if SARS doesn't extend the period?

The taxpayer may then, under rule 52(2)(c), apply to a tax court if the period of time to lodge an objection to an assessment has not been extended by SARS on request by the taxpayer under rule 7, for an order extending the period within which an objection must be lodged by a taxpayer.

4.4 The taxpayer delivered an objection

Under section 106(1) of the Tax Administration Act, SARS must consider a valid objection in the manner and within the period prescribed under this Act and the rules.

Once the objection has been delivered by the taxpayer, SARS must respond by:

- Informing the taxpayer that the objection is invalid; or
- Requiring the taxpayer to produce the additional substantiating documents necessary to decide the objection; or by
- Notifying the taxpayer of the allowance or disallowance of the objection.

4.5 Invalid objection

The prescribed period is 30 days.

Where a taxpayer delivers an objection that does not comply with the requirements of rule 7(2), SARS may regard the objection as invalid and must notify the taxpayer accordingly and state the ground for invalidity in the notice. SARS must notify the taxpayer within 30 days of delivery of the invalid objection and SARS must state the ground for invalidity in the notice.



The rules then allow for the taxpayer who received a notice of invalidity to, within 20 days of delivery of the notice of invalidity, submit a new objection without having to apply to SARS for an extension under section 104(4).

4.6 Valid objection – SARS requires substantiating documents

The relevant rule is rule 8.

The prescribed period is 30 days.

Rule 8 deals with substantiating documents necessary to decide the objection. Under rule 8(1), SARS may require a taxpayer to produce additional substantiating documents. If SARS so requires, the request for additional supporting documents by SARS must be delivered to the taxpayer (by SARS) within 30 days after delivery of the objection (by the taxpayer).

On receipt of the request, the taxpayer must then deliver the documents within 30 days after delivery of the notice by SARS. SARS may extend the period for delivery of the requested document(s) for a further period not exceeding 20 days. This may be done if reasonable grounds for an extension are submitted by the taxpayer – rule 8(3).

Under rule 52(2)(d), the taxpayer may apply to a tax court if the period of time to provide documents to substantiate an objection requested by SARS has not been extended, for an order extending the period within which the information must be provided by the taxpayer.

If the taxpayer failed to obtain an extension of a period by agreement with SARS, an application can be made to the tax court, on good cause shown-

- (a) condoning the non-compliance with the period; and
- (b) extending the period for the further period that the tax court deems appropriate.

4.7 Decision on objection:

The relevant rule is rule 9(1).

The prescribed period is 60 days.

SARS must notify the taxpayer of the allowance or disallowance of the objection within 60 days after delivery of the taxpayer's objection.

4.8 Extended period – 45 days

Where SARS requested supporting documents, SARS must notify the taxpayer of the allowance or disallowance of the objection within 45 days after delivery of the requested documents; or if the documents were not delivered, the expiry of the period within which the documents must be delivered. The rules allow for SARS to extend the 60-day period for a further period if, in the opinion of a senior SARS official, more time is required to take a decision on the objection due to exceptional circumstances, the complexity of the matter, the principle or the amount involved. The further period may not exceed 45 days.



If a period is to be extended the senior SARS official must then, before expiry of the 60-day period, inform the taxpayer that the official will decide on the objection within a longer period – this longer period cannot exceed 45 days.

4.9 When is the rule 56 notice required?

If SARS didn't notify the taxpayer of its decision with respect to the objection within the relevant prescribed period (60 days), SARS will then have failed to comply with a period prescribed under the rules. In essence then, the rule 56 notice can be delivered after the expiry of 60 days, unless SARS requested supporting documents when it will be after 45 days of delivery of the supporting documents.

The Notice of Motion and Founding Affidavit in terms of rule 50(4) must be brought within 20 days after the date of the cause of the application, unless the parties agree, or the tax court directs that a different period is applicable.

5. APPEAL AGAINST AN ASSESSMENT

The relevant rule is rule 10(1).

The prescribed period is 30 days.

Under section 106(2) of the Tax Administration Act, where SARS has, by notice, informed the taxpayer objecting of:

- the decision to disallow the objection
- or to allow it either in whole or in part,

the next step for the taxpayer is to appeal.

