



OFFICE OF THE  
**TAX OMBUD**  
*Ensuring fairness*

# **TAX OMBUD'S SYSTEMIC INVESTIGATIONS REPORT**

IN TERMS OF SECTION 16(1)(B) OF THE TAX  
ADMINISTRATION ACT 28 OF 2011



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ADMINISTRATION ACT 28 OF 2011

**PART I:** The fluidity of the Pay As You Earn Statements of Account (PAYE)

**PART II:** Complaints that SARS fails to adhere to the dispute resolution timeframes prescribed by the Tax Administration Act and the Dispute Resolutions Rules promulgated under the Act

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# GENERAL INTRODUCTION

## 1. THE OFFICE OF THE TAX OMBUD AND ITS MANDATE

The Office of the Tax Ombud (OTO)<sup>1</sup> was established in terms of Sections 14 and 15 of the Tax Administration Act, 28 of 2011 (TAA). The Tax Ombud 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 (the Minister) in April 2014.

The mandate of the OTO is set out in Section 16(1) of the TAA as follows:

- (1) “The mandate of the Tax Ombud is 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 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 this Act or a procedural or administrative provision of a tax Act.”*

## 2. THE REQUEST MADE

In his letter dated 5 July 2018, the Tax Ombud made a request to the Minister in terms of Section 16(1)(b) of the TAA for the Minister’s approval to conduct a systemic investigation into the following two issues:

- 2.1. Complaints by taxpayers about the fluidity of the Pay As You Earn (PAYE) statements of account; and
- 2.2. Failure by the South African Revenue Service (SARS) to adhere to the Dispute Resolution Rules, Procedures and Timeframes prescribed in the Regulations and the TAA.

The purpose was to establish whether the above complaints constituted systemic issues or revealed emerging systemic issues.

## 3. THE MINISTER’S APPROVAL

The Minister granted his approval in his letter dated 10 September 2018.

## 4. THE REPORT

This Report is in respect of the investigations into the above two issues, and is therefore divided into two parts:

- PART I, which deals with the issue of the fluidity of the PAYE statements of account; and
- PART II, which deals with SARS’s failure to adhere to the prescribed timeframes.

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<sup>1</sup> References to “we”, “us”, “our” and “this office” are references to the OTO.



# PART I

INVESTIGATION INTO THE FLUIDITY OF THE PAY AS YOU  
EARN STATEMENTS OF ACCOUNT

# SECTION I: EXECUTIVE SUMMARY

## 1. THE ISSUE

Industry bodies expressed concerns to the OTO about the accuracy of the PAYE statements of account, caused by changes in the SARS standard operating procedures and system upgrades over several years. Despite several taxpayer engagements with SARS, the problem persisted.

The purpose of the investigation was to determine whether the underlying transactions reflected on the statements of account were correctly processed by SARS in line with payment allocation rules or if the fluidity of the statements of account was arbitrary.

In this context, fluidity refers to frequent unexplained changes occurring in a short space of time to taxpayer statements of account.

## 2. REASONS FOR THE REQUEST

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

## 3. METHODOLOGY

In the course of conducting the review, the OTO held meetings with various stakeholders, including SARS, for their input.

## 4. DATA CONSIDERED

The data that was considered was sought, and obtained, from SARS. The data is as indicated in Section III of this report. Some inputs from taxpayers were also considered.

## 5. PRELIMINARY OBSERVATIONS

Following SARS's response to the initial request for information, actual statements of account provided by taxpayers were considered and some observations were made that seemed to contradict the explanations given by SARS. The anomalies were identified and further clarity was sought from SARS.

## 6. FINAL REMARKS AND FINDINGS

The investigation revealed five aspects that might have given rise to the complaints lodged about PAYE statements of account:

### 6.1. Inadequate Communication

In order to comply with the latest accounting standards, SARS implemented system and statement of account enhancements. The OTO did find, however, that the explanations given by SARS on certain transactions were either not correct or not detailed enough and thus added to the confusion.

While the confusing communication from SARS may strengthen the perception that SARS does not have a basis for passing the journals reflected on the account, the OTO is not convinced that the communication constitutes a systemic issue. In all the specific instances investigated in this category, the

OTO found that the underlying transactions applied by SARS conformed to the payment allocation rules and that the journal entries were justified.

**Recommendation:**

SARS is requested to consider improving its communication with taxpayers, and desist from issuing generic letters.

## 6.2. SARS Errors

SARS does in fact make mistakes which it acknowledges. However, the mistakes identified were isolated incidents of human error and cannot therefore be regarded as systemic in nature.

**Recommendation:**

These mistakes, given the difficulty in getting them corrected, may contribute towards the perception that SARS issues journal entries arbitrarily. The OTO therefore recommends that more effort be made to eliminate them.

## 6.3. Questionable Letters

The OTO found some letters issued by SARS purporting to be in response to taxpayer requests. SARS confirmed that taxpayers had not made any such requests but rather that the letters contained standard paragraphs that could not be edited.

This issue does not fall within the scope of the investigation but will be taken up with SARS on a separate platform.

## 6.4. Absorption of Credits

This is not a new issue. The raising of assessments by SARS to clear credits on PAYE accounts is a historic issue. It was raised in the Tax Ombud's Report on Delayed Refunds, dated 23 August 2017. While SARS stopped the practice, it does not show any inclination to rectify the assessments raised under those circumstances, unless requested by a taxpayer to do so. SARS's practice directly impacts on the fluidity of the PAYE statements and the tax compliance status of taxpayers.

The moment SARS raises the assessments incorrectly, it results in the EMP501 reconciliation reflecting as outstanding. The taxpayer cannot file an amended EMP501 reconciliation because its initial declaration would be deemed correct.

This is a systemic issue that needs to be rectified.

**Recommendation:**

The OTO recommends that SARS identifies all transactions where it incorrectly raised assessments to clear out credits on PAYE accounts and correct these.

## 6.5. Lack of knowledge of the Payment Allocation Rules

Knowledge of Payment Allocation Rules on the part of taxpayers would help them understand how journal entries are passed.

This is an education issue and not systemic in nature; therefore, no recommendations will be made.

# SECTION II: DESCRIPTION OF THE ISSUE AND METHODOLOGY USED

## 7. DESCRIPTION OF THE ISSUE

- 7.1. Industry bodies have raised concerns with our office over the fluidity of the PAYE statements of accounts. They complain that statement of account balances change constantly throughout any one day, with SARS passing journal entries with no explanation to taxpayers as to why such entries are made. The practical result is that the real status of a taxpayer's account is so fluid that neither SARS nor the taxpayer knows exactly what the status of the account is at any given time.
- 7.2. In addition, industry bodies complain that the PAYE account system allocates any amount paid to PAYE, UIF and SDL in that sequence. Where a debt arises in any period, all subsequent payments are allocated in this sequence, regardless of the taxpayer's intentions. These allocations are normally done without informing the taxpayer, resulting in reconciliation problems for both SARS and taxpayers. As a result of this problem, most corporates, according to the industry bodies, employ dedicated resources to review and reconcile statements of accounts daily as balances continuously change throughout any one day.
- 7.3. Industry bodies say that despite several engagements with SARS, the problem persists and is widespread.
- 7.4. SARS's conduct described above has serious negative financial implications for taxpayers; for example:
- 7.4.1. A taxpayer who genuinely believes itself to be fully compliant when applying for a tax clearance certificate may not obtain a certificate because of these discrepancies caused by the PAYE system. This may result in the taxpayer sometimes being prevented from doing business because of the "PAYE non-compliance status" when the taxpayer is in fact fully compliant.
- 7.4.2. Linked to the incorrect "PAYE non-compliance status", the taxpayer concerned is barred from receiving payments from government departments; this results in severe cash flow problems for the taxpayer.
- 7.4.3. In some instances, SARS may pursue recovery steps on a "debt" that is created by the PAYE system, when in reality there is no such debt; the drastic powers SARS has to recover a debt are well known.

## 8. METHODOLOGY

Taxpayers and industry bodies were invited to make formal submissions on their experiences with the fluidity of the PAYE statements of account. To avoid unduly limiting the investigation, no specific questions were posed to stakeholders. They were encouraged to provide examples of specific issues, concerns or transactions that might possibly impact on the fluidity of the PAYE statements of account.

Based on the submissions made and complaints received on the issue, SARS was requested to provide specific information.

For the sake of validation and completeness, the responses received from SARS were tested against the information provided by stakeholders, as well as against the actual information available on SARS systems.

### The following approach was used:

- 8.1. PAYE statements of account provided by taxpayers were analysed for any inconsistencies by comparing the taxpayer presentations with the information reflecting on the SARS systems. This was done for each transaction on the statements of account.
- 8.2. The OTO scrutinised SARS's responses against the chain of communications that was sent to taxpayers concerning any changes made on the tax accounts of employees of the taxpayers.
- 8.3. We also physically provided SARS with sample copies of statements of account received from taxpayers. It was noted that SARS officials themselves could not give an explanation by merely reading the statements of account without having to access the system.
- 8.4. We scrutinised the internal policy<sup>2</sup> issued by SARS following the initiation of this investigation, against the statements of account issued. Our aim was to see if SARS was adhering to the policy.
- 8.5. We tested whether SARS correctly applied the payment rules as explained in detail under Section III of this Report. For this purpose, we scrutinised the sample statements of account that were provided by some taxpayers. In addition, in cases where approved requests for compromise or deferred payment arrangements were granted, we also tested the applicability of payment rules for completeness and accuracy. Our aim was to identify any possible inconsistencies that might have led to the distortion of the statements of account.
- 8.6. We also tested the effectiveness and correctness of written communication (letters) sent by SARS to taxpayers following allocation of payments, passing of journals, reconciliation assessments and revised declarations.
- 8.7. Furthermore, we scrutinised the sample of journals reflecting on the statements of account to ascertain whether these were system generated or manual, and what had given rise to them.
- 8.8. We scrutinised the sample statements of account showing reconciliation assessments. Our intention was to ascertain whether these assessments were as a result of a taxpayer's action as SARS had indicated that reconciliation assessments were only generated in response to a taxpayer's action.
- 8.9. We requested SARS to show us any improvements made to the PAYE statements of account processes. In this way, it would be possible to ascertain any positive impact made in addressing the fluidity of the PAYE statements of account.
- 8.10. We tested the effectiveness of the process taxpayers must follow if aggrieved with the journal processed by SARS. Our aim was to ascertain whether or not taxpayers know how this process works.
- 8.11. Finally, we scrutinised the statements of account in order to test the allegation that they reflected penalties and interest charged by SARS even though taxpayers had submitted returns and made payments timeously.
- 8.12. A preliminary report was provided to SARS for final comments and the response was considered before finalising this Report.

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<sup>2</sup> Internal Policy - Manage Account Journal Adjustments, GEN-ACM-01-POL02, effective from 15 February 2019.

# SECTION III: DATA CONSIDERED

## 9. INFORMATION REQUESTED BY THE OTO FROM SARS

We are grateful to SARS for the cooperation received in relation to the requests for information in this systemic investigation. The information received was prepared in a professional and concise manner and was provided timeously, especially given the technical nature of the issue in question. The initial information requested from SARS included explanations on:

- 9.1. Specific concerns raised in the submissions received that could impact on the fluidity of the PAYE statements of account; and
- 9.2. SARS internal policies and standard operating procedure (SOP) governing PAYE account maintenance.

## 10. ANALYSIS OF THE INFORMATION RECEIVED FROM SARS AND TAXPAYERS

SARS provided highly detailed information about how PAYE is accounted for on its systems and a presentation was also done to the OTO for clarification of the accounting rules. Please note that annexures referred to in SARS's verbatim responses have not been included in the final report as they included confidential information. The following is a summary of the relevant information and explanations provided by SARS.

### 10.1. General Payment Rules

SARS only recognises a payment once it is received into its bank account. Any payment received into the bank account after the due date will be regarded as a late payment. Taxpayers must ensure that all payments are made before the cut-off time in order to ensure that the funds reflect timeously in the SARS bank account.

A unique payment reference number (PRN) is pre-populated on every PAYE return (EMP201) and is used to match the payment to the items reflecting on the specific return. It is therefore imperative that when making payment, taxpayers ensure they are using the PRN reflected on the EMP201. If the incorrect PRN number is used, the payment will either be allocated to the incorrect account/period or reflected as unallocated on the statement of account.

### 10.2. Payment Allocation Rules

**SARS allocates payments according to the declared value in the following sequence:**

- PAYE tax value in the following sequence – penalty, interest, tax (capital), additional tax/USP
- UIF contribution value in the following sequence – penalty, interest, tax (capital), additional tax/USP
- SDL value in the following sequence – penalty, interest, tax (capital), additional tax/USP.

**If there is still a balance remaining after the above allocations have been made, the balance will be allocated to any other outstanding debts, starting with the oldest, in the following order:**

- Outstanding PAYE - penalty, interest, tax (capital), additional tax/USP
- Outstanding UIF - penalty, interest, tax (capital), additional tax/USP
- Outstanding SDL - penalty, interest, tax (capital), additional tax/USP
- ETI debt (if any).

In the event that there is still a credit left over, it will be placed in the unallocated account.

In addition, any payments made using an incorrect PRN number will be placed in the unallocated account. The same applies when there is no debt on the applicable period, as well as to payments made

without submitting the necessary returns.

Below is an example provided by SARS of a simple transaction to illustrate the payment rules.

## Payment allocation rule

### Example - simple allocation

#### Payment made on/before 7th

	Date	Total PAYE	PAYE			Total UIF	UIF			Total SDL	SDL		
			Tax	Penalty	Interest		Tax	Penalty	Interest		Tax	Penalty	Interest
Declaration	7/10/2018		1000			200				100			
Payment - R1300	7/10/2018	-1000	-1000			-200	-200			-100	-100		
<b>Balance</b>			<b>0</b>	<b>0</b>	<b>0</b>		<b>0</b>	<b>0</b>	<b>0</b>		<b>0</b>	<b>0</b>	
Declaration less payment		1000 - 1300 = 300			200 - 300 = 100			100 - 100 = 0					

#### Payment made after 7th

	Date	Total PAYE	PAYE			Total UIF	UIF			Total SDL	SDL		
			Tax	Penalty	Interest		Tax	Penalty	Interest		Tax	Penalty	Interest
Declaration	7/10/2018	1000	1000			200	200			100	100		
Interest and Penalty	8/10/2018	180	0	100	80	36		20	16	18		10	
Payment - R1300	9/10/2018	-1000	-820	-100	-80	-200	-164	-20	-16	-100	-82	-10	
Declaration less payment		1000 - 1300 = 300			200 - 300 = 100			100 - 100 = 0					
<b>Balance</b>	<b>31/10/2018</b>	<b>180</b>	<b>180</b>	<b>0</b>	<b>0</b>	<b>36</b>	<b>36</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>18</b>	<b>0</b>	
Interest	30/11/2018	14			14	3			3	1		1	
Balance of account when payment is received		194	180	0	14	39	36	0	3	19	18	0	
Payment - R200	30/11/2018	-194	-180		-14	-6	-3		-3	0	0	0	
<b>Balance</b>	<b>30/11/2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>18</b>	<b>0</b>	

## 10.3. Journals

### Journals shown on statements of account can be the result of various actions:

Firstly, in order to reallocate a payment to the correct period, SARS processes a journal following successful or unsuccessful engagement with the taxpayer.

Secondly, some journals are a result of the payment rules mentioned earlier. Specifically, these journals are processed when taxpayers request the allocation of a payment via e-filing and adjust their PAYE reconciliation (EMP501).

Furthermore, a journal is processed in the event a taxpayer submits a request for correction (RFC), irrespective of whether it is related to the EMP201 or EMP501.

In essence, whenever the capital liability for PAYE, UIF or SDL is changed for one of the above reasons, the

original payment will be reset to zero and reposted against the revised liabilities, in accordance with the payment rules. These transactions result in journals being reflected on the PAYE statements of account. According to SARS, a notice is issued to taxpayers once a manual journal is effected. In the event that the taxpayer is not in agreement with the journal that was processed, a request can be made for reallocation of the payment via any of the SARS communication channels (branch, contact centre or e-filing).

### In essence, the explanations given by SARS are that as long as the PAYE return was:

- filed on time,
- the payment was made timeously and using the correct PRN, and
- the declaration was not subsequently changed in any way,

no journal entries will appear on the statement of account.

Below is an example provided by SARS of a more complex transaction where a declaration was revised after payment was received, further illustrating how journals are raised.

