



OFFICE OF THE
TAX OMBUD
Ensuring fairness

Menlyn Corner, 2nd Floor
87 Frikkie De Beer Street, Menlyn, Pretoria
PO Box 12314, Hatfield, 0028
T 0800 662 837 or +27 12 431 9105 F +27 12 452 5013
E complaints@taxombud.gov.za W www.taxombud.gov.za

**TAX OMBUD'S REPORT ON THE INVESTIGATION IN
TERMS OF SECTION 16(1)(b) OF THE TAX
ADMINISTRATION ACT 28 OF 2011 INTO ALLEGED
DELAYED PAYMENT OF REFUNDS AS A SYSTEMIC AND
EMERGING ISSUE**

TABLE OF CONTENTS

SECTION I

INTRODUCTION	3
THE OFFICE OF THE TAX OMBUD AND ITS MANDATE	3
THE REQUEST MADE	3
REASONS BEHIND THE REQUEST TO THE MINISTER:	4
Complaints from taxpayers	4
Historical problem	4
METHODOLOGY	7

SECTION II

EXECUTIVE SUMMARY	9
--------------------------	----------

SECTION III

INTRODUCTORY GENERAL REMARKS BY SARS AND THE OTO'S COMMENTS THEREON	16
--------------------------------------------------------------------------------	-----------

SECTION IV

(i) OBSTACLES ALLEGEDLY PLACED BY SARS WHICH RESULT IN DELAYED PAYMENT OF REFUNDS, (ii) SARS'S RESPONSE AND (iii) OTO's COMMENTS AND/OR RECOMMENDATIONS	19
------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------

SECTION V

CONSIDERED DATA	54
INFORMATION REQUESTED BY THE OTO FROM SARS	54
ANALYSIS OF THE INFORMATION RECEIVED	55

SECTION VI

FINAL REMARKS AND CONCLUSION	76
-------------------------------------	-----------

SECTION I:

INTRODUCTION

1. THE OFFICE OF THE TAX OMBUD AND ITS MANDATE

The Office of the Tax Ombud (“OTO”) was established in terms of sections 14 and 15 of the Tax Administration Act, 28 of 2011 (“TAA”). The Tax Ombud (“TO”) was appointed with effect from 1 October 2013. The office became operational with effect from October 2013, and was officially launched by the Minister of Finance in April 2014.

Section 16(1) of the TAA spells out the Ombud’s mandate as being to:

- a) Review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a Tax Act by the South African Revenue Service (“SARS”); and
- b) Review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of the TAA or procedural or administrative provisions of a Tax Act.

2. THE REQUEST MADE

By a memorandum dated 9 March 2017, the TO, acting in terms of section 16(1)(b), motivated for the Minister to grant approval for a review in respect of several complaints by taxpayers that SARS was unduly delaying the payment of refunds due to them. Through his letter dated 14 March 2017, the Deputy Minister of Finance granted the approval as requested by the TO.

3. REASONS BEHIND THE REQUEST TO THE MINISTER:

3.1 *Complaints from taxpayers*

- 3.1.1 The request to the Minister was not the result of complaints received in any one particular year; it was the result of complaints received over the past few years since the inception of the OTO. This will be seen from references to previous reports; see the “*Historical Background*” below. Naturally, this being a young office established only in October 2013, the complaints were initially few, but increased with passage of time.
- 3.1.2 The number of such complaints has run into hundreds recently within a short space of time. In the period November 2016 to March 2017, we received no less than 500 such complaints; half of which were validated.
- 3.1.3 While the number of complaints received is important, this is not necessarily indicative of the financial magnitude or impact of the problem because one claim may run into millions.
- 3.1.4 The impact of the withholding of refunds may be devastating to the taxpayer. What appears to be a small claim may have serious cash flow impact on that small taxpayer company, or an individual.

3.2 *Historical problem*

The historical background will show that not only has there been a build-up of complaints about delayed payment of refunds, but that the issue was raised in various reports submitted in the past: to Parliament (Annual Reports) and to the Commissioner of SARS (periodical reports). These reports notwithstanding, the number of this type of complaints kept on increasing, as indicated above. Again as said earlier, a delayed refund may result in serious consequences to a taxpayer. So as not to burden this Report, we will not attach full reports referred to below; only relevant portions thereof will be extracted and attached, with links provided for full access into each one of them:

<http://www.taxombud.gov.za/Publications/Pages/Annual-Reports.aspx>



3.2.1 Annual Reports to Parliament

3.2.1.1 Annual Report: 1 October 2013 – 31 March 2014: In the very first report of the Tax Ombud to Parliament, which covered only the first six months of the existence of the office (1 October 2013 – 31 March 2014), the issue of delayed refunds was already raised. We made the following remark: *“A system generated stopper was set after the 2010 audit was finalized. A fix on the system was implemented over the week end. The refund was released ...”* (pages 58 – 59 of the report). See another complaint on page 59 where the refund was delayed because SARS had failed to follow its standard operating procedures for the changing of bank details; SARS later apologized. Understandably, not many such complaints were received as the office was only six months into its existence.

3.2.1.2 Annual Report: 1 April 2014 – 31 March 2015:

3.2.1.2.1 The following appears on pages 32-33 of the report:

“17.1.2 Delayed payment of refunds due to taxpayers was the second largest category of complaints received by the OTO for the period. This is mostly due to verification audits, failure to update banking details and some system issues wherein SARS failed to lift stoppers or release bank accounts after the verifications were done. In 79% of the complaints finalised the refunds were released to the taxpayers, 5% of the



refunds were reversed and 15% involved issues that required other avenues to be followed to resolve the complaints; for example taxpayer education and dispute resolution procedures had to be followed.

17.1.3 *Failure by SARS to update banking details timeously resulted in a delay in refunds being paid as well as refunds being paid into wrong bank accounts. In cases where it was the fault of SARS that the refunds were paid into wrong bank accounts SARS refunded the payments to the taxpayers; however, the burden of proof is on the taxpayer to show that they did in fact inform SARS of their change in details prior to the refund being paid to a wrong person"*

3.2.1.2.2 Attached hereto is Annexure 1, being a copy of page 34 of the report, referring to "*SERIOUS AND SYSTEMIC Delay in refund payment*". The various columns speak for themselves.

3.2.1.2.3 Also attached hereto are copies of the relevant parts of pages 44 and 45 of the report, as Annexures 2 and 3.

3.2.1.3 Annual Report: 1 April 2015 – 31 March 2016: This report will show that in the above period we received 317 of such complaints. Again, they were the second largest group of complaints. The delay in paying refunds tops the inventory of "*10 of the most serious issues encountered by taxpayers as*



well as identified systemic and emerging issues”, as per section 19(2) of the TAA; see attached hereto a photocopy of page 35 of the report, as Annexure 4 which also shows SARS’s response.

3.2.2 Periodical reports to the Commissioner of SARS

The same issue was raised in our periodical reports issued in terms of section 19(1)(c) of the TAA to the Commissioner of SARS.

4. METHODOLOGY

Once the Minister’s approval was granted, we had meetings with various stakeholders.

- 4.1 The professional or industry bodies: briefed them about the envisaged review and its scope. They were invited to make inputs within a certain time frame. Inputs were later received and considered.
- 4.2 SARS: Meetings were held with officials of SARS, at which some information was asked for, received and considered. Some documents were also asked for and provided, which were also duly considered and analysed.
- 4.3 Given the much publicised complaints about SARS’s alleged delay in paying out refunds, the public were informed, through the media, about the envisaged review. Some political parties also raised the issue through Parliamentary questions. Several taxpayers aired their views about the issue. Meetings were held with, and inputs received, from the following bodies in particular:
 - 4.3.1 South African Institute of Tax Practitioners (SAIT)
 - 4.3.2 Law Society of South Africa (LSSA)
 - 4.3.3 South African Institute of Chartered Accountants (SAICA)
 - 4.3.4 South African Institute of Professional Accountants (SAIPA)
 - 4.3.5 Institute of Accounting and Commerce (IAC)
 - 4.3.6 Banking association of South Africa (BASA).



- 4.4 A Provisional Report was given to SARS for response. A detailed response by the Commissioner was received, dated 24 July 2017. Apart from introductory general remarks, the response dealt with each paragraph of our Provisional Report. We intend to transpose, verbatim, each such response vis-à-vis each one of our relevant paragraph to avoid paraphrasing or editing SARS's responses.
- 4.5 After receipt of SARS's response, our office had yet another and final meeting with SARS officials.
- 4.6 We also presented some of the issues raised by SARS to some of the stakeholders for their final response.
- 4.7 We point out that, this our Final Report does not contain any new complaints or issues not contained in the Provisional Report and thus not responded to by SARS. However, where necessary, there may be some comments on issues raised in SARS's response to the Provisional Report.
- 4.8 Some complaints came too late to be dealt with in this Report.

SECTION II

EXECUTIVE SUMMARY

1. Introduction

Taxpayers have over the years been complaining that SARS unduly delays the payment of verified refunds. The complaints reached their pick in the period December 2016 to March 2017. Taxpayers identified certain mechanisms allegedly employed by SARS, in the implementation of the tax collections system, to cause the delay. The ultimate wish by the taxpayers is that these mechanisms be eliminated out of the system; otherwise, be implemented in a manner that would cause the least possible delay in the payment of the refunds.

2. Why the request was made to the Minister to approve a review

In light of the mounting complaints, the Tax Ombud sought, and obtained, the Minister's approval in terms of section 16(1)(b) to conduct the review therein contemplated.

3. Methodology:

In the course of conducting the review, the OTO held meetings with various stakeholders, including SARS, for their input. A Provisional Report was produced, and given to SARS for response, as also to some of the stakeholders to comment on certain specific issues. The final product is this Report.

4. Essence of the complaint by taxpayers:

The complaint by taxpayers was that SARS employed certain mechanisms to unduly delay, or even avoid, paying out refunds due to them. They argued that, in this respect, the tax collection system was being implemented unfairly by SARS. This

resulted in financial hardships to them and, in some instances, the near collapse of their businesses; in others, loss of jobs ensued.

5. Obstacles allegedly placed by SARS to delay the payment of refunds.

5.1 Failure to link submitted documentation requested by SARS to the main file; e.g scanned documents not being linked

This issue was raised by the South African Institute of Chartered Accountants as one of the ways in which the payment of refunds was delayed. The complaint is that when the taxpayer goes to a SARS office to give them documentation asked for by SARS for loading, the office fails to connect the query with the uploaded documents. See pages 19 - 21 for a detailed discussion, SARS's response and the OTO's comment.

Recommendation: When the requested documents are uploaded at SARS's office, they should be linked to the request.

5.2 The unwarranted placing of Special Stoppers.

There is a complaint that "*Special Stoppers*" are placed on taxpayers' accounts in order to stop refunds from being paid out. In most of these cases taxpayers are required to verify bank details in person at a SARS branch. Whilst the OTO understands this is done to prevent payment of refunds that are not due, or fraud, there is, however, too long a delay in paying these refunds despite a taxpayer's banking details having been verified, or a taxpayer having complied with SARS's requirements. Complaints of this nature are justified. At the same time, the point made by SARS that fraud is a problem, is important and should not be lost sight of. See pages 21-24 for detailed discussion, SARS's response and OTO's comments.

Recommendation: Banking details given by the taxpayer must be duly recorded and verified timeously to avoid the delay in the payment of refunds.



5.3 Using the filing of new returns as an excuse to block refunds.

The placing of a stopper every time a new return for the next period is filed. The system blocks already verified refunds the moment a subsequent return is submitted by the taxpayer. Therefore, even where specific returns are not identified for audit/verification, the mere submission of the next return results in the payment of the refund being stopped. This may have a knock-on effect especially in the case of VAT where the periods for declaration are close to each other. See pages 24 – 27 for detailed discussion, SARS's response which includes proposed remedies, and the OTO's comment.

Recommendation: SARS needs to ensure that the remedy it says it has put in place to solve the problem does indeed work well because, that notwithstanding, complaints seem to be persisting.

5.4 Delay in the lifting of stoppers and lack of time frame for doing so.

There has been a complaint by the professional bodies that the lifting of “*special stoppers*” takes unduly long. We have ourselves in the past also raised the matter with SARS. See pages 27 – 30 for a detailed discussion, illustrative cases, SARS's response which includes its concern about fraud and the OTO's comment.

Recommendation: The stoppers must be removed as soon as possible once the cause thereof has been resolved. We note SARS's willingness to do so; but this should not wait for 21 days. Moreover, there should be a time frame for doing so (shorter than 21 days) once the matter is resolved. Taxpayers cannot be expected to be patient to no end.

5.5 Refunds for one period being withheld while an audit/verification is in progress on another period.

SARS refuses to release refunds that have been verified for a specific tax period until such time as all audits/verifications that may be pending on other tax



periods have been finalised. This is against section 190 of the TAA. See pages 30 – 33 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

Recommendation: The provisions of the TAA must be adhered to.

5.6 SARS using historic returns to delay the payment of refunds.

Returns that have never been shown as outstanding on Tax Clearance Certificates or Statements of Account suddenly reflect as outstanding and then used as reason for not paying refunds. This is done notwithstanding the fact that previous refunds were released. The complaint was submitted to us by industry bodies without mentioning a specific case. SARS's view is that for that reason, the complaint should be dropped. We disagree because the absence of an illustrative case does not necessarily mean that instances of the nature complained about did not occur. See pages 34 – 35 for detailed discussion, SARS's response and the OTO's comments.

Recommendation: The use of historic returns to delay the payment of verified refunds is wrong and should cease.

5.7 SARS raises assessments and pass journals to clear unallocated credits.

SARS raises assessments to absorb credits on taxpayers' accounts where for example overpayments are made. In doing so, SARS creates fictitious tax liabilities, instead of taking a decision on a refund. Failure to take such a decision is subject to objection and appeal, but SARS avoids this, it seems, by raising an assessment, a step which takes the dispute resolution procedure in another direction, away from paying the refund. See pages 35 – 43 for detailed discussion, illustrative cases, and SARS's response which includes that "SARS has discontinued the practice in instances where it is inappropriate", and the OTO's comment.

