



# **Tax Practice: *On the Move***

Tax compliance & dispute forms & documents

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YOUR KEY TO THE TAX COMMUNITY



# Escalations and controversy

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*“Why is it sometimes more cost-efficient to get a tax law specialist and/or tax attorney involved earlier on in a case or dispute with SARS, rather than waiting until the taxpayer is ‘ready to try anything’?”.*

# When and how does a dispute arise?

- An assessment is defined in the TA Act and means the determination of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS.
- A notice of assessment by SARS is issued under section 96 and delivered to a taxpayer in the manner regulated by the TA Act.
- It is important to note that the TA Act makes a distinction between the making of an assessment and the issuing of the notice of the assessment, which distinction has also been confirmed *inter alia* by the SCA.

# When and how does a dispute arise?

- Dispute resolution under Chapter 9 of the TA Act and the Tax Court rules normally involves the determination of the tax liability or refund and/or a decision specifically made subject to objection and appeal.
- Any taxpayer who is aggrieved by an assessment in which that taxpayer has an interest may object to that assessment. A taxpayer may also object to any decision of SARS which is in terms of the relevant section subject to objection and appeal.

# When and how does a dispute arise?

- Generally, Chapter 9 distinguishes between an assessment and a decision which is specifically made subject to objection and appeal under a tax Act.
- For purposes of the rules, “assessment” includes a decision referred to in section 104(2): when the word “assessment” is used in the rules it may mean either an assessment of the determination of a tax liability or refund, or a decision specifically made subject to objection and appeal under a tax Act.



# If a decision is not subject to object and appeal, a taxpayer has the following remedies?

- **Withdrawal or amendment of decision:** A person can ask the SARS official who made the decision, that official's manager or a senior SARS official to withdraw or amend the decision under section 9 of the TA Act, except where the decision has given effect to in an assessment
- **Service Escalation:** A taxpayer may pursue the internal administrative complaints procedure in SARS at branch level and, if not satisfied with the outcome, with the SSMO
- **Tax Ombud:** Once a taxpayer has exhausted the internal remedies available to it in SARS, it may lodge a complaint with the Tax Ombud who may deal with it if the complaint falls within its mandate
- **High Court:** If all of the above remedies fail or if the taxpayer chooses to do so directly, it may approach the High Court for a review of the decision by SARS under section 6 of PAJA.

# When may a taxpayer lodge a complaint about a tax dispute at the SSMO or OTO?

Essentially, there are two kinds of disputes with SARS:

- Disagreements on the interpretation of law
- Disagreements on administration of law

# Disagreements on the interpretation of law

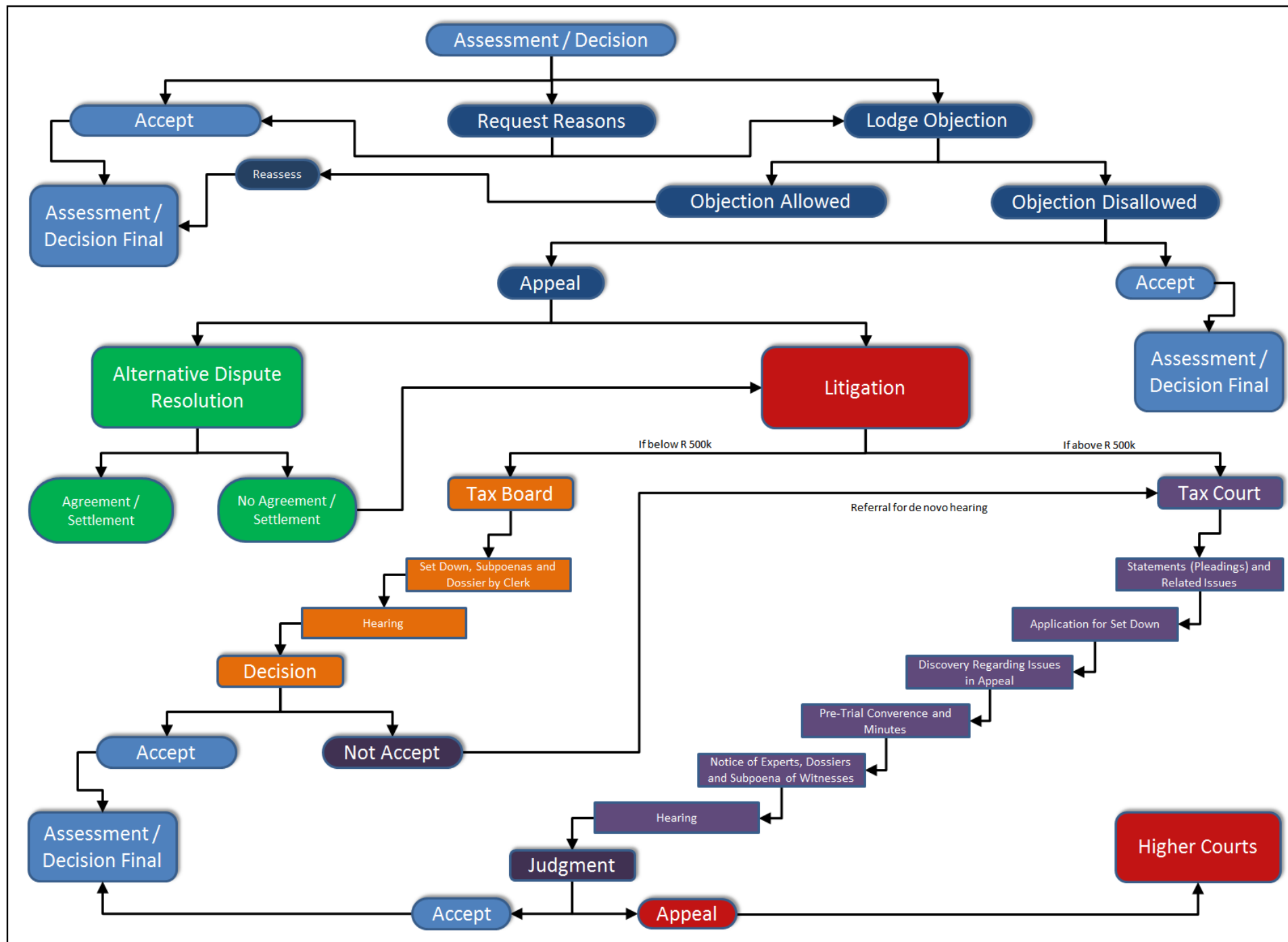
In such disputes, the normal dispute resolution steps are followed namely objection and appeal, alternative dispute resolution, appeal to the tax board and/or the Tax Court, and further appeals to the Higher Courts.