Under rule 10(1), a taxpayer who wishes to appeal against an assessment must deliver a notice of appeal within 30 days after delivery of the notice of disallowance of the objection. The rules allow for the period to be extended.

5.1 Extended period

Under section 107(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.

Where the period was extended by SARS, the taxpayer who wishes to appeal against the assessment must deliver a notice of appeal within the extended period.

5.2 What is the position if SARS refuses to extend the period?

The rule 52 application.



5.3 The prescribed period

Rule 52 does not have a period as this rule is there to deal with non-compliance of a period in the first place. But it would be in the interest of the taxpayer that this is done as soon as possible after having received the notice from SARS that they will not extend the period to lodge an appeal.

5.4 The application

Where, pursuant to an application under section 107(2), the period of time to lodge an appeal to an assessment has not been extended by SARS, the taxpayer may apply to a tax court for an order extending the period within which an appeal must be lodged by an appellant.

If the taxpayer is successful, the appeal can then be lodged.

The taxpayer has now lodged, or delivered, the appeal. What happens after the appeal was delivered by the taxpayer?

It was explained earlier in this guide that the taxpayer can opt to have the dispute be dealt with under the alternative dispute resolution process. If the taxpayer did not elect to pursue the alternative dispute resolution process, the following is relevant:

- the taxpayer must request the clerk to set the matter down before the tax board. This applies where the tax in dispute is less than R1, 000, 000;
- SARS must deliver to the taxpayer a statement of the grounds of assessment and opposing the appeal – see the rule 31 discussion later on in this guide.

It is common to opt for dispute resolution and that process will be dealt with first.

5.5 Alternative dispute resolution

Under section 103(2), the rules may provide for alternative dispute resolution (ADR) procedures under which SARS and the person aggrieved by an assessment or 'decision' may resolve a dispute.

The taxpayer must indicate, in a notice of appeal, a willingness to participate in ADR proceedings.

Rule 13(1): the prescribed period is 30 days:

If the taxpayer has in a notice of appeal indicated a willingness to participate in ADR proceedings in an attempt to resolve the dispute, SARS must inform the taxpayer by notice within 30 days of receipt of the notice of appeal whether or not the matter is appropriate for ADR.

Rule 13(2): the prescribed period is also 30 days:

If the appellant has not indicated in the notice of appeal that the appellant wishes to make use of alternative dispute resolution, but SARS is satisfied that the matter is appropriate for alternative dispute resolution and may be resolved by way of the alternative dispute procedures, SARS must then inform the appellant accordingly. This must be done by way of notice and must be within 30 days of receipt of the notice of appeal.

The appellant must then, within 30 days of delivery of the notice by SARS, deliver a notice stating whether or not the appellant agrees to ADR proceedings.



5.5.1 The rule 56 notice

Where SARS has not, by notice, informed the taxpayer as was required within the 30-day period, SARS has failed to comply with a period or obligation prescribed under the rules, and the taxpayer may then deliver a notice under rule 56.

5.5.2 Period of alternative dispute resolution

The relevant rule is dealt with in rule 15(3).

The prescribed period is 90 days.

The parties must finalise the ADR proceedings within 90 days after the commencement date.

The period within which the alternative dispute resolution proceedings are conducted:

- commences on the date of delivery of the notice by SARS under rule 13(1) or the notice by the appellant under rule 13(2)(b),
- and ends on the date the dispute is resolved under rule 23 or 24 or the proceedings are terminated under rule 25.

It is important to remember that the period referred to above interrupts the periods prescribed for purposes of proceedings under:

- rule 11 (appeal to the tax board or tax court);
- Part D (set down of appeal before tax board);
- Part E (submission of the rule 31 statement (starting the tax court procedure); and
- Part F (applications on notice)

of these rules.

5.5.3 Periods during the alternative dispute proceedings where no facilitator has been appointed

The relevant rule is dealt with in rule 19(2).

The prescribed period is 30 days.

Where a facilitator has not been appointed, the parties must, within 30 days determine a place, date and time at which the parties must convene the alternative dispute resolution meeting.