## Payment allocation rule

### Example - Revised declaration after payment is received

Where a declaration is revised the payment must be reset and reallocated based on the new liability.

#### Payment made after 7th

	Date	Total PAYE	PAYE			Total UIF	UIF			Total SDL	SDL		
			Tax	Penalty	Interest		Tax	Penalty	Interest		Tax	Penalty	Interest
Declaration	7/10/2018	1000	1000			200	200			100	100		
Interest and Penalty	8/10/2018	180	0	100	80	36		20	16	18		10	8
Payment - R1300	9/10/2018	-1000	-820	-100	-80	-200	-164	-20	-16	-100	-82	-10	-8
Declaration less payment		1000 - 1300 = 300			200 - 300 = 100			100 - 100 = 0					
<b>Balance</b>	<b>31/10/2018</b>	<b>180</b>	<b>180</b>	<b>0</b>	<b>0</b>	<b>36</b>	<b>36</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>18</b>	<b>0</b>	<b>0</b>
Interest	30/11/2018	14			14	3			3	1			1
Balance of account when payment is received		194	180	0	14	39	36	0	3	19	18	0	1
Payment - R200	30/11/2018	-194	-180		-14	-6	-3		-3	0	0		0
<b>Balance</b>	<b>30/11/2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>18</b>	<b>0</b>	<b>1</b>
Recon assessment	5/12/2018	-200	-200			0	0			0	0		
New declaration value			800				200				100		
JE reverse (reset the payment)	5/12/2018	1000	820	100	80	200	164	20	16	36	18	10	8
JE reverse (reset the payment)	5/12/2018	194	180		14	6	3		3	0			
Interest and Penalty adjustment based on new declaration		-36		-20	-16	0		0	0	0			0
Balance of Account after payments are reset and P&I are adjusted		944	800	80	64	236	200	20	16	118	100	10	8
Payment - R1300 (allocate according to declaration value)	9/10/2018	-800	-656	-80	-64	-200	-164	-20	-16	-100	-82	-10	-8
Remainder		144	144	0	0	36	36	0	0	18	18	0	0
Payment - R1300 (200 remaining after allocation per declaration value)	9/10/2018	-144	-144			-36	-36			-18	-18		
Payment - R1300 (R2 left after allocation to remainder of the account - R2 will be left in the unallocated account)													
Payment - R1300	9/10/2018	-944	-800	-80	-64	-236	-200	-20	-16	-100	-82	-10	-8
Balance of Account after R1300 was reallocated to the account and before the payment of R200 is allocated		0	0	0	0	0	0	0	0	0	0	0	0
Payment - R200 - Unallocated account	30/11/2018	0				0				0			
<b>Balance</b>	<b>31/10/2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Unallocated account		0				0				0			

#### 10.4. Levying of penalties and interest on the PAYE statement of account

Penalties and interest are levied when no payment is made, the payment is less than the liability or the payment was made late. In addition, where the PRN used to make payment does not match the PRN on the return, such payment will not be allocated against the liability of that return. Even when the payment, was timeous, the use of an incorrect PRN will result in penalties and interest being levied. According to SARS, when the payment is subsequently correctly allocated, it is done using the date on which the payment was actually received. Accordingly, the penalty and interest will be reversed automatically.

#### 10.5. Recon Assessments

The recon assessment is raised when the EMP501 reconciliation figures are different from the PAYE declarations (EMP201). The recon assessment is raised based on the information that the employer submits to SARS.

##### **In a nutshell:**

- when the EMP501 monthly liability differs from the monthly EMP 201, a recon assessment will be raised for the difference on the applicable period; and

- where the EMP 501 annual liability differs from the total liability (combined IRP5 PAYE, UIF and SDL totals), a recon assessment will be raised in the last month of the reconciliation period being submitted, i.e. August or February.

It is therefore imperative for the employer to ensure that correct information is submitted to SARS in order to avoid the fluidity of the statement of account.

When SARS raises an assessment (revised declaration) due to an audit or verification, a notice of revised assessment is issued. However, there is an allegation that no notices are issued when it comes to recon assessments as these are the result of the change initiated by an employer via the EMP501. According to SARS:

“An outcome letter is generated and sent to the employer once the case has been finalised. The revised EMP501 is also attached to this letter in order for the taxpayer to see the changes.”

In the event that the taxpayer disagrees with the recon assessment, the taxpayer needs to revisit the information submitted on the EMP501 and submit an amended reconciliation. According to SARS, where a declaration has prescribed, a reduction in declaration will not be allowed.

# SECTION IV: ANALYSIS AND DISCUSSION OF THE ISSUES

## 11. OTO OBSERVATIONS AND RESPONSES BY SARS

Following the response to the initial request for information, certain observations were made that seemed irreconcilable with explanations given by SARS and further clarity was therefore sought. It must be noted that not every observation sent to SARS needs to be discussed.

### 11.1. Quality review: explanations provided to taxpayers

#### OTO observations:

Correspondence from SARS to taxpayers was reviewed. In one specific case, although the initial service request from the taxpayer related to VAT, the explanation provided by SARS directly impacted on the PAYE statement of account.

The correspondence indicates that certain VAT refunds were transferred to the PAYE account to offset outstanding debt. On further investigation, this was found to be incorrect. The VAT refunds were indeed paid out to the taxpayer and were never transferred to offset the PAYE account.

Incorrect explanations from SARS are further cause for confusion when it comes to the PAYE statements of account.

#### SARS response:

“It must be noted that the Debt Equalisation journal was only implemented during April 2014 with the implementation of the RAM journal. Prior to this all debt equalization was done with a departmental refund. A manual cheque was issued and then paid onto the PAYE account. The transaction on the Statement of Account will thus reflect as a payment and not a journal.

As per annexure 1 a cheque was issued on period 2008/11 dated 2009/01/19 to effect debt equalization. For the period 2009/11 to 2013/03 a manual cheque to the amount of R48.920.06 was issued and paid onto the PAYE account with a remission date of 2013/05/31.”

#### OTO's further question:

“Once a case is reviewed by Account Maintenance, is there any quality review process in place to ensure that the explanations and information provided to taxpayers are accurate and correct?”

#### SARS response:

“Where letters are sent through “contact taxpayer” verifiers have to approve these letters before Service Manager will release the letter to the taxpayer.

Part of the verifiers' process is to approve the journal as well as to review the letter and check whether the taxpayer was answered correctly.”

#### OTO observations:

While we do note that SARS no longer issues cheques in order to effect debt equalisation, SARS only provided the taxpayer with an explanation during 2017. The fact that the statement of account indicates that a refund was paid out to transact for the debt equalisation creates a contradiction that was not explained properly in the correspondence to the taxpayer. If the explanation that was provided to this Office had been given to the taxpayer in question, the latter would most likely have understood and there would have been no need to expend further resources and time on the issue. That said, even though the description of the transactions on the statement of account and subsequent explanation by SARS were

in fact incorrect, the underlying transactions were in our view processed correctly.

**Recommendation:**

SARS should ensure that the quality of the correspondence it issues to taxpayers is improved, and that the correspondence is issued promptly.

## 11.2. Quality review: debt equalisation journals across tax types

**OTO observations:**

11.2.1. To illustrate the concern described above about debt equalisation, we note that the taxpayer submitted the EMP201 in respect of the 11/2016 period out of time. This resulted in penalties and interest accruing on the account.

The taxpayer proceeded to pay the penalties and interest on the 13th of December 2016 (R291,323.52). The taxpayer requested that penalties and interest be waived, and SARS approved the request on 27 January 2017. This resulted in a credit on the account.

However, on 29 May 2018, SARS proceeded to perform a debt equalisation transaction from the VAT account (period 2018/04) to the PAYE account.

The reason for this debt equalisation account is unclear since there was no outstanding debt on PAYE account in this period.

The penalties and interest on the account were also reinstated. It is unclear from SARS's system on what date the penalties and interest were reinstated.

OTO asked SARS to indicate why the debt equalisation was done.

**SARS response:**

"On the date of the debt equalization was done (29/05/2018) the PAYE account reflected a debt on both 2016/11 and 2014/02 periods. The payment for 2016/11 was reflecting in the unallocated account. Before the debt equalisation was done, the user should have checked for unallocated payments

specific to this period."

**OTO observations:**

Kindly explain the process that is followed, including the different approval levels, to ensure that only valid debt equalisation journals are processed?

**SARS response:**

"When the refund risk engine receives a refund to be paid, it will first check debt on all other taxes. Should debt exist on another tax type for the same legal entity, a generic-e case is created for Account Maintenance: Refunds business area indicating the reference number and period where the debt exists.

Before doing debt equalisation the user must check whether debt exist and also take into consideration any suspension of debt; payment arrangements and unallocated payments before the journal is done. When doing the journal RAM will call up the debit on the specific period to which the credit must be allocated to. If there is no debt on the account, the RAM does not allow the journal. Once the journal is done, it is routed for approval by the verifiers (can also be approved by the Ops Managers).

Subsequent to the journal done on the specific case, the SOP was enhanced to ensure that the user check for unallocated payments prior to debt equalisation being done. This was implemented during April 2019."

**OTO observations:**

SARS acknowledges that an error occurred in that the debt equalisation should not have been processed due to the fact that the debt was caused by an amount that reflected as an unallocated payment. This would have impacted on the taxpayer's compliance status, and caused unnecessary journal entries reflecting on the statement of account.

However, SARS updated its internal policies in April 2019. This office considered the amended policy and it is expected that the changes to the policy will eliminate this problem.

There is therefore no need for the OTO to make any recommendation in this regard.

11.2.2. Similarly, three companies within a group structure had VAT credits for the 2018/04, 2018/06 and 2018/09 periods.

SARS proceeded to do a debt equalisation from these VAT accounts to the 02/2008 UIF account of a fourth company within the group. There was however no liability on this UIF account for the period 2018/09.

Three letters issued to the taxpayer pertaining to the debt equalisation indicated that the letters were in response to the request received from the taxpayer.

It is noted that the letters were generated on the same day that the debt equalisation journals were processed, and no request from the taxpayer is attached to these cases.

SARS's system for period 02/2008 reflects neither debt equalisation journals nor the reversal thereof. The only information reflected is the submission of the EMP201 and the related payment.

**Can SARS please give clarity on the following?**

- The employee approval levels applicable to the transaction?

**SARS response:**

“All journals have a second level approval, which is done by the verifiers, but can also be done by the Ops Managers.”

- Were the three letters generated indeed generated as a result of a request received from the taxpayer and if not, why were they generated as if they were?

**SARS response:**

“In the above three cases SARS did not receive a request from the taxpayer. Letters are issued through “contact taxpayer” on Service Manager to ensure that users do not use their SARS e-mail accounts. Using their SARS e-mail accounts results in taxpayers sending responses and requests directly to the internal e-mails instead of using SARS approved channels.

Users can only insert the content of the letter into

the required text fields on “contact taxpayer”. The generic information such as the introduction paragraph, which refers to the taxpayer’s request, is, automated. Users have the ability to review the generated letter to the taxpayer, but cannot alter any static information which is part of the system template.”

**OTO observations:**

While not necessarily an issue to be raised in this report, the concern must be highlighted that there is no indication on the system indicating that the letters were not generated at the taxpayer’s request. On face value, these letters indicate that a request was made by the taxpayer. This practice is problematic as it compromises the audit trail for the sole reason that SARS would not wish for the taxpayers to contact its officials (via e-mail).

There is therefore no need for the OTO to make any recommendation in this regard. This issue will be addressed with SARS outside the scope of this Report.

- Why does SARS’s system no longer reflect the debt equalisation journals and what is the reason for this?

**SARS response:**

- o “It must be noted that a user cannot allocate or debt equalise any payments or credit to UIF or SDL. All allocations are done to PAYE using a PRN number whereby the system will allocate such credits to PAYE, SDL and UIF according to payment rules.
- o The amount of R14064.94 (2018/04) was debt equalised to PAYE period 2008/02 on 2018/06/28. The balance at that time was R14064.94. This journal was subsequently reversed 2018/06/28 as it created credits on the UIF account. The credit was refunded on 2019/03/04.
- o The amount of R14178.72 (2018/06 VAT period) was debt equalized to PAYE period 2008/02 as the previous debt equalisation journal was reversed as it created credits on the UIF account. The journal was subsequently reversed on 2018/08/30 and the credit refunded on 2019/03/04.

- o The amount of R1240.25 was debt equalised from the 2018/09 VAT period to the 2008/2 PAYE period and reflects as a debt equalisation journal.”
  - Is it not better to rather indicate the transfer back to the respective VAT accounts on the PAYE statement of account?

**SARS response:**

“The debt equalization reversal journals do reflect on the statement of the account. In the above example, the transactions reflected on the unallocated account, which will not reflect on the statement of account.”

**OTO observations:**

The letters referred to initially, as well as the explanation by SARS above, indicate that debt equalisation journals were done for a specified period. However, we found that there was no debt in that period and SARS confirms above that no debt equalisation journals reflect on the statement. The reason for this is that according to the payment allocation rules, any payment allocated to a period for which there

is no debt, is reflected as a credit on “unallocated payments”, and not as a debt equalisation journal. Accordingly, this is a situation where the transaction was applied correctly in terms of the payment allocation rules, but the debt equalisation journal was done by SARS in error. The erroneous letters explaining the transactions added to the confusion of what exactly transpired.

That said, even though this was clearly an error by SARS, there is no evidence that this was due to a practice, trend, policy or anything other than an isolated incident that would negatively impact on taxpayers other than the one involved. It can therefore not be found that the problem created in this instance is the result of a systemic issue.

For this reason, there is no need for the OTO to make any recommendation in this regard.

It must be noted with some concern, though, that the error by SARS was only resolved almost nine months after the journal was incorrectly processed.

## 12. SARS RAISING ASSESSMENTS TO ABSORB CREDITS

This issue was dealt with in detail in the OTO’s previous systemic report on the allegation of delayed refunds by SARS. Accordingly, we do not elaborate on it in this Report, other than to the extent that the issue relates to specific observations that have not been covered previously. Only the responses relevant to this Report will be mentioned.

It is important to note that SARS ceased this practice on 20/07/2017; however, there may still be issues arising from time to time in respect of assessments raised before that date.

### 12.1. OTO observations Case 1:

A review into this PAYE account indicated that the taxpayer last updated the EMP 501 on 18 March 2015. The recon assessments resulted in credits for the 04/2013 to 01/2014 periods. On 27 January 2017, SARS issued internal revised assessments (DECL-RD) for the 04/2013 to 01/2014 periods. Notes on the SARS systems merely indicated that

the assessments were issued as no explanation was received from the taxpayer. The note is unclear as to what the taxpayer needed to explain; however, we draw the conclusion that SARS saw the credits on the account and then raised the assessments to absorb them. The accompanying EMP217 notice of assessments issued through Service Manager gave the adjustment reason as: “Tax credits: Corrected”. The grounds for the assessment merely stated: “Refer to letter”. No letter was attached to any of the above-mentioned Service Manager cases. The revised assessments issued resulted in the EMP501 for the 2014/02 period reflecting as not submitted on the SARS Core System, impacting the compliance status of the taxpayer.

**SARS response:**

“The assessments were raised by Account Maintenance on 2017/01/27 to absorb the credit (prior to the date of instruction). As per the above general note, the taxpayer had to explain the reason for the credit on

the account and also notify the user the action to be taken on the credit, should the reason be satisfactory. Although the notes are unclear, it is assumed that the taxpayer did not respond to the letter issued by the user, resulting in the assessments being raised.

SARS however do agree that the reasons stated on the EMP 217 are not clear and inadequate and that no further letter was issued to the taxpayer. However, the EMP 217 does state that the EMP 501 should be resubmitted.”

## 12.2. OTO observations Case 2:

The taxpayer submitted the 2016/02 IRP5 reconciliation on 1 June 2016. The reconciliation resulted in a credit of R968.14 for the 2016/02 period. SARS issued a revised assessment (DECL-RD) on 8 February 2017 to absorb the credit on the 2016/02 period. Due to the assessment raised by SARS to absorb the credit on the account, the IRP 5 reconciliation is now marked as not submitted, impacting on the tax compliance status of the taxpayer. SARS issued the notice of assessment on 8 February 2017. The adjustment reason is listed as “refer to the letter” and the grounds for the assessment indicate “assessment based on information available to SARS”. It is noted with concern that there is no letter attached to the case and the grounds for the assessment are also not very clear.

