



PROFILE

IT88 Process Explained

by David Brown



SARS will issue an IT88 for one of three reasons

- The employee has PAYE outstanding from a previous period. These IT88's generally have a number assigned to them e.g. 12345986
- PAYE is outstanding for a company share scheme. The reference number for these is generally T0000000
- The affected **employee** has not submitted one or more annual returns for their personal taxes paid. The reference numbers for these are e.g. A10000045.

Different Periods

- When the **IT88** is initially issued - it will be a single amount for ALL the returns outstanding at the time the IT88 is issued
- If an **IT88** is issued and an employee appears on the statement more than once, **each** item raised is for an annual return that has NOT been submitted to SARS and has been outstanding for a month since the first IT88 issued, as described above.
- If an employee has outstanding returns for TWO separate periods, subsequent IT88 notices will have the employee appearing TWICE, thus the employee will have TWO deduction lines on the IT88.

Penalties

- The administrative non-compliance penalty for the failure to submit a return comprises fixed amount penalties based on a taxpayer's taxable income and can range from R250 up to R16 000 a month for each month that the non-compliance continues.
- Administrative penalties recur each month that the taxpayer is non-compliant, up to a maximum of 35 months. Each recurring penalty will have a unique transaction number.

Comments on SARS' website

- At the beginning of 2010 SARS began applying an administrative penalty on individuals whose income tax returns were outstanding.
- The penalty charged is between R250 and R16000 per month, and is charged per return that is outstanding and more importantly is applied for each month that the non-compliance continues to occur.
- Thus, if an IT88 is issued for an employee, the amount deducted will be **added** for **every month** the return is outstanding.

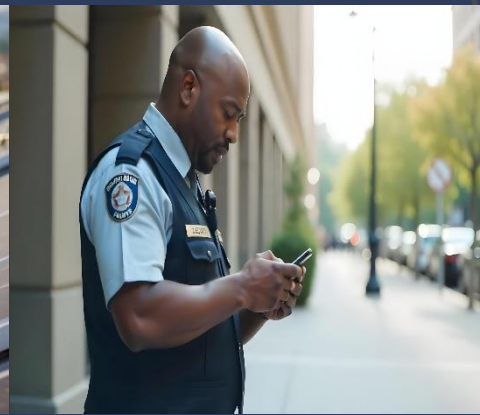
Penalties and Reference Numbers

- Each NEW penalty will have a NEW IT88 reference number even if it is for the same year e.g. 2008, if the return is not lodged IN THE MONTH the penalty is initially raised, the penalty will be re-imposed each subsequent month until the return is lodged
- AND the IT88 number will change each month i.e. *"Where the return remains outstanding, the penalty recurs for each month or part thereof, depending on how long the return remains outstanding."*
- *On the Penalty Assessment Notice, the taxpayer is informed to both remedy the non-compliance by submitting the outstanding return and to pay the outstanding amount by the due date reflected on the Penalty Assessment Notice.*

SARS Reconciliation Statement

- These new penalties are raised on the 'IT88R Reconciliation statement', issued by SARS, under the innocent sounding heading of 'IT88 Appointments made during xxMonthxx Period'.

e@syFile



Finding out the IT88 status for Employers and their employees

SARS has created software that allows the Employer to download any new IT88 form to their PC.

This is done by:

- Logging in to the e@syFile desktop software
- Under the 'Utilities' menu option select the 'Synchronise Application' sub menu option.
- The user will be requested to enter their SARS e-Filing login name and password.

Once this has been entered, the e@syFile desktop application will download all new IT88 notices, statements and update the status of individual employees as regards the IT88 penalty.

Paying the IT88

- This is possibly the most challenging aspect of the IT88 process
- SARS had the Big Four banks write specific payment gateways for the payment of IT88's.
- These IT88's must be paid for each line that appears on the IT88 issued by SARS, listing the unique reference number for each taxpayer.