Recommendation: We feel strongly that the practice should cease altogether.



5.8 Requesting further information during audit.

The complaint is that SARS auditors keep audits pending while repeatedly requesting information from taxpayers. Apart from delaying the refund, the incidental consequence is that if successive requests for further information are sent out each within 21 days of the other, interest will not start accruing on the refund. See pages 43 – 45 for detailed discussion, illustrative case, SARS's response and the OTO's comment.

Recommendation: Where an auditor failed to ask for all documents at once, and the refund is consequently delayed, SARS should pay interest on the delayed refund.

5.9 Assessments successfully disputed, but refund is still not paid out.

Where assessments are successfully disputed and the initial refund is reinstated, taxpayers experience a delay in the revision of the assessments and the payment of the refund. The problem here is that there is no turn-around time. See pages 45 – 49 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

OTO's Comment: The undertaking by SARS to take steps to address the situation is welcome and supported.

5.10 Obstacles regarding diesel refunds delays.

VAT and Diesel refunds are declared on the same return which gives a nett amount payable by or refundable to the taxpayer. At SARS however they are reflected on two different systems and manual set offs need to be done to obtain the same nett result as reflected on the return. Where there is a delay in this, set off refunds are delayed. Furthermore where the diesel portion is being verified/audited the VAT portion shows as a liability and SARS takes collection steps even though the taxpayer complied with the nett result shown on the return. See pages 49 – 50 for detailed discussion and SARS's response,



including that significant risks were identified in the industry, resulting in it having to perform more audits to mitigate the risks but that steps are taken to address the problem.

OTO's Comment: SARS's undertaking to address the problems is noted.

5.11 The raising of assessments prematurely

Taxpayers are afforded 21 days to submit supporting documents but assessments are raised prior to the lapse of this deadline. It was noted by this office that sometimes taxpayers submit only some of the documents requested and then SARS raises the assessment. Taxpayers then complain that they still wanted to submit the rest of the documents later. See pages 50 – 51 for detailed discussion, SARS's response and the OTO's comment thereon.

5.12 Refunds for periods that have been verified by SARS are automatically set-off against debts on other periods notwithstanding a request for suspension or where there is the suspension of payment

Section 164(6) stipulates that SARS may not institute any collection steps from the date of submission of a request for suspension of payment, until 10 days after a decision to not grant the request has been communication to the taxpayer. Despite this provision, SARS's systems do not cater for instances where a taxpayer has requested the suspension of payment pending the finalisation of an objection or appeal. The system automatically sets already confirmed refunds off against those debts even if SARS has not responded to, or granted, such a request. See pages 51 – 53 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

6. Considered data

We list on pages 54 – 55 the data that was considered in compiling this Report.

7. Analysis of the data.

We set out a detailed analysis of the data received, from which certain conclusions are drawn, on pages 55 – 75.

8. Concluding remarks

Certain conclusions are drawn from the analysis of the data, representations by taxpayers, industry bodies and SARS. These conclusions need not be summarized here as they are being succinctly presented on pages 76 – 77.

SECTION III

5. INTRODUCTORY GENERAL REMARKS BY SARS AND THE OTO'S COMMENTS THEREON

Before dealing individually with the obstacles allegedly placed by SARS resulting in delayed payment of refunds, it would be appropriate to deal with some introductory general remarks made by SARS in their response to the Provisional Report, and the OTO's comments thereon.

The remarks, and the OTO's comments thereon, serve to give context to the substantive issues dealt with in this report.

1. SARS: That "*SARS has an obligation to manage risk and fraud. This inherently requires some manual intervention which takes time. ... Given the total universe of refund related complaints compared to the total volume of refunds processed, the number of complaints represents less than 1 % of the refunds SARS processed over the same period. Without explaining this broader context, and providing statistics that contextualise that delays occur within less than 1 % of cases processed, the overwhelming impression is that the findings apply to every refund processed by SARS, whereas this is far from the case.*

Therefore, in order to contextualise your report, and to ensure that a balanced analysis is possible, I request that you include in your report an overview of refunds in their entirety which should include statistics of the processing time of all refunds. For example, 92% of Personal Income Tax refunds were actually paid within 2 days in the 2016/17 year."

OTO's Comment: Accepting that the percentage is correct, the truth is that the complaints spiked during the period December 2016 to February 2017. Secondly, and very importantly, the impact of delayed refund on each of the 1%



taxpayer can be, and has in some cases been, devastating and even lead to near closure of businesses due to lack of cash flow. The problem therefore remains serious. In any case, whereas the 630 credits from the sample given by SARS may indeed constitute less than 0,01% in terms of numbers, their monetary value is however a whopping R25.86 billion. Therefore, the withholding of these refunds may have a significant impact on the collected revenue, and a devastating negative impact on the finances of individual taxpayers in varying degrees. In addition, and to properly contextualize the issue of the 92% of Personal Income Tax, the refunds were paid automatically by the system without any human intervention; with that, there is no delay and therefore no problem. The problem occurs in instances where there is a need for verifications and/or audits; that is, once there is human intervention.

2. SARS: *“(Y)our Provisional Report notes that in respect of alleged obstacles numbered 1, 6, 8, 10 and 11 that no case was presented in order for your office to conduct an investigation into the merits of the allegation. In respect of alleged obstacle 11, your Provisional Report notes that the complaint was not well founded, presumably for the exact reason that no case was presented to your office. However, in respect of each of the other alleged obstacles (being alleged obstacles numbered 1, 6, 8 and 10) where no cases were presented either, your office has made a finding or recommendation on an assumption that the allegation is correct. In SARS' view there is no good reason to make a finding based on the hypothesis that the allegation is correct. The hypothetical acceptance of those unsubstantiated and unverified allegations is unjustified. Furthermore, in our view these provisional and hypothetical findings also undermine the legitimacy of the other findings and recommendations which are based on the investigation of factual scenarios and could also be interpreted as a certain bias.*



Accordingly, SARS' view is that where no investigation took place because no case was presented to your office or was found in your inventory, then these allegations should be treated in the same way that you have treated alleged obstacle 11" (that is, that the complaints are not well founded).

OTO's Comment: The fact that no illustrative cases were found, does not eliminate the fact that a complaint was received, and had to be responded to; nor does it mean that there are no taxpayers out there who, though did not complain for a variety of reasons, suffered the hardships complained of by those who did. The exercise is not to prove a case against SARS but to draw its attention to a complaint raised. Our comments are carefully worded. Our comment in respect of obstacle 11 is different: we find that it was the taxpayer's fault.

3. SARS: *"(W)e want to record that there was no evidence of, and no finding was therefore made, that SARS intentionally delayed the payment of refunds as was alleged."*

OTO's Comment: Intention is a matter of inference from established facts. While this statement may hold in respect of other instances, it can hardly do so in respect of others. For example, in cases such as when an assessment is raised which comes up with a debt identical to the cent to that otherwise due to be paid to the taxpayer, the inference of intentional delay is irresistible. We deal with such cases in SECTION IV, paragraph 7.1.2, pages 36 - 41 below. Anyway, it is important to note that the purpose of this review is to investigate allegations of undue delays, intentional or otherwise.

SECTION IV

(i) OBSTACLES ALLEGEDLY PLACED BY SARS WHICH RESULT IN DELAYED PAYMENT OF REFUNDS, (ii) SARS'S RESPONSE AND (iii) OTO's COMMENTS AND/OR RECOMMENDATIONS

In this part of the Report, we point out without any order of importance, some of the obstacles allegedly caused by SARS which resulted in the delay of the payment of refunds due to taxpayers. In many instances, it was the taxpayers' perception that these obstacles were deliberately created by SARS to avoid parting with money. In respect of each alleged obstacle, we refer to a few cases, but with due regard to confidentiality, to illustrate the point. We do not wish to overburden the Report with a large number of cases. We also reflect SARS's responses to each such allegation, and our comment and/or recommendations.

1. Alleged obstacle: Failure to link submitted documentation requested by SARS to the main file; eg scanned documents not being linked

1.1. Our investigations and findings

1.1.1 Restatement of the complaint submitted by SAICA:

"A challenge ... exists where the request for information or additional information is made by post or phone call without the SARS official having opened a request on SARS Efiling. In such instances the taxpayer would have to visit a SARS branch to have the documents scanned, but members have noted that in many instances the relevant SARS auditor does not always receive or have access to the scanned copy leading to the incorrect conclusion that no documents were submitted."



1.1.2 Cases for illustration

This was a complaint by SAICA; we were not given any specific case, nor did we come across any. We would have been surprised to find one. This is because as far as this office is concerned, when SARS's branch offices scan documents, a case number should be there in order to link the document to the query/request.

1.1.3 **Provisional Report:** If the allegation is true, our finding would be that the complaints are justified.

1.1.4 **Provisional Report:** Recommendations

If the above is true the auditor who calls the taxpayer should create a case reference on e-filing when making a request and communicate the reference to the taxpayer.

1.2 SARS's response

- *"The Tax Ombud has not made a finding on this issue because no specific instances were presented. However, the report makes a theoretical finding on the hypothesis 'if the facts are true'.*
- *Similarly, provisional findings on a presumption of the correctness of the facts underlying an allegation are also made for alleged obstacles 6, 8, 10 and 11 whereas no facts were made available to test the veracity of the allegation or the underlying cause. The concern is that each allegation has not been explored fully while the cumulative impact of making hypothetical findings on the presumption of facts, points to systemic issues when this may not be the case.*
- *Our submission is that the Report should not make a hypothetical finding on a presumption of fact, and that it would be fairer to either not include the*



allegation or to note simply that as no specific instances were presented or identified an exploration of that issue could not be done.

- OTO's Comment: The fact that no illustrative cases were found, does not eliminate the fact that a complaint was received, and had to be responded to; nor does it mean that there are no taxpayers out there who, though did not complain for a variety of reasons, suffered the hardship complained of by those who did. The exercise is not to prove a case against SARS but to draw its attention to a complaint raised. Our comments are carefully worded. Our comment in respect of obstacle 11 is different: there we find that it was the taxpayer's fault. SAICA, who raised this issue, say that they have in the past raised it with SARS.
- *If SARS' submission is not accepted, then we wish to comment that, from our own investigation and engagement with our front office teams, this allegation is not true. In most instances where taxpayers complained that documents were submitted and SARS was unable to view them, it is found that persons uploading documents to the SARS eFiling site are not ensuring that the "submit" button is pushed. The "submit" button makes the documents accessible to SARS."*
- OTO's Comment: SARS's submission is indeed not accepted. SARS's response relates to a self-loading scenario, while we refer to a situation where a taxpayer goes to a branch and gives SARS's officials the documents for loading.

2. Alleged obstacle: The unwarranted placing of Special Stoppers.

2.1 Our investigations and findings

2.1.1 *Summary*

There is a complaint that "Special Stoppers" are placed on taxpayers' accounts in order to stop refunds from being paid out. In most of these



cases taxpayers are required to verify bank details in person at a SARS branch. Whilst the OTO understands this is done in order to prevent payment of refunds that are not due, there is, however, a long delay in paying these refunds despite a taxpayer's banking details having been verified, or a taxpayer having complied with SARS's requirements. What compounds the problem is that in many of the complaints received by this office, taxpayers are informed by SARS in no uncertain terms that there is no turnaround time for the removal of these "special stoppers"; the taxpayers are told simply to be patient.

In their submissions, SAICA remarked as follows:

"In this regard, it should be noted that these requests are seemingly made randomly, after bank detail changes, without bank detail changes, after address changes, after audit completion, etc. The lack of communication as to why the bank account verification was required as opposed to its mere instruction is a communication challenge. This lack of communicated context together with this process being applied incorrectly in terms of law results in inferences that it has become a tax refund payment delay mechanism which may not be factually accurate."

Already in its letter of 8 November 2016 to SARS, this office identified this issue as systemic and made a formal observation to SARS. The response was only received on 24 April 2017, in the form of a letter dated 17 November 2016. This issue was therefore pertinently raised in the past with SARS, but complaints persisted. We quote our observation referred to above and SARS's responses thereto: *"That SARS should clarify why it is necessary for taxpayers to confirm their banking details when SARS's procedures already require substantiating documents to be submitted by taxpayers when they change their banking details in order to confirm that any refunds due will be paid into the correct*



account. In other words SARS should clarify if the current fraud prevention process does not create an unnecessary administrative burden on taxpayers and on SARS". **The following was SARS's response:**

"SARS is utilizing 3rd party data to verify some of the data submitted by the taxpayers. These include employers and medical schemes. Where there have been disparities SARS had to identify possible fraud and had to mitigate such by requesting taxpayers to physically present themselves at the nearest branch for authentication. It is the wish of SARS to balance fraud risk and burden of tax compliance."

Comment:

The above response gives a very brief explanation on how a risk is identified by using 3rd party data but does not, with respect, answer the question. This is because the moment a taxpayer registers and provides banking details or changes banking details, SARS has procedures in place to ensure that the particulars and banking details of the taxpayer are verified and confirmed. The question was therefore why it would be necessary to go through this process again and only **after** a refund claimed has been verified as legitimate. One would assume that SARS's initial procedures when taxpayers register or change banking details are secure enough to prevent fraud.

2.1.2 Cases for illustration:

See cases in paragraph 4.1.2 below, which are also applicable here.

2.1.3 **Provisional Report:** The complaints are justified.

2.1.4 **Provisional Report:** Recommendation:



Banking details given by taxpayer must be duly recorded and verified timeously to avoid same being a cause for the delay of the payment of refunds. Banking details on the tax returns should for example not take precedence over recent banking details given by the taxpayer and verified. There is presently a problem in this regard.

