



OTO protects a **taxpayer's right to dispute** an assessment

The South African Revenue Service's (SARS) action of incorrectly invalidating objections is one of the issues raised and addressed in the Tax Ombud's Systemic Investigation Report (2020), which concluded that there was a 31% error rate where objections were incorrectly invalidated for various reasons. The case below illustrates another instance of SARS incorrectly invalidating an objection.

SUMMARY OF COMPLAINT

The complaint concerns SARS incorrectly invalidating an objection lodged against the 2023 additional income tax assessment.

BACKGROUND OF THE COMPLAINT

The taxpayer filed an objection on 29 August 2023 against an assessment issued by SARS for the 2023 tax year. The objection concerned a dispute against SARS for not allowing an exemption of income relating to services that the taxpayer rendered outside of the Republic of South Africa in terms of section 10(1)(o)(ii) of the Income Tax Act, 58 of 1962 (The Act).

When filing the objection, the taxpayer also submitted substantiating documents for the exemption claim. SARS requested additional supporting documents on 11 September 2023, which the taxpayer provided on 15 September 2023.

SARS proceeded to invalidate the objection on 2 October 2023 without considering the taxpayer's supporting documents. This action by SARS is not provided for in the dispute resolution rules, which state that SARS can invalidate an objection where, for instance, the taxpayer did not complete the objection form in full. SARS is not allowed to invalidate an objection because it disagrees with the taxpayer's grounds of dispute. Where SARS requests further substantiating documents, as in this case, it must make a decision to allow, disallow or partially allow the objection based on the information submitted by the taxpayer.

SARS gave the taxpayer the following reasons for rejecting the taxpayer's objection:

- "In order to qualify for the exemption in terms of section 10(1)(o) of the Act, the taxpayer must be outside the RSA for a period exceeding 183 full days in aggregate during any 12-month period and for a continuous period exceeding 60 full days during such period of 12 months."
- SARS further indicated: "A new Notice of Objection may be submitted within 20 business days from the date of this letter."

These reasons indicate that SARS had considered the grounds of the objection and, thereby, the dispute's merits. It is thus evident that the reasons SARS gave for invalidation of the objection fall outside the dispute resolution rules.

In taking the incorrect step, SARS effectively stopped the taxpayer from lodging an appeal against the decision. Informing the taxpayer that they could lodge an amended notice of objection is also an incorrect step that would simply lead to a duplication of work by both the taxpayer and SARS officials, and result in delays in resolving the dispute.

In this instance, the treatment of the objection by SARS negatively impacted the taxpayer's rights and entitlements to receive timely service, dispute an assessment and obtain finality.

RECOMMENDATION

The taxpayer lodged a complaint with the OTO on 9 October 2023. The OTO accepted the complaint on 12 October 2023 and recommended that SARS withdraw the invalidation of the objection issued to the taxpayer and take a decision on the objection that was lodged.

RESOLUTION

SARS implemented the OTO's recommendation by considering the incorrectly invalidated objection, allowing the dispute on 30 October 2023, and issuing a reduced assessment on 3 November 2023, reducing the taxpayer's tax liability by more than **R500 000.00**.

LESSON LEARNT

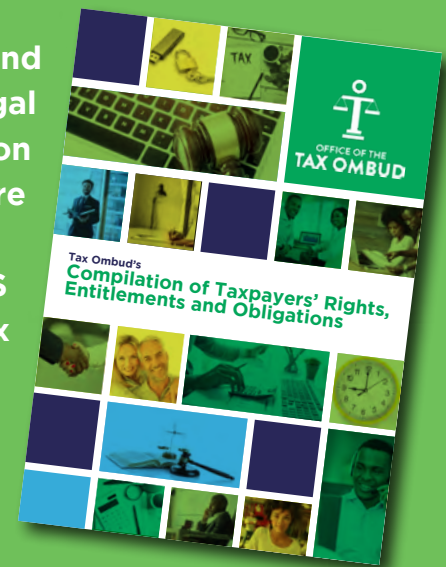
Taxpayers can only appeal once a decision is made by SARS to disallow or partially allow an objection. When SARS incorrectly invalidates objections, the taxpayer could follow the complaint process to avoid being led down unnecessary and incorrect procedural steps. At the same time, the taxpayer could challenge the decision to invalidate the objection in the tax court (bearing in mind the time constraints mentioned earlier).

TAXPAYER RIGHTS

The *Compilation of Taxpayers' Rights, Entitlements and Obligations* provides taxpayers with insights into what is legal and not regarding how SARS collects taxes. The *Compilation* addresses different types of rights to which taxpayers are entitled, which include:

- entitlement to receive quality and timely service from SARS
- not having to pay any more than the correct amount of tax due to SARS
- entitlement to finality
- the right to dispute/challenge assessments/decisions.

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