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Tax Alert

Any taxpayer who is aggrieved by an assessment raised by South African Revenue Service (SARS) has a right to lodge an objection in terms of section 104(3) of the Tax Administration Act 28 of 2011 (the TAA) read with the Rules promulgated under section 103 of the TAA (the Rules).

It states that a "taxpayer entitled to object to an assessment... must lodge an objection in the manner, under the terms, and within the period prescribed in the 'rules'". An assessment raised by SARS must set out the dispute resolution procedure available to the taxpayer.

Dispute resolution procedure as set out in the rules

The Rules provide that a taxpayer must lodge an objection within 30 business days after the date of assessment. If a taxpayer delivers an objection that does not meet the requirements of Rule 7(2), SARS must notify the taxpayer that his objection is not a valid objection and state the ground for invalidity within 30 business days of the invalid objection. The taxpayer is afforded 20 business days to file an amended objection without the need to apply for an extension.

However, if the taxpayer fails to submit a new objection within the 20-business day period, or again submits an objection that does not comply with the requirements for a valid objection, the taxpayer may only submit a new and valid objection, if that taxpayer also makes an application to SARS for an extension of the period for objection.

Extension of the objection period

Reasonable grounds

In terms of section 104(4) read with section 104(5) of the TAA, a senior SARS official may extend the 30-business day period for lodging an objection by a further 21 business days if satisfied that reasonable grounds exist for the delay in lodging the objection.

According to SARS Interpretation Note 15 (Issue 4), the senior SARS official should also give consideration to factors such as the reasons for the delay, the length of the delay and the prospects of success based on the merits of the objection.

When applying for an extension in terms of section 104(4) of the TAA, the taxpayer must set out the actual circumstances that existed that led to the delay. These may include the taxpayer's illness; the fact that SARS has incorrect contact details on record for the taxpayer, resulting in the

taxpayer not receiving the notification that an assessment has been raised; or that the taxpayer was overseas at the time the assessment was issued and had therefore not received it. However, ignorance of the law or the use of a tax practitioner does not absolve the taxpayer from his responsibility to comply with the TAA.

It follows that the greater the length of the delay, the greater the justification required by SARS. It is likely that SARS would request the taxpayer to provide corroborating evidence, for example a medical certificate.

While the prospects of success is a key factor in the granting of the extension, the strength of the taxpayer's case does not derogate from the requirement for the taxpayer to provide sound reasons for the delay in the filing of the objection.

Exceptional circumstances

In terms of section 104(5)(a) of the TAA, a senior SARS official may extend the 30 business days by a further period that exceeds 21 business days where "exceptional circumstances" gave rise to the delay.

Notwithstanding the above, a taxpayer is precluded from filing an objection more than three years after the date of the assessment as provided for in section 104(5)(b) of the TAA.

In *ABC (Pty) Ltd v The Commissioner for the SA Revenue Service* (ITC: 0038/2015) (ABC Case), the tax court considered whether the taxpayer had discharged the onus of proving that exceptional circumstances existed for an extension of the period allowed for the taxpayer to object to an assessment in terms of the TAA. The court held "exceptional circumstances" to mean that "unusual facts must be proven which have a *causal connection* to the delay which resulted." The judgment in the ABC Case is clear that it is not sufficient that "exceptional circumstances" existed; the taxpayer must demonstrate that those circumstances were in fact the reason for the delay.

Although "exceptional circumstances" is not defined for the purposes of section 104 of the TAA, section 218 of the TAA lists what would constitute exceptional circumstances for the remittance of penalties. Section 218 of the TAA provides an indication of the type of scenarios that would constitute "exceptional circumstances".

Section 218 of the TAA lists natural or human-made disaster; civil disturbance or disruption in services; serious illness or accident; serious emotional or mental distress; and serious financial hardship as examples of "exceptional circumstances".

An objection to SARS's decision on whether or not to allow an extension of the period for the lodging of an objection is also possible under section 104(2)(a) of the TAA. If a senior SARS official does not grant the taxpayer an extension to submit an objection, after considering the reasons furnished by the taxpayer for not lodging the objection within the prescribed time, the taxpayer may object and appeal against such a decision.

In conclusion it is fair to say that a taxpayer is not barred from contesting an assessment where he has failed to file an objection timeously. In fact, a taxpayer has three attempts at submitting a late objection, that is within 21 business days after missing the first deadline; any time before 21 business days after missing the first deadline and three years after the date of the assessment; and finally a taxpayer may even object against the decision by SARS not to allow the late filing of an objection.

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