2.2 SARS's response

- *"It is proposed that the finding should make it clearer that SARS does not agree that refunds are deliberately delayed. Furthermore, the report should emphasise that one reason for stoppers is to limit fraud. One particular area of fraud is that banking details are manipulated and in order to misdirect the payment of a tax refund."*
- OTO's Comment: Noted. We accept that fraud is a problem.
- *"SARS recognises that (SARS) could have communicated better with taxpayers and tax practitioners and undertakes to ensure that this finding is brought to the attention of front-end staff, and that we improve in providing more meaningful explanations to taxpayers in order to expedite the resolution of cases."*
- OTO's Comment: Noted. However, the problem is not communication, but failure to verify banking details timeously. This problem still remains.

3. **Alleged obstacle: Using the filing of new returns as an excuse to block refunds**

3.1 Our investigations and findings

3.1.1 Summary

The placing of a stopper every time a new return for the next period is filed. The system blocks already verified refunds the moment a subsequent return is submitted by the taxpayer. Therefore even where specific returns are not identified for audit/verification, the mere



submission of the next return results in the payment of the refund being stopped. This may have a knock-on effect especially in the case of VAT where the periods for declaration are close to each other.

3.1.2 Case study for illustration

In relation to cases actually dealt with by the OTO, an example of the system delaying the payment of refunds is in the matter with the OTO reference number [REDACTED]. Refunds to the value of R1.8million were held back due to the system placing a stopper every time a new return (that is a return for the next period) was filed. SARS acknowledged that this was a system's issue in its close out report on this complaint, noting:

*"The system blocks refunds when new return is filed. The refunds were withheld by the system."*¹

3.1.3 **Provisional Report:** The complaints are justified.

3.1.4 **Provisional Report:** Recommendations

SARS should keep to time frames, so that a refund is paid out before being overtaken by the next submission. In any case, there is no legal basis for SARS to do as alleged, as it is not entitled to secure a hopeful debt out of a next return by withholding a refund which is otherwise already due.

3.2 SARS's response:

- *"Issues 3 and 5 are substantially similar."*

¹ This specific issue and case study also incidentally ties in with complaint 5 below.



- SARS acknowledges the frustration when refunds are held up because of the filing of a later return, and this is exacerbated if there is a short period between filing.
- SARS suggests that it should be acknowledged that a significant number of refunds present a risk to the fiscus, which is illustrated in paragraph 2.4.2 of the Provisional Report where it is reported that over 1/3rd of refunds claimed are reversed by SARS. It is proposed that this should be mentioned to contextualise the challenge to SARS when dealing with the practical challenge that, amongst the high volume of refunds claimed, there is a significant number of illicit refund claims. While risk identification is one method of preventing illicit claims from being paid out, the reality is that risk identification is done systematically, for example through the comparison of third-party data, but the resolution of identified risks is a manual procedure. The manual review naturally takes a longer time. While a manual audit/verification is being carried out, other returns for later periods may be submitted - which creates a congestion of multiple refunds and at times simultaneous reviews of refunds being conducted on one taxpayer but for multiple periods. As the time when each review of each period is concluded is not synchronised this results in the same concluding processes being repeated for the same taxpayer - but for different periods. SARS notes that this overlapping of procedures can result in repetition which can be frustrating for taxpayers and which is also not the most efficient method of conducting verifications. The unfortunate perception raised by practitioner bodies is that SARS delays payment of refunds.”
- OTO's Comment: The complaint is that section 190 of the TAA (discussed in detail on Page 30 - 31 below) legislation does not allow SARS to withhold a refund on account of a subsequent return being submitted, or to withhold a refund for one period pending verification or audit of another period. While SARS's response provides a reasonable explanation why



verifications or audits on various periods may sometimes overlap, it does not offer an explanation on the complaint raised.

- *“SARS introduced a remedy for VAT refunds in October 2016 and with the implementation of Generally Recognised Accounting Practice, the challenge experienced in income tax refunds should be addressed. SARS also undertakes to remedy cases on an individual basis.”*
- OTO’s Comment: While we note the response, the last illustrative case shows that whatever remedy SARS is referring to, does not work well and needs to be relooked at.

4. Alleged obstacle: Delay in the lifting of stoppers and lack of time frame for doing so

4.1 Our investigations and findings

- 4.1.1 There has been a complaint by the professional bodies that the lifting of “*special stoppers*” takes unduly long. We have ourselves in the past also raised the matter with SARS. The following was a recommendation contained in our letter of 8 November 2016 to SARS referred to in paragraph 2.1.1 above; page 22:

“SARS should urgently establish why it takes in excess of two months to lift the ‘special stopper’ and release the refunds while it is possible for personal and banking details to be updated and confirmed on the same day as the documents are submitted”.

SARS’s response then (page 23 paragraph 2.1.1 above):

“It is unfortunate that some cases took long to resolve. SARS has implemented a process where branch staff were assigned profiles to immediately attend to lifting stoppers. This is to ensure faster turnaround times”.



- OTO's Comment: Despite this, and some communication between this office and SARS, the complaints keep on coming in.

4.1.2 Cases for illustration

OTO Case Number	Case Information
[REDACTED]	Audit finalised 25/07/2016, no adjustment made. The taxpayer followed up several times and was eventually informed on 02/08/2016 to go to a SARS branch with specified documents. Following that, he was informed of different turnaround times for the stopper to be removed and had to visit the branch several further times because not all the information was submitted and SARS failed to inform him thereof while he was at the branch. The taxpayer eventually lodged all the supporting documents on 19/08/2016 and on 25/08/2016 a SARS official requested the special stopper to be lifted. The taxpayer lodged a complaint with SARS's internal mechanisms on 30/08/2016 which could not resolve the matter. The refund was only released on 18/10/2016.
[REDACTED]	Operations Audit finalised on 04/08/2016, no adjustments made. Personal details confirmed and SARS official gave instruction for removal of special stopper on 26/08/2016. Refund only paid on 12/10/2016.
[REDACTED]	Operations Audit finalised on 22/07/2016, no adjustment made. Personal details confirmed on 25/07/2016 and SARS official gave instruction for the removal of special stopper on 25/08/2016. Refund only paid on 01/12/2016.
[REDACTED]	Operations Audit finalised on 03/10/2016, no adjustment made. Personal details confirmed and SARS official gave instruction for removal of special stopper on 22/09/2016. SARS told the



	taxpayer there is no turnaround time for special stoppers. Refund only paid on 15/11/2016.
	Personal details confirmed and SARS official gave instruction to remove the special stopper on 19/08/2016. Refund only released on 22/10/2016.
	Personal details confirmed and SARS official gave instruction to remove the special stopper on 23/08/2016. Refund only released on 19/10/2016.

4.1.3 **Provisional Report:** The complaints are justified.

4.1.4 **Provisional Report:** Recommendations

We believe that there should be a time frame for the upliftment of the stoppers; taxpayers cannot simply be expected to be patient to no end.

4.2 SARS's response:

- *"The delay in uplifting special stoppers is noted. SARS has begun reviewing all stoppers and, going forward, will put in steps to ensure that inappropriate stoppers are removed within 21 days.*
- *It must be noted however, that stoppers will remain where SARS has identified a risk, for instance when fraud is suspected. If SARS fails to release a refund within the period, a taxpayer may follow SARS's complaints process."*
- OTO's Comment: Noted. However, SARS does not define what it means by "inappropriate stoppers". If this term includes stoppers that have been placed on a refund in error, undertaking to remove such stoppers within 21 days would not be reasonable; the period would be too long given possible hardships to the taxpayer. Regarding the "stoppers" we would recommend

that SARS rather gives an undertaking to remove them as soon as the resolution of the incident that resulted in the stopper being placed.

5. Alleged obstacle: Refunds on one period being withheld while an audit/verification is in progress on another period.

5.1 Our investigations and findings

5.1.1 Summary

SARS refuses to release refunds that have been verified for a specific tax period until such time as all audits/verifications that may be pending on other tax periods have been finalised. What happens in practice is, for example, that a VAT period is identified for verification, but before the verification is completed the vendor is required to submit its next declaration which is also identified for verification. This may happen for several periods in a row. Even though the refund for the first period in this scenario has been verified, SARS refuses to pay it until such time as all the other verifications have also been finalised! A brief analysis of the applicable legal framework will show that this is wrong:

Section 190(1) and (2) of the TAA states:

- “(1) SARS **must** pay a refund if a person is entitled to a refund, including interest thereon under section 188 (3) (a), of—*
- (a) an amount properly refundable under a tax Act and if so reflected in an assessment; or*
 - (b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.*
- (2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection or audit **of the refund** in accordance with Chapter 5 has been finalised.” (Own emphasis).*



The legislation is quite clear in that SARS is allowed to withhold a refund until the verification, inspection or audit of that refund is finalised. The right to withhold refunds under this provision is not extended to other refunds for other categories of tax, or other tax periods. Withholding a refund under those circumstances may be perceived to be SARS's attempt to secure payment of a future possible, but uncertain and as yet to be established, tax debt. This is not permissible.

5.1.2 Case studies for illustration

OTO Case Number	Case Information
[REDACTED]	A refund of R993,289 for the 2016/07 VAT period was withheld because there were ongoing verifications and an audit on other VAT periods. The refund was only paid on 16 October 2016 which was after the finalisation of the verifications and audits of the next period or even more.
[REDACTED]	SARS has been auditing various VAT periods between 2009/03 and 2013/09 since 07 January 2014. Refunds to the total value of R273,743 were stopped from being paid out for eleven VAT periods between 2014/02 to 2016/05. Even after the complaint was referred to SARS by the OTO, SARS still insisted that the audit for the unrelated VAT periods be finalised before the refunds for subsequent periods were paid.
[REDACTED]	SARS withheld payment of refunds to the value of approximately R14,000 for the 2014/01 and 2014/03 VAT periods while others were under audit. On this matter it must be noted that SARS stated on the close out/finalization report that when cases are referred to case selection, they go into a pool and in some cases they are not touched until a complaint is lodged with our office, and will only be prioritised at that stage. There is therefore serious prejudice to the taxpayer.



	<p>The vendor submitted VAT returns for periods 11/2016 on 19 December, 12/2016 on 31 January and 01/2017 on 28 February 2017. SARS finalized the audit for period 11/2015 on 13th March 2017 with no changes. Refund was not paid out. SARS combined audits for periods 12/2016, 01/2017 and 02/2017. The audit was finalized on 31 March 2017. No changes were made in respect of these periods. The total value of all refunds was R10.5m, which was paid only on 8 May 2017. It is worth mentioning that the entity was caused great hardship and had to borrow money from the bank to survive.</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5.1.3 **Provisional Report:** The complaints are justified.

5.1.4 **Provisional Report:** Recommendations

SARS should operate within the legal framework; given also the hardship caused to taxpayers. The above practice should therefore cease.

5.2 SARS's response

- *"Issues 3 and 5 are substantially similar.*
- *SARS acknowledges the frustration when refunds are held up because of the filing of a later return, and this is exacerbated if there is a short period between filing.*
- *SARS suggests that it should be acknowledged that a significant number of refunds present a risk to the fiscus, which is illustrated in paragraph 2.4.2 of the Provisional Report where it is reported that over 1/3rd of refunds claimed are reversed by SARS. It is proposed that this should be mentioned to contextualise the challenge to SARS when dealing with the practical challenge that, amongst the high volume of refunds claimed, there*



is a significant number of illicit refund claims. While risk identification is one method of preventing illicit claims from being paid out, the reality is that risk identification is done systematically, for example through the comparison of third-party data, but the resolution of identified risks is a manual procedure. The manual review naturally takes a longer time. While a manual audit/verification is being carried out, other returns for later periods may be submitted - which creates a congestion of multiple refunds and at times simultaneous reviews of refunds being conducted on one taxpayer but for multiple periods. As the time when each review of each period is concluded is not synchronised this results in the same concluding processes being repeated for the same taxpayer - but for different periods. SARS notes that this overlapping of procedures can result in repetition which can be frustrating for taxpayers and which is also not the most efficient method of conducting verifications. The unfortunate perception raised by practitioner bodies is that SARS delays payment of refunds.”

- OTO's comment: The complaint is that section 190 of the TAA (discussed in detail on Page 30 - 31 below) legislation does not allow SARS to withhold a refund on account of a subsequent return being submitted, or to withhold a refund for one period pending verification or audit of another period. While SARS's response provides a reasonable explanation why verifications or audits on various periods may sometimes overlap, it does not offer an explanation on the complaint raised. Furthermore we remain of the view that the legal points canvassed above remain valid and raise concerns. The complaints are justified.

Recommendations: SARS should operate within the legal framework; given also the hardship caused to taxpayers. The above practice should therefore cease.

6. Alleged obstacle: SARS using historic returns.

6.1 Our investigations and findings

6.1.1 Summary

Returns that have never been shown as outstanding on Tax Clearance Certificates or Statements of Account suddenly reflect as outstanding and then used as reason for not paying refunds. This is done notwithstanding the fact that previous refunds were released.

6.1.2 Cases for illustration

We could not find a particular case with us, falling in this category, nor were we furnished with any. The complaint was submitted by the industry bodies without reference to a particular case.

6.1.3 **Provisional Report:** On the facts given, the complaints would be justified.

6.1.4 **Provisional Report:** Recommendations

If there is indeed such a practice, it should be discontinued as it also causes hardships to taxpayers.

6.2 SARS's response:

- *"The Tax Ombud has not made a finding on this issue because no specific instances were presented.*
- *However, the Provisional Report recommends that "(T)his practice should be discontinued". It is submitted that the recommendation is not supported by factual findings and that the report should not include a recommendation."*



- OTO's Comments: The fact that no illustrative cases were found, does not eliminate the fact that a complaint was received, and had to be responded to; nor does it mean that there are no taxpayers out there who, though did not complain for a variety of reasons, suffered the hardships complained of by those who did. The exercise is not to prove a case against SARS but to draw its attention to a complaint raised. Our comments are carefully worded. Our comment in respect of obstacle 11 is different: there we find that it was the taxpayer's fault.