## OTO Limitation of Mandate:

In terms of section 17 of the TA Act, the OTO may not review the following:

- Legislation or tax policy
- SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a Tax Act by SARS
- A matter subject to objection and appeal under a Tax Act, except for an administrative matter relating to such objection and appeal
- A decision of, proceeding in or matter before the Tax Court.





# Disagreements on the interpretation of law / facts:

## Tips

- Tax Court Rules and High Court Rules run together. Procedure is critically important. A good case with technical errors can fail.
- By the time a matter has gone to appeal, it has been reviewed independently a number of times. Therefore, the taxpayer has to make a strong case for SARS to 'change its mind'.
- Being persuasive on paper, is a skill. What to say and how to say it matters more than one may think. The documents 'do not speak for themselves' ...

# Disagreements on the interpretation of law / facts:

## Tips

- A formal opinion on the prospect of success is often very valuable and can be restructured to form the Heads of Argument.
- Tax Practitioners: Link up with a legal advisor. By partnering, a tax practitioners can provide a more cost-efficient service to their clients, with greater prospects of success.
- Discovery: Extremely important how you write an email or craft responses to SARS.
- Test: Did SARS comply with all the formal requirements for a valid assessment? This is a question of law and facts
- Chronology: Don't assume that SARS knows your client and its case as well as you do

# Disagreements on administration of law

Disagreements on administration of law or unfair treatment:  
Complaints in this regard may be reported—

- within the SARS internal administrative complaints resolution process, which process commences at the SARS contact centre or branch level and, if not satisfactorily resolved, it may be escalated to the SSMO which falls under the SARS Service Escalation Office at Head Office
- after exhaustion of the SARS internal administrative complaints resolution process, to the Tax Ombud unless there are compelling circumstances why the Tax Ombud may be approached directly.



# When may the OTO be approached directly?

## Systemic issues

Delays in the payment of refunds.

Non-adherence to dispute resolution time frames and related issues.

Inability on the part of SARS to confirm that correspondence was sent to the taxpayer.  
(manual correspondence as well as "eFiler view" correspondence)

Tax Compliance System (TCS).

Raising assessments prematurely.

Failure to respond to the request for a "Deferred Payment Arrangement" within the prescribed turnaround time of twenty one (21) days.

Failure to respond to the request for a "Compromise" within the prescribed turnaround time of thirty (30) days.

Failure to respond to the request for a Suspension of Payment within the prescribed turnaround time of twenty one (21) days.

SARS delays to code the taxpayer's profile as deceased estate and to update the executor's contact details (formal recommendations issued to SARS on 24 February 2022).

SARS repeat verification cases (approved 19 April 2022, formal recommendations issued to SARS on 20 April 2022).

# Disagreements on administration of law: **Tips**

- At the SSMO, the service request number is firstly validated 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. Make sure you provide the first case number to determine the internal turnaround time.
- When should you contact your RCB? SAIT Tax Helpline
- SARS officials do not have a mirror image and they do not have your view of eFiling (take screen shots).



Thank you