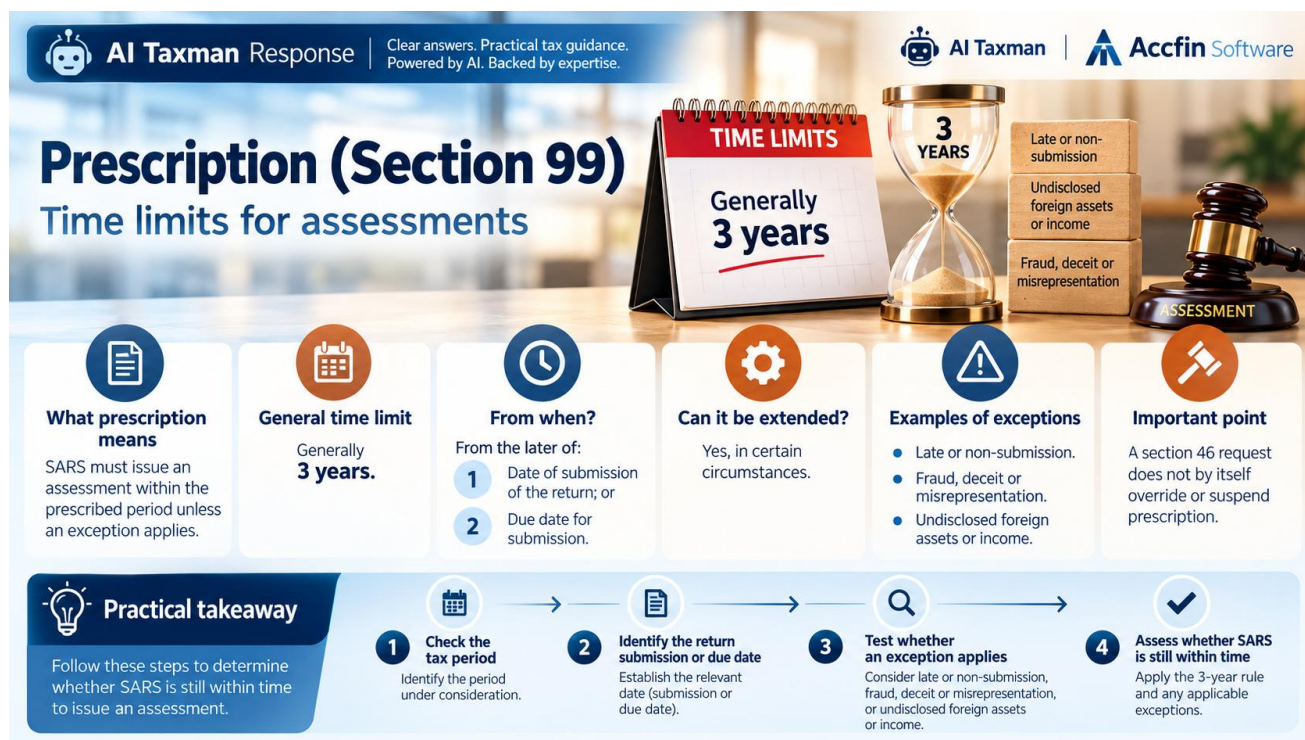


PREScription IN SOUTH AFRICAN TAX ADMINISTRATION



Prescription is a limit on SARS's power to issue an assessment after a specified period. It is not a rule that automatically cancels an assessment or an outstanding tax debt when that period ends. The central provision is section 99 of the Tax Administration Act 28 of 2011 (TAA). The applicable period depends principally on *how the original tax liability was assessed*: by SARS, as is generally the case with income tax, or by the taxpayer through self-assessment, as is generally the case with VAT and PAYE.

This distinction is the starting point for every prescription enquiry. The age of a tax year, on its own, does not establish whether an assessment has prescribed. One must identify the relevant original assessment or self-assessment event, calculate the applicable period, and then consider the statutory exceptions and extensions.

1. The ordinary three- and five-year periods SARS's **Short Guide to the Tax Administration Act** sets out the following section 99 framework:

Assessment situation	Example	Ordinary period and starting point
SARS issued the original assessment	Income tax	Three years from the date of SARS's original assessment
The taxpayer submitted a self-assessment return	VAT or PAYE	Five years from the date the return was submitted
SARS issued an original assessment because a required self-assessment return was not filed	VAT or PAYE	Five years from the date of that original assessment
No return was required, but payment of tax was required	Relevant payment-based tax	Five years from the date of the last payment made

These are limits on issuing assessments, subject to the qualifications discussed below. In particular, the five-year period for a filed VAT or PAYE return runs from submission of the return, not simply from the end of

the tax period. Similarly, the income-tax calculation ordinarily starts with the date of the original assessment, not the end of the year of assessment.