Paying SARS in Bulk or Individually

- SARS has also written a Bulk Upload facility within the SARS e-Filing system that allows the user to do a single upload for ALL the IT88 deduction for a specific period.
- These can be paid via a Debit Pull or a Credit Push.
- This is a very easy process and should be used instead of the individual payment described above.
- There are payment service providers that will perform this tedious exercise on the Employers' behalf.

SARS IT88's



- While the penalties imposed by SARS are perceived as extremely harsh, it is the only way SARS can make the delinquent taxpayers submit their annual returns.
- The **IT88** will be a huge phenomenon in the short term, but it is in the employee's interests to ensure that the annual returns are indeed submitted to SARS and then the problem will go away.

IT88 deduction priority

- In the initial phases of the implementation of the IT88 process, SARS considered the IT88 deduction to be the next most important deduction after PAYE/UIF itself.
- ITA88s issued under the Income Tax Act are binding agent appointments and take effect regardless of internal employer deduction policies.
- Employers must treat IT88s as binding statutory obligations, not optional deductions subject to BCEA sequencing.

IT88 deduction priority

- While the Basic Conditions of Employment Act makes itself subservient to other Acts of Parliament concerning deductions from an Employee's remuneration, the Act, in Section 34(1) categorically spells out the order of deductions possible from an Employee's remuneration.
- Deductions and other acts concerning remuneration
- Section 34.
- (1) An employer may not make any deduction from an employee's remuneration unless—
 - (a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
 - (b) the deduction is required or permitted **in terms of a law**, collective agreement, court order or arbitration award.

IT88 Deduction Priority

- The important sub-section being (b).
- The order of deductions are:
 - 1.required or permitted in terms of a law** – This would cover PAYE, IT88, UIF, Pension/Provident (Pension Funds Act 1956, Medical Schemes Act 1998), and other deductions covered in a law.
 - 2.collective agreement** – Union fees etc.
 - 3.court order** – Maintenance and Emolument Attachment Orders for Civil debt
 - 4.arbitration award**

IT88 deduction priority

- Pension Funds Act 1956.
- 37A. Pension benefits not reducible, transferable or executable:
 - (1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No. 58 of 1962), and the Maintenance Act, 1998, no benefit shall,...., be capable of being **reduced**,.....
- While this Section of the Pension Funds Act make reference to the Income Tax and Maintenance Act, the Basic Conditions of Employment Act specifically relegates the punitive Sections of those Acts to the third sequence of deductions permitted from an employee's remuneration.

IT88 deduction priority

- I would argue that the mention of the Income Tax Act is to cover the statutory deductions of PAYE and UIF etc. and not the punitive sections of the Income Tax Act.
- The fact that mention has specifically been made of the Maintenance Act in this section of the Basic Conditions of Employment Act means that IT88 deduction is relegated to a third priority on the deductions sequence list i.e. Court order

IT88 deduction priority

- **Deduction Priority 3 - court order - Maintenance Act 99 of 1998.**

- **In Section 29(3) of the Maintenance Act:**

Any employer on whom a notice has been served for the purposes of satisfying a maintenance order shall give priority to the payments specified in the notice **over any order of court** requiring payments to be made from the emoluments due to the person against whom the maintenance was made.

IT88 deduction priority

- **Deduction level 3 cont'd - Income Tax Act - Section 99.**
- Section 99(1) of the Income Tax Act states:
the Commissioner is empowered to "... if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax due from any moneys, **including pensions**, salary, wages or any other remuneration, which may be held by him for or due by him to the person whose agent he has been declared to be".

IT88 deduction priority

- But both Acts have been promulgated by the same institution viz. Parliament.
- I would argue that the Maintenance takes preference to the IT88 as stipulated in the Maintenance Act because both are Acts of Parliament, but the Maintenance Act is specifically reinforced with the statement '**over any order of court**'.
- The fact that a Magistrate interprets the one and an individual at SARS interprets the other does not make the Maintenance Act subservient to the Income Tax or the issue of an IT88 any less an **order of court**.