7. Alleged obstacle: SARS raises assessments and pass journals to clear unallocated credits.

7.1 Our investigations and findings

7.1.1 Summary

SARS raises assessments to absorb credits on taxpayers' accounts where for example overpayments are made. In doing so, SARS creates fictitious tax liabilities, instead of taking a decision on a refund. Failure to take such a decision is subject to objection and appeal, but SARS avoids this, it seems, by raising an assessment, a step which takes the dispute resolution procedure in another direction, away from paying the refund.

According to SARS' Annual Report for the 2015/2016 tax period, a total amount of R3,47 billion was held by SARS as unallocated payments on taxpayers' accounts. These unallocated payments may be for various reasons including taxpayers using incorrect reference numbers, overpayment by taxpayers, revised assessments or even third party appointments incorrectly done by SARS.



Whatever the causes of the unallocated payments, they create credits on the taxpayers' accounts and should be either refunded to taxpayers or utilised to set off their other verified existing tax liabilities. We are, however, aware that there have been instances of taxpayer accounts being used with nefarious motives and that there may be valid reasons for SARS to refuse refunding unallocated payments under such circumstances. But what is of concern is the raising of assessments solely for the absorption of these unallocated payments. According to the information at this office's disposal, SARS raises assessments to exactly the same amounts as the unallocated payments, thus creating a corresponding debit to absorb the credit. From what could be established, the general practice by SARS is to send the taxpayer a letter to request reasons for the overpayment as well as proof that it was the taxpayer/third party who actually made the payment. If the taxpayer/third party does not respond or satisfy SARS, an assessment is raised to absorb the credit. Somehow, the new assessment manages to raise a debt exactly to the same amount as the overpayment.

7.1.2 Cases for illustration

- a) A perfect example of the above concerning practice is a complaint received by the OTO reference number [REDACTED] the events of which can be summarized as follows:

12/12/2014: SARS issued a third party appointment (TPA) to the taxpayer's bank for payment of an amount of R555,221.72 allegedly owed on its PAYE account.

15/12/2014: The bank paid the exact amount over to SARS as per the TPA.



- 23/03/2015: The taxpayer's representative queried the TPA providing proof that the declarations were correct and had already been paid in full. In the same letter the taxpayer requested SARS to refund the full amount that was withdrawn from the bank account.
- 01/07/2015: SARS informed the taxpayer that R2,917.16 of the amount was utilised to set off another tax debt, but that the account has been rectified and R552,304.56 was at that stage an unallocated credit on the account. Notwithstanding the fact that the taxpayer already requested this amount to be refunded, SARS asked whether it should be refunded or be utilised to offset future periods. SARS also apologised for the inconvenience caused.
- 16/07/2015: At this stage the taxpayer had already ceased trading and was arranging to be wound up. Accordingly the taxpayer requested deregistration as employer.
- 21/07/2015: SARS noted on its system that there was a credit on the account and sent the taxpayer a letter notifying it thereof. It must be noted that the letter does not require any action by the taxpayer and merely notifies it of the credit. From the procedures set out in its policies SARS is supposed to send the taxpayer a letter and only raise assessments if the taxpayer does not respond. Yet the letter written did not really require any reaction.



- 30/07/2015: SARS noted on its system that it received the request for deregistration.
- 03/08/2015: SARS noted on its system that the request for a deregistration and authentication have been received.
- 12/08/2015: SARS again noted and sent the exact same letter notifying the taxpayer of the credit. Again the notifications did not require any action from the taxpayer.
- 01/09/2015: SARS made a note on its system referring to a Head Office Project and notes *"NO REPLY FOR UNALLOCATED LETTER SEND [sic]. ASSESSMENT DONE ON 2015/02."* There was however no assessment raised for the 02/2015 period on the PAYE account. Instead the SARS official raised the assessment on the UIF account for the 02/2015 period. The assessment created a UIF liability of R552,304.56 which is exactly the amount of the credit which SARS confirmed to the taxpayer was available. It must be noted that at this stage SARS acknowledged it was an error to collect the money by way of a TPA, and apologised. To re-iterate, the taxpayer had already, made it clear that it wanted the funds to be refunded, and also notified SARS that it was no longer trading and was deregistering. This information was on SARS systems and the official



who raised the assessment on UIF to absorb the credit ought to have been aware of it.

02/09/2015: The assessment on the UIF account was approved.

30/09/2015: SARS took the credit from the PAYE account to pay the UIF assessment.

03/02/2017: The Tax Ombud accepted a complaint by the taxpayer and recommended to SARS that the refund be paid as it was not proper to raise an assessment on the UIF for the purpose of absorbing the credit.

15/03/2017: SARS revised the UIF assessment; and the credit once again reflected on the taxpayer's account.

27/03/2017: Regardless of the fact that at this stage SARS had acknowledged that the credit was valid and the fact that the OTO had also referred SARS's own acknowledgment to its own notes of its error in initiating a third party appointment, SARS again requested proof that the taxpayer actually paid the money to SARS.

30/03/2017: SARS approved the payment of the refund, but it was not actioned yet.

31/03/2017: SARS actions the refund (but not yet paid).

05/04/2017: The taxpayer contacted the OTO and confirmed the refund reflected in its bank account on 04/04/2017.

Follow-ups, by one internal unit to the relevant one got no response. SARS was obliged in terms of section 96 of the TAA to

serve a notice of assessment, together with reasons to the taxpayer.

The taxpayer's representative is adamant that neither they nor the taxpayer received a notice of the UIF assessment. This Office has not been able to find confirmation that such a notice of assessment was indeed sent to the taxpayer. The taxpayer would be justified to infer that SARS raised a supposed UIF liability for no purpose other than to **absorb** the credit.

b) Other cases

OTO Case Number	Case Information
[REDACTED]	SARS raised assessments on two VAT periods 2016/08 and 2016/12. The taxpayer paid the debts, but lodged objections thereto which were partially allowed. After the assessments were revised there was an overpayment by the taxpayer of R39,784.88. SARS raised estimated assessments to absorb the credits notwithstanding the taxpayer's request to be refunded. ²
[REDACTED]	The taxpayer accidentally paid its 2016/12 VAT account twice. The representative provided SARS with proof of duplicate payment as well as a request for the credit to be refunded. SARS raised an assessment on 11 March 2017 to absorb the credit of R121,269. Again, the assessment raised exactly the same amount as the undisputed overpayment.
[REDACTED]	The taxpayer accidentally paid its 2016/12 VAT account twice. The representative provided SARS with proof of duplicate payment as

² This case is also relevant to complaint 5 above, and 9 below.



	<p>well as a request for the credit to be refunded. SARS raised an assessment on 13 March 2017 to absorb the credit of R120,282. Again, somehow, the assessment matched the undisputed overpayment.</p>
<p>██████████</p>	<p>The taxpayer requested a correction to be done due to incorrect declarations on various UIF returns. This issue was not resolved and the taxpayer complained to CMO on 26/04/2016. On 25/07/2016 the taxpayer was informed that the correction had been confirmed by SARS's auditors and that the refund was being processed by SARS's accounts department. A month later the taxpayer was informed that the refund was held up by an objection on one of the numerous periods in question. SARS at this stage again confirmed the refunds would be paid, but only after the objection had been finalised. On 10/10/2016 CMO informed the taxpayer that the refunds had been set off against other existing tax debts and closed the complaint lodged in April as resolved. This Office could not find any tax debts at that stage on the taxpayer's accounts, nor could it see any set off done for tax debts. On 31/05/2017 SARS raised assessments to absorb the credits on the account. According to the notes on the system the reason for the assessments were "<i>Unallocated list – Assessment raised according to Section 190(4)(b) of the TAA</i>". However, on all the notices of assessment, the reasons for the assessments were: "<i>Assessment based on information available to SARS</i>" and "<i>UIF contributions incorrectly calculated.</i>" In this matter there seems to have been a series of misrepresentations to the taxpayer, to deny him the refund he was entitled to. The complaint remains unresolved.</p>

7.1.3 Provisional Report: The complaints are justified.



7.1.4 **Provisional Report:** Recommendations:

It is strongly felt that the above practice be discontinued.

7.2 SARS's response:

- *"Your attention is brought to section 190(4) of the Tax Administration provides that an amount paid in error is deemed to be a payment made to the National Revenue Fund after three or five years depending upon whether the underlying tax is a self-assessment tax or not."*
- OTO's Comment: Section 190(4) cannot be read in isolation. The section presupposes a scenario where SARS has made a decision to refuse refunding the credit as obliged in section 190(1), which decision must then be communicated to the taxpayer in order to give the taxpayer the opportunity to object to that decision in terms of section 190(6). The issue we raise, as illustrated by the cases, is where assessments are created solely for the purpose of absorbing and eliminating the money meant to be refunded. In all the cases we have investigated, these assessments were raised irregularly.
- *"In addition, where a taxpayer has not filed a return, SARS does have the authority to raise an assessment which is an estimate that is based on information which is readily available. It is SARS' view that in these particular circumstances the amount paid by a taxpayer without a return being filed, is information that is readily available."*
- OTO's Comment: This is not the issue. The concern is where a tax return was filed, with an overpayment.
- *"SARS has discontinued the practice in instances where it is inappropriate".*
- OTO's Comment: This is commendable. However, SARS does not state when it ceased these inappropriate practices. It was important for us to

know the effective date to enable us to properly handle taxpayers' complaints.

8. Alleged obstacle: Requests for further information during audit.

8.1 Our investigations and findings

8.1.1 Summary

The complaint is that SARS auditors keep audits pending while repeatedly requesting information from taxpayers. Apart from delaying the refund, the incidental consequence is that if successive requests for further information are sent out each within 21 days of the other, interest will not start accruing on the refund.

8.1.2 Cases for illustration

In our Provisional Report, we said that we could not find a particular case with us, falling in this category, and that we were not furnished with any. One has since been brought to our attention.

OTO Complaint number [REDACTED]: Taxpayer submitted a return for December 2015 period. On the 20th January 2016 SARS advised the taxpayer that its declaration had been identified for verification – and requested supporting documentation. The taxpayer submitted the requested documentation on 26 January 2016. There was no response from SARS until 22 February 2016 (23 days after the first request) when it (SARS) issued another request which was substantially the same as the first request. On 23 February 2016, taxpayer submitted the information.

When the taxpayer called the SARS Call Centre to enquire progress on the matter, the latter advised the taxpayer that it had to wait for a further



30 days for the refund. A third similar letter was issued by SARS on 31 March 2016 requesting similar information as the 1st and 2nd letters.

The taxpayer, in its letter to the OTO, states the following:

"I strongly object to this treatment by SARS. All the invoices are valid for purposes of claiming input VAT. The invoices were provided to SARS on 26 January 2016. If SARS had further questions why wait till 22 February 2016 to ask further questions? For the next period (February 2016) there will be a large payment of VAT to SARS. The output VAT on one invoice for the sale of wine amounts to R210 315. The input VAT (that is the subject of the refund for the December 2015 period) relates to expenses in respect of the wine sold. What guarantee do I have that towards the end of the new 21 day period (around the 20th of March 2016) SARS will not ask new questions and again delay the payment of the refund?"

SARS eventually paid out the refund on the 20th May 2016.

8.1.3 **Provisional Report:** On the information given to us, our provisional finding would be that the complaint is justified.

8.1.4 **Provisional Report:** Recommendations:

If it does indeed happen, it should be discontinued; an auditor should ask for documents all at once. Alternatively, pay interest to taxpayer from 21 days after the first batch of requested documents are submitted to SARS.

8.2 SARS's response

- *"In the event that SARS' comment is not accepted, then our response is as follows:*



- *The provisional recommendation that SARS should request all relevant information once, at the outset of an audit/verification, is unrealistic because SARS will hardly ever be in a position to, at the commencement of an audit, specify precisely what information is relevant and required.*
 - *SARS is at an informational disadvantage in relation to the taxpayer, and a taxpayer's answer to one query can raise other issues. This is the exploratory nature of an audit.*
 - *It is submitted that the provisional recommendation is an unjustifiable limitation to SARS' audit powers.*
 - *SARS does note that verifications/audits should be precise and that the same information should not be requested repeatedly”.*
- OTO's Comment: The complaint was justified. We take note of the difficulties and that the further request may be justified; however, attempts should be made to do this within limits. Our alternative recommendation (to pay interest) still stands and will hopefully be implemented.

9. Alleged obstacle: Delay in the revision of the assessments following the reinstatement of the initial refund after successfully disputing assessments.

9.1 Our investigations and findings

9.1.1 Summary

Where assessments are successfully disputed and the initial refund is reinstated, taxpayers experience a delay in the revision of the assessments and the payment of the refund. The problem here is that there is no turn-around time.



Analysis of the Issue

The “*pay now argue later*” rule is well established in tax systems across the world. The concept of enforcing payment of tax debts while they are being disputed has been tested and found justified in order to ensure good management of tax systems.

In order for this system to work properly, taxpayers must trust that if they do pay disputed debts, SARS will not only refund any amounts paid if the dispute is resolved in their favour, but also do so without delay. To ensure fairness; the TAA creates reciprocal obligations between taxpayers and SARS: taxpayers have a legal obligation to pay tax regardless of whether or not an objection or appeal is pending, and SARS is allowed to take any collection steps it is authorised to if payment is not made.³ On the other hand, SARS has a legal obligation to speedily revise a successfully disputed assessment and refund any credits with interest created accordingly.⁴

Should SARS not comply with its obligations and revise the successfully disputed assessments timeously and refund the payments, the basis for the “*pay now argue later*” rule would be undermined and the trust between taxpayers and SARS be eroded.

9.1.2 Cases for illustration

OTO Case Number	Case Information
[REDACTED]	SARS raised an assessment which the taxpayer paid according to the pay now argue later rule. The assessment was disputed and on

³ Section 164(1) of the TAA.