An original assessment is the first assessment for a tax period. SARS's guide explains that a self-assessment original assessment comes into existence when a return incorporating the taxpayer's calculation is submitted; where SARS determines the liability, SARS makes the original assessment. An *additional assessment* follows an original assessment and increases the liability, or otherwise corrects an assessment to SARS's benefit in the circumstances described in the guide.

Illustration: If SARS issued an original income-tax assessment on 30 March 2021, its ordinary three-year assessment period would reach its limit three years from that assessment date. That does not, by itself, answer whether SARS could issue a later assessment: one must still check for an applicable exception, a valid extension, or a dispute-related assessment. The original-assessment date, rather than merely the label of the tax year, is decisive to the initial calculation.

2. What prescription protects—and what it does not

Section 99 provides certainty by restricting SARS's ability to raise an assessment after the applicable period. Where the time limit applies and no exception or extension is available, SARS cannot overcome it simply by deciding later that it would prefer a different tax treatment. The prescription analysis therefore focuses on whether SARS still has statutory power to issue the proposed assessment.

Three distinctions matter:

1. An assessment does not disappear on its third or fifth anniversary. Section 99 limits the issue of further assessments; it does not automatically erase an existing liability.
2. Prescription is different from an objection deadline. A taxpayer may lose the ordinary opportunity to object well before SARS's assessment-issuance period expires.
3. Prescription of assessment is different from recovery of an existing tax debt. SARS's guide discusses a separate, longer period in the context of recovery and write-off of tax debts. A demand concerning an existing debt must therefore not be dismissed merely because the underlying income-tax assessment is more than three years old, or a VAT return is more than five years old.

On that last point, the *Short Guide* describes a 15-year period for a tax debt in its discussion of debt recovery and write-off, measured from when the debt comes into existence as explained there. It also distinguishes a temporary write-off, which does not absolve the taxpayer, from a permanent write-off. This is a separate enquiry from section 99's three- and five-year limits on issuing assessments; the precise history of a particular debt must be examined before asserting that SARS can no longer collect it.

3. Circumstances in which the ordinary limits do not apply

The three- and five-year periods are not unconditional. Section 99 and SARS's guide identify several important qualifications.

Fraud, misrepresentation and non-disclosure

Broadly, the ordinary restriction does not apply where the full amount of tax was not assessed because of fraud, misrepresentation or non-disclosure of material facts. SARS's guide notes that the formulation for self-assessment taxes such as VAT and PAYE differs: it refers to fraud and to intentional or negligent

misrepresentation or non-disclosure. The precise applicable provision and facts must therefore be identified for the tax type concerned.

The word “because” matters. A later discovery of an error is not, by itself, an explanation of why the full tax was not assessed within the period. Where SARS relies on an exception, a taxpayer should ask SARS to specify:

- whether it alleges fraud, misrepresentation or non-disclosure;
- the particular facts or information in issue;
- why the facts were material; and
- how the alleged conduct caused the full amount of tax not to be assessed.

The prescription correspondence in the uploaded materials expressly distinguishes an ordinary mistake or later difference of interpretation from an automatically established fraud, misrepresentation or non-disclosure exception.

A required self-assessment return was not submitted

A taxpayer should not assume that five years of inactivity protects an unfiled VAT or PAYE return. SARS’s guide states that SARS is not barred from making an assessment where a person has failed to submit a return for a self-assessment tax. It separately identifies a five-year calculation where SARS has itself issued an original assessment because that return was not filed. These are different factual situations and should not be conflated.

An agreement concluded before expiry

SARS and the taxpayer may agree that the ordinary prescription period will not apply, provided the agreement is concluded before the period expires. If an extension is asserted, the practical questions are when the agreement was concluded, what period it covers, and precisely which tax periods and matters its terms address. A purported agreement reached only after ordinary prescription has already taken effect cannot simply be assumed to revive an expired assessment power.

