



OFFICE OF THE
TAX OMBUD
Ensuring fairness

CASE TEN
29 November 2021

Fairness for all

It sometimes happens that taxpayers and taxpayer representatives appeal a decision made by the Office of the Tax Ombud (OTO) regarding complaints lodged. When this happens, the matter is referred to the OTO's Appeal Committee, chaired by the CEO of the Office, Professor Thabo Legwaila. The case below is an example of a tax complaint that was referred to the OTO Appeal Committee.

Taxpayer appeal rejected for failure to follow SARS processes

What was the tax complaint?

The taxpayer lodged a complaint after the South African Revenue Service (SARS) failed to issue a Deceased Estate Duty Clearance Letter to an executor.

On 27 May 2021, a taxpayer representative requested SARS to assess and email a Deceased Estate Duty Clearance Letter and a Deceased Estate Compliance Letter to an executor. On 23 August 2021, the requested Deceased Estate Compliance Letter was issued, but not the Deceased Estate Duty Clearance Letter. After SARS failed to issue the letter, a complaint was lodged with the OTO, but was rejected due to the failure to exhaust the SARS internal complaints mechanism as required under section 18(4) of the Tax Administration Act.

No compelling circumstances were advanced to justify the Tax Ombud accepting the complaint before SARS had had an opportunity to resolve it.

The representative disagreed with the OTO's decision to reject the matter and appealed the decision claiming to have lodged a complaint with the SARS Complaints Management Office (CMO). The matter was presented to the OTO's Appeal Committee but no evidence of such a complaint lodged with the CMO could be found.

It is important to note that the OTO has access to the SARS complaints system and can independently verify information provided by taxpayers and the revenue collector.

What was the outcome?

The OTO Appeal Committee upheld the earlier decision to reject the complaint and recommended that the taxpayer lodge a complaint with the SARS CMO.

Recommendations

The OTO's recommendation to the taxpayer representative was to lodge a complaint with the SARS CMO. If SARS failed to resolve the matter within 21 business days of it being lodged, the taxpayer representative would be welcome to resubmit the complaint to the OTO.

Conclusion - Important lesson

Taxpayers can avoid the disappointment of having their complaints rejected by the Tax Ombud by simply exhausting SARS's internal complaints processes before approaching the OTO for assistance. If a taxpayer has not exhausted the SARS complaints mechanisms, the only time the OTO will accept a tax complaint is if there are compelling circumstances for taxpayers not taking the SARS route first.

NOTE: TAXPAYER'S DETAILS WITHHELD FOR CONFIDENTIALITY REASONS.

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