



TWO-PART REQUEST OVER TAX ON FOREIGN DIVIDENDS CONFUSES SARS

When a tax complaint deals with more than one issue, it may lead to confusion at the South African Revenue Service (SARS), as the case below shows.

Background

This case has an international angle, involving tax on dividends paid from a Swiss company to a South African taxpayer.

The complainant is a South African resident who received foreign dividends from a company that is resident in Switzerland. On payment of the dividends, there is a 35% withholding tax in Switzerland. In terms of the Double Taxation Agreement between South Africa and Switzerland, the withholding tax can be reduced to 15% if certain prescribed requirements are met. One of the requirements for claiming the refund of the withholding tax above 15% is that the taxpayer in question must provide the Swiss Revenue authority with a “claim for refund” form, which must be confirmed and stamped by SARS.

What the complaint was about

The complainant applied for a residency certificate to confirm it is a South African resident, and also asked SARS to complete or confirm the “claim for refund” form. After the taxpayer had followed up numerous times on the progress of the application, SARS indicated that the complainant had not signed the application form.

The application was signed and submitted again, together with the claim for refund form. However, SARS still did not attend to the request within 21 days, and the taxpayer proceeded to follow up yet again.

More than 21 days lapsed without the application being finalised, resulting in the taxpayer lodging a complaint with the SARS Complaints Management Office. This led to the certificate of residency being issued. The authorisation and return of the claim for refund form remained outstanding. The taxpayer then lodged a complaint with SARS for the authorisation of the form. SARS, however, incorrectly closed this case. The revenue authority indicated that the certificate of residency had been issued and ignored the issue raised in the complaint (the authorisation and return of the claim for refund form).

How the complaint was resolved

The taxpayer lodged a complaint with the Office of the Tax Ombud (OTO). The OTO accepted the complaint since it fell within its mandate and the taxpayer had already exhausted the internal SARS complaints process.

The OTO recommended that SARS responds to the taxpayer's request for a signed claim for refund form. The OTO had to have numerous interactions with SARS to clarify what the complaint was about and the reasons for the taxpayer's request. This resulted in the necessary form being authorised and returned to the taxpayer, allowing it to proceed with the claim in Switzerland.

Conclusion

The taxpayer had every right to submit a two-part request to SARS. The fact that this led to confusion at SARS, resulting in a delay in the taxpayer receiving the required documentation, is not the fault of the taxpayer. However, taxpayers with similar requests might want to bear in mind that it might be quicker to deal with one issue first and, when that has been addressed, to follow up with a request about the second issue.

NOTE: TAXPAYER'S DETAILS WITHHELD FOR CONFIDENTIALITY REASONS.

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