An assessment needed to give effect to a Chapter 9 dispute outcome

The ordinary time bar does not prevent an assessment required to give effect to the resolution of a dispute under Chapter 9 of the TAA. This permits SARS to implement an objection, settlement or final judgment in the manner contemplated by the dispute provisions. It should not be treated as a general licence to reopen an unrelated, already resolved issue: SARS’s guide also states that, once a Chapter 9 dispute has been resolved, no further assessment may be issued unless it is to give effect to a settlement or final judgment.

Certain reduced assessments

Prescription must be assessed carefully where the taxpayer wants SARS to correct an assessment. Section 93 provides limited routes for a *reduced assessment*; section 99 determines when the assessment time bar applies or does not apply to those routes. A reduced assessment does not “prescribe” as a separate event independent of this framework.

The two routes particularly relevant here are:

- Section 93(1)(d): a readily apparent, undisputed error in the taxpayer’s return or SARS’s assessment. The materials explain the protection in section 99(2)(d)(iii): if SARS became aware of the error before the ordinary prescription date, it may still process the qualifying reduced assessment after that date. Awareness before expiry is a factual question, so proof of receipt is important.

- Section 93(1)(e): specified problems involving an employer or third party's missing or incorrect return, an unauthorised fraudulent return, or a SARS processing error. The guide identifies this as a distinct reduced-assessment situation to which the ordinary periods do not apply in the manner it describes. It must not be used as a catch-all description for an ordinary disagreement with an assessment.

The *Additional Tax Law* material discusses a 2025 draft Interpretation Note, not a final binding interpretation note, on section 93(1)(d). Its example concerns an original assessment dated 30 March 2021 and a request, with documents, received and acknowledged by SARS on 29 March 2024. The point of the example is that provable SARS awareness before expiry can preserve the ability to complete a qualifying reduced assessment afterwards; the date on which SARS eventually decides the request is not the only date that matters. The material also notes that section 93 does not itself set a fixed statutory number of business days for SARS to decide such a request.

4. Extensions by notice during an audit or information dispute

Apart from agreement, SARS's *Short Guide* identifies two specific notice-based extension situations. These should be checked before concluding that the ordinary expiry date is conclusive:

- Delay in providing relevant material or resolving an information-entitlement dispute: SARS may, before prescription expires and on at least 30 days' prior notice, extend the period by a period approximately corresponding to the delay described in the guide.
- An audit or investigation involving specified complex matters: SARS may, before expiry and on at least 60 days' prior notice, extend the period by three years for an assessment by SARS or two years for a self-assessment. The listed matters are substance over form, anti-avoidance provisions, hybrid entities or instruments, and transfer pricing.

Consequently, the fact that SARS opened an audit, requested records, or was still corresponding with a taxpayer does not, without more, establish that prescription was extended. Check the statutory basis, whether the matter falls within the specified category, the notice, its timing, and the extension claimed. SARS's section 46 power to request relevant material is an information-gathering power, not itself a power to reopen an assessment that has prescribed.

5. Generally prevailing practice and final dispute outcomes

SARS's guide records a further protection where the preceding assessment, or a payment where no return is required, followed a practice generally prevailing at the time: the guide states that additional and reduced assessments cannot be issued in that situation. This is a distinct point to investigate; it should not be replaced with a bare assertion that three or five years have passed.

A finally resolved dispute likewise requires separate attention. An assessment issued to implement a settlement or final judgment is treated differently from an attempted new assessment of an issue already resolved. The operative dispute documents and the reason for the proposed new assessment are essential.

6. "Final" is not the same word as "prescribed"

Section 100 deals with finality of assessments. SARS's guide lists, among other events, the absence or withdrawal of an objection, disallowance of an objection without an appeal, and the conclusion of an appeal as circumstances relevant to finality. It cautions that an assessment's being final does not necessarily prevent an additional assessment for the same period if the specified legal criteria are met.

This is particularly important after an objection succeeds:

- The reduced assessment implementing a successful objection is linked to the Chapter 9 dispute outcome.
- It should not be treated as though it automatically gives SARS a fresh, unrestricted three- or five-year period to reassess the resolved matter.
- Conversely, one should not describe every assessment issued after the ordinary expiry date as unlawful if its purpose is to give effect to that Chapter 9 outcome.

A reduction under section 93(1)(d) is different: it concerns an undisputed error, not a Chapter 9 objection outcome. Whether SARS can make it after the ordinary period turns on the particular section 99 protection, notably whether SARS became aware of that error before expiry.