The parties must also, if required, notify the other party in writing which written submissions, or any other document should be furnished or exchanged and when the submissions or documents are required.

The rule doesn't place the obligation on a specific party to convene the meeting – it effectively requires the parties to convene it. In practice, this is done by SARS, but it would be unlikely that a rule 56 would be required here.



5.5.4 Appointment of the facilitator:

The relevant rule is dealt with in rule 15(3).

The prescribed period is 15 days.

Where the parties agree to use a facilitator, a senior SARS official must appoint a person from the list of facilitators-

- (a) within 15 days after the commencement date of the proceedings under rule 15; or
- (b) within 5 days after the removal of or the withdrawal of a facilitator;

and give notice thereof to the appellant and the SARS official to whom the appeal is allocated.

5.5.5 Determination and termination of proceedings by facilitator

Determination of the place, date and time of the meeting:

This is dealt with in rule 19(1).

The prescribed period is 20 days.

The facilitator must, after consulting the taxpayer and the SARS official involved in the alternative dispute resolution proceedings, within 20 days of the facilitator's appointment, determine a place, date and time at which the parties must convene the alternative dispute resolution meeting and notify the parties accordingly in writing.

If required, the facilitator must also notify each party in writing which written submissions, or any other document should be furnished or exchanged and when the submissions or documents are required.

In practice the taxpayer will initially follow up with the facilitator (and SARS) if this didn't happen.

5.5.6 The report by the facilitator

This is dealt with in rule 19(7).

The prescribed period is 10 days.

Under this rule, the facilitator must deliver a report to the taxpayer SARS within 10 days of the cessation of the proceedings.

In practice the taxpayer will follow this up with SARS, or often SARS will follow this up with the taxpayer, and a rule 56 is not necessary.



5.5.7 Recommendation by facilitator

SARS, the appellant and the facilitator may agree at the commencement of the proceedings that, if no agreement or settlement is ultimately reached between the parties, the facilitator may make a written recommendation at the conclusion of the proceedings.

This is dealt with in rule 21(2).

The prescribed period is 30 days.

The facilitator must deliver the recommendation to the parties with 30 days after the termination of the proceedings under rule 25 unless the parties agree to an extension of this period.

5.5.8 An agreement is concluded

A dispute which is subject to the ADR procedures may be resolved by agreement whereby a party accepts, either in whole or in part, the other party's interpretation of the facts or the law applicable to those facts or both.

This is dealt with in rule 23(3).

The prescribed period is 45 days.

Where an agreement is concluded, SARS must issue an assessment to give effect to the agreement within a period of 45 days after the date of the last signing of the agreement.

Clearly if this didn't happen, a rule 56 would be appropriate.

5.5.9 Unresolved issues

This is dealt with in rule 24(4).

The prescribed period is 15 days.

If the taxpayer wishes to pursue the appeal on the unresolved issues to the tax board or tax court, the taxpayer must deliver a notice to this effect to the clerk or registrar, as the case may be, within 15 days of the date of the agreement.

5.5.10 Termination of the alternative dispute procedures:

The relevant rule 25(3).

The prescribed period is 20 days.

This would generally mean that the dispute was not settled or settled only in part. The ADR proceedings are then terminated.



The taxpayer now, if the appeal is to be dealt with further, will have to set the matter down before the tax board or the process continues to the tax court. The request must be made to the tax board if the amount of tax involved in the dispute is less than R1 million.

6. THE R1 MILLION THRESHOLD

Notice 1196 of 2015 fixes the amount of tax in dispute for purposes of the hearing of an appeal by the Tax Board. The current threshold applies in respect of any appeal noted on or after 1 January 2016, for the amount of tax in dispute and for purposes of the hearing of an appeal by the tax board is R1 000 000.

7. THE REQUEST TO HAVE THE MATTER SET DOWN BEFORE THE TAX BOARD

The relevant rule is rule 26.

The taxpayer delivers the request to have the matter set down under rules 11(2), 23(4), 24(4) or 25(3).

The prescribed period is 35 days, unless the taxpayer elected the ADR process. If so, the period is 20 days.