### SARS response:

“The assessments were raised by Account Maintenance on 2017/02/08 to absorb the credit (prior to the date of instruction), because the taxpayer did not respond to the request sent. However, SARS does agree that the reasons provided to the taxpayer is not clear.”

### OTO observations:

In both the above cases, SARS acknowledges that the reasons provided to the taxpayers are not clear. Indeed, the lack of clear and concise grounds and reasons for assessments issued to taxpayers is evident.

### Recommendation:

It is therefore recommended that SARS ensures that sufficient reasons are provided to taxpayers in all instances where assessments are raised.

### OTO observations:

In light of the above and the explanations provided by SARS during our meeting, we therefore request SARS to indicate the process followed to correct all these assessments that were previously raised to absorb the credits on the accounts.

### SARS response:

“Due to the fact that this was a historic process it would have resulted in volumes of assessments raised to absorb credits over the years, it will not be possible to reverse all these assessments and SARS is reliant on taxpayers to request the reversals of such assessments. In many instances the taxpayer has already submitted a Notice of objection or requested SARS to reverse these assessments.”

### OTO observations:

It is in our view unfair of SARS to put the burden of rectifying its incorrect actions on taxpayers, especially in an instance where the incorrect action in question was, by SARS’s own admission, not communicated properly in the first place. The fact that SARS indicates high volumes of these assessments were raised exacerbates the situation.

Furthermore, the matter as described above illustrates an ancillary systemic issue. When SARS raised the assessment to absorb the credit that changed the statement of account for that period, it resulted in the EMP501 reconciliation for the 2016 tax year being reflected as outstanding. This means that the taxpayer’s compliance status is non-compliant. The taxpayer cannot resubmit the EMP501 as it was in fact correct in the first place. The taxpayer cannot be expected to resubmit an EMP501 in order to balance with SARS’s assessment under these circumstances. This will be the scenario in all instances where SARS raised assessments to absorb credits on PAYE.

### Recommendation:

It is recommended that SARS identifies all transactions described on its systems as ‘DECL-RD’ and correct the assessments raised incorrectly and reflect the correct EMP501 reconciliation status on its systems. Even though SARS stopped raising assessments under these circumstances, the historical treatment of these credits not only impacted on the fluidity of statements but also currently affects taxpayers’ tax compliance statuses.

## 13. RE-SUBMISSION OF EMP 501 RECONCILIATIONS ALREADY SUBMITTED BY THE TAXPAYER

### **OTO observations:**

The SARS Internal Policy – Reconciliation Processing PAYE – AE – 04 – POL01 has reference.

Page 6 of the policy indicates that if an EMP501 is processed and SARS subsequently revises the EMP201 that falls within the reconciliation period, the EMP501 will automatically be marked as outstanding and the taxpayer will have to resubmit the EMP501.

A point was raised with SARS as to what the rationale was for this decision since this severely impacts on the taxpayer as the tax compliance status will now be reflected as non-compliant for a reconciliation that was already submitted.

SARS expects taxpayers to submit a revised declaration taking into account the adjustments made by SARS.

The time period from the original submission of the reconciliation to the revised EMP201 from SARS may make it difficult for taxpayers to obtain all the information for re-submission. Furthermore, SARS regularly updates the formatting of e@syFile and the codes and required fields may change.

Even in instances where the taxpayer successfully disputes a revised EMP201 by SARS, the adjustment raised to give effect to the outcome of the dispute will result in the EMP501 reflecting as outstanding, and would require resubmission by the taxpayer if our understanding is correct.

### **SARS response:**

“The only revised declarations that are issued are done by either Compliance Audit or Enforcement audit and will result from a verification or audit that was done. The rationale behind the decision is that the

taxpayer has to update IRP 5 certificates of affected employees taking into account the audit findings and resubmit the EMP 501 by including the audit result as well as issuing/re-issuing of IRP 5 certificates.

Where a revised declaration is issued by Compliance or Enforcement Audit a letter of findings is issued. Account Maintenance no longer issues revised declarations to absorb credits.

Where SARS did not provide the taxpayer with adequate reasons for an assessment, the taxpayer can request such reasons via e-filing.

In terms of Section 99 the limitation on the issuance of assessments is also applicable to SARS, therefore an assessment post-prescription is not allowed.

Where the taxpayer successfully disputes the revised declaration, the latest version of the EMP 501 can be resubmitted to SARS as it should still be available on easyfile/e-filing.”

### **OTO observations:**

The explanation by SARS is in our view justified. We do note however that SARS states in its response that Compliance Audit issues letter of findings in these circumstances. SARS indicated in another unrelated issue to the OTO that it believes letters of findings on additional assessments raised by Compliance Audit are not required in law and does not issue them. The inclusion of Compliance Audit in this explanation therefore seems to be either an exception to this practice or an error.

### **Recommendation:**

There is no need for this office to make any recommendation in this regard.

## 14. PENALTIES AND INTEREST

### 14.1 OTO observations Case 1

The taxpayer submitted the return and payment for period 2016/08 on time, being 7 September 2016.

The statement of account reflects penalties and interest accruing on the SDL account on 8 September 2019.

The account further indicates that a recon assessment for PAYE, UIF and SDL was issued on 26 October 2016.

All recon assessments in effect resulted in the reduction of the initial liabilities declared and paid, resulting in an overpayment on all three of the payroll taxes.

According to SARS, in instances where there is an overpayment, the remainder is allocated to the unallocated account.

On 8 June 2017, another recon assessment was issued.

The liabilities on all three payroll taxes increased due to the assessment; however the net effect of all these assessments was still less than the original declaration by the taxpayer.

The excess payment that resulted from the recon assessment on 26 October 2016 was already allocated to the period 2016/01.

This resulted in the underpayment of the SDL for the 09/2016 period and in penalties and interest being imposed.

Please explain the rationale for the decision to have penalties and interest accrued on the account when allocations resulted in an underpayment.

#### **SARS response:**

“Due to the payment allocation rules a payment is reallocated every time a liability on one of the three payroll taxes is changed. In this instance the payment was reallocated due to the revised liabilities on the EMP 501 resulting in a partial allocation of the payment to the unallocated account. The unallocated payment was allocated to period 2016/01 by changing the PRN number of the partially unallocated amount (the original payment is split between the actual liability and unallocated account – a new PRN is given to the unallocated amount when allocated to another period). When the additional assessment was raised to increase the liabilities, the original payment was already partially allocated to another period, thus reducing the amount paid on the specific PRN number, resulting in an underpayment on SDL which caused the penalties and interest. The system would no longer recognize the portion of the payment that was allocated to 2016/01 as the PRN number was changed.

Example below for illustration purposes:

Date	Description	Total	PAYE	UIF	SDL	Notes
2016/09/07	Declaration	336,414,728.26	302,457,813.81	17,391,492.70	16,565,421.75	
2016/09/07	Payment	-336,414,728.26	-302,457,813.81	-17,391,492.70	-16,565,421.75	Payment with PRN number ...
2016/09/26	Recon assessment	-5,309,209.77	-5,309,209.77	0.00	0.00	Total declaration value on PAYE – R331,105,518
	Payment reversed	336,414,728.26	302,457,813.81	17,391,492.70	16,565,421.75	
	Payment repost	-331,105,518.49	-297,148,604.04	-17,391,492.70	-16,565,421.75	R5,309,209.80 allocated to unallocated account with PRN .... This PRN is then changed to ... in order to allocate the partial payment to 2016/01
2016/11/30	Revised Declaration	5,006,611.85	5,006,611.85	0.00	0.00	Total declaration value on PAYE – R336,112,130
	Payment reversed	331,105,518.49	297,148,604.04	17,391,492.70	16,565,421.75	Original payment of R336,414,728.30 was split as follows: PRN: ... R331,105,518.50 PRN: ... R5,309,209.80
	Payment repost	-331,105,518.49	-302,457,813.81	-17,391,492.70	-11,558,809.91	Only the remaining amount on the original payment is allocated to the period.
	Balance	0.00	0.00	0.00	5,006,611.84	
2016/09/07	Penalty (10%)				500,661.18	SDL outstanding due to partial payment allocated to another period.

In order to fix this, the taxpayer may request the reallocation of the original payment to the period it was intended for.”

## 14.2. OTO observations Case 2:

The taxpayer submitted the return and payment for the 2015/08 period on time, being 4 September 2015. The statement of account indicates that penalties and interest were imposed on the SDL account on 8 September 2015.

The account further indicated that a recon assessment was raised for PAYE, UIF and SDL on 23 October 2015.

This revision reduced the liabilities per the original declaration and created an over payment of R203,314.09, which was allocated to the unallocated payment account.

A portion of the R203,314.09 was then allocated to the 03/2010 period.

On 16 February 2016, a further assessment was raised to increase the liability once more; however, the net effect of all the revisions was less than the original submission.

Once again penalties and interest were imposed on the SDL account.

Please explain the rationale for the decision to have penalties and interest accrued on the account when allocations resulted in an underpayment.

### SARS response:

“Due to the payment allocation rules a payment is reallocated every time a liability on one of the three payroll taxes is changed. In this instance the payment was reallocated due to the revised liabilities on the EMP 501 resulting in a partial allocation of the payment to

the unallocated account. The unallocated payment was allocated to period 2010/03 by changing the PRN number of the partially unallocated amount. When the additional assessment was raised to increase the liabilities, the original payment was already partially allocated to another period, thus reducing the amount paid on the specific PRN number. This resulted in an underpayment on SDL which caused the penalties and interest. The system would no longer recognize the portion of the payment that was allocated to 2010/03 as the PRN number was changed. The reason for the underpayment reflecting on the SDL account is due to the allocation rules, which will allocate a payment in the sequence of PAYE, UIF and the SDL.

In order to fix this, the taxpayer may request the reallocation of the original payment to the period it was intended for.”

## 14.3 OTO observations Case 3:

In this case it is noted that a penalty imposed on the SDL account for the 2015/08 period amounted to R5,276.50.

The total value of the additional assessments raised on 16 February 2016 (presumably voluntary disclosure assessments) for PAYE and SDL combined was R52,765.03 (PAYE – R52,016.50, SDL – R748.53). The said penalty levied on the SDL account appears to be 10% of the total assessment value including the PAYE.

### SARS response:

Taking the above explanation with regards to the payment allocation into consideration the penalty on the SDL account for the period 2015/08 was calculated on the outstanding balance as follows:”

Date	Description	Total	PAYE	UIF	SDL
2015/09/04	Declaration	173,875,578.09	158,932,349.76	7,256,711.56	7,686,516.77
2015/10/23	Recon Assessment	-203,314.09	-199,181.76	-475.56	-3,656.77
2016/02/16	Assessment	52,765.03	52,016.50	0.00	748,53
2015/09/04	Payment (partial payment allocated to 2016/01)	166,041,420.50	158,785,184.50	7,256.236.00	-7,630,843.50
	Balance	52,765.03	0.00	0.00	52,765.03
2015/09/08	Penalty (10% of balance)				5276.50

#### 14.4 OTO observations Case 4:

SARS imposed penalties and interest on the 08/2016 SDL period of the taxpayer. The calculated penalty is more than the actual value of the SDL assessment. Please explain why the penalty was calculated on the SDL account only.

#### SARS response:

Taking the above explanation with regards to the payment allocation into consideration the penalty on the SDL account for the period 2016/08 was calculated on the outstanding balance as follows:”

Date	Description	Total	PAYE	UIF	SDL
2016/09/07	Declaration	336,414,728.26	302,457,813.81	17,391,492.70	16,565,421.75
2016/10/26	Recon Assessment	-5,312,089.30	-5,309,209.77	-1,718.24	-1,161.29
2016/11/30	Revised Declaration	5,006,611.85	5,006,611.85	0.00	0.00
2017/06/08	Recon Assessment	305,477.19	302,589.11	1,718.54	1,160.54
2017/08/29	Recon Assessment	-2,880.00		-1,719.00	-1,161.00
2017/11/27	Recon Assessment	2,880.00		1,719.00	1,161.00
2016/09/07	Total payment PRN ... R336,414,728.30 (Partial payment allocation of R310,224.15 to 2010/03)	-336,414,728.26	-302,457,813.81	-17,391,492.70	-16,565,421.75
2016/07/21	Journal (Receipt A39829119)	-2,840.00		-1,719.00	-1,121.00
2016/07/21	Journal (Receipt A39829119)	-38.53			-38.53
2016/07/21	Journal (Receipt A39829119)	-1.84			-1.84
	Balance	307,343.52			307,343.52
2016/09/08	Penalty (10% of balance)	30,734.35			30,734.35

#### OTO observations:

The payments were processed correctly in terms of the payment allocation rules even after the recon assessments were amended.

Should a taxpayer under those circumstances believe that a different allocation will change the penalty and/or interest amounts, the reallocations can be done on e-Filing.

It is crucial for taxpayers to understand the payment allocation rules and to understand how to allocate payments properly.

#### Recommendation:

There is no need for the OTO to make any recommendation in this regard.

## 15. COMPROMISE AND DEFERRED PAYMENT ARRANGEMENTS GRANTED BY SARS

### **OTO observation:**

- 15.1. How will a compromise granted by SARS on the PAYE be accounted for on the PAYE statement of account?

### **SARS response:**

“Once the taxpayer paid the amount according to the compromise agreement a settlement journal is done on the account to effect the remainder of the terms of the agreement. This journal will reflect as “write-off- journal” on the statement of account. It must be noted that settlements, compromise and write-offs are done by Debt Management.”

- 15.2. The taxpayer submitted a request for a deferred payment agreement (DPA) in respect of the PAYE debt and this was granted by SARS. However, the statement of account did not reflect the allocation of payments as per the agreement.

The taxpayer was provided with a PRN number (LX-PRN) in order to effect the necessary payments in accordance with the DPA. These payments were made; however, it would appear that the SARS payment rule was applied on all related transactions, overriding the terms of the deferred payment agreement.

Due to the system allocation in line with the SARS payment rules, the taxpayer ended up being non-compliant and unable to obtain a tax clearance certificate.

### **SARS response:**

“The payments in question all have the same payment date (2018/10/31) and LX number (LXxxxxx). Initially the payments were allocated by the system as per

the allocation rules starting from the UIF tax period 2013/05.

On 15 November 2018 a SM case was created (RFS#xxxxxxx) where the taxpayer requested that the payment be allocated as per the DPA with Collections. As per the taxpayer’s request, ACM then correctly allocated the payments as follows:

- R7,275 incorrectly allocated to UIF (2013/05) was then allocated to PAYE debits as per DPA for PAYE
- R7,755 incorrectly allocated to UIF (2013/08 to 2013/10) was then allocated to SDL debits as per DPA for SDL
- R10,999 incorrectly allocated to SDL (2013/08 and 2013/10) was then allocated to UIF debits but not as per DPA for UIF due to payment rules being applied by the system when allocating.

The deferment arrangement was made on PAYE only, while there was still debt on UIF and SDL. When the taxpayer made the payment it was allocated to the oldest debt first as per the allocation rules. This was a debt management user error by not including the debt of UIF and SDL in the deferred arrangements. Debt Management will reiterate the rules on deferred arrangements to ensure that the total debt on employees’ taxes are included.”

### **OTO observations:**

While we note there was an error on the part of a SARS official in this instance, it can be categorised as an isolated user error and not as systemic in nature.

### **Recommendation:**

There is no need for the OTO to make any recommendation in this regard.

## 16. SYSTEM REVERSING THE REMISSION OF PENALTIES AND INTEREST THAT WERE PREVIOUSLY GRANTED.

### OTO observations:

- 16.1. The taxpayer submitted the 2017/01 EMP201 on 1 February 2017; however, SARS only received payment on 8 February 2017. Penalties and interest therefore accrued on all three payroll taxes. On 9 March 2017, the statement of account reflected a liability on the account totalling R164, 655.39. The taxpayer paid the full liability on the same day. A request for remission of penalties and interest was submitted to SARS on 14 March 2017. SARS remitted the penalty in full and the interest partially on 6 May 2017. A credit recon assessment was issued on 6 December 2017. This resulted in the reversal of the remittance of the penalties and interest that was previously granted. SARS indicated in the closeout report on the case that the system erroneously reversed the penalties that were remitted previously.
- 16.2. A second case indicated that the taxpayer incurred penalties and interest on the 2016/11 period due to the late payment of the EMP201 declaration liability. The taxpayer requested SARS consideration for the remittance of the penalties and interest incurred. The request was partially allowed on 27 January 2017 and the outcome implemented. The remittance was subsequently reversed and later reinstated again. It is noted that no additional assessments were issued for this period.