7. Prescription is not a substitute for objecting on time

A taxpayer who receives an incorrect assessment should not wait for the three- or five-year section 99 period to pass. Section 104 and the dispute rules govern objections on their own timetable. The uploaded *Additional Tax Law* material describes the ordinary objection period as 80 business days and explains that a late objection requires an extension: up to 30 business days on reasonable grounds, with a longer delay requiring exceptional circumstances, subject to the statutory limits discussed there. In particular, it states that SARS cannot grant an extension once more than three years have elapsed from the assessment or objectionable decision.

That three-year late-objection limit must not be mistaken for section 99's three-year income-tax assessment limit. They answer different questions: *Can the taxpayer still object?* and *Can SARS still issue an assessment?* Depending on the dates and facts, their answers can differ. Where a section 93 request is refused, the materials also caution against treating dispute rule 6 as if it creates a dedicated statutory decision deadline for every section 93 request.

8. A practical prescription checklist

For an actual assessment, work through these questions in order:

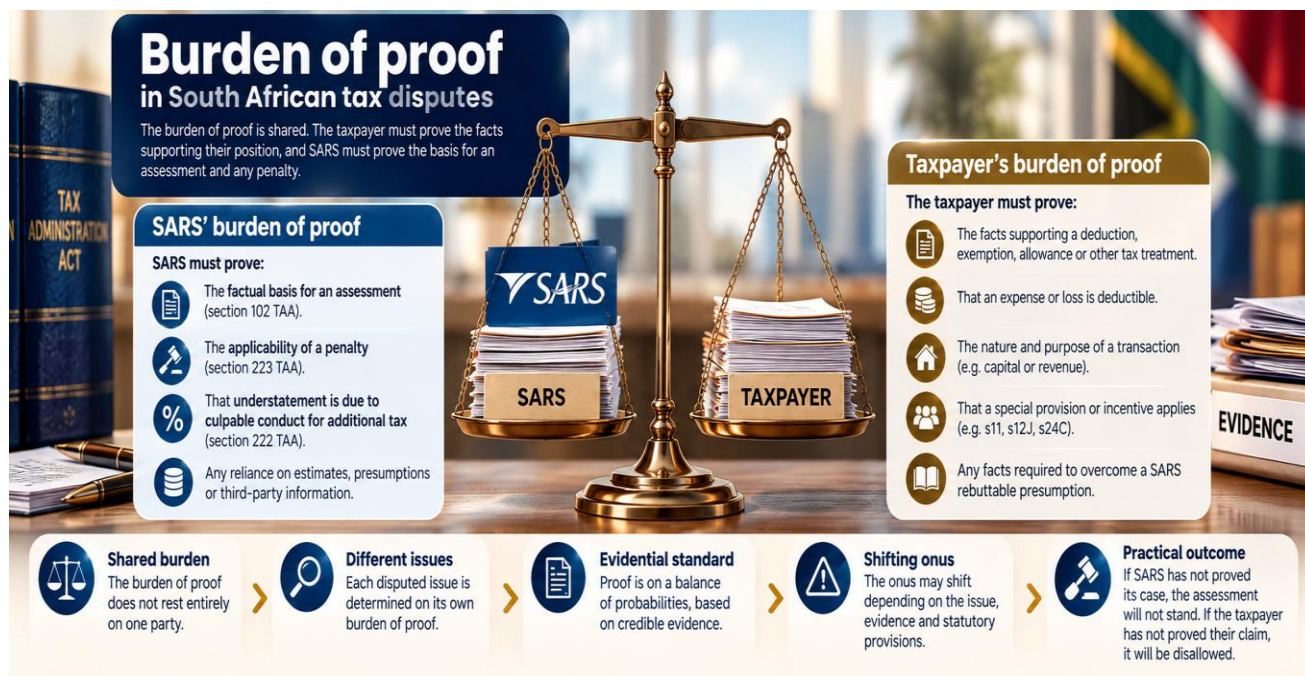
1. Identify the tax and period. Is it income tax assessed by SARS, VAT or PAYE self-assessed on a filed return, or another assessment situation?
2. Obtain the original assessment or filed return. Record its actual issue or submission date. Do not calculate solely from the tax-year label or a statement-of-account date.
3. Calculate the ordinary expiry point. Apply the relevant three- or five-year rule to the correct starting event.
4. Identify what SARS proposes to do. Is it issuing an original, additional or reduced assessment; implementing a dispute outcome; seeking documents; or collecting a debt that has already arisen? These are not interchangeable acts.
5. Check every asserted exception or extension. Ask for the facts supporting alleged fraud, misrepresentation or non-disclosure; check whether a return was filed; inspect any agreement; and obtain any extension notice and audit description.
6. Check for an objection, settlement or judgment. Determine whether the proposed assessment merely gives effect to its outcome, and whether the issue has already been finally resolved.
7. If requesting a section 93(1)(d) correction, establish when SARS became aware of the error. Preserve the eFiling submission, supporting documents, acknowledgement, case number and timestamps. Decide separately whether section 93(1)(e) genuinely fits the facts.