If the appellant fails to apply for the date within the prescribed period, SARS must apply for a date for the hearing within 30 days after the expiry of the period.

Under rule 25(3), the taxpayer must then, within 20 days of the date of the termination-

- (a) if the appeal is to be dealt with by the tax board, request the clerk to set the matter down before the tax board under rule 26; or
- (b) if the appeal is to be dealt with by the tax court, give notice to SARS that the appellant wishes to proceed with the appeal.

SARS must then deliver a statement of the grounds of assessment and opposing the appeal to the taxpayer.

8. DELIVERY OF GROUNDS OF ASSESSMENT

The relevant rule is rule 31(1).

8.1 The prescribed period

Under rule 31(1), SARS must deliver to the taxpayer a statement of the grounds of assessment and opposing the appeal within 45 days after delivery of:

- (a) the substantiating documents required by SARS under rule 10(4);
- (b) if alternative dispute resolution proceedings were followed under Part C, the notice by the appellant of proceeding with the appeal under rule 24(4) or 25(3);
- (c) if the matter was decided by the tax board, the notice of a *de novo* (anew) referral of the appeal to the tax court under rule 29(2); or
- (d) in any other case, the notice of appeal under rule 10.



Subparagraph (a) and (d) are very important. In both instances, nothing more is required of the taxpayer, and it is SARS who must comply with the period. The principle here is that the taxpayer expects to receive SARS's statement of the grounds of assessment and opposing the appeal, within 45 days after:

- delivery by the taxpayer of the documents substantiating a ground not raised, by the taxpayer, in the objection; or
- delivery, by the taxpayer, of the notice of appeal.

The next step is that the taxpayer must deliver a statement of grounds of appeal with 45 days after delivery of SARS's statement of the grounds of assessment and opposing the appeal (rule 31).

Thereafter the process continues in the court and there are also prescribed periods for court. This guide however, doesn't deal with that and only deals with the process until the grounds of assessment were received from SARS.

9. THE RULE 56 NOTICE

Once the taxpayer has identified that SARS didn't keep to the prescribed periods, the next step is to deliver the rule 56 notice to SARS. Reference was already made to the following statement in the SARS Dispute Resolution Guide:

"The strongest remedy afforded by the rules in the event of non-compliance with certain time periods is an application for default judgment under rule 56 in terms of which a party may give notice to the defaulting party of the intention to obtain a final order if the defaulting party fails to remedy the default within 15 days and if the defaulting party fails to remedy the default within the prescribed period, apply on notice to the defaulting party to the tax court for a final order in favour of the applicant party.."

The SARS Dispute Resolution Guide also states the following:

"An application for a default judgment is a procedural application under the rule referred to in section 117(3). In terms of the rule 56 process, the taxpayer must deliver a notice to SARS that an application will be made to the tax court for a default judgment if SARS fails to deal with the objection with 15 days of delivery of the notice. If SARS fails to respond to the notice and the matter proceeds to the tax court, the court may—

- *order SARS to deal with the objection within the period prescribed by the court, or*
- *if SARS cannot show good cause for the default in dealing with the objection, make an order under section 129(2) including making a final order in favour of the taxpayer..*

The tax court under section 130(3) may make a costs order against SARS."

9.1 A party may deliver a notice

The notice must be delivered to the address that SARS has specified under these rules, or the Commissioner has specified by public notice as the address at which the documents must be delivered to SARS. The addresses of the different SARS offices was specified in Notice 5114 in Government



Gazette 51022 dated 38 August 2024. The addresses include email addresses, and they are in the format of contact.???@sars.gov.za.

10. EXAMPLE OF A RULE 56 NOTICE

The taxpayer starts by stating that this is a notice of intention to apply for a default ruling and, for example, will read as follows:

10.1 Notice of intention to apply for a default ruling

This is a notice to SARS informing SARS of the intention of the abovementioned taxpayer to apply to the tax court for a final order under section 129(2) of the Tax Administration Act.

It then continues to explain the default.

10.2 The default

SARS has failed to comply with a period prescribed under the rules promulgated under section 103 of the Tax Administration Act, prescribing the procedures to be followed in lodging an objection and appeal against an assessment.

