



Fairness for all

In this issue we discuss a critical intervention by the Office of the Tax Ombud that led to SARS refunding close to **R196 000.00** to a taxpayer after the money was unfairly taken from its bank accounts.

The Tax Ombud Judge Bernard Ngoepe always reiterates the importance of tax compliance and the rights of taxpayers to be treated fairly by SARS and to pay only what is due, not a cent less or more. The case below is testimony to the success of a critical intervention by the OTO to protect the rights of a taxpayer and secure the return of funds wrongly deducted from its bank accounts.

PAYING WHAT IS DUE – NOT A CENT LESS OR MORE

Background

What was the tax complaint?

The complaint relates to a request for SARS to delink a company from a payroll tax number as the company concerned had not registered for Pay As You Earn (PAYE), Unemployment Insurance Fund (UIF) and Skills Development Levy (SDL). SARS had registered the company for PAYE on the wrong company registration number and incorrectly collected **R195 365.90** from the taxpayer. The company did not have to register for PAYE, UIF and SDL because it did not have any employees.

Findings

Who was at fault?

Upon investigation, the OTO discovered that SARS had allocated the wrong PAYE number to the company. The number was linked to a different entity. Nevertheless, SARS issued Third Party Appointment (TPA) notifications to Nedbank and Investec and recovered **R77 356.90** and **R118 000.00** from the taxpayer's bank accounts on 24 February 2020 and 4 March 2020 respectively. On 2 November 2020, the taxpayer lodged a complaint with the SARS Complaints Management Office (CMO), but the complaint was rejected. The CMO rejected the complaint as it was within the service level agreement. The CMO calculated the turnaround time of 21 business days from a submission made by the taxpayer on 16 October 2020, whereas this matter had been ongoing for some time. The taxpayer had already raised the issue with SARS Debt Management from 25 February 2020.



The revenue collector issued a Notice of Final Demand on 18 September 2020 for an overdue amount of R86 529.50. This was over and above the two amounts it had already collected in February and March 2020. This Notice of Final Demand was issued after the collection of the above mentioned amounts, SARS intended to proceed with further collection steps.

Recommendations What should happen?

The OTO recommended that SARS delinks the company from the wrong payroll tax number as the company has not registered for PAYE, UIF and SDL. Furthermore, it should reimburse the company for the **R77 356.90** and **R118 000.00** taken and cease collecting money from the wrong account or alternatively provide valid reasons for continuing to do so.

Resolution What was the outcome?

SARS delinked the company from the incorrect payroll tax number on 6 January 2021 and fully reimbursed the company for the **R77 356.90** and **R118 000.00** taken from the two bank accounts.



Conclusion - Important lesson

In many instances, taxpayers and business are hesitant to lodge complaints with SARS or with the Tax Ombud for fear of reprisals from the revenue collector. Others argue that the Tax Ombud has no powers to take on SARS. This matter illustrates that the OTO has powers and that the revenue collector makes mistakes and that seeking assistance from the Tax Ombud can compel SARS to correct the errors and return monies illegally collected from taxpayers, sometimes with interest.

Concern about the possibility of being targeted by SARS for lodging a complaint is unfounded. The Office reminds taxpayers that it will protect their rights and independently resolve their complaints as long as these fall within the OTO mandate.

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