Can SARS indicate if the system is developed to reverse the penalties and interest remitted, once any further assessments are raised? What was the reason for this? Why was the remittance cancelled even in instances where a credit assessment was issued and should not have had an impact on the decision that was taken to remit the penalties and interest?

### SARS response:

“The remission of penalties and interest journals are reversed systematically in the following circumstances:

- when the liability on the specific period has reduced subsequent to the penalties and/or interest being remitted;
- when an allocation on a payment with a date prior to the declaration date is made AFTER the remittance of the penalty and/or interest.

In this case allocations were done on payments with a receipt date prior to the date of declaration; however the journals were done after the date of declaration thus reducing the amount of penalty that was raised on the account to R268,205.21. The user remitted the penalty before the allocations were done to this period. Subsequently the system reversed the remittance journal that was done. Below is an analysis of the period 2016/11 in processing date order:”

Date	Transaction	Amount
2016/12/05	Declaration	2,724,057.52
2016/12/08	Penalty (original penalty of R272,504 recalculated after allocations done on 2018/05/24)	268,205.21
2016/12/08	Payment	2,724,057.52
2017/01/27	Remission of penalty (based on original penalty raised on the account)	-272,405.75
2018/05/24	Allocation journal (receipt date – 01/03/2011)	-21.63
2018/05/24	Allocation journal (receipt date – 01/03/2011)	-33,906.39
2018/05/24	Allocate payment (receipt date – 07/08/2014)	-8,077.39
2018/05/26	Remission of penalty reversed	272,405.75
2010/10/09	Remission of penalty (based on the recalculated amount)	268,205.21

“Should the remission journal not be reversed, it will create incorrect credits on the account. A follow-up is created for Account Maintenance to investigate the reversal and reinstate the remission journal on the new amount.

It must be noted that the remission journal allows a user to enter any amount to be remitted and is treated as a separate transaction type.”

**OTO observations:**

The explanations provided are acceptable. It is also

## 17. RECON ASSESSMENTS

**OTO observations:**

In correspondence dated 28 February 2019, SARS indicated that recon assessments were as a result of a taxpayer action and not a SARS action. However, the SARS Internal Standard Operating Procedure – Manage Excessive Liability – GEN – ACM 01 – SOP09 indicates the contrary. The SOP indicates that any variance from the liability adjustment rules will systematically trigger an excessive liability case (ELC). This enables Account Maintenance team members to adjust the liability amounts on behalf of the taxpayer to allow for the successful processing of the EMP501. The SOP indicates that a taxpayer will be afforded an opportunity to provide the reasons for the variance. If SARS is not in agreement with this, it would do the revision and Service Manager would give the submission status as ELC.

**SARS response:**

“The EMP501 processing rules were enhanced to include functionality on Service Manager whereby reconciliations with liability changes in excess of a predefined threshold are stopped for verification.

The liability variance is either a percentage or amount that is set per tax type. It is a parameterised value and is performed for both an increase and decrease of the value. The liability variance check is performed for each monthly liability on the EMP501, as well as the total liability.

When a variance has been detected on the front-end (e-filing/Easyfile) the taxpayer is immediately alerted

noted that the system creates a follow-up case to confirm if the remission journals should be reinstated after the payment rules are applied. Although the explanation provided in this process is plausible, it differs significantly from the one provided in the closeout report as referred to in the first example above.

**Recommendation:**

There is no need to make any recommendations.

to the variance and a reason for the variance must be captured by the taxpayer before the EMP501 can be submitted. Once submitted a case is created for an Accounts Maintenance user to check each monthly value where the variance was detected. The reason as captured by the taxpayer is displayed on the case.

The case will display the liability values as per the Core Tax System (this is based on EMP201 values and any subsequent SARS or Employer revised declaration), the liability values declared on the EMP501 with the total liability values on the EMP501. The user has the ability to either accept the employer declaration or SARS declared values per period as well as the difference on the reconciliations. The user does not have the ability to enter their own amounts.”

**OTO observations:**

- 17.1. In SARS exercising its duty in making the above decision, what verification work is conducted by the SARS official and to what extent is this reviewed?
- 17.2. Please indicate whether the reasons for SARS adjusting the assessment will be communicated to the taxpayer prior to the revision.
- 17.3. In instances where SARS adjusts the reconciliation, what description or reason would be shown on the assessment?

**SARS response:**

“Where the reasons for the variance are not accepted by the user, the taxpayer is engaged to either further explain and fix the error and resubmit the recon.

Based on the reasons and engagement a selection will be made (SARS or Employer values). If the EMP501 values submitted by the employer are not accepted, the user will select the SARS value, which will be processed. An outcome letter is generated and sent to the employer once the case has been finalized. The revised EMP501 is also attached to this letter in order for the taxpayer to see the changes.”

“When an ELC case is created the EMP501 has not yet processed to the Core Tax System. This is only processed once the ELC case is finalized. There is thus no description on the assessment or statement of

account except for the “recon assessment” transaction where SARS accepted the EMP value should it differs from the SARS value.”

**OTO observations:**

There were no systemic issues identified in this instance.

**Recommendation:**

There is no need to make any recommendations in this regard.

## 18. RECON ASSESSMENTS ISSUED NOT TAKING SECTION 99 OF THE TAA INTO ACCOUNT

**OTO observations:**

The taxpayer submitted the original 2011/02 EMP201 on 7 March 2011.

The reconciliation submitted on 16 March 2017 resulted in a reduced recon assessment being issued. This assessment was issued after the prescribed period as stipulated in terms of section 99 of the TAA. A second recon assessment was issued on 11 May 2018, increasing the liability. No amended reconciliation reflects on Service Manager. We could only establish one reconciliation (EMP501) that was submitted on 16 March 2017. SARS indicated in correspondence dated 28 February 2019 that where a declaration has prescribed, a reduction in declaration would not be allowed. Can SARS indicate whether it was the taxpayer or SARS who issued the recon assessment dated 11 May 2018?

**SARS response:**

“After the taxpayer submitted original EMP501, revised declarations were done by SARS increasing the liability. Subsequently the second EMP501 was on 2017/03/16, reducing the revised declarations issued by SARS. This EMP501 was also submitted post prescription

of three years (any returns submitted prior to the implementation of the TAA). No objection against these SARS assessments was received.

When the EMP501 was processed to the core the following should not have taken place:

1. The liability for the periods 2010/03, 2010/06 and 2010/12 should not have reduced the SARS assessments. (During 2017 SARS implemented a validation on Easyfile and E-filing alerting the taxpayer that a reduction of a SARS assessment is not allowed on the EMP501 and that the amount being entered must be inclusive of the SARS assessment).
2. The liability for the above periods should not have reduced because the EMP501 was submitted post prescription.

With the system fix in May 2018 this reduced assessment of R6,373.42 was reversed with a debit recon assessment of the same amount for the above reason 2.”

Below is a detailed analysis of the 2011 transaction year:

Period	EMP201 declaration	EMP501 (VO) Submission	Revised declaration	EMP501 (V1) Submission	Current balance on account	Notes
		2011/05/13		2017/03/16		
201003	35,660.18	35,660.00	1,928.88	35,660.00	37,588.88	Assessments Raised - 2013/11/27
201004	35,660.18	35,660.00		35,660.00	35,660.18	
201005	35,616.18	35,660.00		35,660.00	35,660.18	
201006	43,310.18	43,310.00	827.52	43,310.00	44,137.52	Assessments Raised - 2013/11/27
201007	36,830.18	36,830.00		36,830.00	36,830.18	
201008	36,830.18	36,831.00		36,830.00	36,830.18	
201009	36,762.68	36,763.00		36,763.00	36,762.68	
201010	36,738.48	36,738.00		36,738.00	36,738.48	
201011	36,513.48	36,513.00		36,513.00	36,513.48	
201012	630,333.68	63,034.00	3,617.02	63,034.00	66,651.02	Assessments Raised - 2013/11/27
201101	39,183.81	39,184.00		39,184.00	39,183.81	
201102	30,388.86	30,389.00		30,389.00	30,389.00	
Total		466,571.00	6,373.42	466,571.00	472,945.99	Credit assessment of R6,373.42 reversed to apply prescription

**OTO observations:**

No current systemic issues have been identified.

**Recommendation:**

There is no need to make any recommendations in this regard.

**OTO observations:**

Furthermore, will a revised assessment be allowed after the prescription period if the revision increases the liability?

**SARS response:**

“For employees’ tax (PAYE) assessments (which is self-assessment), the prescription period is five years after the date of an original assessment [s99 (1)(b)]. The rules for any subsequent additional or reduced assessment post prescription have its own unique rules.

Additional assessments (in terms of s92).

SARS will accept a revised assessment post prescription period if the employer increases its tax liability. The reason for this can be found in s99 (2)(b).

The above limitation of s99 (1)(b) will not apply if, the full amount of tax chargeable was not assessed due to either fraud; intentional or negligent misrepresentation; intentional or negligent non-disclosure of material facts; or failure to submit a return [(s99 (2)(b)]. Where a taxpayer (an employer) amends its EMP501 return to increase its tax liability, SARS presumes that the taxpayer is acknowledging that, if is a fact that something had taken place that was not included in its original declaration which will result in the current assessment not reflecting the correct amount of tax; and that this ‘fact’ has resulted in the full amount of tax chargeable was not assessed; and it is linked to one of the elements under s99 (2)(b). SARS prima facie accepts the amended declaration and processes the amended return on the SARS system.

All employers have a statutory duty to deduct or withhold the correct amount of employees’ taxes and pay that over to the Commissioner (para 2(1) of Fourth Schedule). Where it is discovered that this was not done, SARS is of the view that the employer was negligent and did not take proper care in ensuring that the employees’ tax was correctly calculated and paid over.

Keep in mind as well, that on any subsequent additional employees' tax liability, where the employer is personally liable for this payment, para 5(1) of Fourth Schedules states that "the employer shall pay that amount to the Commissioner not later than the date on which payment should have been made if the employees tax had in fact been deducted or withheld in terms of paragraph 2". This takes this additional liability back to the original tax period.

Example: EMP201 for January 2010 tax liability = R1 million (due 7th February 2010). Where an under declaration of R200 000 was discovered in January 2016, the additional tax liability must be raised in January 2010 tax period. The employer will be liable for the payment R200 000 + interest calculated from 8th February 2010.

The limitation in s 99(2)(b) can also be set aside where SARS and the taxpayer agree prior to the expiry of the limitations period [see s99(2)(c)].

Reduced assessments (in terms of s93)

In contrast, there are a completely different set of rules for a reduced assessment post prescription.

The limitation of s99 (2)(b) can only be set aside if –

- S99(2)(d)(iii) – if SARS becomes aware of a readily apparent undisputed error in an assessment [s93 (a)(d)] (by SARS or taxpayer) before the assessment prescribed. For taxpayer (employer) to make use of this provision, the employer must identify the error and bring

it to the attention of SARS by the last day of the prescription period. Using the example above, this will be by the latest 31 December 2015, that SARS must become aware of this error;

- S99 (2)(e) – if SARS receives a request for a reduced assessment under s93 (1)(e). Only s93 (1)(e)(ii) and (iii) will be applicable. That is a processing error by SARS or a return fraudulently submitted by a person not authorised by the taxpayer; or
- Where SARS and the taxpayer agree prior to the expiry of the limitations period [see s99 (2)(c)].

Based on the explanation above, it is for this reason that post prescription on additional assessment is systematically accepted.

During May 2018 the SARS PAYE system was enhanced to take into account the Section 99 legislation and to automatically apply prescription when a revised declaration is submitted. A system fix was also done retrospectively to apply the prescription rule to any revised declaration."

#### **OTO observations:**

SARS's explanation and interpretation of the relevant legislation is correct.

#### **Recommendation:**

There is no need to make any recommendation in this regard.

## **19. GENERAL OBSERVATIONS BASED ON THE PRESENTATION MADE BY SARS**

#### **OTO observations:**

Based on the presentation made, it was apparent that SARS relied on certain functionalities within its system to track allocations made in the statements of account. The observation has been made that even SARS itself finds it difficult to explain certain transactions by merely looking at a statement of account without accessing its systems. Unfortunately, this resource is not available to taxpayers and tax practitioners.

#### **SARS response:**

"It must be noted that almost all system changes on PAYE will impact the statement of account. A comprehensive list of changes cannot be provided, but the following major changes were made:

- Various validation rules on the submission of the EMP501 to ensure complete and accurate submission:
  - o Validating IRP 5's
  - o Validating the calculations of ETI and non-compliance

- o Where non-compliance is not rectified, the processed EMP501 will be auto-corrected.
- o Addition of warning messages on the EMP501 where liability value differs significantly
- o Creation of Excessive Liability change cases to ensure correctness of the submitted EMP501 before it is processed to the Core
- o SARS revised declaration can no longer be reduced on an EMP501
- o Implementation of Section 99 prescription
- Changes to the payment allocations
  - o Mismatch function – no longer use zero-PRN numbers
  - o Enhancement of NB journal where payments have prescribed”

**OTO observations:**

It appears that there was a systemic problem. However, the OTO appreciates the improvements made by SARS to the PAYE statements of account and system in general. As these enhancements were implemented while this investigation was already in progress, we could not on concluding this Report properly assess the effectiveness of the enhancements.

**Recommendation:**

We note the measures taken by SARS but recommend that, given the problems and confusion created among taxpayers, an effort be made to ensure that the measures referred to above are effective.

# SECTION V: FINAL REMARKS AND FINDINGS

## 20. FINAL REMARKS

When the investigation started, the general perception was that SARS was in some way changing taxpayers' PAYE statements of account for seemingly no reason. These changes, it was alleged, reflected on statements of account as journal entries. In our view, two specific aspects fuelled these perceptions.

Firstly, it is clear that there is a general lack of knowledge about the payment allocation rules applied by SARS. If a taxpayer is not aware of how these rules apply, they would understandably be confused about why journal entries are being passed on their accounts.

Secondly, it is also clear that there have been breakdowns in communication between SARS and taxpayers, resulting in confusion. The way in which the statements of account were drafted resulted in even

SARS itself not being able to interpret them without accessing its systems to establish what the underlying transactions were actually about. Even when SARS attempted to explain these transactions in writing, in the instances we considered, the explanations could not assist in giving clarity to the taxpayers. One could therefore understand to a certain extent why taxpayers had the perception that SARS passed journal entries without reason.

In the course of the investigation, SARS implemented improvements to the PAYE system, as well as to its statements of account. Since the implementation thereof, the OTO has not received further formal or anecdotal complaints that are not legacy issues. While it may still be too early to say for certain, it may be assumed that the enhancements have been effective at least to a certain extent.

## 21. CONCLUSIONS/FINDINGS

In essence, the investigation revealed the following problems:

### 21.1 Poor communication

SARS has not thus far disputed that its statements of account were not very coherent. It is acknowledged that in order to comply with the latest accounting standards, SARS has implemented system and statement of account enhancements. These improvements, which SARS had already started planning and implementing at the start of this investigation, are to be welcomed. In instances where transactions were explained to taxpayers, it appeared that SARS could have crafted its explanations better. The correspondence was written in such a manner that the writer assumed the reader had some knowledge of internal SARS matters. While confusing communication from SARS may strengthen the perception that SARS does not have a basis for passing the journals reflected on the statements of account, we are not convinced that this constitutes a systemic issue. In all the specific instances we investigated in this category, it was

found that the underlying transactions applied by SARS conformed to the payment allocation rules and that the journal entries were justified.

#### **Recommendation:**

SARS is requested to consider improving its communication with taxpayers. The ultimate objective is to enable a taxpayer to understand how the journals are passed.

### 21.2 SARS Errors

In some of the instances we looked into, SARS did in fact make mistakes and, in an attempt to prevent the reoccurrence of errors, updated certain policies. In light of the fact that SARS had already taken steps to address the errors, which we found were isolated incidents of human error, no finding of a systemic problem is made. These mistakes and the difficulty

in having them corrected may, however, contribute to the perception that SARS issues journal entries arbitrarily.

**Recommendation:**

As SARS has already taken steps to address the errors, there is no need for any recommendations.

### 21.3 Questionable Letters

The OTO found that SARS had issued letters purporting to be in response to taxpayer requests. However, SARS confirmed that no such requests had been made by taxpayers. Rather, the letters were generic and contained standard paragraphs that could not be edited out.

