

Dispute resolution: incorrect procedures can cause complications

In the case below, both the taxpayer and SARS failed to follow the correct procedures, resulting in a cycle of invalidations of the taxpayer's objection.

What was the tax complaint?

The complaint relates to SARS's failure to correctly deal with an objection lodged by a taxpayer over a VAT assessment for 05/2018 VAT period.

What the OTO discovered

On 3 September 2018, the taxpayer submitted an objection to an assessment issued for the 05/2018 VAT period. In the grounds for objection, the taxpayer requested SARS to provide reasons for the assessment. SARS correctly invalidated the objection because the taxpayer was supposed to make a request for reasons in terms of the prescribed procedure and not an objection. SARS nevertheless responded to the taxpayer's request on 19 September 2018, giving the reasons for the assessment and advising the taxpayer to re-submit the objection now that these reasons had been provided.

On 15 October 2018, the taxpayer submitted its second objection. This objection was within time in terms of the procedure, but SARS incorrectly routed it for condonation and, while it allowed the "late" filing, it only did so on 24 October 2018, thereby delaying the process. The taxpayer again erred by using the objection to request SARS to provide it with a "...detailed calculation of the penalty..." SARS again correctly invalidated the objection based on the taxpayer's error; that said, it must be criticised for only doing so on 12 December 2018.

On 28 January 2019, the taxpayer submitted two identical objections minutes apart from each other. This time, the grounds for the objection had been formulated. SARS correctly invalidated one objection as a duplicate, but it must be noted that in filing duplicate objections, the taxpayer took up time that a SARS official could have used to provide services to other taxpayers. SARS invalidated the other objection on the basis that the merits had already been dealt with during the first objection. SARS erred because the first objection had been invalidated and dealt with as a request for reasons. SARS had not dealt with the merits and had not made a decision on the first objection.

The taxpayer lodged a fifth objection, disputing the imposition of understatement penalties for this period. SARS incorrectly invalidated the objection, referring to invalid invoices claimed in the tax period and that are not subject to objection (and to which the taxpayer had not objected).

Following the invalidation of the last objection submitted, the taxpayer lodged a complaint with the SARS Complaints Management Office (CMO) about the revenue collector's continued invalidating of objections. However, the CMO referred the taxpayer to the objection lodged on 3 September 2018. Once again, it claimed that the merits had already been addressed under that case. The CMO complaint was then closed and marked as resolved. The taxpayer then approached the OTO for assistance.

Recommendations

The OTO investigated the complaint and recommended that SARS correctly attend to the objection by opening the last invalidated objection and reconsidering the case. If the objection was deemed invalid, the revenue collector was advised to provide sound reasons for the invalidation.

Resolution

The objection lodged to the 05/2018 VAT assessment was partially allowed by SARS on 2 October 2021, and a letter communicating the outcome was issued.

Conclusion - Important lesson

Taxpayers have a right to object to decisions taken by SARS on their tax matters. However, if they do not follow the correct procedure, they will frustrate themselves and delay SARS officials in providing services to other taxpayers. At the same time, SARS is also bound by the same rules as the taxpayer when it comes to dispute resolution and must ensure it complies and treats objections with the appropriate care and attention. In this case, the actions of both parties created a litany of errors that resulted in confusion on how this objection should be dealt with. Whenever a situation like this occurs, the OTO can capitalise on its ability to independently investigate the issue and make impartial decisions based on available facts.

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