ITA88 / IT88 Process Flow

Trigger Event
(SARS identifies outstanding tax / penalties)

ITA88 Notice Issued
(SARS appoints employer/bank/agent)

Employer Duties

- Verify employee details
- Deduct specified amount
- Use unique ITA88 ref

Payment to SARS

- eFiling bulk upload
- Bank payment gateways

Affordability Issues

- Employer flags on e@syFile
- SARS may allow 3 to 6-month plan
- Longer = employee negotiates with SARS

Non-Compliance Consequences

- Employer personally liable
- Criminal prosecution possible

Common Payment Problems

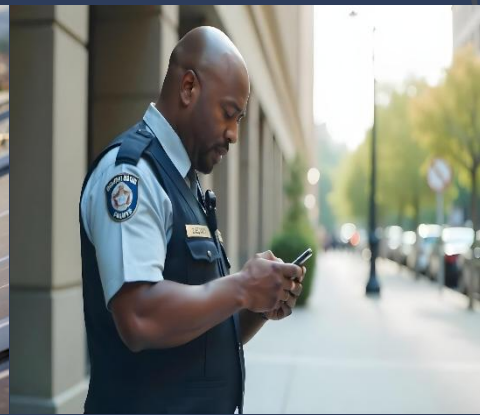
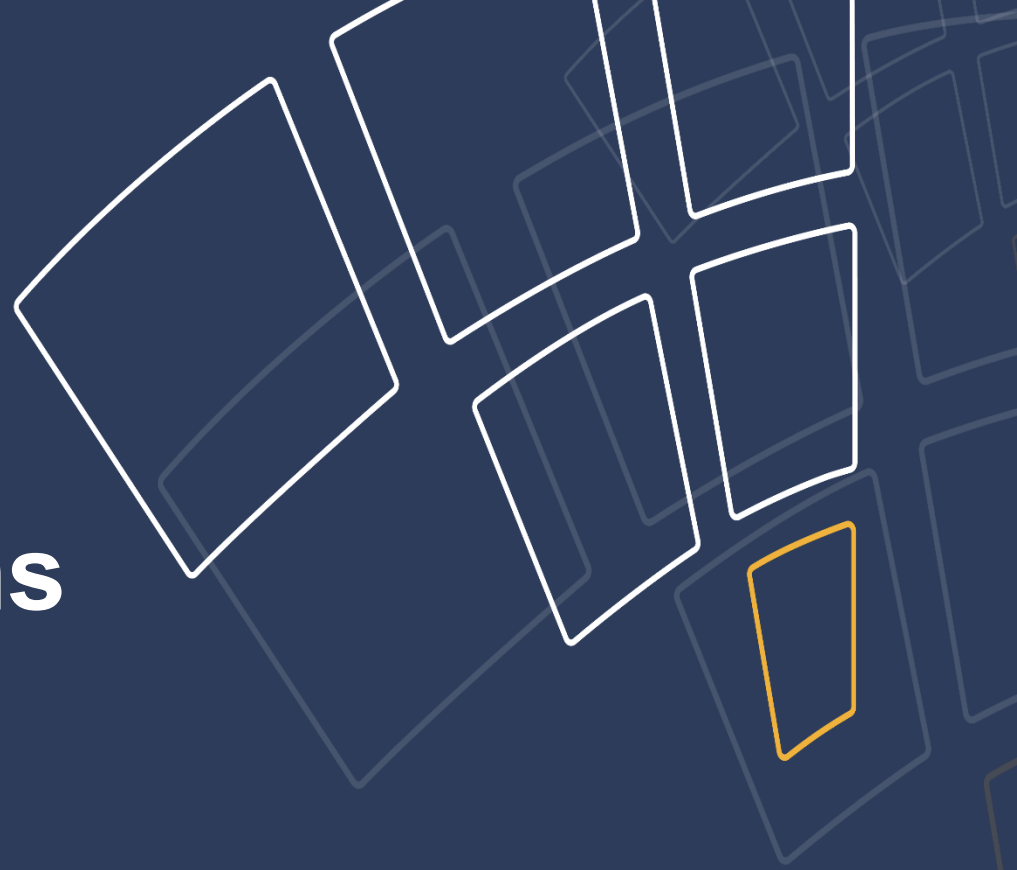
- SARS e-Filing uploads
 - IT88A reference number made up of the 10-digit tax reference number and the nine digit AI number.
 - AI number NOT the required 9 digits
 - AI captured as A1
 - IT88 has been Employer split over three deductions and from the second payment onwards, the AI number rejects.
 - Could be the AI paid up