⁴ Section 164(7) of the TAA.



appeal SARS conceded. The revised assessment resulted in a credit of R255,147.75 which was due to the taxpayer. This amount was supposed to be refunded to the taxpayer but instead SARS raised assessments on 21 September 2016 to absorb the credits. On 24 October 2016, the taxpayer requested reasons for the assessment as he noted none were provided when the assessment was raised. SARS responded on 15 November 2016 to the request by asking for proof of payment. The taxpayer responded with all requested documents on 22 November 2016.

On 10 February 2017 the taxpayer lodged a complaint with SARS's internal Complaints Management Office. It took the CMO almost a month to find a person who could attend to the complaint and on 02 March 2017 the taxpayer was informed that he was supposed to object to the assessment. CMO was happy with this response and closed the case.

The taxpayer then lodged a complaint with the OTO and after it was again referred to SARS the refund was paid on 22 May 2017 without any need for the taxpayer to lodge an objection.⁵

SARS made several errors in this case:

- a) it did not comply with its legal obligation to refund excess amounts created after an assessment was paid, but later revised after being successfully disputed;
- b) it raised assessments to absorb a credit;⁶

⁵ This example is also applicable to complaint 7 above.

⁶ Refer to the discussion on this practice in category 7 above.



- c) it did not provide the taxpayer with reasons for the assessment as obliged;⁷
- d) when the taxpayer asked for reasons for the assessment it could not refer the taxpayer to any document with reasons, nor provide the reasons as obliged; rather, it chose to respond to the taxpayer's questions by asking questions;⁸
- e) it did not refund the credit after the taxpayer complied with its requirements to provide proof of payment of the amounts;
- f) it expected the taxpayer to lodge an objection to an estimated assessment which was raised with the sole purpose of avoiding to pay a refund that was the result of a revised assessment after SARS conceded on appeal that it was incorrect to have raised the additional assessment in the first place. In other words, a justifiable inference can be drawn that SARS wanted to keep the money it was not entitled to.

9.1.3 Our finding is that such complaints are justified.

9.1.4 Recommendations

SARS should set reasonable time frames for revising a successfully disputed assessment and within which to pay the refund.

9.2 SARS's response:

- *"SARS acknowledges that there are instances when a reduced assessment is not made swiftly to reflect the outcome of a dispute. An*

⁷ Section 96 of the TAA.

⁸ Rule 6 of the Dispute Resolution Rules promulgated in terms of section 103 of the TAA.



undertaking is given that SARS will endeavour to revise an assessment within 45 days of the resolution of a dispute”.

- OTO's Comments: While the move is commendable, the period of 45 days is too long. Considering the hardships which the delay can cause to a taxpayer, a shorter period should be considered.

10. Alleged obstacle regarding Diesel Refunds delays

10.1 Our investigations and findings

10.1.1 Summary

VAT and Diesel refunds are declared on the same return which gives a nett amount payable by or refundable to the taxpayer. At SARS however they are reflected on two different systems and manual set offs need to be done to obtain the same nett result as reflected on the return. Where there is a delay in this, set off refunds are delayed. Furthermore where the diesel portion is being verified/audited the VAT portion shows as a liability and SARS takes collection steps even though the taxpayer complied with the nett result shown on the return. SAICA notes this is easy to resolve by simply splitting the returns. We got the complaint from the industry. It is hoped the new system will resolve the problem.

10.1.2 Cases for illustration

It is a complaint we received from the professional bodies. No such specific case was given to us. We were told that one such matter was resolved.

- #### **10.1.3 Provisional Report:**
- If the information given to us is correct, our finding would be that the complaint is justified.



10.1.4 **Provisional Report:** Recommendations

It is suggested that the returns be split.

10.2 SARS's response:

- *"The Provisional Report notes that no case was provided and that the OTO was informed that one such case was 'apparently' resolved. As with Alleged Obstacles 1, 6 and 8, a provisional finding and recommendation concerning a systemic issue has not been made after a review of the allegation".*
- OTO's Comment: As already mentioned, the absence of an illustrative study case does not mean that there are no such complaints.
- *"SARS accepts that the industry requests the separation of returns and SARS wishes to refer to page 145 of the 2017/18 Budget Review.*
- *We wish, however to point out that significant risks were identified in this industry, which resulted in SARS having to perform more audits to mitigate these risks".*
- OTO's Comment: Noted.

11. **Alleged obstacle: Raising Assessments Prematurely**

11.1 Our investigations and findings

11.1.1 Summary

Taxpayers are afforded 21 days to submit supporting documents but assessments are raised prior to the lapse of this deadline. It was noted by this office that sometimes taxpayers submit only some of the documents requested and then SARS raises the assessment. Taxpayers then complain that they still wanted to submit the rest of the documents later.



11.1.2 Cases for illustration

We have not found any specific case. It was a complaint received from the professional bodies.

11.1.3 **Provisional Report:** On the information given the complaint is not well founded.

11.1.4 **Provisional Report:** Recommendations

Taxpayers need to be educated and encouraged to furnish all the required documents or information at once. Where a taxpayer submits only some of the documents requested the taxpayer should inform SARS that the outstanding documents will be submitted.

11.2 SARS's response:

- The response is that as no illustrative cases were given, the issue be dropped.
- OTO's Comment: The OTO's consistent comment on a response of this nature by SARS is that the fact that no illustrative cases are given, does not mean that the problem does not exist; in any case, complaints were received albeit without illustrative cases.

12. Alleged obstacle: Refunds for periods that have been verified by SARS are automatically set-off against debts on other periods notwithstanding a request for suspension or where there is suspension of payment

12.1 Our investigations and findings

12.1.1 Summary

Section 164(6) stipulates that SARS may not institute any collection steps from the date of submission of a request for suspension of payment, until 10 days after a decision to not grant the request has



been communication to the taxpayer. Despite this provision, SARS's systems do not cater for instances where a taxpayer has requested the suspension of payment pending the finalisation of an objection or appeal. The system automatically sets already confirmed refunds off against those debts even if SARS has not responded to, or granted, such a request.

12.1.2 Cases for illustration

The first complaint, with OTO reference number [REDACTED], related to VAT refunds for the 2015/12, 2016/03, 2016/04, 2016/08, 2016/09, 2016/10, 2016/11, 2017/01 and 2017/02 periods which were not paid out by SARS. The value of the refunds was R156,561,392.00. It was discovered that the refund available on the SARS system was only R56,914,962.56 which related to the 2017/01 period and which was still under verifications by SARS. It was only on the 9th and 10th of May 2017 that payments of about R98m were made.

It transpired that the refunds that had already been confirmed had been utilised by SARS to off-set debts created due to additional assessments that were in dispute. This was done notwithstanding the fact that SARS had not notified the taxpayer whether or not the request for suspension of payment pending the dispute was granted.

The second complaint, with OTO reference number [REDACTED], is similar, with the refunds amounting to R90,973,572.00. In this matter SARS also continued to do debt equalisation notwithstanding a request for suspension of payment pending the finalization of the dispute. It was not until 12 May 2017 that an amount of about R37m was paid out.



12.1.3 **Provisional Report:** On the facts given, our provisional finding would be that the complaint is justified.

12.1.4 **Provisional Report:** Recommendations

SARS's systems must be updated to ensure that they comply with the provisions of the TAA. Whenever legislation changes, any automated actions performed must be changed to comply with legislation.

12.2 SARS's response:

- *"SARS acknowledges the complaint, and the recommendation is accepted.*
- *SARS has put in place an automated process for a Request for the Suspension of Payment. This should ensure that a refund is not set-off against a suspended tax debt which is disputed".*
- OTO's Comment: Noted and welcome. The steps are fully supported.

SECTION V

CONSIDERED DATA

1. INFORMATION REQUESTED BY THE OTO FROM SARS

The OTO requested certain information from SARS. We are grateful for the co-operation given. The information received was well packaged and very useful. We were furnished with a month by month breakdown of SARS's credit book for all categories of tax for the 2014/2015, 2015/2016 and 2016/2017 financial years. Useful information was gleaned from it. In the process, the following further information was asked for and provided:

- 1.1 Further explanation on why the "*Returns not Received*" data anomaly identified in April 2016 for VAT would reduce the credit book.
- 1.2 The Nett Credit book for April 2017.
- 1.3 An age analysis of refunds higher than R500,000;
- 1.4 Month by Month rand value and number of cases where credits were paid out to taxpayers for the 2016 and 2017 financial years, in respect of refunds higher than R500,000 in value;
- 1.5 Specific tax reference numbers for all 630 cases refunds higher than R10,000,000;
- 1.6 Month by month rand value of credits identified for audit/verification for the 2017 financial year;
- 1.7 Age analysis of cases referred for audit, from the date they were identified until the time they were allocated to auditors; the duration of the audits; and then in the cases where refunds were still payable, the time from when the audit was finalised until date of payment;
- 1.8 Month by month rand value of reduction of the credit book due to audit/verification for the 2017 financial year;



- 1.9 Month by month number of cases identified for audit/verification for the 2017 financial year;
- 1.10 Month by month number of cases identified for audit/verification where assessments were raised to reduce credits for the 2017 financial year;
- 1.11 Rand value and number of cases where assessments were raised in order to reduce unallocated credits (overpayments of tax) to zero for the 2016 and 2017 financial years;
- 1.12 Further elaboration on the cause and the extent of the backlog cleared during December 2016 referring specifically to tax types, number of cases as well as rand values.

2. ANALYSIS OF THE INFORMATION RECEIVED

2.1 The monthly taxpayer credit book; refunds paid to taxpayers; and the anomalies of refunds paid during the period January – March 2017.

- 2.1.1 The credit book reflects all amounts owed to taxpayers. At the risk of over simplifying the operation of the credit book, there are certain principles that must be affirmed before the analysis can be discussed. The Credits are created on this account when a refund is claimed on a return, if an overpayment is made on taxpayer account, or if a payment is made into an incorrect account. A credit created by a payment without a return will not be paid to a taxpayer but will be absorbed either when the return is submitted or where SARS raises an assessment to create the necessary debit on the taxpayer's account after ensuring that it does in fact relate to a return that was not submitted. Furthermore refunds claimed may be subjected to verifications, audits or criminal investigation and will also reflect as credits until such time as these procedures are finalised at which point they will either be confirmed and paid to taxpayers, or adjusted by way of additional assessment. Lastly,

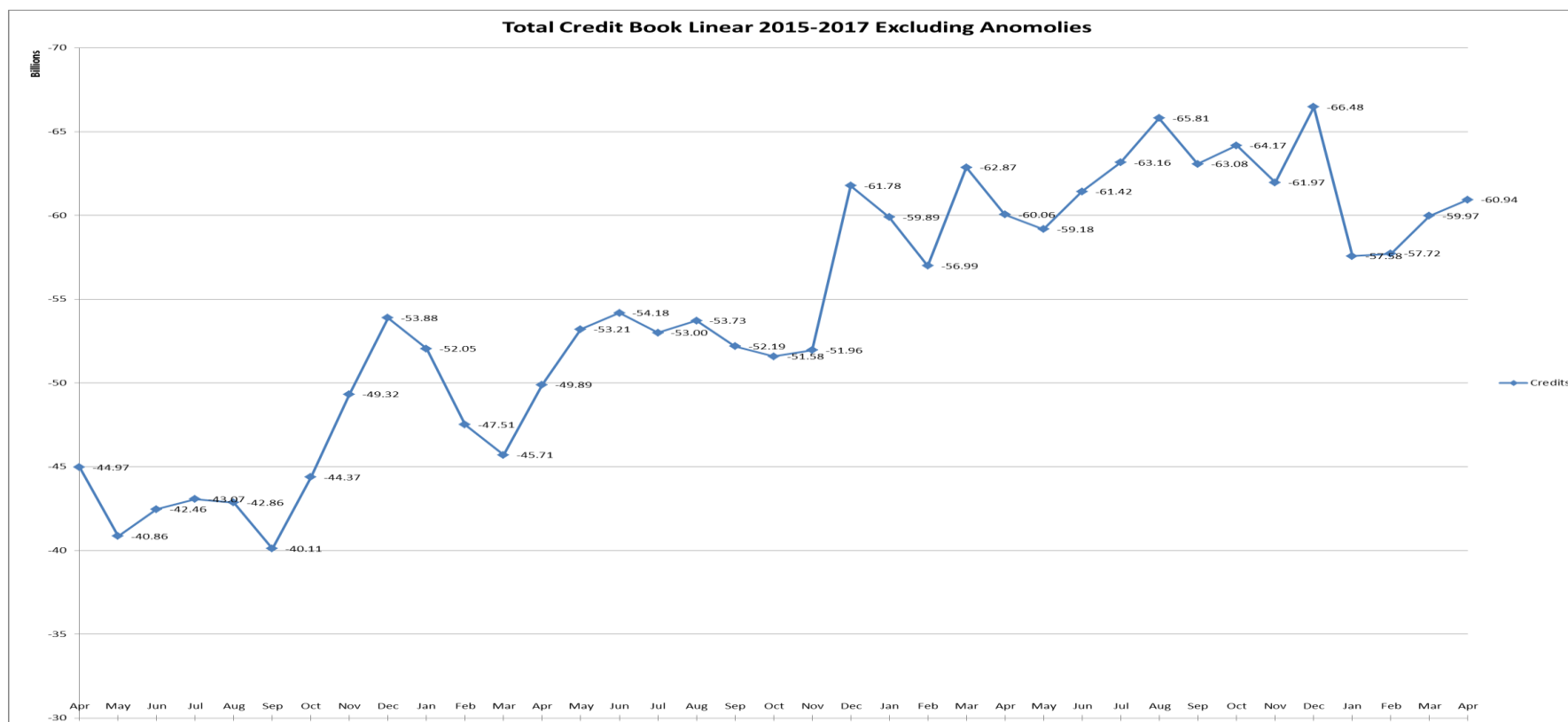


valid refunds will be utilised to reduce any debits on other tax periods or tax types before they are refunded to a taxpayer to ensure full compliance.