**Recommendation:**

SARS should refrain from sending letters containing information that is not relevant to the particular taxpayers. In addition, if any generic information is contained in the letter, it should be indicated as such.

### 21.4 Absorption of Credits

SARS raising assessments to clear credits on PAYE accounts is a historical issue that was raised in the Tax Ombud's 2017 report on delayed refunds. Although SARS has stopped the practice of raising assessments to clear credits, it appears not to be rectifying the assessments previously raised unless requested by a taxpayer to do so. There are legacy issues identified that directly impact on the fluidity of the PAYE statements and tax compliance status. The moment SARS raises the assessments incorrectly, it results in the EMP501 reconciliation reflecting as outstanding.

The taxpayer cannot however file an amended EMP501 reconciliation because its declaration was correct. This is a systemic issue that needs to be rectified.

**Recommendation:**

It is recommended that SARS identifies all transactions where it incorrectly raised assessments to clear out credits on PAYE accounts and correct those so that the taxpayers that have already been negatively affected are not further prejudiced.

### 21.5 Lack of knowledge of the Payment Allocation Rules

As the investigation progressed, it became apparent that there was a general lack of knowledge on the part of taxpayers about the payment allocation rules applicable to PAYE accounts.

Apart from the specific instances addressed separately above, where the finger pointed at SARS, we established that the changes made to taxpayers' statements of account were initiated through taxpayers' actions, requests or errors, and were not a matter of SARS making changes on its own. We also found that all the underlying transactions were correct. Some statements of account had pages full of journal entries for one tax period, but all of them were the result of recon assessments. Had taxpayers had more knowledge of the payment allocation rules, it might have helped them understand how or why journal entries were passed.

**Recommendations:**

This is an education issue and not a systemic one; therefore, no recommendations are made.



# PART II

COMPLAINTS THAT SARS FAILS TO ADHERE TO THE DISPUTE  
RESOLUTION TIMEFRAMES PRESCRIBED BY THE TAA AND THE  
DISPUTE RESOLUTIONS RULES PROMULGATED UNDER THE ACT

# SECTION I: EXECUTIVE SUMMARY

## 22. DESCRIPTION OF THE ISSUE

An investigation into SARS's failure to adhere to the Dispute Resolution timeframes prescribed by the TAA and the Dispute Resolutions Rules promulgated under the Act.

## 23. REASONS FOR THE REQUEST

In light of the escalating number of complaints, the Tax Ombud sought and obtained the Minister's approval in terms of section 16(1)(b) to conduct an investigation into SARS's adherence to the dispute resolution requirements.

## 24. METHODOLOGY

In the course of conducting the review, the OTO held meetings with various stakeholders, including SARS, for their input.

## 25. DATA CONSIDERED

The data that was considered and analysed is contained in Section III of this Report. It comprises complaints from taxpayers, our interactions with SARS and the latter's responses to our observations.

## 26. FINDINGS AND RECOMMENDATIONS BASED ON THE ANALYSIS OF THE DATA

The OTO has found that indeed in several respects SARS fails to adhere to the timeframes prescribed by the TAA and the Dispute Resolution Rules promulgated under the Act. This applied to applications for condonation in all respects, as well as the handling of appeals.

Several findings have been made regarding the causes of delays, such as the unnecessary clogging of the system by unjustified re-assessments against which taxpayers have to appeal, only for most appeals to be conceded. Other problems are the result of SARS's incorrect inclusion of the dies non period

(16 December to 16 January), and the erroneous inclusion of public holidays in various timeframe requirements. Yet another problem is SARS's practice of keeping manual records, which are not always accurate, of appeal steps. We make recommendations in respect of each issue found, all of which are, aimed at eliminating the delays. In other instances, we find that the fault lies with the taxpayer, such as when documents are not submitted in time. Finally, we also find that whereas SARS is empowered to enforce its assessment against a taxpayer without further ado after 75 days, SARS often allows such matters to remain alive beyond that period.

## 27. A CONCLUDING REMARK ON FINDINGS AND RECOMMENDATIONS

### 27.1. On findings:

Both SARS and taxpayers fail to adhere to the prescribed timeframes, but SARS is at the greatest fault given the power it wields against taxpayers and the prejudice they may suffer.

### 27.2. On recommendations:

SARS should endeavour to adhere to the prescribed timeframes and address the fundamental causes of the delays it causes, as set out in this Report.

# SECTION II: DESCRIPTION OF THE ISSUE, CHALLENGES FACED AND METHODOLOGY USED

## 28. DESCRIPTION OF THE ISSUE

The Dispute Resolution Rules (DR Rules) promulgated under s103 of the Tax Administration Act prescribe procedures to be followed in lodging an objection and appealing against an assessment or decision that is subject to objection and appeal. The DR Rules also set out the procedures for alternative dispute resolution.

Furthermore, the rules set out certain timeframes within which specific steps must be taken by either party (the taxpayer and SARS).

Generally, and perhaps understandably, SARS adopts a very strict approach towards taxpayers in enforcing compliance with the timeframes; however, it does not itself always adhere to the timeframes.

Non-compliance by SARS with the prescribed timeframes has been highlighted by the OTO as one of the major sources of complaints we receive. We have repeatedly raised the issue with SARS in our periodic reports to the SARS Commissioner, as well as in every one of the Tax Ombud's Annual Reports to Parliament, submitted in terms of Section 19(2) (a) of the TAA. The question of adherence to dispute

resolution procedures and timeframes was raised as early as in the 2014/15 Annual Report, followed by the 2015/16 report, which indicated that 17.50% of the total complaints received related to the dispute resolution process. The 2016/17 Annual Report reflected an additional increase of 22.01% in the number of complaints relating to dispute resolution, bringing the total increase to 39.51%. This improved slightly in 2017/18, when these complaints decreased to 29.85%, but still high enough to be a cause for concern.

Despite repeatedly having these shortcomings brought to its attention, SARS has not taken the necessary steps to resolve the underlying causes of the delays, which persist into the present.

### Illustrative case:

The timelines in the matter below illustrate the problem. It should be noted that the taxpayer in this matter did not lodge a complaint with this office; rather, we identified the case through the data received from SARS. The matter is used purely to illustrate the kind of problems taxpayers encounter in the dispute resolution process.

30/01/2017	SARS raised an additional assessment on the taxpayer's 2014 tax year.
09/02/2017	The taxpayer lodged an objection well within the 30-day period allowed.
20/03/2017	First instance of non-compliance: SARS requested substantiating documents after the prescribed 30 days. <sup>3</sup>
16/05/2017	Second incident of non-compliance. SARS disallowed the objection because the taxpayer did not respond to the request for substantiating documents. While we note that SARS was correct in disallowing the objection due to non-submission by the taxpayer, it did so outside the prescribed timeframe. <sup>4</sup>

<sup>3</sup> See Rule 8(1).

<sup>4</sup> See Rule 9(1)(b)(ii).

17/05/2017	The taxpayer lodged an appeal well within the 30-day prescribed period, but SARS's system incorrectly routed it automatically for condonation.
01/10/2018	SARS took the decision to allow the request for condonation on the basis that it was routed for condonation due to a system error. There is no legislative or other guideline to determine a timeframe for SARS to make a decision on a request for condonation.
19/10/2018	341 business days after the system incorrectly routed the appeal for condonation and 14 days after the decision was taken to allow condonation, SARS informed the taxpayer of its decision.
10/01/2019	Third instance of non-compliance: SARS conceded in full to the appeal but made the concession long after it had become obliged to inform the taxpayer whether or not the appeal was suitable for alternative dispute resolution (ADR).
14/01/2019	SARS revised the assessment finalising the dispute.

In this matter, it took SARS approximately 445 days from the date the objection was submitted (09/02/2017) to a point where it conceded that the taxpayer's dispute was correct. The value of this dispute was not high, nor was it a complex or legally technical matter. At almost every step of the dispute resolution procedure, SARS showed complete disregard for the timeframes prescribed by legislation and the regulations. And while this example may be extreme, it is by no means an isolated incident.

## 29. CHALLENGES ENCOUNTERED DURING THE REVIEW

A request was made to SARS for empirical data related to the dispute resolution procedure. The OTO also wished to obtain a balanced view of the challenges SARS faced when attending to objections and appeals. SARS provided our office with some of the requested information, but could not provide the following:

i) Regional appeal registers and statistics from the quarterly reports of SARS's Legal Division. We had requested these because the appeal

process is manual and not system driven, necessitating access to the records kept.

ii) We also sought without success to conduct interviews with SARS employees responsible for finalising dispute resolution matters. Our intention was to ascertain what challenges these employees might have faced. SARS denied the request as it was of the view that the designated person would be able to sufficiently address all our queries.

## 30. METHODOLOGY

30.1. The review was conducted in terms of section 16(1)(b) of the Tax Administration Act.

30.2. Upon receiving the Minister's approval relating to the systemic review, we had meetings with various stakeholders.

30.3. The professional and industry bodies were invited to make written inputs on concerns they might have had with the dispute resolution procedure.

30.4. An introductory meeting was held with SARS representatives to introduce the investigation team and to explain the nature and scope of

the review. The office also requested data sets pertaining to the dispute resolution process from SARS.

30.5. The information was scrutinised and further information and clarity was sought from SARS.

30.6. The review entailed an analysis of all objections and appeals lodged over the course of two financial years.

30.7. A preliminary report was provided to SARS for final comments and its response was considered before we finalised this Report.

# SECTION III: DATA CONSIDERED AND ANALYSED

## 31. INFORMATION REQUESTED BY THE OTO FROM SARS

The initial information requested from SARS was for data sets of all objections and appeal cases, as well as condonation cases, received for the 2016/17 and 2017/18 financial years. The data sets were extensive and included a significant number of cases for analysis.

Objections	-	449 096 cases;
Condonation for late filing of objections	-	80 369 cases;
Appeals	-	17 356 cases;
Condonation for the late filing of appeals	-	2 334 cases.

SARS provided detailed information in response to the initial request and we are grateful for this. Nevertheless, there were several problems with the information which needed to be addressed before an analysis could be conducted.

- i. SARS could not distinguish between the different steps in the appeal procedure as this was not automated but conducted manually. Early on, therefore, it was apparent that it would be difficult to establish where the bottlenecks might lie.
- ii. For both data sets, SARS was not able to distinguish between the dates on which its officials made decisions and the dates on which the decisions were implemented. We have in the past dealt with delays between the time decisions were made and their implementation; unfortunately, on the information provided, we could not establish if this conflation of dates was a frequent occurrence.
- iii. There were a number of matters that were listed as “Unknown Outcome”; “Outcome not Selected” or “Decision Unknown”. We manually checked these cases on the Service Manager system and inserted the actual outcomes on the data sheets. These gaps are of concern for SARS’s inventory management as they mean that SARS officials are finalising cases that will not form part of its statistics. The tables below provide a breakdown of the numbers and outcomes for each data set and what the actual outcome was changed to:

## OBJECTIONS

Original data set	Outcome not available	838
Changed to	Allowed	63
	Busy/Pending	294
	Cancelled	46
	Disallowed	79
	Invalid	238
	Partially allowed	31
	Withdrawn	39
	No outcome/notes	48

## OBJECTIONS: CONDONATION

Original data set	Outcome not available	885
Changed to	Allowed	2
	Declined	865
	Invalid	7
	Withdrawn	3
	No outcome/notes	8

## APPEALS

Original data set	Outcome not selected	5
Changed to	Withdrawn	1
	SARS concedes	2
	No outcome/notes	2
Original data set	Disallowed	60
Changed to	SARS concedes	60

- iv. The calculation of the timeframes for SARS's data sets had to be redone. When it comes to the dispute resolution procedure, timeframes are calculated differently from normal timeframes in terms of tax legislation. For dispute resolution, business days exclude weekends, public holidays and the period between 16 December and 15 January;<sup>5</sup> however, the data sets provided by SARS only excluded weekends. We therefore recalculated the timeframes on the correct basis. The result actually favoured SARS, compared to the initial data sets, as SARS's apparent periods of delay were shortened. In order for us to obtain more accurate data on pending cases as well, we calculated the turnaround times on all matters that were not finalised up to and including 31/03/2018, which was the last date of the data sets. This provides not only an aging analysis of finalised cases, but also an analysis of how long pending cases have been in SARS's inventory.
- v. Furthermore, a number of 578 objections noted as finalised on SARS's data sets have no finalisation dates. Taking into account the large number of objections and the small impact this has on the end result, these cases were not manually checked and changed.
- vi. Finally, regarding appeals, a large number of cases do not have regions assigned to them. These were checked and found to be for taxpayers registered in the Johannesburg region falling under Gauteng Central in terms of SARS's regional categorisation. The analysis takes this into account.

<sup>5</sup> See the definition of 'business day' in section 1 of the TAACT.

## 32. ANALYSIS OF THE INFORMATION RECEIVED

The information received by SARS with the corrections and challenges as described above was analysed and broken down, as shown in the tables below. The first set of tables breaks down the number of objections received. The second set of tables breaks down the

number of condonation matters relating to the late filing of objections attended to by SARS. The third set of tables breaks down the number of appeals and the fourth the number of condonation matters relating to appeals.

**TABLE 1**

Objections in general				
Outcome	Number of cases	Average days to finalisation / 31/03/2018 for open cases	% of total objections	% of cases allowed/partially allowed/Disallowed based on total cases that actually went through the objections process
Allowed	116,752	34.8	26.0%	56.9%
Partially allowed	29,479	41.9	6.6%	14.4%
Disallowed	53,894	42.9	12.0%	26.3%
Withdrawn	4,919	42.4	1.1%	2.4%
Invalid <sup>6</sup>	243,664	26.9	54.3%	
Busy/pending	294	157	0.1%	
Cancelled	46	29.3	0.0%	
No outcome/notes on the system	48	21.1	0.0%	
Totals	449,096	32.12	100.0%	

**TABLE 2**

Finalised objections by verification/audit type			
Type	Number	Average days to finalisation / 31/03/2018 for open cases	% of cases based on allowed/partially allowed/disallowed
<b>Compliance</b>	<b>176,888</b>		
<i>Allowed</i>	103,295	35	58.4%
<i>Partially allowed</i>	25,887	39	14.6%
<i>Disallowed</i>	43,607	40	24.7%
<i>Withdrawn</i>	4,099	38	2.3%
<b>Limited scope audit</b>	<b>4,725</b>		
<i>Allowed</i>	2,552	68	54.0%
<i>Partially allowed</i>	858	79	18.2%
<i>Disallowed</i>	1,168	89	24.7%
<i>Withdrawn</i>	147	59	3.1%
<b>Full scope audit</b>	<b>583</b>		
<i>Allowed</i>	74	105	12.7%
<i>Partially allowed</i>	148	94	25.4%
<i>Disallowed</i>	318	86	54.5%
<i>Withdrawn</i>	43	76	7.4%
<b>No audit</b>	<b>22,848</b>		
<i>Allowed</i>	10,831	34	47.4%
<i>Partially allowed</i>	2,586	51	11.3%

<sup>6</sup> A total number of 11,989 cases were invalidated after a request for substantiating documents. Reasons for invalidation are numerous but include the objection being resolved through other means; substantiating documents requested but not provided which is against policy and a resolved systemic issue; and taxpayers being requested to get their employers to do reconciliations.

Finalised objections by verification/audit type			
Type	Number	Average days to finalisation / 31/03/2018 for open cases	% of cases based on allowed/partially allowed/disallowed
<i>Disallowed</i>	8,801	49	38.5%
<i>Withdrawn</i>	630	67	2.8%

TABLE 3

Compliance with the DR Rules					
Step in the procedure	Number of cases	Average days to finalisation / 31/03/2018 for open cases	Number of incidents of non-compliance	% of cases of non-compliance	Average days to finalisation of incidents of non-compliance
<b>Response to a request for reasons, Rule 6(4) &amp; (5). Requirement: 30-45 days from date of request.<sup>7</sup></b>	<b>12,685</b>	<b>21</b>	<b>1,043</b>	<b>8.2%</b>	<b>72</b>
<i>Compliance</i>	11,244	19	863	7.7%	55
<i>Limited scope audit</i>	487	53	86	17.7%	202
<i>Full scope audit</i>	10	78	4	40.0%	174
<i>No audit</i>	944	25	90	9.5%	104
<b>Notice of invalidation, Rule 7(4). Requirement: 30 days from submission of invalid objection.</b>	<b>243,664</b>	<b>27</b>	<b>77,832</b>	<b>31.9%</b>	<b>50</b>
<i>Compliance</i>	211,034	26	68,108	32.3%	48
<i>Limited scope audit</i>	4,494	61	2,695	60.0%	92
<i>Full scope audit</i>	270	53	147	54.4%	84
<i>No audit</i>	27,866	25	6,882	24.7%	55
<b>Request for substantiating documents, Rule 8(1). Requirement: 30 days from submission of objection.</b>	<b>50,805</b>	<b>25</b>	<b>16,670</b>	<b>32.8%</b>	<b>47</b>
<i>Compliance</i>	46,597	24	15,239	32.7%	45
<i>Limited scope audit</i>	1,083	51	658	60.8%	75
<i>Full scope audit</i>	56	35	17	30.4%	82
<i>No audit</i>	3,069	24	756	24.6%	55
<b>Taxpayer's response to request for substantiating documents, Rule 8(2). Requirement: 30 days from date of request by SARS.</b>	<b>Could not establish due to incorrect data. Dates of submission on the data sheets were for first submission of documents not after Rule 8(2) request.</b>				

<sup>7</sup> The dates of non-compliance are calculated from 45 days after submission of request due to the fact that no data is available to determine in which cases 30 days and in which 45 days are applicable. It is therefore possible for the number of incidents to be higher.

