



“Your Empowered Insight into the World of Tax, Business and Personal Finance Issues.”
“TAX DISPUTES”

Tax liability occurs when a **taxpayer** (individual or corporation) submits a return which indicates that a payment is due to **SARS** or when **SARS** raises an assessment, interest or fines.

The assessment indicates the income, deductions, allowances, rebates et al and ultimately the tax liability.

The assessment also contains the date on which the liability must be paid. **Taxpayers** conceding to the liability may pay the tax in a single installment or enter into a deferral arrangement.

The following information is useful for a **taxpayer** who is aggrieved by an assessment - on which - interest will accrue at a prescribed rate from a predetermined time.

SARS procedures and benchmarks

After the expiry of the date mentioned above, **SARS** will commence with collection steps as contained in the Tax Administration Act (TAA) and / or Tax Administration Amendment Act.

SARS claims and powers include:

1. Liability of representative **taxpayer**,
2. Personal liability,
3. Withholding agent,
4. Personal liability of withholding agent,
5. Responsible third party and personal liability of third party,
6. Application for a civil judgement,
7. Liquidation / Sequestration,
8. Other remedies.

SARS relies on the “Pay now, argue later” principle that was affirmed in **Metcash Trading Limited v Commissioner for South African Revenue Service (SARS)** case.

The Judgment in that case was not without qualification as the Court further held that a **senior SARS official** is afforded the right to exercise his/her discretion to suspend the obligation to pay the disputed tax pending the outcome of an objection.

This discretion has become a permanent feature in the purport of **section 164 et seq** of the **TAA**. It must be emphasised that an application to suspend must be timeously initiated by the **taxpayer as it is not an automatic right**.

Process to be followed by an aggrieved taxpayer

An objection must be lodged in the manner under the terms and within the period prescribed in the rules.

An extension of the time period in which to lodge the objection also exist within the rules, this is however dependent on additional relevant factors.

The **TAA** does not prescribe the manner in which the discretion to extend the period should be exercised. The **Constitution of South Africa** as well as the **PAJA ACT** sets the tone for this administrative action.

Taxpayers are also entitled to, prior to lodging of an objection request reasons for such assessments as provided for under rules 6(1) & 6(2) to have a clear understanding of the tax liability.

Conclusion

Taxpayers MUST act against an assessment that is materially flawed or incorrect within the regulated timelines.

SARS’s power is wide and far reaching. You will wake up to the reality that your bank account has been debited if not cleared with citation “**SARS**”.

The consequence can be catastrophic, all because of a delay in lodging a comprehensive and competent objection.

Morality upheld

Taxpayers are legally and morally required to pay tax that is fair and correct. **Taxpayers** participating in schemes to defraud are considered as thieves, robbing the fiscal and - to an extent - the poor.

The state on the other hand, by imposing burdensome taxes to correct its self-created shortfall can also be perceived as engaging in thievery.

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30 HEYSTEK STREET, RUSTENBURG, (TEL) 014 592 3234 (FAX) 086 601 1472

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**30 HEYSTEK STREET, RUSTENBURG, TEL (014) 592 3234/ 3237 /3022 FAX (086) 601 1472
internal@taygro.co.za ; management.rtg@taygro.co.za**