

Your right to have tax assessment reasons in writing



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Normally, SARS will furnish a letter to the taxpayer explaining its decision, but a breakdown of how that decision was arrived at needs to be provided too

TAXPAYERS have a right to request reasons in writing for decisions made by the Commissioner of the South African Revenue Service (SARS) according to section 33(2) of the constitution.

Under rule 3(1)(a) of the rules governing objections and appeals, promulgated under section 107A of the Income Tax Act, Act of 1962, a taxpayer is entitled to request reasons for an assessment issued by the Commissioner. Therefore, when a taxpayer receives an assessment from SARS with which it does not agree, it is entitled to either lodge an objection against that assessment within 30 business days or to request that SARS furnish reasons for the assessment. Normally, SARS will furnish a letter to the taxpayer setting out the manner in which the assessment was arrived at and, more importantly, specify the reasons relied on in issuing the assessment.

However, it is insufficient for SARS merely to repeat the provisions of the act without explaining how the decision reflected on the assessment was arrived at. Taxpayers need to understand the quality of the reasons to which they are entitled to protect their rights in dealing with the Commissioner. SARS has published a Guide on Tax Dispute Resolution which contains a useful commentary on the dispute resolution process to be followed when taxpayers are aggrieved with an assessment.

The guide comments on the quality of reasons to be supplied to a taxpayer in the following terms:

“The Supreme Court of Appeal

has stated that ‘adequate reasons’ requires the decision-maker to explain his decision in a way which will enable a person aggrieved to say, in effect: ‘Even though I may not agree with it, I now understand why the decision went against me.’ The aggrieved person, ideally, should be in a position to decide whether that decision is worth challenging.”

A taxpayer is not required to review the various letters that has passed with the Commissioner and attempt to glean from that correspondence what constitutes the reasons for the Commissioner’s decision. The Commissioner is required under the law to provide proper reasons to the taxpayer setting out precisely how the decision was arrived at.

Where the Commissioner fails to supply a taxpayer with adequate reasons for an assessment the taxpayer is entitled to seek an order from the Tax Court under rule 26 compelling the Commissioner to supply adequate reasons in compliance with the statutory provisions. In ITC 1811, 68 SATC 193, Judge Jajbhay decided that the Commissioner had not supplied adequate reasons and directed SARS to do so. The judge pointed out that the Commissioner must advance reasons that are understandable to the taxpayer and are explicit.

Judge Jajbhay indicated that the taxpayer and the court need not examine the letters received from the Commissioner to establish the reasons for the decision.

Further, where the taxpayer raises specific questions about why the

Commissioner made the decision to issue the assessments and why he had proposed imposing additional tax at a particular rate, the taxpayer is entitled to answers to those questions. As a result, the court in ITC 1811 ordered the Commissioner to supply the taxpayer properly structured reasons for issuing the assessments to the taxpayer. In doing so, the court directed that the Commissioner refer to the relevant statutory provisions and the findings of fact that supports the conclusions reached. The court directed the Commissioner to advise the taxpayer the reasoning process followed in reaching his conclusions and also to answer the specific questions raised by the taxpayer.

Therefore, when a taxpayer receives an assessment from the Commissioner a decision must be made and that is whether the reasons received for that assessment are adequate. Where the reasons are inadequate the taxpayer has every right to request proper reasons under either rule 3(1)(a) of the rules governing objections and appeals or alternatively under section 5 of the Promotion Of Administrative Justice Act, 2000.

The time for calling for the reasons is at the time that the assessment is received and prior to the submission of the objection against the assessment. A taxpayer cannot formulate a proper objection to an assessment without first having received the reasons for the assessment from the Commissioner. The Commissioner should also record the reasons for the decision

made on the issuing of the assessment at the time that the assessment is issued to the taxpayer.

Fair administrative action as envisaged in section 33 of the Constitution and the Promotion of Administrative Justice Act requires that the decision-maker records the reasons for the decision at the time the decision is made and not later.

Where, for instance, a taxpayer disposes of an asset and the Commissioner subjects the proceeds received therefrom to income tax on the basis that they constitute gross income, it is insufficient for the Commissioner to say that the taxpayer has failed to discharge the onus of proof contained in section 82 of the act. The Commissioner is required to set out the statutory provisions, the facts pertaining to the case and the manner in which the Commissioner reached the conclusion that the taxpayer is engaged in a scheme of profit-making.

A taxpayer cannot submit a proper objection to an assessment without understanding the Commissioner’s reasons for issuing it in the first place. The taxpayer must submit a request for the reasons for issuing the assessment within 30 business days of the due date of the assessment. Only once the reasons have been received is the taxpayer in a position to submit an objection against the assessment. The objection must then be lodged within 30 business days of receipt of the reasons from the Commissioner.

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