Compliance with the DR Rules					
Step in the procedure	Number of cases	Average days to finalisation / 31/03/2018 for open cases	Number of incidents of non-compliance	% of cases of non-compliance	Average days to finalisation of incidents of non-compliance
<b>Decision on objection in absence of request for substantiating documents, Rule 9(1) (a). Requirement: 60 days after submission of objection (allowed/partially allowed/disallowed cases only).</b>	<b>163,767</b>	<b>34</b>	<b>11,803</b>	<b>7.2%</b>	<b>113</b>
<i>Compliance</i>	139,297	32	7,457	5.4%	101
<i>Limited scope audit</i>	3,724	70	1,411	37.9%	131
<i>Full scope audit</i>	499	92	261	52.3%	150
<i>No audit</i>	20,247	40	2,674	13.2%	133
<b>Decision on objection with request for substantiating documents, Rule 9(1) (b): Requirement: 45 days after submission by taxpayer/expiry of submission deadline (allowed/partially allowed/disallowed cases only).<sup>8</sup></b>	<b>36,289</b>	<b>31</b>	<b>2,296</b>	<b>6.3%</b>	<b>105</b>
<i>Compliance</i>	33,442	30	1,972	5.9%	105
<i>Limited scope audit</i>	851	49	186	21.9%	106
<i>Full scope audit</i>	40	48	7	17.5%	111
<i>No audit</i>	1,956	34	131	6.7%	111

TABLE 4

Regional breakdown of total objections	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases based on region
Eastern Cape	25,987	32.5	13.0%
Free State	23,593	32.2	11.8%
Gauteng Central	132,862	32.8	66.3%
Gauteng North	120,984	33.8	60.4%
Gauteng South	546	36.5	0.3%
Head Office <sup>9</sup>	44	108	0.0%
KwaZulu-Natal	65,766	27.8	32.8%
Limpopo	208	59.8	0.1%

<sup>8</sup> Due to the incorrect data on date of submission as explained under Rule 8(2) in the table, the dates here were calculated not on 45 days from date of submission, but 75 days from date of request (30 days as per Rule 8(2) plus 45 days as per Rule 9(1) (a). In other words, the assumption is made that SARS would at the very earliest have made a decision 45 days after the expiry of the deadline for submission.

<sup>9</sup> Head Office objections consist of Account Maintenance, VDP and suspected non-compliance.

Regional breakdown of total objections	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases based on region
Mpumalanga	275	59.8	0.1%
North West	45	141.1	0.0%
Region unknown	27	151.3	0.0%
Western Cape	78,759	31.3	39.3%

**TABLE 5**

Regional breakdown (allowed, partially allowed, disallowed, busy, pending)	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases based on allowed/partially allowed/disallowed
Eastern Cape	11,687	39.4	5.8%
Free State	11,191	37	5.6%
Gauteng Central	59,553	38.6	29.7%
Gauteng North	56,074	39	28.0%
Gauteng South	205	51	0.1%
Head Office <sup>10</sup>	19	97	0.0%
KwaZulu-Natal	26,936	35.9	13.4%
Limpopo	115	66.5	0.1%
Mpumalanga	155	72.8	0.1%
North West	27	143	0.0%
Region unknown	18	163.3	0.0%
Western Cape	34,439	37.5	17.2%

**TABLE 6**

Requests for condonation (objections)	Number of objections	% of finalised cases (only based on allowed/declined)	Average days to finalisation or to 31/03/2018 for pending cases	Longest delay in days
Allowed	64,093	86.06%	10.4	319
Declined	10,379	13.94%	21.5	343
Invalid	0		0	0
Withdrawn	761		4.6	258
Cancelled	2		7.5	10
Busy	279		84.3	196
No information	1		11	11
Total	75,515			

<sup>10</sup> Head Office Objections consist of Account Maintenance, VDP and Suspected non-compliance.

**TABLE 7**

Objection against a decision declining condonation (objections)	Number of objections	% of finalised cases (only based on allowed/declined)	Average days to finalisation or to 31/03/2018 for pending cases	Longest delay in days
Allowed	3,321	78.49%	8.2	327
Declined	910	21.51%	14.9	171
Invalid	0		0	0
Withdrawn	53		4.9	91
Cancelled	3		81.6	120
Busy	2		167	167
No information	3		7.7	12
Total	4,292			

**TABLE 8**

Appeal against disallowance of condonation (objections)	Number of objections	% of finalised cases (only based on allowed/declined)	Average days to finalisation or to 31/03/2018 for pending cases	Longest delay in days
Allowed	175	76.09%	89.5	255
Declined	55	23.91%	104.6	300
Invalid	7		133	315
Withdrawn	32		19.2	155
Cancelled	92		138.3	160
Busy	198		82.7	192
No information	3		149	208
Total	562			

**TABLE 9**

Total "objection condonation" Cases	Number of objections	% of finalised cases (only based on allowed/declined)	Average days to finalisation or to 31/03/2018 for pending cases	Longest delay in days
Allowed	67,589	85.63%	10.5	327
Declined	11,344	14.37%	21.4	343
Invalid	7		133	315
Withdrawn	846		5.2	258
Cancelled	97		133.8	160
Busy	479		84	196
No information	7		68.7	208
Total	80,369		12.5	

TABLE 10

Appeals global breakdown				
Outcome	Number of cases	Average days to finalisation / 31/03/2018 for open cases	% of total appeals	% of cases conceded/ settled/ referred to Tax Board & Tax Court based on total cases that actually went through the Appeal process
SARS conceded	6,786	131.9	39.1%	69.50%
Settlements entered into	557	151.4	3.2%	5.70%
Referred to Tax Board	21	282	0.1%	0.22%
Referred to Tax Court	1	400	0.0%	0.01%
Taxpayer withdraws	2,399	126.6	13.8%	24.57%
Invalid	2,295	68.5	13.2%	
Cancelled	13	137.8	0.1%	
Pending	5,282	156	30.4%	
No outcome/no notes on system	2	0.5	0.0%	
Totals	17,356	130.9	100.0%	

TABLE 11

Finalised appeals by verification/audit type			
Type	Number		% of cases based on conceded/settled/ referred to TB & TC
<b>Compliance</b>	<b>8,206</b>		
<i>SARS conceded</i>	5,920	131.3	72.1%
<i>Settled</i>	331	145	4.0%
<i>Referred to TB &amp; TC</i>	18	297.6	0.2%
<i>Withdrawn</i>	1,937	120	23.6%
<b>Limited scope audit</b>	<b>265</b>		
<i>SARS conceded</i>	185	132.9	69.8%
<i>Settled</i>	26	136	9.8%
<i>Referred to TB &amp; TC</i>	1	340	0.4%
<i>Withdrawn</i>	53	126	20.0%
<b>Full scope audit</b>	<b>53</b>		
<i>SARS conceded</i>	23	150	43.4%
<i>Settled</i>	14	160.8	26.4%
<i>Referred to TB &amp; TC</i>	0	0	0.0%
<i>Withdrawn</i>	16	173	30.2%
<b>No audit</b>	<b>1,240</b>		
<i>SARS Conceded</i>	658	136	53.1%
<i>Settled</i>	186	164.3	15.0%
<i>Referred to TB &amp; TC</i>	3	208.3	0.2%
<i>Withdrawn</i>	393	158	31.7%

**TABLE 12**

Regional breakdown of total appeals	Number	Average days to finalisation or 31/03/2018 for open cases	% of case distribution based on region
Eastern Cape	988	83	5.7%
Free State	1,002	77	5.8%
Gauteng Central <sup>11</sup>	4,169	158	24.0%
Gauteng North	3,430	117	19.8%
Gauteng South	1,479	166	8.5%
KwaZulu-Natal	2,072	117	11.9%
Limpopo	419	170	2.4%
Mpumalanga	426	203	2.5%
North West	434	181	2.5%
Western Cape	2,937	113	16.9%

**TABLE 13**

Regional breakdown (conceded, settled, referred to TB & TC)	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases conceded, settled and referred based on regional inventory
Eastern Cape	495	64	50.1%
Free State	529	73	52.8%
Gauteng Central <sup>12</sup>	1,371	177	32.9%
Gauteng North	1,898	123	55.3%
Gauteng South	553	179	37.4%
KwaZulu-Natal	678	115	32.7%
Limpopo	155	157	37.0%
Mpumalanga	154	218	36.2%
North West	149	201	34.3%
Western Cape	1,383	124	47.1%

**TABLE 14**

Regional breakdown (pending cases)	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases pending based on regional inventory
Eastern Cape	133	147	13.5%
Free State	161	89	16.1%
Gauteng Central <sup>13</sup>	1,808	157	43.4%
Gauteng North	637	152	18.6%
Gauteng South	630	173	42.6%
KwaZulu-Natal	851	150	41.1%
Limpopo	112	186	26.7%
Mpumalanga	169	176	39.7%
North West	175	158	40.3%
Western Cape	606	156	20.6%

<sup>11</sup> Includes "Unknown" cases, all of which have regional codes for Johannesburg [Enforcement] which falls under Gauteng Central.

<sup>12</sup> Same as footnote above.

<sup>13</sup> Same as footnote above.

**TABLE 15**

Regional breakdown (invalid cases)	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases invalidated based on regional inventory
Eastern Cape	161	55	16.3%
Free State	89	32	8.9%
Gauteng Central <sup>14</sup>	530	105	12.7%
Gauteng North	518	30	15.1%
Gauteng South	150	103	10.1%
KwaZulu-Natal	267	48	12.9%
Limpopo	79	118	18.9%
Mpumalanga	47	151	11.0%
North West	43	133	9.9%
Western Cape	411	58	14.0%

**TABLE 16**

Regional breakdown (withdrawn cases)	Number	Average days to finalisation or 31/03/2018 for open cases	% of cases withdrawn based on regional inventory
Eastern Cape	191	109	19.3%
Free State	223	96	22.3%
Gauteng Central <sup>15</sup>	455	163	10.9%
Gauteng North	376	143	11.0%
Gauteng South	145	150	9.8%
KwaZulu-Natal	276	89	13.3%
Limpopo	73	188	17.4%
Mpumalanga	56	285	13.1%
North West	67	229	15.4%
Western Cape	537	79	18.3%

**TABLE 17**

Requests for condonation (appeals)	Number	% of finalised cases (only based on allowed/declined)	Average days to finalisation / 31/03/2018	Longest delay in days
Allowed	1,459	89.90%	112.9	341
Declined	164	10.10%	116	301
Invalid	26		220.2	309
Withdrawn	110		18.9	259
Cancelled	0		0	0
Busy	549		108.6	203
No information	1		186	186
Total	2,309			

<sup>14</sup> Includes "Unknown" cases, all of which have regional codes for Johannesburg [Enforcement] which falls under Gauteng Central.

<sup>15</sup> Same as footnote above.

**TABLE 18**

Objection to declined condonation (appeals)	Number	% of finalised cases (only based on allowed/declined)	Average days to finalisation / 31/03/2018	Longest delay in days
Allowed	7	43.75%	34.9	124
Declined	9	56.25%	44.6	118
Invalid	3		0.3	1
Withdrawn	0		0	0
Cancelled	0		0	0
Busy	0		0	0
No information	0		0	0
Total	19			

**TABLE 19**

Appeal against disallowance of condonation objection (appeals)	Number	% of finalised cases (only based on allowed/declined)	Average days to finalisation / 31/03/2018	Longest delay in days
Allowed	1	100.00%	42	42
Declined	0	0.00%	0	0
Invalid	0		0	0
Withdrawn	0		0	0
Cancelled	1		124	124
Busy	4		146.8	203
No information	0		0	0
Total	6			

**TABLE 20**

Totals for appeal condonation	Number	% of finalised cases (only based on allowed/declined)	Average days to finalisation / 31/03/2018	Longest delay in days
Allowed	1,467	89.45%	112.5	341
Declined	173	10.55%	112.3	301
Invalid	29		220.2	309
Withdrawn	110		113	259
Cancelled	1		124	124
Busy	553		9	203
No information	1		186	186
Total	2,334		108.3	

# SECTION IV: FINDINGS AND RECOMMENDATIONS ON THE ALLEGED DELAYS IN SARS DEALING WITH DISPUTES

## 33. SYSTEM-AUTOMATED CALCULATION OF DAYS

We have established that the SARS system does not correctly calculate dates for dispute resolution. It does not, for example, exclude public holidays or weekends. Apart from the inventory management issues this may create for SARS, this results in objections that are filed on time being routed for condonation by the system automatically. This immediately creates delays in the dispute resolution procedure and adds to the workflow of both taxpayers and SARS staff by introducing a separate and unnecessary procedural step.

The definition of a business day for dispute resolution purposes excludes weekends, public holidays and the period between 16 December of each year and 15 January (referred to as *dies non*).<sup>16</sup> SARS acknowledged that the *dies non* are not excluded by the system when determining which objections should be routed automatically for condonation, but insisted it is correctly calculated for the appeal process.

It would seem that the incorrect calculation also applies to appeals.

To illustrate the problem, we refer to one case where SARS issued an additional assessment for the 2017 tax year on 1 December 2017. The taxpayer attempted to lodge a dispute against the additional assessment on 29 January 2019. This was on the 21st day after the additional assessment was issued, excluding

weekends and the days between 16 December and 15 January. However, the SARS system incorrectly included these days and created a condonation case that needed to be finalised before the objection case could be processed, resulting in unnecessary delays and use of resources.

In another case a taxpayer was issued an assessment on 6 July 2017. The taxpayer then lodged an objection on 22 July 2017. SARS correctly invalidated the objection on 29 August 2017, affording the taxpayer 20 business days to submit an amended objection. The second objection was submitted within the 20 business days on 21 September 2017. SARS invalidated this objection on 11 December 2017, once more affording the taxpayer 20 days to submit an amended objection. The taxpayer attempted to file the amended objection on 27 January 2018. Therefore, on the 14th day after the invalidation, the e-filing system incorrectly created a request for condonation case.

The data also indicated that the problem does not only relate to objections as SARS stated, but appeals as well. In a third case a taxpayer filed an objection to the assessment raised for the 2017 tax year. The objection was disallowed on 21 February 2018 but the appeal was automatically routed for condonation by the system when the taxpayer lodged it on 12 March 2018. SARS acknowledged in its close-out report issued to this office that the system incorrectly routed the appeal for condonation. SARS's Legal Division

<sup>16</sup> See the definition of "business day" in section 1 of the TAA.

also confirmed this system issue when asked about factors causing delays in dealing with appeals: “Some tax payer [sic] are forced by the system to apply for condonation even thou [sic] the Appeal is not late”.

### Findings:

From the above three case studies and SARS’s acknowledgements, it is clear that this a systemic issue as the system does not calculate the legislative timeframes correctly. This not only has a negative impact on taxpayers, who are forced to apply for condonation unnecessarily, but also on SARS through person hours lost due to dealing with condonation cases that should not be routed for condonation in the first place. In the Compliance Audit section, SARS indicated that it took approximately 10 minutes of standard time to attend to each condonation case for

objections. In the Investigative Audit section, SARS indicated that condonation cases were presented to a committee within seven days of receipt. Taking into account preparation time by officials presenting as well as committee members and the time spent in committees, any case that is not supposed to be routed for condonation results in wasted time that has a negative impact on other functions of SARS officials and directly contributes to delays in finalising matters in the dispute resolution procedure.