And then must describe the failure – to keep to the prescribed periods or do something.

10.3 Describe the failure

Under rule 9(1), SARS must notify the taxpayer of the allowance or disallowance of an objection and the basis thereof under section 106(2) of the Tax Administration Act within:

- (a) 60 days after delivery of the taxpayer's objection; or
- (b) where SARS requested supporting documents under rule 8, 45 days after
 - (i) delivery of the requested documents; or
 - (ii) if the documents were not delivered, the expiry of the period within which the documents must be delivered.

The taxpayer's objection was delivered on DAY MONTH YEAR.

SARS didn't request supporting documents under rule 8.

SARS didn't extend the 60-day period for a further period or deliver a request to the taxpayer, before the expiry of the 60-day period, for an extension of the period.

At the date of delivery of this notice, SARS had a total of ### days to deliver the rule 9 notice, but SARS had still not done so.

The notice then concludes with the following:



10.4 Intention to apply to the tax court

This is a notice to SARS, the defaulting party, informing SARS of the intention of the taxpayer to apply to the tax court for a final order under section 129(2) of the Tax Administration Act in the event that SARS fails to remedy the default within 15 days of delivery of the notice.

If SARS fails to remedy the default within the prescribed period, the taxpayer will apply to the tax court for a final order under section 129(2).

The date of delivery of this notice is DAY MONTH YEAR and the default must therefore be remedied by DAY MONTH YEAR.

10.5 What happens after the rule 56, or rule 52 notice was delivered to SARS?

The taxpayer waits the required 15 business days. If SARS failed to respond by then, the taxpayer's next option is then to approach the court. This requires that the taxpayer must give the Commissioner written notice of at least 10 business days of the applicant's intention to institute the legal proceedings – see section 11(4) of the Tax Administration Act. This guide doesn't deal with that process. It is advisable to involve a legal practitioner at this point.



ANNEXURE Rule 52. Application provided for under rules:

- (1) A party who failed to obtain an extension of a period by agreement with the other party, the clerk or the registrar, as the case may be, under rule 4 may apply to the tax court under this Part for an order, on good cause shown-
 - (a) condoning the non-compliance with the period; and
 - (b) extending the period for the further period that the tax court deems appropriate.
- (2) A taxpayer or appellant may apply to a tax court under this Part-
 - (a) if SARS fails to provide the reasons under rule 6 required to enable the taxpayer to formulate an objection under rule 7, for an order that SARS must provide within the period allowed by the court the reasons regarded by the court as required to enable the taxpayer to formulate the objection;
 - (b) if an objection is treated as invalid under rule 7, for an order that the objection is valid;
 - (c) if the period of time to lodge an objection to an assessment has not been extended by SARS under section 104(4) on request by the taxpayer under rule 7, for an order extending the period within which an objection must be lodged by a taxpayer;
 - (d) if the period of time to provide documents to substantiate an objection requested by SARS has not been extended under rule 8, for an order extending the period within which the information must be provided by the taxpayer; or
 - (e) if the period of time to lodge an appeal to an assessment has not been extended by SARS under section 107(2) of the Tax Administration Act on request by the taxpayer under rule 10, for an order extending the period within which an appeal must be lodged by an appellant.

Rule 56. Application for default judgment in the event of non-compliance with rules

- (1) If a party has failed to comply with a period or obligation prescribed under these rules or an order by the tax court under this Part, the other party may-
 - (a) deliver a notice to the defaulting party informing the party of the intention to apply to the tax court for a final order under section 129(2) of the Tax Administration Act in the event that the defaulting party fails to remedy the default within 15 days of delivery of the notice; and
 - (b) if the defaulting party fails to remedy the default within the prescribed period, apply, on notice to the defaulting party, to the tax court for a final order under section 129(2).
- (2) The tax court may, on hearing the application-
 - (a) in the absence of good cause shown by the defaulting party for the default in issue make an order under section 129(2); or
 - (b) make an order compelling the defaulting party to comply with the relevant requirement within such time as the court considers appropriate and, if the defaulting party fails to abide by the court's order by the due date, make an order under section 129(2) without further notice to the defaulting party.

Ref: #770315