- 2.1.2 The credit book includes four clear anomalies that distort the data trends and which have been explained to the satisfaction of this Office. Two of the anomalies were capturing errors of R14 billion and R69 billion respectively which were corrected by SARS. The other two anomalies were overstatements of the cases where returns were not submitted as explained in 2.1.1 above and which were purely the result of a timing error. These two anomalies were to the value of approximately R14 billion each. In light of the fact that the anomalies distort the data trends, we have excluded their approximate values from the data that have been analysed and that will be discussed here.
- 2.1.3 The first two graphs below, A and B, illustrate the movements in the total credit book, excluding the four anomalies from April 2015 up to and including April 2017 first in linear form and then each year overlapped onto each other. The third graph, marked C, shows the total value of refunds paid on a monthly basis over the same period by SARS.

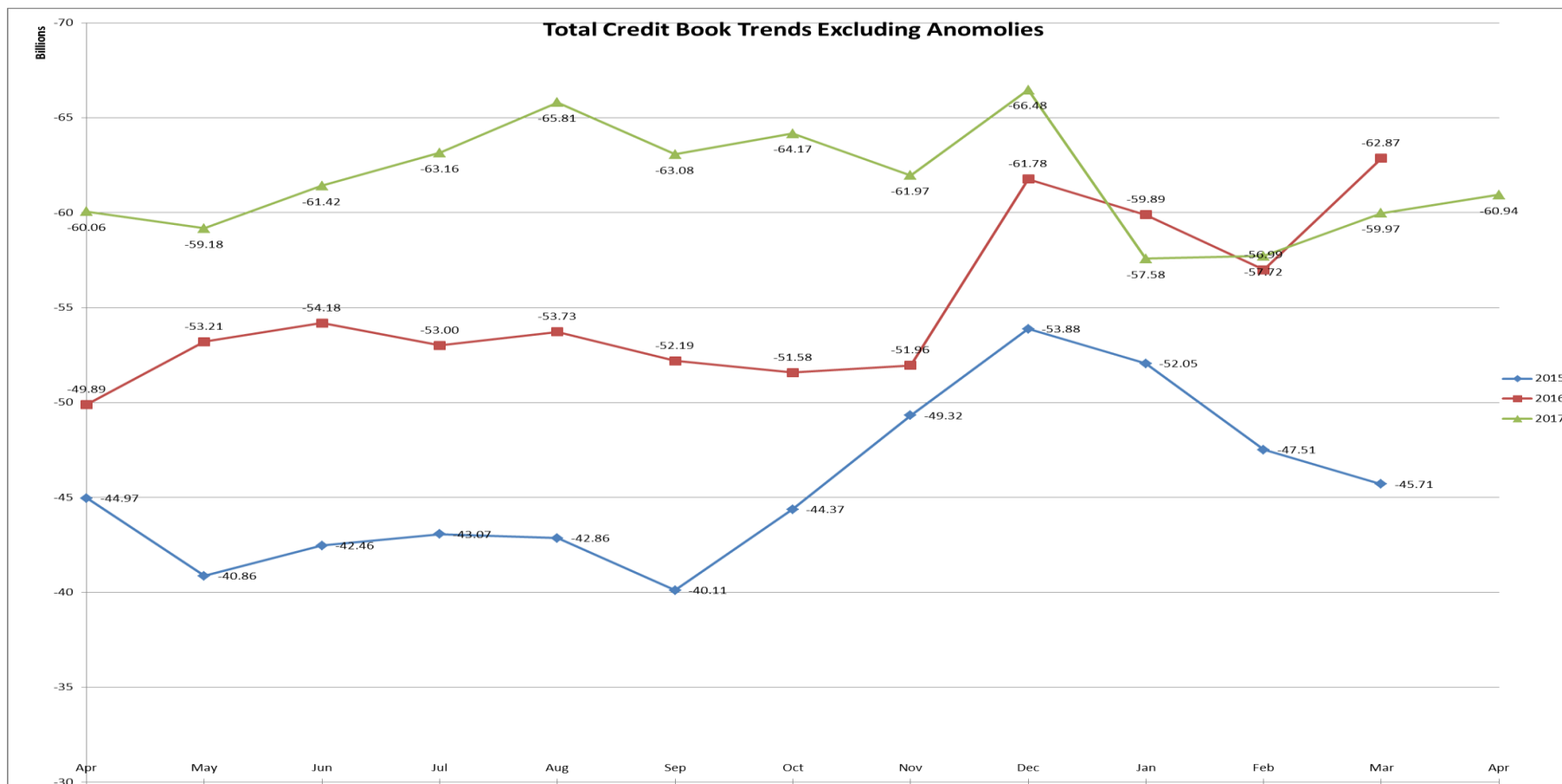


GRAPH A



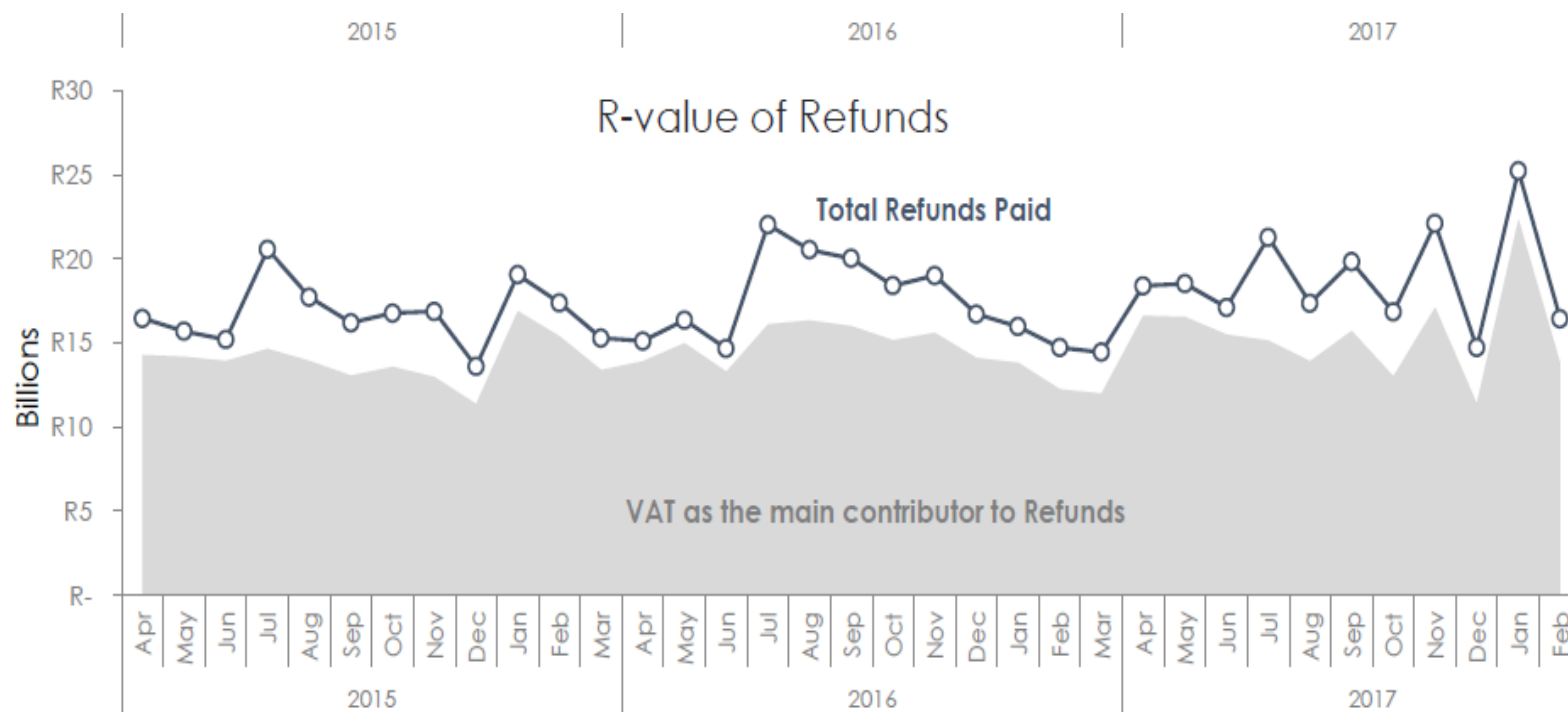


GRAPH B

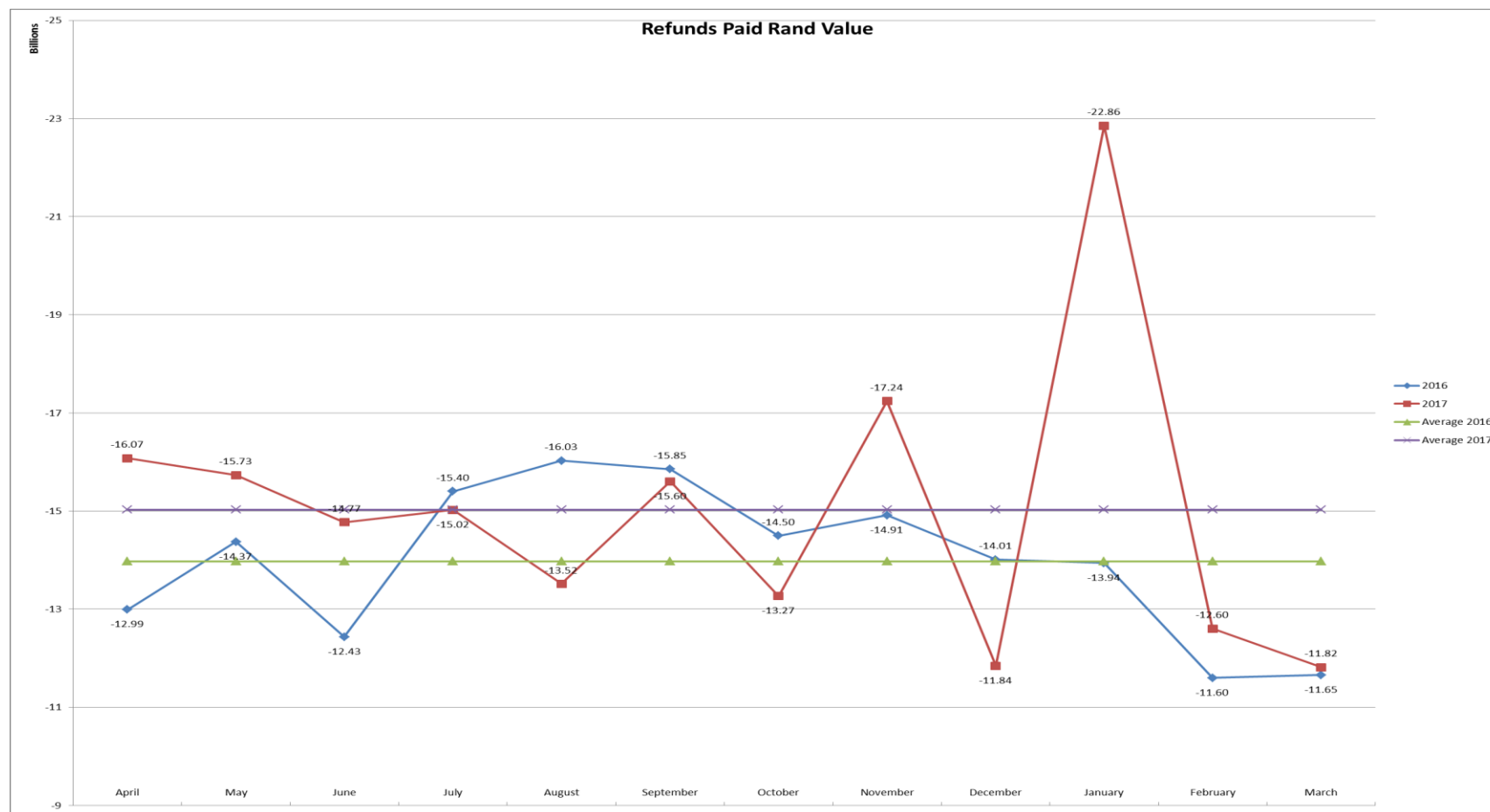




GRAPH C

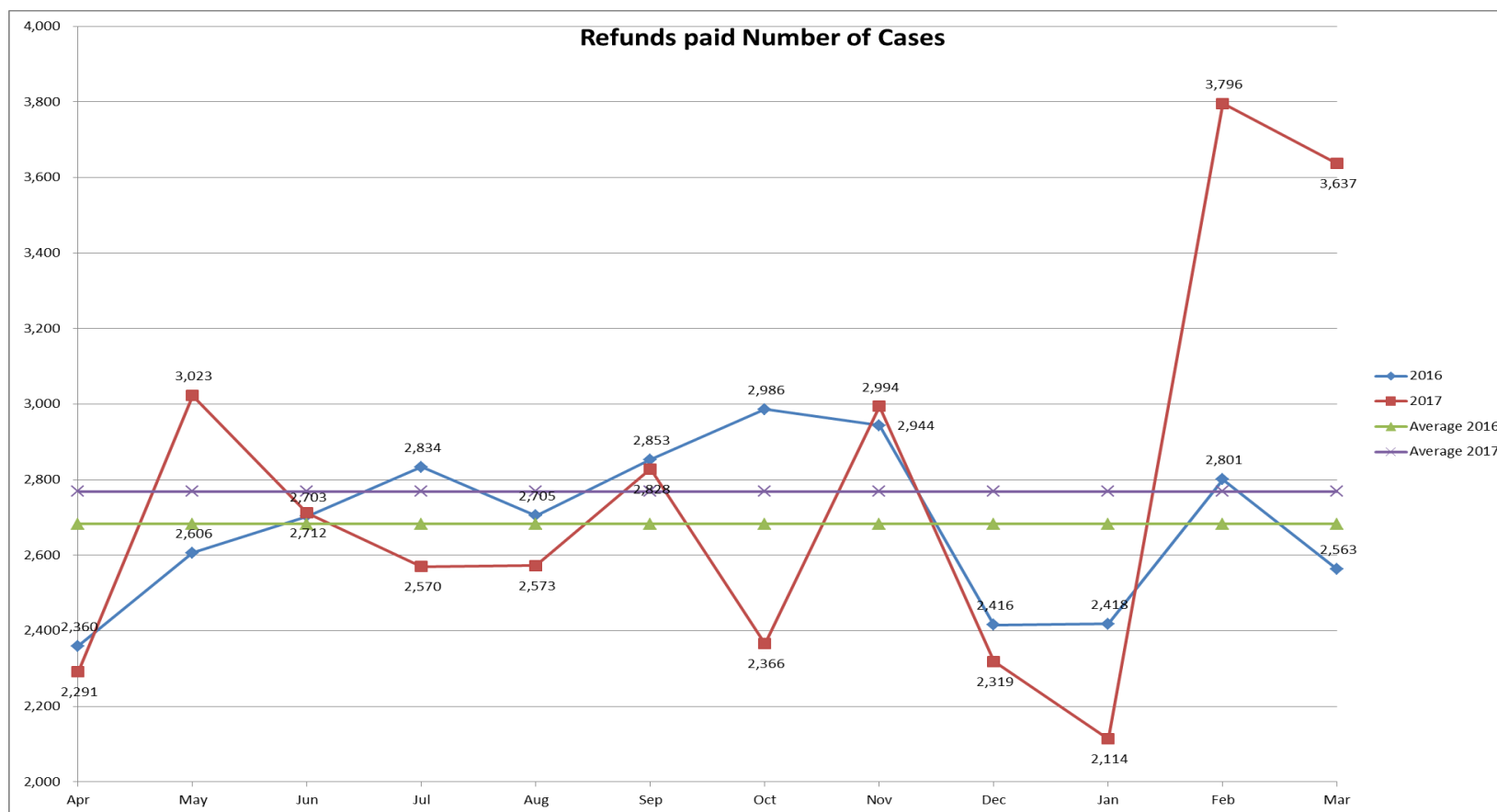


GRAPH D





GRAPH E





- 2.1.4 The graphs illustrate that the credit book has increased significantly over the last three years. Graph C clearly shows a spike in refunds paid during July of each year. Thereafter the value gets progressively less, with refunds paid during January, February and March seemingly below average. The exception was January 2017, with fewer payments, but of high value.
- 2.1.5 The period January 2017 is an anomaly that has not been explained to this office. January 2017 saw by far the highest value of refunds paid during the last three financial years. At the same time those refunds related to the least number of cases over the same period. [Refer to Graph D]. February and March 2017 is the opposite, with high volumes of cases being finalised, but for total refund values that were well below the monthly average, as per Graphs D and E. SARS indicated in response to this query that a backlog of “*low volume of high value refunds*” was being cleared, causing this anomaly; this is plausible. However, they go on to state that “*This is an annual occurrence...*”. This is clearly not the case because during January 2016 there are significant reductions in the value of refunds paid. An explanation for the processing of high numbers of low value refunds during February and March 2017 was not advanced.

SARS response:

- “*January 2017 reflects the highest value of refunds paid in the last three financial years. The Provisional Report states that “(T)he period January 2017 is an anomaly that has not been explained to this office” but acknowledges that SARS indicated that the anomaly is explained by clearing a backlog of low volume and high value cases. While the Reports notes this as plausible, the Report does not accept that this is an annual occurrence because*



January 2016 reflects a significant reduction in the value of refunds paid.

- *The following is presented as an explanation of the anomaly and explains that SARS' focus on backlogged low volume, high value refunds is an annual occurrence.*
 - *The number of routine business transactions reduces during December each year, and this provides an opportunity for SARS to concentrate on larger cases that naturally take longer to scrutinise and finalise.*
 - *These verifications/audits take place during December and are approved at higher levels within SARS, before the festive season begins and offices operate on skeleton staff.*
 - *Refunds finalised in December would usually be paid in January of the following year.*
 - *The approach in the 2016/17 year was no different, except that the value of refunds paid in January 2017 was approximately R10 billion greater than the value paid in January 2016.*
 - *As the OTO requires a more detailed explanation, SARS has extracted additional information.*
 - *Approximately 70% of the value of VAT refunds paid in January 2017 was paid to 150 vendors - this accounts for R15.94 billion in refunds paid. We tracked the amounts refunded in January of each of the three preceding years to those vendors appearing in the top 150 for the 2017 year. Those vendors who appear in the 2017 year's top 150 were paid an amount of R 6.12 billion in 2016.*
 - *Not all these vendors appeared in the Top 150 vendors of the preceding years. For example, only 97 of the vendors who are reflected in the Top 150 for 2017 were refunded in the 2016*



year. All these 97 vendors were refunded amounts less than R500 million each in 2016, while in 2017:

- *145 of the 150 vendors were refunded amounts less than R 500 million; 3 of the 150 vendors were refunded amounts between R500 million and R1 billion; and*
- *2 of the 150 vendors were refunded between R1 billion and R3 billion.*
- *If the same approach is applied to identify the top 150 taxpayer receiving refunds in January 2016, the result is similar, in that they have been paid R8.5bn (61%) of the total R 13.8bn of VAT refunds.*
- *From this analysis it is evident that 2016 was an anomalous year for the opposite reason that 2017 is an anomalous year. In 2016 not all the top 150 vendors who were paid refunds in 2017 were paid refunds in 2016 - they were paid almost R10 billion less (R15.94 billion in 2017 and R6.12 billion in 2016). The top 150 vendors who were paid refunds in 2016 were paid R 8.5 billion and the top 150 in 2017 were paid R15.94 billion - a difference of R7.44 billion. This suggests that the top refunds paid in 2016 were un-expectantly low and counterintuitive to a trend of increasing values.*
- *Considering that the value of refunds in January 2017 was high and the value of refunds in January 2016 was lower than expected, the difference between the two years would create an even greater perception of an anomaly in January 2017".*
- OTO's Comment: We understand and accept the above exposition. However the amounts of the refunds paid out in January, February and March 2017 were lower than the average in the year (see also para 2.1.4 above). The graphs show that the credit book has increased significantly over the last three years.



Graph C clearly shows a spike in refunds paid during July of each year. Thereafter the value gets progressively less, with refunds paid during January, February and March seemingly below average. The exception was January 2017, with fewer payments, but of high value. Paragraph 2.1.6 below shows that in value terms, less money was paid out.

2.1.6 With reference to the table below, and for the purpose of illustrating the above point, we have taken any refund of below R250,000.00 as one of low value. The problem with paying out a large number of low value claims attracts the criticism that SARS was playing the number game: you want to be seen to be processing many claims, but selecting the ones of low value (99%) while the unprocessed ones, few as they are (1%) are collectively of much higher value than the 99% put together. This was the case. In value terms, less money was paid out while the bulk, by far, was not. In this regard the Credit Value distribution is illustrated in the table below.

Value	Number of Cases
< -100	3,724,202
-100 to -1,000	600,388
-1000 to -5,000	381,613
-5,000 to -10,000	134,463
-10,000 to -30,000	136,937
-30,000 to -40,000	23,461
-40,000 to -50,000	15,092
-50,000 to -100,000	34,644
-100,000 to -250,000	23,245
-250,000 to -500,000	9,761
-500,000 to -1,000,000	5,517
-1,000,000 to -10,000,000	5,588
-10,000,000 to -25,000,000	404



-25,000,000 to -50,000,000	122
-50,000,000 to -62,000,000	20
< -62,000,000	84
Total	5,095,541

2.2 The Age analysis of Credits with a value of R500,000 and more;