### Recommendations:

It is recommended that SARS should promptly correct its system to calculate the number of days during the dispute resolution procedure correctly and in accordance with the DR Rules.

## 34. NOTIFICATION OF INVALIDATION

During 2016 the OTO raised an issue with SARS about standardised invalidation letters, specifically where condonation for objection was declined. The main issue with the standard letter was that it contained a fixed paragraph referring taxpayers to an incorrect process step for the resolution of the dispute. SARS acknowledged the problem and indicated that the system would be changed to ensure the paragraph would be excluded from the letter. The fact that SARS has since implemented system changes to deal with condonations as a separate workflow step in its system has made this proposed system change unnecessary. The remedy was effective and reduced a significant amount of confusion caused by condonation matters.

### Findings:

A similar problem has, however, now been found with Notice of Invalid Appeal letters. The problem arises very specifically in matters where taxpayers submit appeals so late that SARS does not have discretion to condone the late filing thereof.<sup>17</sup> The letters issued by SARS under these circumstances correctly inform the taxpayer that SARS has no discretion to entertain appeals that are lodged more than 75 days after delivery of the Notice of Disallowance of Objection

(NOA). The problem is that this letter includes a standard paragraph stating:

“A new NOA may be submitted within the prescribed period, and if late, a request for late submission must be submitted by you”.

SARS tries to work around this issue by adding a line “Please ignore the below paragraph - Case concluded.”.

### Recommendation:

This office is of the view that simply adding the quoted line is not sufficient and that correcting the error would save a lot of time, in particular for SARS personnel who have to ensure that they do not forget to add it. The situation where appeals are submitted this late and the fact that SARS does not have discretion to extend the period beyond 45 days, would justify the use of a standardised letter. Taking this into account, the recommendation is made for a standard letter to be included on SARS’s system to cater specifically for s107(2)(b) matters. This would avoid confusion and instances where taxpayers try to lodge new NOA forms in accordance with the current standard letters.

<sup>17</sup> See section 107(2)(a) and (b) of the TAA.

## 35. REQUESTS FOR CONDONATION

SARS may extend the period prescribed in the dispute resolution rules within which an objection or appeal must be made. Most often these requests are made after the period had already lapsed and in practice this process step has become known as condonation. It is important to note that there is no turnaround time specified in law for SARS to deal with these requests, nor is there any undertaking on how long it should take in terms of its Service Charter.

### Findings:

An analysis of the information provided by SARS reflected that on average SARS was quick in attending to the objection condonation cases for both the requests allowed (10 days) and the requests declined (22 days).<sup>18</sup> It is further noted that 86.06% of the valid requests finalised by SARS were allowed.<sup>19</sup>

Furthermore, SARS received 4,292 objections disputing its decisions to decline the condonation request.<sup>20</sup> SARS allowed 78.49% of these objections.<sup>21</sup>

Similarly, SARS allowed 76.09% of the 175 cases where taxpayers appealed the disallowance of the objection to the decision not to condone the late filing of the objection.<sup>22</sup>

Ultimately 85.63% of all requests for condonation on objection cases received by SARS in the period were allowed.

When it comes to requests for the condonation of the late filing of appeals, the data is not as favourable with regard to timelines as it is with objections. SARS took on average 113 days to make a decision to allow requests for condonation to the late filing of appeals.<sup>23</sup>

As in the case of requests for condonation relating to objections, the allowance rate for appeal condonations is very high. On the initial request for condonation, SARS allowed 89.9% of the matters it finalised by taking a decision.<sup>24</sup> SARS received very few objections and appeals to decisions to decline condonation

during the appeal step and while only 47% of those were allowed, SARS still allowed 89.5% of all condonation requests it made decisions on during the period. This raises the question of what purpose the condonation process serves and whether or not that purpose justifies the time spent on it. Although these requests were quickly attended to, the concern is the high number of condonation cases that SARS received. On objections alone 80,369 condonation requests were received over a two-year period.<sup>25</sup> According to SARS, it spends at least 10 minutes per case depending on whether it is handled in the Compliance Audit or Investigative Audit divisions.

### Recommendation:

We are aware that SARS has taken a decision to extend the period for lodging an objection by amending the DR Rules, and that this process is at an advanced stage. We are, however, of the view that an extension will not necessarily reduce the number of requests for condonation. Taking into account that almost 90% of all requests for condonation are allowed, we believe that consideration should be given to rather allow taxpayers three years to object to an additional assessment as stipulated in section 104(5)(b) of the TAA and remove the provisions of the TAA and the DR Rules relating to condonation. Similarly, we are of the view that during the appeal process the timeframe could be set at 75 days with no further option of extension.

The result of the proposals for both objections and appeals would be that taxpayers are given a fixed period (three years for objections and 75 days for appeals) within which to object and appeal; if they did not, they would lose all rights to do so. These are, after all, exactly the same legal implications provided for in the current legislation and DR Rules and so would not limit taxpayers' current rights and/or remedies. It would provide SARS with more capacity and time to focus on the actual objection and appeal cases and hopefully be able to comply with the prescribed timeframes.

<sup>18</sup> See table 6.

<sup>19</sup> Cases that taxpayers withdrew that were cancelled by SARS and that were still pending were excluded in this calculation.

<sup>20</sup> See table 7.

<sup>21</sup> See table 8.

<sup>22</sup> See table 9.

<sup>23</sup> See table 17.

<sup>24</sup> See table 17.

<sup>25</sup> See tables 18, 19 and 20

The recommendation is therefore for SARS to review the condonation process with a view to replacing it

with a more efficient and cost-effective alternative.

## 36. NON-COMPLIANCE WITH THE PRESCRIBED TIMEFRAMES FOR OBJECTIONS

Table 3 is the result of an analysis done to determine the rate at which SARS failed to comply with the legally prescribed timeframes for each step during the objection stage of the dispute resolution process. At the outset, it must be noted that these timeframes are prescribed by the TAA and the DR Rules and are not mere guidelines, but mandatory. It is therefore not acceptable for SARS, which is the administrator of tax legislation, to be non-compliant with the very legislation it administers.

### 36.1. The general end-to-end periods for taking decisions on Objection: Rule 9

For purposes of analysing the data for decisions being taken on objections, we must distinguish between cases where SARS requested substantiating documents and cases where it did not due to the fact that different prescribed timeframes apply.<sup>26</sup>

It took SARS an average of 34 days to finalise objection cases where it did not make Rule 8 requests, and 31 days in cases where additional information was requested. On average this therefore falls within the prescribed periods of 60 and 45 days respectively.

We need to consider though that there were 11,803 instances where SARS did not meet the prescribed period in rule 9(1)(a) circumstances and 2,296 instances where it did not meet the period in the rule 9(1)(b) circumstances. This is a significant number of times when SARS did not comply with its legal obligations. According to SARS, the delays in finalising the objections in the Investigative Audit division are caused among others by the following:

- (a) “The audit function is split between Compliance Audit and Investigative Audit. In some instances, mainly CIT, the objection is incorrectly allocated to the Compliance Audit pool, resulting in delays in finally allocating the objection to the relevant Investigative Audit auditor. Calls are

- logged to Business Systems when this arises.
- (b) Objections submitted without relevant documentation.
- (c) Taxpayers submitting new financial statements at objections stage, often requiring a new audit to commence.
- (d) Additional information requested by the auditor in order to attend to the objection.
- (e) System issues impacting on finalisation of objections.”

In addition to this, SARS notes that taxpayers contribute to delays by requesting extensions in order to submit information. Other taxpayer behaviour resulting in delays include submitting information that was requested during the audit process only at the objection stage or submitting objections without the relevant documentation.

In the Compliance Audit division, the main reason for the delays put forward by SARS is the high volume of cases in its inventory, creating capacity constraints. SARS also highlights the risks of undue refunds being “auto released” if verifications are not finalised within 21 days.

In this division, SARS also attributes delays on the part of taxpayers to failure to submit documents at the verification and objection stages or submission of incorrect information even though SARS’s letters requesting the documents clearly specify what is required. SARS also added the invalidation of objections due to taxpayers not complying with the requirements as a cause of the delays.

#### Findings:

In each of the different steps of the dispute resolution process, there were high numbers of incidents where SARS did not comply with the DR Rules.

<sup>26</sup> See rule 9(1)(a) and (b).

## 36.2. The Request for Reasons for the Assessment: Rule 6

A request for reasons must be made within 30 days of the assessment.<sup>27</sup> SARS must respond within 45 days of the request.<sup>28</sup> SARS can on its own grant an extension if there are exceptional circumstances, the matter is complex or the amount involved is high.<sup>29</sup> The extension may not exceed 45 days, though, and SARS must inform the taxpayer thereof within 45 days of the date of the request.<sup>30</sup>

Furthermore, the extension is only applicable in cases where SARS is of the opinion that adequate reasons have not already been given to the taxpayer.<sup>31</sup> Therefore, 165 days should be the longest period it should take for a request for reasons to be finalised, assuming that both the taxpayer and SARS needed extensions.<sup>32</sup>

### Findings:

On average SARS provided reasons for assessments within 21 days, which falls within the prescribed period.<sup>33</sup> In 12,685 of the cases considered, however, it did not meet the deadlines. In these cases, it took SARS on average 72 days to respond. This falls well beyond the legal requirements if one assumes that SARS provides adequate reasons when it raises assessments.

The longest delays were in the Investigative Audit division. This was to be expected, considering that assessments raised by Investigative Audit are generally more complex. Average periods of 202 and 174 days for limited and full scope audits respectively are excessive, however, and fall well beyond the prescribed timeframes even in the worst-case scenarios.

## 36.3. Notice of Invalidity: Rule 7(4)

If SARS receives an objection that does not comply with rule 7(2) of the DR Rules, SARS may regard the objection as invalid. Within 30 days of receiving the invalid objection, it must then notify the taxpayer accordingly and state the ground for invalidation in the notice.

SARS failed to comply with this legislative requirement in 31.9% of the objections that were invalidated.<sup>34</sup> In a total of 77,832 objections, SARS failed to inform taxpayers within the prescribed timeframe that there was an error or omission on the submission. This led directly to delays in amended objections being filed and ultimately delays in the finalisation of objections.

### Findings:

According to SARS, the Objection Coordinators in the Investigative Audit Division validate objections immediately on receipt, while the Investigative Audit Division's internal standard operating procedure provides that a taxpayer must be informed within 10 days that the objection is invalid.<sup>35</sup> In 60% of limited scope audit objections and 54% of full scope audit objections for the period reviewed, neither the 10-day deadline set in the SOP nor the 30-day deadline in the dispute resolution rules was adhered to.

For Compliance Audit purposes, SARS indicated that it did not differentiate between valid and invalid cases in its process. SARS notes:

“The validation of the objection is not separated from the end to end process and to finalise the objection case depends on the actions taken during the process and may vary between 3-10 days. This includes presentation to the committee if required, revised assessment, approval of the revised assessment and issuing the outcome of the objection.”

Invalid objections do not require any of the steps mentioned by SARS in its explanation quoted above. Furthermore, around 68,108 of the objections invalidated after the prescribed timeframes fell within the Compliance Audit division. In our view the response shows a need for that division to start separating validation from the end-to-end procedure to ensure proper inventory management.

<sup>27</sup> Rule 6(2)(b).

<sup>28</sup> Rule 6(5).

<sup>29</sup> See Rule 6(6).

<sup>30</sup> See Rule 6(7).

<sup>31</sup> See Rule 6(4).

<sup>32</sup> 30+45+45+45 = 165 business days.

<sup>33</sup> See Sub Rules 6(4)&(5).

<sup>34</sup> See Table 3

<sup>35</sup> Audit Objections – Internal SOP GEN-AU-14-SOP35-A01.

A total of 243,034 objections filed with SARS were invalidated. This is concerning as it constitutes 54% of the total objections finalised by SARS.<sup>36</sup> Random samples of invalidated cases were tested to verify if the cases were invalidated correctly. We found a 31% error rate where the objections were incorrectly invalidated. Incorrect reasons for the invalidation included:

- (a) SARS revising the relevant assessments via another channel;
- (b) SARS requesting additional information in terms of Rule 8 and failing to take a decision on the objection; and
- (c) SARS's incorrect treatment of cases where condonation for the late filing of the objection was not allowed.

Our office has previously raised points (b) and (c) above with SARS, which has taken corrective measures to remedy these incorrect invalidations. It would seem however that there are still some errors slipping through.

In relation to point (a), a concern must be raised that where an objection is invalidated unilaterally by SARS in order to have it resolved through another channel, SARS effectively prohibits the taxpayer from continuing with the dispute resolution procedure if the taxpayer is not satisfied with the end result. In other words, even though a taxpayer objected, SARS does not take a decision on the objection in accordance with the DR Rules. Hence, the taxpayer cannot appeal if not satisfied with the resolution provided via another channel. Because SARS treats these cases as invalid objections, a taxpayer would have to lodge an amended objection, which would most likely be out of time by the time SARS "resolved" the matter. It creates a host of new possible problems for the taxpayer and is also not catered for in the DR Rules.

We acknowledge that SARS also experiences frustrations when it comes to the invalidation of objections. Easily avoidable mistakes made by taxpayers and tax practitioners contribute to time wastage. In many cases, taxpayers or practitioners use the incorrect source codes when lodging objections,

resulting in invalidation. Taxpayers also often resubmit the same supporting documents that were not accepted during the audit/verification, which then results in invalidations. In some instances, we have also seen taxpayers or practitioners use other source codes because the SARS system correctly prohibits them from lodging an objection.

It must be noted that any invalid objection is a waste of time for both SARS and taxpayers. A 54% invalidation rate creates a huge administrative burden on SARS. While a large portion of the high rate falls solely at the feet of taxpayers and practitioners who make avoidable errors, SARS also invalidates objections incorrectly, as we have indicated earlier.

**Recommendation:**

SARS should channel objections correctly and taxpayers must furnish the correct codes.

### 36.4. Request for substantiating documents: Rule 8(1)

In 32.8%<sup>37</sup> of objections where SARS requested substantiating documents from taxpayers, it failed to make these requests within 30 days as prescribed. This occurred in 16,670 cases and directly impacts on SARS's ability to finalise objections within the specified timeframes.

In a case where SARS insists that the substantiating documents are essential to making a decision on an objection, but failed to comply with the prescribed timeframes or to obtain an agreed extension before the expiry of those timeframes,<sup>38</sup> it can only do so if it is granted condonation by the Tax Court.<sup>39</sup> If the documents are not essential, SARS must make a decision in the absence of a request for substantiating documents. This office is not aware of any applications that have been made to the Tax Court on any of these cases. In the absence of such applications to the Tax Court, SARS not only failed to comply with the prescribed timeframes but also continued requesting the substantiating information with no regard to the correct procedure.

<sup>36</sup> See Table 1. This constitutes 54.3% of all objections filed during the period.

<sup>37</sup> See Table 3

<sup>38</sup> See Rule 4.

<sup>39</sup> See Rule 52(1).

**Recommendation:**

When it comes to the different steps of an objection, we must consider that there is a great imbalance in the powers between SARS and a taxpayer. An assessment has already been raised and the “pay now argue later rule” is applicable, so a taxpayer is subject to a threat of collection steps being taken. Due to this imbalance, it would be understandable for a taxpayer to simply let SARS’s non-compliance with the timeframes in the DR Rules slide without

insisting on an application for condonation. It would also be easy for SARS to capitalise on this imbalance by simply continuing with the procedures at its own pace because very few taxpayers would approach the Tax Court to compel compliance with the DR Rules.<sup>40</sup> They are probably just relieved that their disputes are being attended to. The responsibility lies heavily on SARS to ensure compliance with the timeframes.

## 37. ISSUES RELATING TO APPEAL CONDONATION CASES

SARS may extend the period prescribed in the dispute resolution rules within which an appeal must be made.<sup>41</sup> As with objections, no turnaround time is specified in law for SARS to deal with these requests and this gap is important to note.

**Findings:**

An analysis of the information provided by SARS showed that on average SARS took 113 days to allow, 116 days to decline and 220 days to invalidate requests for condonation in the appeal procedure.<sup>42</sup> If SARS were to finalise the entire ADR procedure within 90

days once the letter of suitability has been issued as prescribed by Rule 13,<sup>43</sup> condonation would not be a complex issue. The latter process includes ADR meetings, exchanges of documents, legal arguments and possible settlement negotiations, among other things. This office is therefore of the view that the timeframes within which SARS dealt with appeal condonation matters were not reasonable.

