



Fairness for all

The Office of the Tax Ombud is committed to helping improve the country's tax administration system by, among others, protecting taxpayers' rights. But there are instances where the actions of tax complainants are questionable, and the Tax Ombud would rule in favour of the South African Revenue Service or reject a tax complaint outright.

Remember, the Tax Ombud is neither for SARS nor for taxpayers but looks at available facts and makes impartial decisions.

Complaint rejected after taxpayer changes details

The tax case below details a complaint that the OTO rejected following a taxpayer's failure to register a correct bank account and only changing details once SARS had issued a third party appointment and received payment.

Background

What was the tax complaint?

The complaint was about SARS issuing a third party appointment for **R10 000.00** from a company's bank account to settle its director's outstanding income tax debt. The taxpayer is a non-profit organisation (NPO), and the director of the company had an outstanding personal income tax debt with SARS. When applying for the NPO's bank account, the director was listed as the company bank account holder instead of the taxpayer, the NPO.

Findings

Who was at fault?

During the debt collection process to recover the director's outstanding income tax debt, SARS did a bank search and found that the company's bank account was linked to its director. As a result, SARS issued a third party appointment for **R10 000.00** against the company bank account, held in the director's name. The bank then paid over the amount to SARS to honour the third party appointment.

Only after the amount was paid over to SARS was the account holder of the company bank account changed from the director to the taxpayer, the company. The taxpayer then lodged a complaint with the SARS Complaints Management Office to recover the **R10 000.00** that was deducted from the taxpayer's account. SARS conducted further investigations and discovered that the account had been linked to the director and was only changed after the third party appointment was honoured. The taxpayer was accordingly informed that the third party appointment was legal, and that the **R10 000.00** could not be refunded to the taxpayer. The taxpayer then lodged a complaint with the OTO.

Recommendations

What should happen?

The OTO could not make any recommendations, as the third party appointment was not unlawful since it was linked to the company's director at the time of the third party appointment.

Resolution

What was the outcome?

The complaint was rejected.



Conclusion - Important lesson

Directors of companies should ensure that the details used for their companies are those of the company. Changing details after SARS has acted will not make their action unlawful.

NOTE: TAXPAYERS' DETAILS WITHHELD FOR CONFIDENTIALITY REASONS.

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