

2. PRACTICAL ASPECTS OF LODGING OBJECTIONS

By GERT VAN HEERDEN

Senior Manager: Legal Services office of The Tax -Ombud

The procedure for disputing assessments has become a thorn in the side of many tax professionals. While the Office of the Tax Ombud receives many complaints about objections where SARS is in the wrong, we also find many instances where taxpayers and professionals are the authors of their own misfortunes. Much of the frustrations associated with lodging objections can be avoided if one has a proper understanding of this procedure. The procedure itself is not straight forward as it must be extracted from provisions of the Tax Administration Act as well as rules from the Dispute Resolution Rules so it may be a bit confusing. Once all these provisions and rules are unbundled and put into a step by step order however; it is really not all that complex.

That said, the intention of this article is not to simply quote legislation and rules, but to attempt to give a more practical understanding of the objection procedure and highlight some of the pitfalls where confusion can create a cycle of objections being lodged and invalidated to the frustration of not only tax professionals, but also to SARS. A few clarifications in advance, any reference to tax professionals would also apply to taxpayers who are not represented. Also any reference to the term day means business day which excludes weekends, public holidays and for the purpose of this procedure also the period between 16 December and 15 January.

Was the objection invalidated or disallowed?

Before the procedure is discussed, it is important to understand the difference between an invalid and a disallowed objection. Many people confuse the two stages in the procedure and would sometimes use the term “rejected” which can mean both.

An objection will be invalid only if it does not meet the specific requirements set out in the rules. These requirements are purely based on the completeness of the prescribed objection form; the correctness of the information in the form; the submission of substantiating documents; and whether or not the deadline for submission has been complied with. If any of these requirements are not met, the objection will be invalidated by SARS without even looking at the merits of the dispute. SARS must then, within 30 days after its submission, notify the tax professional that the objection is invalid. The tax professional is then afforded 20 days to submit another objection form wherein all defects have been remedied and, provided that the initial objection was not late, there is no need to request condonation for lodging it more than 30 days after the date of assessment. If the amended objection is filed after the 20 day period, or if the initial objection was lodged late in the first place, you will have to request SARS to condone late filing which is not guaranteed and may result in a separate objection and appeal procedure that must be attended to before the actual dispute is even looked at. It should be noted that there used to be a lot of confusion when it came to condonation of late objections which caused an endless cycle of objections being lodged and invalidated.

SARS recently, and after our Office's interventions on this subject we must add, changed its system to separate the condonation and objection procedures in an effort to avoid further confusion and frustration. We will monitor the effectiveness of this action by SARS to ensure the issue is finally resolved.

What is crucial to remember is that you cannot appeal against the decision to invalidate an objection. If you do, the appeal will be invalidated and will result in a waste of time and money for your clients. The procedurally correct remedy to follow if you believe the objection was invalidated incorrectly is to apply to Tax Court for a declaration that it is in fact valid. In many cases though the amount in dispute will not justify the costs of a Court application and then your client will have to weigh up other options including following the complaints procedure.

Only once an objection is valid and there are no issues relating to condonation, will SARS make a decision on the disputed grounds. If SARS maintains that the assessment is correct, the objection will be disallowed. At this point the taxpayer may then appeal the disallowance which will take the matter into either the Alternative Dispute or Litigation arena, or both.

What do I object to?

When an assessment is received it is extremely important to ensure you understand why the assessment was raised. This is essential for several reasons, the most obvious being that you need to know what you are objecting to. This may sound simple enough, but in order to lodge the objection via the eFiling system you have to specifically cite the source code of the relevant line item of the assessment that you are objecting against. If the source code does not correlate with the grounds for the objection, it will be invalidated. This source code is also used to track the objection to ensure that multiple objections are not lodged for the same issue and that appeals are not lodged prematurely. Also if the source codes and the amounts in dispute not correlate the objection will also be invalidated. Simple finger errors here may result in invalidated objections and increased frustration.

But SARS' is not clear on why the Assessments were raised.

If the notice of assessment does not clearly set out the basis for the assessment the tax professional can ask for reasons why it was raised. The request must be done within 30 days after the assessment has been issued and suspends the period within which to lodge an objection until such time as SARS either provides reasons, or refers the tax professional to the document in which reasons were already provided. Both the timeframe within which the request for reasons must be done as well as the timeframe within which SARS must provide reasons may be extended at SARS' discretion, but by no longer than 45 days. The recent system changes implemented by SARS also now makes it possible for requests for reasons to be done on eFiling which will route it to the relevant department to attend to. This should resolve several issues which the OTO brought to SARS' attention including that requests for reasons are not responded to, as well as the situation where an objection is lodged within 30 days after SARS responded to the request for reasons only to be invalidated for being filed late with no reasons for late filing. These situations usually happened because the request was filed with SARS, most of the time at the branch, but was not forwarded to the correct person internally and because the official attending to the objection calculated the days in which the objection was lodged from the assessment date rather than from the date on which reasons were provided.

Lodging the Objection

Once you are happy that you received enough information from SARS to properly advise your client and you are given instructions to lodge an objection, you need to ensure that it complies with the requirements set out in the Rules as discussed earlier in this article. A defect to the objection will result in the objection being invalidated and will just create more work for you and costs for your client. If the objection is filed late it is of the utmost importance to ensure that proper reasons for late filing are advanced. Reasons must be either reasonable or exceptional depending on how late it is. What would be regarded as reasonable or exceptional reasons is a very subjective decision and it is impossible to give guidelines, but if it is so late that exceptional circumstances must be advanced the general guideline is that it must have been to circumstances that were outside of the taxpayer and tax professional's control.

In practice objections are often invalidated purely based on a lack of substantiating documents to tax professional's frustration. It is advisable to attach all documents that would substantiate the arguments advanced for your clients to the objection even if it was already provided to SARS during the audit or verification procedure.

What is also extremely important is to note that the contact details where SARS is supposed to send notifications and documents for purposes of objections can differ from what it has on its systems. This is done in order to allow lawyers or dispute specialists who are not necessarily the taxpayer's general tax representative to attend to the dispute without having to change all contact details for the taxpayers. The downside of this is that it does happen that notifications and correspondence for the dispute procedure may in some cases be sent to the normal tax representative or the taxpayer depending on whose details is on SARS' systems for general tax correspondence. Therefore if your contact details are not listed on the taxpayer's profile for general tax correspondence, you must make sure to impress the importance on your client or whoever the contact person is of forwarding you any correspondence in relation to the objection.

Final Word

Ensuring that an objection complies with the requirements of the Rules and a proper understanding of how the procedure works in order to avoid a situation where the incorrect next step is taken can avoid many frustrations people experience while disputing assessments. Tax professionals owe it not only to their clients but also to themselves to ensure they tick all the right boxes from their side to make an already frustrating situation as painless as possible.