

SARS NOTICES OF INVALIDITY: ARE THEY VALID?

Where objections are concerned, there has been a proliferation of SARS' use of notices of invalidity. Consequently, it would be wise to review the requirements of a valid objection.

When submitting an objection the taxpayer must:

1. complete the prescribed form in full;
2. specify the grounds of the objection in detail including-
 - a) the part or specific amount of the disputed assessment objected to;
 - b) which of the grounds of assessment are disputed; and
 - c) the documents required to substantiate the grounds of objection that the taxpayer has not previously delivered to SARS for purposes of the disputed assessment.
3. if a SARS electronic filing service is not used, specify an address at which the taxpayer will accept delivery of SARS's decision in respect of the objection as well as all other documents that may be delivered under these rules;
4. sign the prescribed form or ensure that the prescribed form is signed by the taxpayer's duly authorised representative; and
5. deliver, within the 30 day period, the completed form at the address specified in the assessment or, where no address is specified, the address specified under rule 2.

In terms of rule 7 (4) of the tax court rules, where the taxpayer's objection does not meet any of these requirements, SARS can deem that objection to be invalid, and it must inform the taxpayer in writing of the grounds of invalidity, within 30 business days, of its receipt of the offending objection.

If SARS declares a valid objection to be invalid, or advances exotic reasons for its decision, to declare it invalid,, the taxpayer will be well advised to approach the tax court for an order confirming that its objection is valid, instead of submitting a new objection.

In such a case, SARS could face the very real possibility that the court rules that the objection is valid, and that taxpayer's objection is allowed, on the basis that SARS decision to declare the objection invalid, is wrong, and that it has consequently failed to deal with that valid objection, as prescribed by the rules.



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Alan has launched a number of applications on behalf of taxpayer's, to seek an order directing their objections to be valid. In these cases, SARS has chosen to deal with the objections, which have been allowed. He can do the same for you.