8. If an additional assessment appears time-barred, dispute the precise basis on which SARS says it may issue it. Put the starting date and calculation to SARS, request particulars of any exception, and use the applicable objection or other procedural route without overlooking its own deadline.

In short: income tax assessed by SARS ordinarily has a three-year section 99 assessment period from the original assessment; a filed VAT or PAYE self-assessment ordinarily has five years from submission of its return. Neither figure is an unconditional rule about every old tax period, every correction, or every debt. The outcome depends on the original assessment event, statutory exceptions, valid extensions, dispute history and the particular action SARS proposes to take.

Source documents used: LAPD-TAdm-G01-Short-Guide-to-the-Tax-Administration-Act-2011.pdf (SARS Version 3, dated 29 March 2018); ADDITIONAL TAX LAW.docx; and the prescription and section 46 material in LETTERS 8.docx. The 2025 interpretation-note discussion above is identified in *Additional Tax Law* as concerning a draft note. END

BURDEN OF PROOF IN SOUTH AFRICAN TAX DISPUTES



What the taxpayer must prove and what SARS must prove

The **burden of proof** is the responsibility to establish a disputed matter with evidence. In a South African tax dispute, the burden does not rest entirely on one party. The taxpayer ordinarily proves the facts supporting a claimed tax treatment or a challenge to an assessment. SARS has its own burden in particular circumstances, especially when it relies on an **estimated assessment** or imposes an **understatement penalty**.

1. The taxpayer's general burden

Section 102(1) of the Tax Administration Act 28 of 2011 places the burden on the taxpayer to prove, among other things:

- That an amount, transaction, event or item is exempt or otherwise not taxable.
- That an amount or item is deductible or may be set off.
- The applicable rate of tax.
- That an amount qualifies as a reduction of tax payable.
- That a valuation is correct.
- A matter concerning a decision subject to objection and appeal under a tax Act.

Practical effect: A figure in a tax return is not, by itself, proof of the tax treatment claimed. If SARS disputes a deduction, the taxpayer needs credible evidence of the underlying transaction and an explanation of why it qualifies. In a Tax Court appeal, the taxpayer ordinarily establishes the relevant facts **on a balance of probabilities**. SARS does not have to disprove every unsupported assertion.

2. SARS must give proper grounds for an assessment

The taxpayer's general burden does not permit SARS to assess without a proper factual basis. Where SARS issues an estimated assessment, or an assessment not fully based on the taxpayer's return, section 96(2) requires SARS to give the grounds for the assessment. SARS must identify the real issue so that the taxpayer can respond.

SARS v Pretoria East Motors illustrates this limit. SARS could not rely on the taxpayer's onus to defend additional assessments founded on a misunderstanding of accounting entries. The taxpayer's evidential burden does not allow SARS to treat an unexplained entry as omitted taxable income or a taxable supply without proper grounds.

The distinction: Giving proper grounds is an obligation on SARS. It does not automatically reverse the taxpayer's ordinary section 102(1) burden concerning the disputed tax treatment.

3. SARS must prove that its estimate is reasonable

Section 95 allows SARS to make an assessment based on an estimate in specified circumstances, using information readily available to it. Section 102(2), however, places the burden on **SARS to prove that the estimate is reasonable**. SARS should be able to explain:

- What information it used.
- What assumptions it made.
- How it calculated the estimated amount.
- Why that calculation was reasonable on the information available.

A taxpayer's failure to provide complete information does not, on its own, prove that whatever figure SARS selected was reasonable. Equally, SARS's burden concerning its **estimate** does not relieve the taxpayer of the need to substantiate a claim that the **actual taxable amount** was different. These are separate questions and should be argued separately.

