

SARS DELAY IN THE REVISION OF ASSESSMENTS

In 2017 the OTO issued a report after finalising a systemic investigation into what caused delays in SARS paying refunds to taxpayers.

One of the issues identified was that SARS delays the revision of assessments after disputes have been finalised. The primary issue noted by the Tax Ombud was that there is no prescribed timeframe for SARS to revise assessments under these circumstances.

In response, SARS gave the undertaking to issue these revisions within 45 days after finalising the disputes. Subsequently, SARS revised its Service Charter but remains silent on this specific issue. Therefore, the OTO is still holding SARS to the period it communicated during this investigation when dealing with complaints such as the one that is the subject of this month's case study. This case study also touches on another systemic issue identified by the OTO. The issue relates to SARS's system not calculating the periods for dispute resolution correctly and thereby incorrectly channelling disputes for condonation.

What was the complaint about?

The taxpayer lodged a complaint requesting that SARS pay an expected refund for the 2021 tax year.

What the OTO discovered

In November 2021, SARS finalised a verification and raised an assessment disallowing the taxpayer's travel expenses. The taxpayer objected to this assessment. SARS invalidated the objection on 13 December 2021, noting that the taxpayer was trying to make a duplicate deduction. The reason SARS gave for invalidation is questionable because it is not supposed to invalidate an objection based on the merits of the dispute. The invalidation letter gave the taxpayer 20 days to resubmit a valid objection without needing to apply for condonation as provided in the Dispute Resolution Rules.

The taxpayer submitted a new objection on 6 January 2021, which was still in time. Yet, SARS's system incorrectly forced the taxpayer to request condonation for the late filing of the objection. SARS subsequently allowed the request for condonation since the objection was not late and partially allowed the objection on 26 April 2022. However, by the time the taxpayer lodged a complaint with the OTO on 17 May 2022, the assessment had not been revised yet.

SARS was still within the 45-business day period it undertook to revise assessments under these circumstances, and the taxpayer did not justify why SARS should deviate from the established period. Unfortunately, the OTO had to reject the matter, and the taxpayer was invited to resubmit the complaint if the revision had not been completed once this period had lapsed.

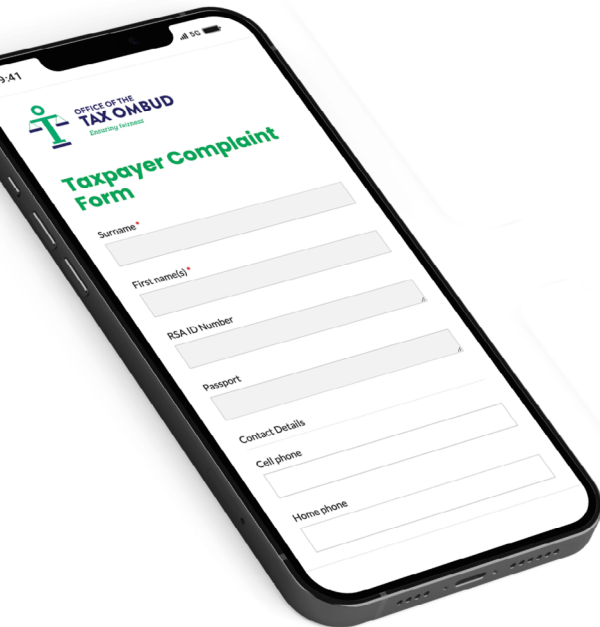
Lessons learnt

While there were errors made by SARS that relate to identified systemic issues, by the time the complaint reached the OTO, those errors had already been rectified by SARS when it allowed condonation and finalised the objection. These errors could not be used to justify accepting the complaint because it would not achieve the taxpayer's desired resolution of getting the assessment revised and the refund paid. It is, therefore, essential for taxpayers to raise their dissatisfaction if SARS acts inappropriately without delay.

SARS cannot be allowed an indefinite period to perform steps within its function. Where the period within which it must complete these steps is not prescribed by law, the OTO relies on the general undertakings set out in the SARS Service Charter or as given to this Office before it can intervene and make recommendations to SARS. Any complaint lodged before these periods have expired is premature and can unfortunately not be entertained.

NOTE: TAXPAYER'S DETAILS WITHHELD FOR CONFIDENTIALITY REASONS.

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