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Tax Ombud's investigation into SARS reveals non-adherence to the Dispute Resolution Rules

The Tax Ombud, Judge Bernard Ngoepe, has released his second Report on the investigation into systemic issues conducted into the South African Revenue Service (SARS). The Report, issued on 23 June 2020, follows nearly 20 months of investigation by the Office of the Tax Ombud (OTO) into complaints by taxpayers and other stakeholders, including Recognised Controlling Bodies, against the revenue collector.

One of the systemic issues identified relates to the failure by SARS to adhere to the Dispute Resolution Rules, Procedures and Timeframes prescribed in the Regulations and the Tax Administration Act, No 28 of 2011 (TAA).

The issue

The Dispute Resolution Rules promulgated under section 103 of the TAA set out certain timeframes within which specific steps must be taken by either party (the taxpayer and SARS) in relation to objection, appeal and alternative dispute resolution matters. Whereas SARS adopts a rather strict approach towards taxpayers in enforcing compliance with the timeframes, it does not itself always adhere to these timeframes. Despite repeatedly having these shortcomings brought to its attention, SARS has not taken the necessary steps to resolve the underlying causes of the delays, which unduly prejudices taxpayers.

Importantly, whilst in some instances taxpayers and practitioners also contribute to the delay in resolving disputes, the OTO is of the view that this does not justify SARS's non-compliance with the prescribed dispute resolution timeframes.

The OTO's Findings – In a nutshell

The key specific challenges as set out in the Report may be summarised as follows:

- **Incorrect calculation of days¹:** The SARS system incorrectly calculates the dates for dispute resolution, resulting in delays in the dispute resolution procedure. For example, it does not exclude public holidays and weekends in the calculation of days. This also results in objections and appeals being routed incorrectly for condonation.
- **Requests for condonation:** Whilst there is no specified time period for SARS to attend to condonation requests, it took SARS an average of 113 days to make a decision to allow requests for condonation to the late filing of appeals. The timeframes within which SARS addressed appeal condonation matters were thus found to be unreasonable.
- **Non-compliance with timeframes for objections:** SARS failed to inform taxpayers within the prescribed timeframe where there was an error or omission on submissions made. This led directly to delays in amended objections being filed and ultimately delays in the finalisation of objections. Whilst taxpayers and practitioners were also found to make avoidable errors, SARS was found to incorrectly invalidate objections.

- **Non-compliance with timeframes for appeals:** Factors contributing towards SARS's non-compliance include its manual inventory management systems, capacity challenges, jurisdictional challenges where cases need to be reassigned to the correct jurisdiction, internal delays within business units and the raising of non-meritorious additional assessments.

Recommendations

The Report details various recommendations to address the specific challenges outlined therein. In broad terms, these recommendations can be summarised as follows:

- SARS should adhere to the prescribed timeframes and address the fundamental causes of the delays it caused, as expanded on in the Report.
- SARS should enforce the 75-day period stipulated in law, to finalise appeal matters. These matters should not endure for a longer period.
- Taxpayers should submit all necessary and relevant documentation to SARS, timeously.

Conclusion

Whilst the Report may indicate serious shortcomings on the part of SARS, it is imperative that taxpayers adhere to the prescribed dispute resolution timeframes and are made aware of avenues to escalate dispute-related matters. This is particularly relevant in our current climate, with the COVID-19 pandemic. Our team has extensive knowledge and experience in this area, should you require assistance in attending to and progressing these matters.



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Regards
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FOOTNOTES

¹ The definition of a business day for dispute resolution purposes excludes weekends, public holidays and the period between 16 December of each year and 15 January (referred to as *dies non*).