4. SARS must prove the facts supporting an understatement penalty

An **understatement penalty** is a separate issue from the tax adjustment itself. Under section 102(2), SARS bears the burden of proving the facts on which it based the penalty. In an appeal against the penalty, section 129(3) also places the burden on SARS.

SARS must identify and support:

1. The alleged **understatement** under section 221, such as a particular omission, incorrect statement or return default.
2. The resulting **shortfall** under section 222.
3. The facts supporting the selected **behaviour category and penalty percentage** under section 223.

An adjustment to a return is not, by itself, proof of a penalty. If SARS alleges that reasonable care was not taken, it should identify the reasonable step the taxpayer failed to take. If it alleges gross negligence or intentional tax evasion, it needs facts supporting that more serious allegation. The size of an adjustment alone does not prove such behaviour.

Where a *bona fide inadvertent error* is in issue, the source material records Tax Court authority treating SARS's burden as extending to proving that the understatement was not due to such an error.

Enviroserv Waste Management v CSARS provides an illustration: SARS had not proved the asserted prejudice to SARS or the fiscus, a necessary part of the understatement alleged in that case. Identifying the taxpayer's conduct without proving that required element was insufficient to sustain the penalty.

5. A further SARS burden: jeopardy assessments

A distinct rule applies if a taxpayer asks the High Court to review a **jeopardy assessment under section 94**. In that review, SARS must prove that making the jeopardy assessment was **reasonable in the circumstances**. This burden is separate from the section 102(2) burdens concerning estimates and understatement penalties.

6. Objection requirements and the burden at trial

At the **objection stage**, rule 7 of the dispute-resolution rules requires the taxpayer to identify what is disputed, state the grounds and provide required supporting documents that have not already been supplied. An objection may face a validity issue if those requirements are not met.

This procedural requirement differs from the eventual burden of proving the merits in the Tax Court. Likewise, SARS's burden to justify an estimate or penalty does not excuse the taxpayer from preparing a properly supported objection. *X and Another v CSARS (2026)* emphasises this distinction.

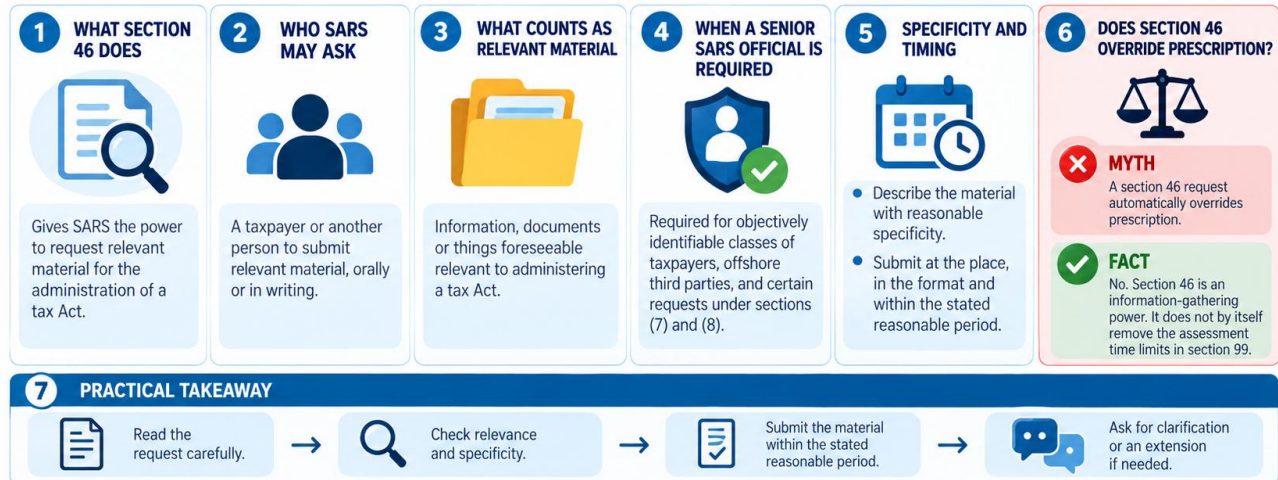
At a glance

Disputed question	Who bears the burden?
Is a claimed deduction, exemption, set-off, tax reduction or valuation justified?	Ordinarily the taxpayer , under section 102(1).
Is SARS's section 95 estimate reasonable?	SARS , under section 102(2).
Do the facts support an understatement penalty?	SARS , under sections 102(2) and 129(3).
Was a jeopardy assessment reasonable in a section 94 High Court review?	SARS .