35% of the cases falling in the R500,000 and more category are older than 10 months. This translates to R9.3 billion or 22% of the total value of refunds in this category being older than 10 months.

2.3 Specific Tax reference numbers for all 630 cases each with a refund of R10,000,000 upwards

This category of credits amounts to R25,68 billion which is a significant amount. All cases relating to tax periods prior to November 2016 were drawn as a sample of high value refunds. This is approximately a 10% sample size in terms of the number of credits. The sample cases amount to R1,4 billion which is a little bit more than 5% of the total value of the requested cases.

Of the 60 sample cases investigated, 54 were older than 60 working days of which 16 were paid, only one of which was paid out before the end of the 2016/2017 financial year and 4 were reduced significantly through additional assessments. Of the 54 cases, 38 refunds therefore remained unpaid. In respect of 4 of the 38, we could not establish the cause of the delay. Regarding the remaining 34, reasons for not paying can be split as follows:

- 4 Refunds delayed due to bank account verifications;
- 1 Refund paid but recalled by way of Third Party Appointment;
- 8 Refunds set off against other tax debts;
- 12 Refunds pending audit/verification/investigation;
- 9 Matters simply stating "Stopper 80 – Refund Stopped".



The combined value of the sampled unpaid claims was of significant monetary impact. While this was a small sample size, it is nevertheless of concern that only one out of the 60 matters in the sample was paid before the end of the 2017 financial year.

SARS response:

- *“SARS was not included or involved in the selection and the analysis of this sample, and has not been provided with details of the OTO's analysis. Apart from advising that we have not been able to reconcile the granulated results back to the sample of 60, it is unfortunate that we cannot comment on the results.*
- *It would be expected that the sampling technique be described in order to give creditability to the results i.e. was the sample selected randomly. This is considered to be more important in that:*
 - *The 630 cases supplied by SARS is already skewed in that they represent the highest refund value and thus do not reflect what the entire population of 5 095 541 refund cases would represent; and*
 - *As mentioned, manual verification/audit takes time and since these cases represent the highest number of cases in value, it would be expected that SARS would apply greater attention to verify the validity of the claim. By their very nature, it would be expected that more time spent on these cases.*
- *Your report notes that 54 of the 60 cases are older than 60 days. The insinuated impression is that 90% of cases involving a refund in excess of R 10 million are delayed beyond 60 days. Although you have not provided SARS with any details of the sample, our statistics are that:*
 - *95% of volume and 90% of Rand value of personal income tax refunds are paid within 60 days;*
 - *80% of volume and 58% of Rand value of company income tax refunds are paid within 60 days; and*



- 92% of volume and 90% of Rand value of VAT refunds are paid within 60 days.
- *It is submitted that in order to contextualise your comments, that reference be made to the total number and value of refunds paid within the time periods".*
- OTO's Comment: We agree that the 630 sample was small. It is conceded that SRS was not involved in the selection and analysis of the sample; however no details were asked of the OTO about the sample. We are however grateful for the information given, namely, that 89% of the total refunds (2017) or 79% of the rand value, were paid within 60 days. Our concern though is about the refunds beyond the 60 days (the 11% of the refunds, representing the 21% of the refund rand value).

2.4 Month by month rand value of credits and the number of credits claimed which were identified for audit/verification; as well as the rand value of credits and the number of these cases where the assessments resulted in a reduction of the credits claimed for the 2017 financial year

During November 2016 there was a very large capturing error on a return which had to be rectified and which had a significant impact on the figures requested. The analysis below has been done on information where this capturing error was excluded from the figures provided by SARS in order to give a more accurate picture of the actual situation.⁹

2.4.1 The table below shows the grand total rand value reduction of the credits that were identified for audit/verification:

⁹ The grand total of the original returns and the adjustment made by SARS were both reduced by R36,6billion to exclude the capturing error. The calculations can be provided.



Values	Rand Value	% Reduction
Original Return	-200,128,001,510	
Adjustment/Reduction	34,776,054,832	-17.38%
Final Assessment	-165,351,946,677	

This reflects a rather significant percentage and the amount that would have been paid out had the refunds not been subjected to auditing/verification.

- 2.4.2 The table below reflects the same calculation but in terms of the number of credits claimed that were identified for audit/verification:

Audit Outcomes	Number of Cases	Percentage
No change	964,910	
SARS Favour	504,468	33.60%
Taxpayer Favour	31,818	

This shows that a significant number of refunds claimed were correctly identified for audit/verification. It would therefore seem that SARS's risk engine is relatively effective in preventing losses through refund claims. What the figures also show is that with regard to refund claims, SARS was able to finalise a significant number of audits/verifications effectively. This suggests that it has adequate capacity to attend to cases being identified, and to reduce the backlog. This is contrary to its statement that it has limited resources to deal with variable demands such as peak seasons (like PIT Filing seasons). While these seasonal fluctuations seem to even out over the financial year as can be seen from SARS's annual figures, it may explain backlogs being created and an incidental increase in a delay in the payment of refunds.



SARS response:

- “The (Provisional) Report suggests that because SARS finalises a large number of refund audits/verifications (1 501 196) SARS has adequate capacity to deal with current and backlogged cases. The Report notes that this suggestion is contrary to SARS’ statement that there are limited resources available.
- This “suggestion” in the Report, with respect, is incorrectly based on output figures alone, and creates an unfounded suggestion that SARS has sufficient capacity.
- An analysis of SARS’ audit/verification capacity, productivity and efficiency is a different exercise that must take into account productivity variables such as head count, standard times and seasonality as well as the work force’s range of experience and capabilities.
- In addition, such a capacity analysis should include an analysis of comparable tax administrations”.
- OTO’s Comment: We previously raised the issue of capacity constraints. While we accept what SARS says, it is still not clear from SARS’s response whether there are such constraints; but it is a matter which is peculiarly within SARS’s knowledge.

2.5 Age analysis of cases referred for audit from the date they are identified until the time they are allocated to auditors (“*Audit-create to Allocate*”); the duration of the audit (“*Audit-Execution*”); and then in the cases where refunds are still payable, the duration from when the audit is finalised until date of payment (“*Refund-Audit to Payment*”); see table below:

The illustrative table below has been furnished by SARS (the figures denote business days).

