

SOUTH AFRICAN REVENUE SERVICE

ALTERNATIVE DISPUTE RESOLUTION: QUICK GUIDE

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www.sars.gov.za

Alternative Dispute Resolution (ADR)

You may opt for the Alternative Dispute Resolution (ADR) process to resolve your tax dispute with SARS.

1. What is ADR?

ADR is a form of dispute resolution other than litigation, or adjudication through the courts. It is less formal, less cumbersome and less adversarial and a more cost-effective and speedier process of resolving a dispute with SARS.

2. Who can initiate ADR?

A taxpayer or SARS can initiate ADR. SARS, however, finally determines whether a matter is suitable for ADR.

3. When can you opt for ADR?

You can opt for ADR at the stage you note your appeal against the disallowance of your objection against a decision or assessment with which you are dissatisfied.

4. How do you initiate ADR?

You can initiate ADR by indicating that you wish to make use of the ADR process in your notice of appeal. SARS will inform you within 30 business days of your notice of appeal whether the matter is suitable for an ADR process.

5. Who facilitates ADR?

A senior SARS official (SSO) is authorised by the Commissioner to establish a list of facilitators, from which list the official appoints a facilitator. However, you can also agree with SARS not to use a facilitator and only have party to party ADR discussions.

6. What ensures that ADR happens in a fair manner?

The facilitator is bound by a code of conduct and must seek a fair, equitable and legal resolution of the matter between the parties, i.e. SARS and you. The process is also governed by a set of terms and conditions to which you agree.

7. ADR process – How does it work?

The process is determined by the dispute resolution rules¹ issued under the Tax Administration Act, 2011. (You can find a copy of these rules on the SARS website: www.sars.gov.za – Legal & Policy – Secondary Legislation – Public Notices.)

- The facilitator will arrange an ADR meeting and notify all the parties or, if no facilitator is used, the parties will arrange it
- The meeting is conducted in an informal manner
- During the meeting both parties state their case and provide supporting documents if needed
- During this process, the facilitator will endeavour to resolve the dispute

8. Who represents you during the ADR process?

You can represent yourself. Alternatively, if the facilitator agrees thereto in exceptional circumstances, you may be excused from the facilitation and be represented by a representative of your choice.

9. Outcome of ADR

If the dispute is resolved between you and SARS, it must be recorded and signed by you and the SARS representative. A settlement agreement must be approved by a senior SARS official.

SARS will issue, where necessary, a revised assessment to give effect to the agreement reached by ADR.

If the dispute is not resolved by ADR you may continue to appeal to the Tax Board, if the tax in dispute is below R500 000, or the Tax Court.

10. Rights and obligations of parties

You should at all times disclose all relevant facts during the ADR process.

The ADR proceedings may not be electronically recorded.

Representations made during the course of the ADR meeting are made without prejudice, i.e. may not be used against you in any subsequent proceedings.

11. How long does ADR take?

The ADR process must be concluded within 90 days.

¹ Rules promulgated under section 103 in Notice 550 on 11 July 2014 (GG 37819).

12. What are the benefits of ADR?

It is a less formal and more cost-effective and a speedier method of dispute resolution.

13. To which taxes does it apply?

ADR applies to taxes such as–

- Diamond Export Levy
- Donations Tax
- Employment Tax Incentive
- Estate Duty
- Income Tax (including PAYE and Capital Gains Tax)
- Mineral and Petroleum Resources Royalties
- Skills Development Levy
- Transfer Duty
- Value-added Tax (VAT)

14. Further information

For further information about dispute resolution, you may–

- contact your own tax advisor or tax practitioner
- visit your nearest SARS branch office
- contact the SARS National Contact Centre at–
 - 0800 00 7277 if calling locally
 - +2611 602 2093 if calling from outside the Republic
- visit the SARS website at www.sars.gov.za

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