The central point: The taxpayer must substantiate the tax treatment it claims. SARS must substantiate matters the law assigns to it, particularly the reasonableness of an estimate and the factual basis of an understatement penalty. Neither party can replace evidence with an assertion that the other party bears the burden.



Section 46 of the Tax Administration Act Requests for Relevant Material



SECTION 46 OF THE TAX ADMINISTRATION ACT: REQUESTS FOR RELEVANT MATERIAL

Section 46 gives SARS a power to obtain **relevant material** for the administration of a tax Act. It is an information-gathering power: SARS can use it to ask for material, but the section does not itself authorise SARS to issue or reopen an assessment.

1. Who can be asked, and for what?

Under **section 46(1)**, SARS may require a taxpayer—or another person—to submit relevant material, orally or in writing, within a reasonable period. The request must concern the administration of a tax Act in relation to a taxpayer. That taxpayer may be named or otherwise **objectively identifiable**. A section 46 request is not confined to a formal audit: SARS's guide says it may also be used, for example, for verification or checking compliance with a tax obligation.

“Relevant material” means information, documents or things that are **foreseeably relevant** to administering a tax Act. The request must therefore have a proper connection to a tax-administration purpose; section 46 is not a general entitlement to unrelated information.

2. When is a senior SARS official required? Section 46(2)

reserves two kinds of request to a **senior SARS official**:

- a request concerning taxpayers in an objectively identifiable **class**; and

- a request for material held or kept by the specified **connected person outside South Africa** in relation to the taxpayer.

SARS's guide gives, as an example of an identifiable class, account holders who made offshore transfers exceeding a specified amount. Senior-official authority is also required for the directions under subsections (7) and (8), discussed below.

3. Limits on a request to a third party

Under **section 46(3)**, if SARS asks someone *other than the taxpayer*, the request is limited to material that person maintains or keeps, or **should reasonably maintain or keep**, in relation to the taxpayer. SARS's guide explains that this does not oblige a third party to gather information outside the records it keeps or should reasonably keep.

4. How precise must the request be?

Section 46(6) requires SARS to describe the material sought with **reasonable specificity**. A request merely demanding "all documentation" may be too vague if it leaves the recipient unable to identify what is required. Where a request is unclear, a practical response is to ask SARS to specify the tax type and period, the issue being examined, the particular records or explanations required, and their relevance. Whether a particular request is sufficiently specific depends on its wording and circumstances.

5. Where, how and when must material be supplied?

Under **section 46(4)**, the recipient must submit the material at the place and in the format stated in the request; the format must be **reasonably accessible** to that person. Ordinarily, the deadline is the time specified in SARS's request, read with subsection (1)'s requirement of a **reasonable period**. The Act does not set one universal response period for ordinary section 46 requests.

There is a specific **90-day period from the date of the request** for material held by the offshore connected person described in section 46(2)(b). That request must also state the consequences, referred to in subsection (9), of failing to provide the material. Under **section 46(5)**, a recipient who submits reasonable grounds for needing more time may ask SARS for an extension; SARS **may**, rather than automatically must, grant it.

For that offshore-connected-person situation, SARS's guide explains the consequence of non-production: the taxpayer may be prevented from producing the material in subsequent proceedings unless a competent court directs otherwise on the stated basis of circumstances outside the control of the taxpayer and connected person.

6. Oaths, criminal investigations and revenue estimates

A **senior SARS official** may, under **section 46(7)**, direct that material be provided under oath or solemn declaration. If it is required for a criminal investigation, the direction may also require compliance, where necessary, with sections 212 or 236 of the Criminal Procedure Act. Under **section 46(8)**, a senior SARS official may request material a person **has available** for revenue-estimation purposes. ### 7.

Does a section 46 request override prescription?

No. Section 46 permits information-gathering; it does not, on its own, remove the assessment time limits in **section 99**. Equally, an assertion that an assessment has prescribed should not simply be treated as cancelling every information request. The questions are distinct: **what material may SARS request**, and **whether SARS may lawfully issue a further assessment**. If SARS seeks to assess beyond an applicable time limit, it must identify and substantiate the statutory basis on which it says that limit does not apply.

In practice: read the request against each of these requirements, supply clearly identified relevant material within the stated reasonable period, and promptly seek clarification or an extension—giving reasons—if either is needed.