



UNICUS **TAX UPDATE**

19 May 2026

Chapter 15 penalties and holding SARS Accountable





HELLO & WELCOME!

NICO THERON

BCom Law (cum laude) | LLM (Tax Law) | BCom Honours Taxation | MCom Taxation (SA and International Tax)

MANAGING DIRECTOR



DISCLAIMER:

This training is designed and intended solely for the benefit of employees of Unicus Tax Specialists SA (Pty) Ltd and may only be relied upon by such employees in accordance with the internal rules and policies of Unicus Tax Specialists SA (Pty) Ltd.

While Unicus Tax Specialists SA (Pty) Ltd may, in its sole and absolute discretion, permit non-employees to attend these training sessions, any such attendance is for general interest purposes only. Non-employees acknowledge and accept that they may not rely on the content of this training for any purpose. These training sessions do not constitute professional advice, guidance, or formal training and should not be interpreted or relied upon as such. No advice is provided, nor should any information discussed during these sessions be used as the basis for providing advice to others.

Attendees are strongly encouraged to seek independent professional advice in respect of any matters covered during the training and are advised not to provide advice or rely on any information discussed in these sessions.

CHAPTER 15 PENALTIES: WHAT ARE WE DEALING WITH?

- Administrative non-compliance penalties
- Fixed amount penalties: s 210
- Reportable arrangement penalties: s 212
- Percentage-based penalties: s 213
- Imposed by a penalty assessment: s 214
- The remedy path is not the normal objection-first instinct

PERCENTAGE-BASED PENALTIES: COMMON EXAMPLES

- Late payment of VAT
- Late payment of employees tax / PAYE
- Late provisional tax payment
- Underestimation of provisional tax reflected in an income tax assessment
- Late payment of dividends tax or withholding taxes
- Key question: what underlying tax Act prescribes the percentage?

CORE ROUTE: REMIT FIRST, OBJECT SECOND

- Step 1: identify the penalty assessment or the penalty part of an assessment
- Step 2: request remittance under s 215
- Step 3: include facts, reasons and supporting documents
- Step 4: collection of the penalty is restricted while the request is pending
- Step 5: if SARS refuses, object and appeal against that refusal under s 220

WHY THE ROUTE MATTERS

- A penalty assessment is an assessment, but the penalty provisions are more specific
- Practical position: do not object first to ss 210, 212 or 213 penalties
- Request remittance first
- If tax and penalty are in one assessment, split the routes:
 - object to the tax assessment if the tax is wrong
 - request remittance of the penalty if the penalty is wrong or unfair

WHAT TO PROVE IN A REMITTANCE REQUEST

- File before the payment date in the penalty assessment, where possible
- Explain what prevented compliance
- Attach proof: returns, payments, bank logs, SARS correspondence, medical or system evidence
- s 217: first incidence or small amount, reasonable grounds, and non-compliance remedied
- s 218: exceptional circumstances, including SARS error/delay or serious hardship
- s 219: ask SARS to alter an incorrectly assessed penalty

EXAMPLE: LATE PAYMENT OF VAT

- VAT was paid after the due date and a percentage penalty is raised
- Check: due date, actual payment date, payment reference and bank release time
- If eFiling or SARS processing caused the issue, say so and prove it
- If first incidence / small amount: use s 217
- If SARS error, serious illness, disaster, disruption or hardship: use s 218
- If SARS refuses to remit: object to the refusal, not to the penalty first

EXAMPLE: PROVISIONAL TAX UNDERESTIMATION

- Income tax assessment may include a provisional tax underestimation penalty
- Split the dispute:
 - tax calculation wrong: object to the assessment
 - penalty should be remitted: request remittance
- Build the facts: estimate used, basic amount, actual taxable income, timing and reasons
- Attach workings and contemporaneous evidence
- If remittance is refused, object to the refusal

WHEN SARS ACTS: FIRST CLASSIFY THE ACTION

- What exactly did SARS do?
- Assessment: a tax liability or refund amount is determined
- Decision: SARS decides, refuses, invalidates, collects, blocks or reflects a status
- Failure: SARS does not decide or does not comply with a time period
- The remedy follows the classification

ASSESSMENT OR DECISION: PRACTICAL DISTINCTION

- Assessment: usually a number in rand
 - ITA34, VAT217, EMP217, estimated assessment, additional assessment
- Decision: not itself the tax calculation
 - refusal to remit a penalty
 - refusal to condone a late objection or appeal
 - refusal of suspension of payment
 - TCS / non-compliance status decision
 - third-party appointment or bank collection step

SECTION 105: THE GATEKEEPER

- If it is an assessment or s 104 decision, Chapter 9 is the default route
- High Court is available only if the High Court directs otherwise
- Do not dress an assessment dispute as PAJA or legality and skip s 105
- If a High Court direction is needed, frame good cause for that direction
- If the decision is outside s 104, s 105 should not block High Court access

DECISION TREE FOR FORUM AND REMEDY

1. Is it an assessment or s 104 decision?
 - yes: Chapter 9 / Tax Court route
 - no: likely High Court review or mandamus route
2. Is SARS in breach of a Tax Court rule or time period?
 - yes: Rule 56 notice, then Tax Court application if not cured
3. Do you need High Court despite s 104?
 - seek a s 105 direction and serve s 11(4) notice
4. Outside s 104?
 - serve s 11(4) notice and put SARS on terms

RULE 56: TAX COURT PROCESS PRESSURE

- Use when SARS controls the dispute process and misses a rule obligation
- Examples: no objection outcome, no reasons, no Rule 31 statement, invalid process handling
- Deliver notice of intention under Rule 56(1)
- SARS gets 15 days to cure
- If not cured, apply to the Tax Court for a final order or default relief
- Practical point: the notice is a pressure tool; if SARS cures in time, the default remedy may fall away

SECTION 11(4): HIGH COURT PRESSURE

- Use before High Court proceedings against the Commissioner
- Written notice: at least one week unless the court directs otherwise
- Serve at the address specified by public notice
- State the act or decision, why it is unlawful, and what SARS must do
- Attach key proof and draft relief
- Relief examples: reinstate SOP, correct TCS, stop collection, repay money, compel a decision

EXAMPLE ROUTE: TCS NON-COMPLIANCE STATUS

- Identify why SARS reflects the taxpayer as non-compliant
- If linked to a real unpaid debt or outstanding return, fix that first
- If linked to an incorrect SARS decision or system error, request correction and reasons
- Ask: is this a s 104 assessment/decision dispute?
- If outside s 104: s 11(4) notice, then High Court review/mandamus if not fixed
- Relief: correct TCS profile and remove unlawful compliance blockage

EXAMPLE ROUTE: SARS TAKES MONEY FROM THE BANK

- Identify the mechanism: set-off, s 179 third-party notice, judgment, or other collection step
- Check whether payment was due and recoverable
- Check whether a suspension of payment request was pending or allowed
- Check whether SARS had to wait 10 business days after the SOP decision
- Check whether a final demand was required before a third-party notice
- If unlawful: s 11(4) notice seeking repayment, reinstatement and correction of SARS records

CLOSING CHECKLIST

- Penalty assessment? Remission first
- Mixed tax and penalty assessment? Split the routes
- Refusal to remit? Objection and appeal against the refusal
- SARS process default? Rule 56
- High Court action? Check s 105, then serve s 11(4)
- Bank debit or TCS blockage? Classify the act, put SARS on terms, and seek focused relief

Unicus

TAX SPECIALISTS SA



THANK YOU



unicustax.co.za



info@unicustax.co.za



+27 12 944 8888



Irene Link Commercial