Common Payment Problems

- SARS payment via bulk banking
 - Produce a bank file for payment to SARS via bulk banking
 - Use ONLY the EE tax reference number as reference
 - SARS will query payments that were rejected via SARS e-Filing
 - Some fail, some pass just no consistency in SARS validation

IT 88

Frequently Asked Questions



Questions and Answers - Taxpayer

What offences will be penalised?

- The types of non-compliance targeted by the penalties are listed in the regulations, and include:
 - Failure to register as a taxpayer
 - Not informing SARS of any change of address
 - Failure to submit a return
 - An employer failing to submit a monthly declaration of employees' tax.
- SARS has decided to implement the penalties in a phased approach and to focus the first stage on those non-compliant taxpayers that have not submitted Income Tax returns for a number of years.

Questions & Answers-Taxpayer

- How will the administrative penalty be levied on a noncompliant taxpayer?
 - Once the penalty amount has been determined according to the fixed amount penalty table, the taxpayer will be notified by means of a Penalty Assessment Notice (ITP34). The ITP34 is similar to a final letter of demand.
 - The taxpayer then has to pay the penalty by the due date indicated in the ITP34 and remedy the relevant non-compliance(s).
 - The law provides for the penalty to automatically increase by the same amount for each 30 day period (or part thereof) thereafter that the non-compliance is not remedied.
 - The administrative penalty will recur for up to 35 months or, in the
 - case where a taxpayer's address is unknown, up to 47 months.

Questions & Answers-Taxpayer

What must I do if I receive a Penalty Assessment Notice (ITP34) from SARS?

A non-compliant taxpayer who receives a Penalty Assessment Notice (ITP34) must do two things:

- Firstly, remedy the non-compliance. This means that you must submit the outstanding tax return and/or update your address with SARS.
- Secondly, pay the penalty by the due date. This must be paid even though you have remedied your non-compliance.
- A taxpayer who does not agree with the issuing of the **Penalty Assessment Notice** (ITP34), and wishes to request a remission of the penalty, must submit such a request on the prescribed Request for Remission of Penalty (RFR1) form to SARS.
- This form is available on eFiling, at any SARS branch or on request from the SARS Contact Centre

Questions & Answers-Taxpayer

How can I verify whether or not I have a penalty?

- Call the SARS Contact Centre on 0800 00 7277 (SARS).
- You will be requested to advise your Income Tax Reference Number and Identity Number for authentication.
- Once you have been successfully authenticated, the system will indicate whether or not you have an existing penalty.

Questions & Answers -Taxpayer

1. What is a Request for Remission (RFR)?

Request for remission of the penalty is a means for the taxpayer to dispute the administrative penalty levied against his/her account, and to request that the penalty be waived.

2. Where can I obtain a RFR form?

The RFR will be in a bar-coded format and is available:

- On e-Filing: This channel is available to registered eFilers
- At a SARS branch: Requested a form by visiting the nearest branch office
- On request from the SARS Contact Centre: Call 0800 00 SARS (7277), to have a RFR1 posted to you.

Questions & Answers - Taxpayer

3. How can I submit my RFR?

- Make your submission via:
- e-Filing: This channel is available to registered eFilers
- The nearest SARS branch: The RFR1 form is available at your local branch for completion and submission
- Manual submission: The completed RFR1 form can be submitted via post or at the drop-off box at your nearest SARS branch office.

Questions & Answers - Taxpayer

What will happen if I do not pay my outstanding administrative penalty?

- SARS is entitled to initiate any collection proceedings including Agent Appointments in terms of the Income Tax Act No.58 of 1962.
- The form used for the purposes of Agent Appointments is referred to as an Agent Appointment Notice (ITA88).

Questions & Answers -Taxpayer

Why does SARS only include my outstanding administrative penalty tax and not any other outstanding taxes on the IT88?

- The penalty is regarded as a separate tax that must be settled, failing which severe recovery actions will be initiated.
- A separate account is available reflecting all Administrative Penalties imposed against you.

Questions & Answers - Employer

What if the amount SARS requested exceeds what the employee can afford?

- SARS has calculated a repayment schedule based on available information.
- Where this information indicated possible affordability issues, SARS extended the period of repayment.
- Since an employer might have additional information regarding an employee's financial affairs, SARS permits employers to apply their own discretion in determining if a taxpayer can afford the deduction or not.
- Employers are required to apply the same rules that they apply to other deductions (i.e. garnishee orders) in determining affordability.

Questions & Answers - Employer

- **How will SARS treat these affordability requests?**
- Upon request by the employer, SARS will replace the initial agent appointment with either a three or six-month repayment schedule.
- If more than six months are required, taxpayers must visit a branch to make special arrangements, and to submit the necessary information (i.e. bank statement, etc) to prove that more than six months is required.

Questions & Answers - Employer

Is SARS allowed to initiate an Agent Appointment without a taxpayer's consent?

- Yes. In terms of section 99 of the Income Tax Act No.58 of 1962, SARS is entitled to effect the agent appointment by serving the Agent Appointment Notice (ITA88) without prior notice to, or prior permission from, the tax debtor or the third party.

Questions & Answers - Employer

Who can be appointed as an agent?

- Possible agents who can be appointed for individual taxpayers include:
 - Employers
 - Any debtor who owes the taxpayer money
 - Financial institutions (i.e. banks)
 - Attorneys
 - Medical aids (in the case of, for example, doctors)
 - Investment managers per investments
 - Insurance companies
- These agents will only be appointed if they hold money on your behalf.



Questions & Answers - Employer

How does an Agent Appointment work?

- Once an Agent Appointment is initiated, the third party that was selected as an agent will receive an IT88. Upon receipt of this IT88, the third party is legally bound to transfer the amount of the tax debt to SARS within the due date specified on the IT88.
- Should this not be paid over, the agent will (in terms of section 97 of the Income Tax Act No.58 of 1962) be held personally liable for the tax debt, and may be criminally prosecuted under section 96.

Questions & Answers - Employer

What will happen if the agent does not act on SARS's Agent Appointment within the given time period?

- In terms of Section 97 of the Income Tax Act No.58 of 1962, SARS will hold you (the agent) personally liable for the outstanding administrative penalty taxes.
- However, this will only apply if you hold funds on the taxpayer's behalf.

When is an Agent Appointment terminated?

- The Agent Appointment will be cancelled once payment is received.
- Similarly, if there were no funds in favour of the taxpayer, the Agent Appointment is void and the obligation removed from the agent.



Questions & Answers - Employer

What should I do as an agent if my employee notifies me that the IT88 has been incorrectly issued?

- The agent is required to enforce the Agent Appointment Notice unless it is formally cancelled in writing by SARS.
- The employee should be referred to the SARS branch nearest him/her.

SARS – ITA88

- Employees must submit their tax returns
- Employers must conform to the law
- Service providers are available to perform this function on behalf of Employers.
- Will be with us for the long term – get used to it
- This tax collection option will be with us for the long term – get used to it!