

PART 2:

DISPUTE RESOLUTION

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The tax filing season is a worrisome time for taxpayers and tax practitioners. This article, which corresponds with the start of the filing season, gives some insight into the processes involved in dispute resolution.

✓ **LOGGING AN OBJECTION, AND DIFFERENTIATING BETWEEN VALIDITY OF AND DECISIONS ON OBJECTIONS**

In the previous issue we looked at requests for reasons for assessments, as well as the periods within which objections must be lodged in matters concerning a taxpayer aggrieved by an assessment made by SARS. In this issue, we will address how objections must be lodged and discuss the difference between the validity of and decisions on objections.

When an objection is lodged with SARS it must be on the prescribed form, which must be completed in full. To ensure you use the correct form, it is recommended you confirm which forms have been prescribed for the relevant tax type by contacting SARS.

The taxpayer must provide the grounds for the objection, coupled with the amount of the disputed assessment, as well as all the documents to prove or support the grounds for the objection. These documents must not previously have been delivered to SARS. Also note that if the SARS e-filing system is not used, the address for service must be specified. Either the taxpayer or an authorised representative must sign the prescribed form.

As stated in our previous article, the objection must be lodged within 30 days from the date on which the assessment is issued by SARS, if reasons for the assessment were not requested. If reasons for the assessment were requested, then the objection must be lodged within 30 days of the reasons being supplied.

👏 **SARS' AND TAXPAYERS' RESPONSIBILITIES**

SARS must verify whether the aforementioned requirements have been complied with before dealing with the merits of the matter. If the objection does not comply, SARS will deem it invalid and must issue a notice of invalid objection within 30 days of delivery of receiving the invalid objection. This notice must state the ground/s of invalidity, so as to afford the taxpayer an opportunity to remedy the shortcoming identified in the notice of invalid objection. The taxpayer is

then given 20 days within which to remedy the identified shortcoming, by submitting an amended objection.

If the taxpayer complies with this deadline, there is no need to request condonation for late filing, even if the amended objection is submitted late in relation to the date of the assessment. If the taxpayer does not submit it within the prescribed 20 days, the objection will be regarded as a new and separate objection, and an application for condonation of the late filing will have to be submitted with the new objection.

From the complaints we have received from taxpayers and representatives, we have observed that many fail to submit the new objection within the prescribed 20 days and do not furnish grounds for late filing. This adds another procedural hurdle and SARS may not accept the reasons for late filing. If a taxpayer is unable to meet the 20-day deadline, the best course of action is to apply to SARS for an extension before the expiry of the allotted 20 days.

✗ **FAILURE TO COMPLY WILL RENDER AN OBJECTION INVALID**

As mentioned above, an objection that does not meet the requirements prescribed in the Rules (Dispute Resolution) is an invalid objection. If an objection is deemed invalid, one may not object against it as no decision has been made by SARS.

It is therefore of the utmost importance that taxpayers ensure they comply with the requirements. In this way, they can avoid having their objections declared invalid by SARS, which may delay the dispute resolution process. If a taxpayer is of the view that all the requirements have been complied with, he or she may lodge an application to the Tax Court for an order declaring the objection valid. Even though there is a remedy, it may not be cost-effective or practical, if one looks at the amount in dispute versus the costs involved for moving the court application.

If the objection is deemed a valid one, SARS must consider it within the prescribed timeframe (60 days). If, in the opinion of a senior SARS official, more time is required to take a decision on the objection, the official must inform the taxpayer before the expiry of 60 days that the period has been extended, but the extension may not exceed 45 days. Once SARS makes a decision to either allow the objection in full or in part, or to disallow it, they must inform the taxpayer of the basis for the decision. The taxpayer may then decide whether to accept or appeal the decision.



TYPES OF OBJECTIONS

It is important to note the difference between an invalid objection, a decision made on objection, and a decision not to condone late filing of an objection. Each of these possible actions by SARS sends the dispute resolution procedure in a different direction. If the incorrect action is taken, it may result in a cycle of submissions and rejections that will frustrate both taxpayers and SARS.

To summarise, if an objection is deemed invalid, the taxpayer may not object, but may make an application to the Tax

Court for an order that the objection is valid. A decision to partially allow or disallow the objection is subject to appeal. A decision not to condone the late filing of an objection is subject to a separate objection and appeal that will deal only with whether or not the reasons for late filing of the objection are reasonable or exceptional.

In the next issue we will take a closer look at the procedure for SARS to request further documentation, as well as the timeframes within which SARS must notify the taxpayer of its decision on the objection.