Audit Type	Product Type	Audit - Create to Allocate	Audit - Execution	Refund - Audit to Payment
1.Compliance	CIT	22	9	13
	PIT	26	5	7
	VAT	31	13	5
2.Limited	CIT	22	43	12
	PIT	24	44	7
	VAT	10	73	12
3.Full	CIT	19	100	52
	PIT	4	78	13
	VAT	8	108	42

While the timeframes given by SARS above may be taken as average, it needs to be stated that we have had cases in which the time taken between the identification for auditing and the allocation of an auditor took much longer; the same applies to the time taken to refund.

2.5.1 There should be very minimal delays in the first and last columns. It should ideally not take months to allocate a case to an auditor once it has been identified for audit; otherwise the case is lying dormant for no justifiable reason. Similarly, after the audit or verification has been completed and the taxpayer complied with his/her/its obligations, there should be no justifiable reason why payment should not be made immediately.

2.5.2 The above table provided by SARS presents two problems.

2.5.2.1 The first one is that SARS says that payment cannot be accurately tracked because there are too many variables that may delay payment; for instance, outstanding returns and bank account verifications. SARS has also indicated that there are systems limitations that make tracking this information across its different systems near impossible. The information in the last column is therefore not useful, except that it shows the need for the up-front verification of administrative issues to ensure that when the audit/verification is finalised there are no further administrative issues to delay payment.



2.5.2.2 The second problem only affects compliance audits and not “*Limited*” and “*Full Scope*” audits. When it comes to compliance audits (which represent 99% of total credit return audits)¹⁰, the procedure starts with a request for information and this period is then also included in the age analysis of the first leg in the procedure. For compliance audits therefore the data cannot be used. In terms of limited and full scope audits however, a case is identified for audit and there will be no actions taken on it until such time as it is allocated to an auditor to commence the audit. Any delay in allocating cases to an auditor at this stage would be problematic as such cases would lie dormant, whereas the period within which SARS must provide feedback to taxpayers in terms of the TAA and regulations, only starts once the audit commences. It took an average of 18.66 working days to allocate the 16,371 limited scope audit cases to auditors; and an average of 10.33 working days to allocate the 664 full scope audits. A question arises whether this can be regarded as reasonable considering that on average all limited and full scope audits in 2017 were already 3 weeks old before they were even touched by an auditor!

Illustrative case:

██████████: On 15 July 2016 this matter was identified for audit and SARS issued a Referral for Audit letter. On 20 September and 05 October 2016 Taxpayer requested feedback from SARS and was advised that the Personal Income Tax Assurance audit was in progress and that the Turn Around

¹⁰ 1,37million out of 1,38million credit audits fall within the compliance audit space.



Time was 3-12 months. The taxpayer lodged a complaint with this office and on 21 October 2016 a recommendation was sent to SARS to attend to the Personal Income Tax assurance audit and give the taxpayer progress report. According to SARS the matter was immediately allocated to an auditor and the audit was finalised on 24 November 2016 with the refund paid on 29 November 2016.

SARS response:

- *“The Report refers to a Table which represents average time frames, and the Report states that the OTO has had cases where the periods are longer. As the time periods in the illustrative table are average time periods, individual cases will be both longer and shorter than an average time. The specific reference of cases in the OTO's inventory which have longer time periods creates a negative tone and if this remark is made then it should be balanced with a comment that there are individual cases that have shorter periods”.*
- OTO's Comment: While this is noted, it must be borne in mind that the complaints are about delayed refunds; refunds within a short period are not an issue. Anyway, the word “average” means just that; it acknowledges that there are cases in either category: shorter period and longer period. The point must be made though that a delayed refund may have a devastating impact on a taxpayer.
- SARS: *“As raised at the outset, the meaning of systemic is that which relates to the system as a whole. By placing*



emphasis on some cases in the OTO's inventory the Provisional Report skews the objective of a systemic analysis".

- OTO's Comment: By virtue of the fact that the Ombud in general deals with complaints, any investigation of a systemic issue will naturally concentrate on negative aspects of the subject of the review. Systemic reviews by the Tax Ombud must seek to investigate any underlying issues in the tax system that negatively impact on taxpayers. The present issue is the alleged undue delay in the payment of verified refunds. Therefore, by placing emphasis on such complaints, the objective is not skewed, but focussed exactly where it should be.

2.6 Rand value and number of cases where assessments were raised in order to reduce unallocated credits (overpayments of tax) to zero for the 2016 and 2017 financial years;

Unfortunately, the information provided by SARS does not give a complete picture of the full financial impact this practice has on refunds; this is because SARS was not able to trace a large portion of this data prior to August 2016. What is also clear from previous years' reports is that the unallocated payments reduced significantly over several years and it would have been helpful to be able to establish the value of these reductions, allegedly attributable to SARS's practice to raise assessments purely to absorb these credits.

What is important to note is that from August 2016 to March 2017 only, more than R220million was reduced on PAYE in this fashion. While this number may seem trivial in relation to a trillion rand revenue collected by SARS, the practice of raising assessments solely to absorb credits simply because a taxpayer has



OFFICE OF THE
TAX OMBUD

Ensuring fairness

not explained an overpayment is of grave concern. This issue is linked to that of the raising of assessments to absorb credits (pages 35 - 43).

- SARS response:
We did not get any response.
- OTO's Comment: The practice to raise assessment for the purpose of absorbing credits which should otherwise be paid out to taxpayers, should be discontinued.

SECTION VI

FINAL REMARKS AND CONCLUSION

1. Final Remarks

- 1.1. Complaints increased during the latter part of 2016 to March 2017.
- 1.2. Where appropriate, recommendations have been made relative to the complaint(s) raised.
- 1.3. A number of complaints that the payments of refunds were unduly delayed were justified; the refunds could and should have been paid earlier. In such instances, no satisfactory explanations were given by SARS for the delays.
- 1.4. Some of the mechanisms employed by SARS discussed above, have justifiably given taxpayers the impression that SARS's intention is, at least in some instances, to avoid parting with the money it should pay out; see for example paragraph 7 SECTION IV, pages 35 - 43; and paragraph 2.6 SECTION V, pages 74 - 75.
- 1.5. The financial hardship to taxpayers caused by the delayed payment of refunds has been drastic in some instances; how much the amount is, does not matter.
- 1.6. It is accepted that SARS is confronted with the problem of fraudulent refund claims. Some of the measures it puts in place should be understood in this context.
- 1.7. Notwithstanding paragraph 1.6 above, once verification/audit of the refund is completed, there should be no undue delay; yet illustrative cases show that this has been happening.
- 1.8. It was commendable to pay out as many taxpayers as possible as SARS says it did, however:



1.8.1 that would be of no comfort to a taxpayer whose refund remains unpaid, and who may be enduring financial hardships;

1.8.2 the residual (non-paid) taxpayers may be of very high value, as indicated in the Report, whose payments, once made, would reduce the amount of tax collected over that particular period. It is therefore imperative that they be paid out timeously.

1.9 We finally conclude by pointing out the need for ensuring that refund payments are made as speedily as possible. Illustrative cases have shown that the system as presently administered by SARS does not always achieve this.

2. Conclusion

From this review, conducted in terms of section 16(1)(b) of the Tax Administration Act, 28 of 2011: It is clear that the system allows for SARS to unduly delay the payment of verified refunds to taxpayers in certain circumstances. This has become a systemic issue. The system does not sufficiently protect taxpayers. The removal of the obstacles discussed in the Report, as well as any others, would go a long way towards addressing the problem.

JUDGE B M NGOEPE
TAX OMBUD

Dated: 28 August 2017

ANNEXURE 1

A INVENTORY

DESCRIPTION	ACTION TAKEN BY OTO	ACTION TAKEN BY SARS - RESULTS	PERIOD IN OTO'S INVENTORY	REASONS FOR ACTION
<p>SERIOUS AND SYSTEMIC: Delay in refund payment: 20141104_Req_004.</p> <p>The taxpayer was assessed on 29 October 2013 for the 2013 tax year, which resulted in a refund. The refund was recalled by the SARS ACAS division on 4 July 2014 for further investigation in terms of Section 179 of the TA Act. The practitioner has followed up numerous times with SARS and escalated the complaint to the SSMO without any success. After 1 year and 1 month the issue has not yet been resolved.</p>	OTO requested SARS to bring the case to finality and communicate the decision to the taxpayer.	SARS accepted the OTO's recommendations. The required information was provided to ACAS but the refund remained unavailable. The SARS ACAS division was requested to unblock the account. The complainant confirmed that the account was unblocked at the end of January 2015.	70*	Finalised on 06/03/2015
<p>SERIOUS AND SYSTEMIC: Delay in refund payment: 20140703_Req_015.</p> <p>SARS had not released the complainant's VAT refund for 2014/01 and SARS failed to inform the complainant why the refund was taking more than 21 business working days. The complaint was closed by the SSMO without a resolution.</p>	The OTO requested SARS to investigate the delay in releasing the refund.	SARS accepted the OTO's recommendations. The complainant visited a SARS branch twice to change banking details; however, the SARS system could not upload the new details. After OTO's intervention the new banking details were captured and the refund was paid out.	61*	Finalised on 29/09/2014

ANNEXURE 2

B. IDENTIFIED EMERGING ISSUES IN TERMS OF S16(2)(F)

DESCRIPTION	ACTION TAKEN BY OTO	ACTION TAKEN BY SARS - RESULTS	PERIOD IN OTO'S INVENTORY	REASONS FOR ACTION
<p>SERVICE: SARS FAILURE TO ASSIST TAXPAYERS: 201407024_Req_002</p> <p>In this case the complainant requested that the assessments for the 2012 and 2013 periods be corrected. He visited the SARS Cape Town office four times and was still not assisted. He reported the matter to the SSMO, without any success. The case was rejected by the SSMO.</p>	<p>The OTO requested SARS to contact the taxpayer and make an appointment to assist him to resolve the assessments.</p>	<p>SARS agreed that this was a valid complaint. The 2013 was most urgent and was corrected with a revised assessment. A follow-up audit case was created and all relevant documents were scanned to the case.</p>		<p>Finalised on 04/08/2014</p>
<p>20140808_Req_019</p> <p>In this case the complainant requested SARS to release VAT refunds for the periods 2013/07 and 2014/01. He was informed that the banking details needed to be updated in order for the refunds to be released. The complainant went to a SARS Branch Office to update the banking details. After the turnaround time of 21 business days had expired, the matter was raised with the SSMO, where it was confirmed that the banking details were updated; the refunds were, however, still not paid out.</p>	<p>Due to undue hardship caused when SARS delayed the release of the VAT refunds, the OTO requested SARS to investigate the matter and release the outstanding VAT refunds.</p>	<p>SARS accepted the OTO's recommendations. The matter was rectified by capturing and approving the banking details. The refund was subsequently released.</p>		<p>Finalised on 30/09/2014</p>

ANNEXURE 3

B. IDENTIFIED EMERGING ISSUES IN TERMS OF S16(2)(F)

DESCRIPTION	ACTION TAKEN BY OTO	ACTION TAKEN BY SARS - RESULTS	PERIOD IN OTO'S INVENTORY	REASONS FOR ACTION
<p>20140703_Req_015</p> <p>In this case, the complaint concerns a VAT refund for the period 2014/01, which was delayed by SARS and no reason was provided to the complainant as to why the refund took more than 21 business working days. Despite escalation to SSMO, no feedback was given to the taxpayer as to when the refund would be released. The case was closed at the SSMO without resolving the matter as the refund was still not paid out.</p>	<p>The OTO requested SARS to investigate the matter and to release the refund urgently.</p>	<p>SARS accepted the OTO's recommendations. The delay was caused by banking details that were not updated after the complainant visited a SARS branch for this purpose. The new banking details were captured again and SARS paid the released refund.</p> <p>SARS finalised the audit and issued a revised assessment.</p>		<p>FINALISED 29/09/2014</p>
<p>20150209_Req_001</p> <p>In this case, SARS failed to revise tax assessments for 2011 to 2013 as agreed with the taxpayer. Despite escalation to the SSMO, the issue was still not resolved. The complainant was only informed that an audit was conducted for the 2013 tax period.</p>	<p>The OTO requested SARS to revise the assessment according to the agreement</p>	<p>A letter of finalisation was sent to the complainant.</p>		<p>Finalised 07/04/2015</p>

ANNEXURE 4

10.3 REPORT IN TERMS OF SECTION 19(2)(a)(b) OF THE TA ACT

Section 19(2) requires the Tax Ombud to list and provide details of at least 10 of the most serious issues encountered by taxpayers as well as identified systemic and emerging issues. The table below contains summaries and all details of these issues in compliance with this provision.

	ISSUE	SUMMARY	CATEGORY (SERIOUS/SYSTEMIC/EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
1	Delay in payment of refunds.	Delays on the part of SARS in paying refunds to taxpayers without any communication or notice to taxpayer. Even in some cases where no verification/audit is in process or where a verification/audit has been finalised with no adverse findings, stoppers are put in place to hold the refunds until taxpayers lodge complaints.	Serious/Systemic	Recommendation made for SARS to ensure that after audits have been finalised, all risks identified to be cleared and the refund stoppers simultaneously lifted; the refund SLA is to be adhered to at all times. SARS to communicate with affected taxpayers the reasons for withholding refunds.	SARS has implemented stringent refund rules to mitigate its risk due to fraud previously experienced. SARS refund rules are consistently revised to cater for taxpayer behaviour and trends. There are ongoing enhancements to SARS refunds systems which allow for the immediate processing of a refund and will improve turnaround times. This will include ensuring people are not stopped repeatedly with no result. SARS further indicated that empirical evidence has indicated that almost 90% of all refunds are paid within 60 days of submission.	16 months	Ongoing
2	Failure by SARS to update banking details	Bank account details have been updated by the taxpayers but not effected by SARS. This resulted in the refunds being paid into the incorrect bank accounts.	Serious/Systemic	Recommendations made for SARS to pay the refunds to the correct bank account.	SARS Responded by setting out certain criteria under which they will refund taxpayers under these circumstances.	11 months	Ongoing