**Recommendation:**

SARS needs to ensure its own compliance with timeframes contained in the DR Rules.

## 38. NON-COMPLIANCE WITH THE PRESCRIBED TIMEFRAMES FOR APPEALS

The following are some of the factors the OTO sees as contributing towards SARS’s failure to adhere to the prescribed timeframes relating to appeals:

### 38.1. Inventory Management

As mentioned earlier, the manual recordkeeping on the appeal process limits the information available, making it very difficult to pinpoint the steps in the appeal procedure where SARS is not complying with the prescribed timeframes. SARS notes that its appeal inventory management system is manual and, as a result, much of the information we requested could not be provided. SARS was even unable to provide basic information on the different steps of the appeal procedure. We therefore believe that proper inventory management is necessary, at least to determine which cases are at what stage and for

how long they have been there.

**Findings:**

In the entire process, the Invalid Appeal letter is the only piece of correspondence that consistently features on SARS’s system for appeal cases. Only in a few cases did we find other important letters and documents, such as the so-called “suitability letters”, that lead the process into another step with prescribed timeframes. SARS assured us that these letters were in fact sent as part of the process, but we saw very little actual indication of this. The few cases where evidence of suitability letters was found seemed to be confined to specific regions, most notably the Western Cape.

<sup>40</sup> See Rule 56.

<sup>41</sup> Section 107(2) of the TAA,

<sup>42</sup> Table 17

<sup>43</sup> Rule 13.

SARS acknowledged in its response to our initial request for information that not all manual letters were uploaded onto the system. It is important to note that all these documents are important and that all but two have prescribed periods attached to them. Based on the information received by SARS, it would be near impossible for it to track compliance with the DR Rules in relation to any of these documents. Below, we list the documents that do not appear on the system and which are often not attached to the cases. The ones with footnote references all have prescribed timeframes attached to them.

- ADR suitability letter<sup>44</sup>
- Suitability letter ADR not opted<sup>45</sup>
- Facilitator appointment letter<sup>46</sup>
- ADR meeting set-down letter
- ADR report<sup>47</sup>
- ADR termination letter<sup>48</sup>
- Memorandum to Appeal Committee
- Settlement agreements.<sup>49</sup>

Apart from the above, SARS made various specific statements that led this office to the conclusion that inventory management of appeals is a serious problem:

- a) “The Invalid outcome that is sent to Taxpayer in the event of an Invalid Appeal is the only system generated letter in the appeal process.”
- b) “Appeals that are lodged in channels like Request for Service (RFS), which Legal does not have profiles to.”;
- c) “Appeals are sourced from a database in which they are not organised geographically or by tax type. This makes it difficult to determine which appeal can be dealt with by which region until the appeal is pulled and the documentation perused, which consumes inordinate amount

of time. Once identified as belong [sic] to that particular region it is then placed in the bucket [sic] for that region. Thereafter it is then pulled from that bucket and validated as valid appealed. Only thereafter it is assigned to consultant.”

- d) “SARS has no system to calculate the days of the appeals as per the ADR Rules. Calculation is done manually or by means of MS Excel.”
- e) “The system automatically calculates business days for all ADR Rules.”

It must be pointed out that SARS’s response quoted in (d) above is not accurate as it has already been established that although SARS’s system does calculate the days, it does so incorrectly. SARS’s Legal Division also contradicts itself in its response in the same document as quoted in (e) above. We have also established that (e) is not an accurate statement because SARS has been unable to tell us how long it takes between the different steps in the appeal procedure.

An important point to note is that the ADR process is terminated automatically by the operation of the Rules if it is not finalised within 90 days, unless an extension is agreed to before the end of that prescribed period.<sup>50</sup> The lack of data and confirmation of suitability letters and extension agreements is highly problematic. In the absence of this data there is a possibility that SARS may have appeals in its inventory that have automatically terminated. The only way SARS would be able to determine this is if it investigates each of its appeals one by one. Based on the information provided and explanations given, it would be near impossible to determine this unless all appeal cases are individually investigated.

For illustration, we refer to a case where the appeal was delayed for two years after the taxpayer agreed to an extension:

22/07/2016	The appeal was submitted with substantiating documents.
08/08/2016	The appeal was validated and the note stipulated it was referred for ADR.
02/09/2016	A suitability letter was issued but the letter is not available.

<sup>44</sup> Rule 13(1).

<sup>45</sup> Rule 13(2).

<sup>46</sup> Rule 16(3).

<sup>47</sup> Rule 20(7).

<sup>48</sup> Rule 25.

<sup>49</sup> Rule 24(3) and (4).

<sup>50</sup> See Rule 25 read with Rule 15(1)

16/09/2016	A facilitator was appointed.
07/02/2017	SARS requested an extension on the last day according to its calculations. The taxpayer agreed to this on the same date, but followed up on 7 June 2017 asking for feedback. This escalation is still in the busy status on SARS's system.
17/09/2018	Without an ADR hearing taking place, SARS conceded two years after the facilitator was appointed.

Below is an example where the process was clearly delayed by SARS and letters issued purely in an attempt to comply with the DR Rules:

25/07/2016	The appeal was submitted with supporting documents.
05/04/2018	The case was assigned for validation but it is not clear if it was validated as the note simply stated that the appeal was late, with no reasons given.
10/05/2018	SARS requested documents from the taxpayer.
28/06/2018	An internal appeal statement was provided.
06/09/2018	The decision to concede the appeal was signed by the Appeal Committee.
07/09/2018	A concession letter is drafted. There is no indication if it was sent to the taxpayer.
19/09/2018	A suitability letter was drafted. This letter refers incorrectly to the appeal dated 25 July 2018 when it was actually submitted in 2016. The letter then states the matter is suitable for ADR, but it was well after the prescribed period for this notice. Lastly, the letter requests an extension of 40 days even though the decision to concede had already been made two weeks before.
26/09/2018	A reduced assessment was issued.

It is clear that there are serious challenges with how SARS treats appeals.

### **Recommendation:**

It is recommended that the system be aligned to record each step of the appeal process and its accompanying correspondence. This would enable an accurate inventory management and also make it easy to identify where the bottlenecks are within the process. This should be done to ensure that SARS does not unduly delay the appeals and ADR processes.

### **38.2. The raising of non-meritorious additional assessments**

In total, SARS conceded 70% of all appeals finalised.<sup>51</sup> Taking into account that a concession results in the entire additional assessment being revised to the original, this is a very high number of assessments found to be incorrect. Leaving aside appeals withdrawn by taxpayers and looking only at cases where the merits of the assessment are actually reconsidered,

the proportion of matters in which SARS concedes in full increases to 92.14%. This is rather concerning as it means that in 92% of the matters that reach appeal, there was no merit in the assessments.

### **Findings:**

The point must be made that initially, 71% of objections were allowed or partially allowed; then 92% of appeals that went through the entire appeal process were conceded in full. One must question firstly, why these assessments were raised in the first place and, secondly, why they could not be allowed at the objection stage. This point is important because a lot of time and effort is invested in dealing with each such case. For each case, a committee must sit to consider the matter, for which the members must spend valuable time preparing. The result is that thousands of non-meritorious cases clog the system unnecessarily and cause delays.

<sup>51</sup> See Table 10. The calculation excludes appeals that were cancelled, invalid and still pending.

**Recommendation:**

We recommend that SARS reviews and improves the process of raising additional assessments, as well as the efficiency of its objections committee mechanism.

**38.3. Delayed submission of information by taxpayers**

We asked all three SARS divisions involved in the DR process about their own challenges and views on the reasons for delays in finalising objections and appeals. From the responses, we identified a common theme: submission of documents by taxpayers. This issue may tie in with the high level of allowance of objections and concessions on appeal. In the case of the Investigative Audit Division, SARS states that, among others:

- a) taxpayers submit information requested at the audit stage only when disputes are lodged;
- b) disputes are submitted without relevant documentation; and
- c) taxpayers submit new financial statements at the dispute stage.

Compliance Audit notes that:

- a) SARS requests documentation at the verification stage which taxpayers do not provide either when requested or even when objections are lodged. This results in SARS again having to request the same documentation at the objection stage; and
- b) in instances where taxpayers do respond, they often do not provide the information that was actually requested. Then when lodging the dispute, taxpayers provide the same documents that SARS has already found to be inadequate, again resulting in a further request for information.

The Legal Division refers to:

- a) “onus cases” inundating the appeal process;
- b) delays by taxpayers in providing supporting documentation;
- c) taxpayers providing incorrect documents; and
- d) cases that have to be audited again as a result of documents submitted only at the appeal stage;

The Legal Division’s reference to onus cases relates to cases where the assessment is based on the taxpayer not discharging its burden of proof at the verification/audit or objection stage. Owing to the nature of these appeals, the assessment can be revised if the taxpayer simply provides SARS with the substantiating documents that would convince SARS of the correctness of the initial declaration made by the taxpayer. In practice, the auditor will inform the legal consultant what documents they need to make a decision on the matter. If the taxpayer provides the information, the appeal is conceded in full. If not, the matter should proceed to the next step in the process. In essence the appeal process in these cases has turned into a document exchange exercise that could have been avoided if the correct information was provided to SARS from the beginning.

**Recommendation:**

Both Legal and Investigative Audit refer to instances where the matter should be audited from scratch due to new information being provided after the disputes were lodged. If new information (for instance new financial statements) is provided, it may be argued that the initial declaration by the taxpayer has changed, affecting the additional assessment. The question that arises is whether the dispute resolution procedure is the correct channel to conduct an audit of information that was not considered before, or should rather be treated as a request for correction of the original declaration. The view of this office is that it should be the latter.

Full concessions at the appeal stage should be exceptions rather than the rule as is presently the case.

**38.4. Other issues that, according to SARS, cause delays:**

Apart from what has already been referred to above, SARS’s Legal Division also provided various other explanations on what it regarded as causes for delays in the finalisation of appeals:

- a) Capacity challenges: SARS notes that during the 11 months preceding the information requests, the volume of appeals increased by 22% while the head count of legal consultants decreased by 17%. SARS does not however specify if the increase in inventory was due to the backlogs

created by the loss of staff or due to increased inflow as compared to previous years, or both. Over the period in question, SARS had a total of 17,356 appeals to attend to.<sup>52</sup> According to the information provided as at November 2018, there were 125 SARS officials responsible for attending to appeals. That would mean that each official would have had about 70 appeal cases per year if the assumption is made that the appeals would be distributed equally among them. If one considers only the 7,365 cases that were finalised at the ADR, Tax Board or Tax Court stage, this number equates to 30 cases per person per year. While the OTO is not seeking to and cannot, investigate issues relating to human resources within SARS, we felt it necessary to raise this with SARS given the negative impact this might have on the taxpayers.

- b) Delays from business units in providing the Internal Appeal Statements (IAS): The Legal Division notes that it has agreements on the time within which business units must provide the IAS but this varies across regions. It does acknowledge there is no data available to determine how long it takes for IAS to be provided. The OTO is concerned that the legal division gives this as the reason for delays on several occasions, yet it acknowledges that it does not have the data to support this. This again ties in with SARS's challenges discussed earlier regarding the management of its inventory on appeal cases.
- c) Jurisdictional challenges when cases need to be tested and reassigned to the correct jurisdiction areas: SARS notes that its database of appeals is not organised geographically or by tax type. The Legal Division is divided into regional jurisdictions, which means that it must manually draw the cases, peruse the documents and allocate it into buckets for the different regions. The appeals are only validated thereafter. This is not completely accurate. We found jurisdictional overlaps between areas, which the different services within the Legal Division must allocate manually. This is not so for all regions, however, and the Service

Manager system labels taxpayers according to the regions in which they are registered. Lists of cases can be filtered according to the regions and wherever there is overlap, cases can be drawn and allocated to the correct buckets without any documents being perused. Therefore, while there is a systems issue that makes the process cumbersome, the response by SARS in this regard is exaggerated. That said, the process of re-allocating cases to different jurisdictions is still cumbersome and unnecessary. This has been an issue in SARS's Legal Division for a great number of years and should be addressed with urgency.

- d) The lack of access to the system/channel that received appeals lodged related to the Request for Service (RFS): According to SARS, there are instances where its system rejects submissions of appeals on the electronic platform. In those cases, taxpayers are advised to lodge appeals in the form of requests for service, to which the Legal Division does not have access. The division states that it only becomes aware of these appeals if taxpayers escalate them. The difficulty with this is that disputes must be submitted in the form and manner as prescribed by SARS. Where SARS's own system makes it impossible for the taxpayer to comply and it prescribes another form and manner as a workaround, it should at least ensure that the division responsible for attending to the appeal is made aware of and has access to the documents. This situation should be rectified with urgency.
- e) SARS states that it has a large number of appeals where the ADR process had been terminated and taxpayers have not set the matter down before the Tax Board or notified SARS that they would like to proceed to the Tax Court depending on the jurisdiction. In those instances, SARS confirms it issued notices to the taxpayers to inform them of its intention to apply to the Tax Court to have the assessments confirmed.<sup>53</sup> It then notes: "We need a way forward on these cases so we can close these appeals." While we agree with SARS that the Rule 56 procedure is the correct

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<sup>52</sup> See Table 10.

<sup>53</sup> Rule 25(3) read with Rule 56.

one to follow under those circumstances, we do not understand what way forward SARS needs to close the appeals. The procedure is quite clear: once taxpayers in those cases fail to rectify their default, SARS must lodge applications in the Tax Court to confirm the assessments and finalise the appeal process.

- f) SARS notes that dealing with condonation of late appeals should not take longer than a day but often it has to source reasons for the late filing from the taxpayer/practitioner and if their response is delayed, condonation can take a long time to consider. It must be noted that SARS is not responsible for ensuring that a taxpayer/practitioner provides reasons for late filing, but nothing stops it from enquiring if such reasons are absent.<sup>54</sup> Taking into account that SARS does not have discretion to condone late filing of an appeal beyond 75 days after the date of the disallowance of objection, it would make sense for SARS to follow the practice as outlined above only for appeals that were submitted late, but still within 75

days.<sup>55</sup> Otherwise the appeal is kept live and gives the taxpayer the opportunity beyond the 75-day period to rectify a defect to the appeal. If SARS simply invalidated the appeals under those circumstances, which it is entitled to do, and the invalidation happens after the 75-day period, the taxpayer would be barred by law from submitting an amended appeal purely on the ground of SARS's inaction or delayed action. For objections, taxpayers are allowed 20 days, after receiving a notice of invalidity, to submit a corrected objection form without the need to request condonation, but appeals do not have similar provisions.<sup>56</sup>

As much as this office acknowledges that taxpayers/ tax practitioners also contribute to the delay in various ways, this office is of the view that this does not justify SARS's failure to comply with the timeframes provisions of the DR Rules or to utilise remedies provided in these Rules to deal with such matters within the prescribed timeframes.

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<sup>54</sup> Par 4.4 Interpretation Note 15(Issue 4) 20 November 2014.

<sup>55</sup> Section 107(2).

<sup>56</sup> SARS has proposed amendments to Rule 7(5) and (6) to also remove this remedy from objections.

# SECTION V: CONCLUDING REMARKS AND RECOMMENDATIONS

## 39. CONCLUDING REMARK ON FINDINGS

It is true that in some instances taxpayers fail to comply with timeframes prescribed by the Act and the Dispute Resolution Rules, but SARS also fails to do so in large measure. Given the imbalance of power between SARS and the taxpayer, SARS's non-compliance results in prejudice to the taxpayer, given that SARS often enforces its tax collection measures with rigidity against the taxpayers' non-compliance, while the taxpayer is often helpless to hold SARS to the prescribed timeframes.

## 40. CONCLUDING NOTE ON RECOMMENDATIONS

We have made recommendations above regarding specific challenges. The various recommendations made fall into the following main categories:

- 40.1. That SARS adheres to the timeframes prescribed. To this end, we have attempted to identify some of the factors we see as contributing towards SARS's failure to adhere to the prescribed timeframes and which, for the benefit of taxpayers and indeed the tax collection system, require SARS's close attention.
- 40.2. It has been found in other instances that SARS keeps taxpayers' appeals live beyond the 75-day period stipulated by law. In this respect, we recommend that SARS enforces the 75-day period so that matters reach finality.
- 40.3. Regarding taxpayers, they must submit all the necessary and relevant documentation timeously from the outset.



**Judge B M Ngoepe, Tax Ombud**

Dated: