



DELAYS IN PAYMENT OF REFUNDS SARS IS NOT ALWAYS IN THE WRONG

The Office of the Tax Ombud (OTO) continues to receive many complaints about non-payment of refunds and delays in finalising disputes lodged. Not all complaints received within these categories are due to the South African Revenue Service (SARS) not adhering to timeframes, but rather to a lack of awareness among taxpayers about all the applicable turnaround times. Another complicating factor is that these complaints do not fall within the ambit of an identified systemic issue, which means the OTO cannot accept them.

One such case is discussed below:

BACKGROUND

The OTO received a complaint alleging that SARS had not timeously verified an income tax verification and had not paid out the refund due. During the review of the complaint, it was determined that the verification had already been finalised on 2 November 2021, with SARS issuing an additional assessment. The taxpayer lodged an objection against the additional assessment on 6 January 2022; however, SARS asked for more information on 28 February 2022. The complainant submitted the required additional information on 10 March 2022, and SARS partially allowed the objection on 26 April 2022. The revision of the assessment to give effect to the outcome of the objection would result in a refund due to the taxpayer.

When no reduced assessment had been issued by 11 May 2022, the taxpayer proceeded to lodge a complaint with the [SARS Complaints Management Office](#) (CMO). In the CMO complaint, the taxpayer referred to the objection lodged and argued that the delay in finalising it was causing the taxpayer undue hardship. The CMO invalidated the complaint and indicated that the objection had already been finalised. Following the invalidation of the CMO complaint, the taxpayer proceeded to lodge a complaint with the Office of the Tax Ombud.

According to [Rule 9\(1\) of the Dispute Resolution Rules](#), SARS must notify a taxpayer of an objection's outcome (allowance or disallowance) within 60 days. In instances where SARS requests additional information from a taxpayer, the objection must be finalised within 45 days of receiving the requested information.

The timeframes indicated in rule 9(1) of the regulations are only applicable to SARS deciding on the objection. They do not include the revision of the assessment to give effect to the outcome of the objection. What is more, there is no turnaround time stipulated in the [Tax Administration Act](#), the Dispute Resolution Rules or the [SARS Service Charter](#) to guide taxpayers or SARS with this.

One of the issues identified by the OTO was a delay by SARS in revising assessments after a taxpayer had successfully disputed an assessment.

On 27 August 2017 the OTO published a report on systemic issues related to allegations of SARS's delays in paying refunds. One of the issues identified by the OTO was a delay by SARS in revising assessments after a taxpayer had successfully disputed an assessment. In this report, [which is available on the OTO website](#), the OTO recommended to SARS that reasonable timeframes should be set for revising a successfully disputed assessment and within which SARS should pay the refund. SARS gave an undertaking to revise an assessment within 45 days of the dispute being resolved.

CONCLUSION

In this particular case, when the complaint was lodged with the OTO on 17 May 2022, SARS was still within the 45-day turnaround time for issuing the reduced assessment. This, together with SARS's undertaking ([published on pages 48 and 49 of the report](#)) to issue a revised assessment within 45 days of a dispute being resolved, meant that the CMO had grounds not to accept the complaint. The complaint also did not fall within the ambit of an identified systemic issue and was, therefore, not accepted by the OTO. Taxpayers should always be mindful of the different timelines that apply.

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