

COPYRIGHT NOTICE AND DISCLAIMER

The information provided in this document is protected by applicable intellectual property laws and may not be copied, distributed or modified for any purpose without the explicit consent of the Tax Ombud.

The information was correct at the time of publication but may have subsequently changed. This leaflet is for information purposes only and cannot be considered to be a legal reference. The use of this information by any person shall be entirely at that person's discretion. The Office of the Tax Ombud does not expressly or by implication represent, recommend or propose that services referred to in this document are appropriate to the needs of any particular person. The Tax Ombud does not accept any liability due to any loss, damages, costs and expenses, which may be sustained or incurred directly or indirectly as a result of any error or omission contained in this newsletter. The information does not supersede any legislation and readers who are in doubt regarding any aspect of the information displayed in the newsletter should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

Menlyn Corner, 2nd floor, 87 Frikkie De Beer Street,
Pretoria, 0181

Call Centre: 0800 662 837
Email: complaints@taxombud.gov.za
www.taxombud.gov.za

The discrepancies in the SOAs result in SARS refusing to issue a Tax Clearance Certificate, which prevents a taxpayer from obtaining business contracts due to seeming PAYE non-compliance. In some instances, the Banks are appointed as agents to recover the "debt" from the non-compliant taxpayer. The industry members have no objection where it is a legitimate debt but their concerns refer to the undue debt created by SOA allocations.

13 NUMEROUS FOLLOW-UPS (THIS SYSTEMIC ISSUE EXCLUDES SITUATIONS WHERE TAXPAYERS ARE REPRESENTED BY TAX PROFESSIONALS)

We have noticed an increase in complaints pertaining to SARS issuing duplicate income tax numbers under one identity number (ID). This adversely impacts on the affected taxpayers, more especially those who are waiting for their severance or lump sum payout, as their employers are finding it difficult to apply for a directive. The OTO Review Committee reached this decision since the SARS system should be able to detect that a tax reference number for the applicant ID has already been issued, and thus automatically decline any application related to the affected ID number.

14 SARS INCORRECTLY INVALIDATING THE NOTICE OF APPEAL

Following a trend noted from complaints received pertaining to the invalidation of the Notice of Appeal by SARS due to the condonation reason provided not being exceptional, the review committee has approved the amendment of the current systemic issue relating to SARS's Incorrect Invalidation of Objections, to include appeals. SARS should ensure that the notice of suitability is issued within 30 business days from the date the taxpayer or vendor lodges an appeal. From the affected cases, it is evident that SARS failed to adhere to this, nevertheless opting to invalidate the Notice of Appeal – thus depriving the taxpayers or vendors of their right to follow the proper dispute resolution processes.

15 SARS REVISING AN ASSESSMENT WITHOUT ISSUING ANY PRIOR COMMUNICATION

The complaint related to a revised assessment issued by SARS pertaining to the 2005 to 2017 income tax years wherein SARS disallowed the Retirement Annuity Fund Contribution (RA) without any prior notice, including failure to request supporting documentation.

It must be noted that the above is limited merely to matters related to RA wherein SARS revised assessments, without attempting any prior communication with the affected taxpayers.

16 SARS REVISING ASSESSMENT WITHOUT ISSUING A LETTER OF FINDINGS

A high number of taxpayers are affected by the lack of communication when it comes to SARS's failure to issue a letter of findings following the verification completed. In addition, the current notices of assessment (IT 34 and VAT 217) do not provide sufficient information that would enable the taxpayer to understand the reason for the revised assessment.

17 REFUNDS PAID INTO WRONG BANK ACCOUNTS

This is due to failure by SARS to update banking details timeously, which often results in refunds being paid into the wrong bank account.

18 EFILING PROFILE HIJACKING

Taxpayers' eFiling profiles are hijacked by fraudsters. These fraudsters then altered the taxpayers' banking details to their own, filed fraudulent returns and created refunds; if not identified as such by SARS, the latter creates unintended tax debts for taxpayers.

19 DELAY IN EFILING PROFILE TRANSFER BETWEEN TAX PRACTITIONERS DUE TO A SYSTEM ERROR. (TAX PRACTITIONERS WERE ADVISED BY SARS THAT THE LATTER WAS WAITING FOR THE SYSTEM DEVELOPER TO UNDERTAKE THE REPAIR OF THE SYSTEM.)

The eFiling system exhibits delays in the transferring of the taxpayer's profile from one tax practitioner to another or even to the taxpayer.

20 DISPUTE RESOLUTION EFILING/SYSTEM ISSUES

From the complaints lodged with the OTO, it is clear that a taxpayer is not allowed to amend the amounts or source codes reflecting as amounts in dispute, due to an eFiling system error.

Should you require additional information on systemic issues, please contact OTO Systemic Investigators **Sibusiso Thungo** (SThungo@taxombud.gov.za) or **Francois Viljoen** (FViljoen2@taxombud.gov.za).



OFFICE OF THE
TAX OMBUD
Ensuring fairness

SYSTEMIC ISSUES DEFINED



SYSTEMIC ISSUES

For the Office of the Tax Ombud (OTO), a systemic issue is a particular matter that can be regarded as the underlying cause for a complaint that affects, or will affect, a number of taxpayers in the tax system. Systemic issues may arise due to how specific systems in the South African Revenue Service (SARS) function; the way in which SARS's policies, practices or procedures are drafted and implemented; or even the manner in which legislative provisions are applied or disregarded.

A systemic examination arises when an issue is identified that may impact a large number of taxpayers or a segment of the population. Our Office conducts reviews of the individual service complaints and telephone calls received, with the goal of identifying possible trends. We engage our Recognised Controlling Bodies (RCB), tax professionals, academia and community support, while continuously scanning and receiving media queries to assist in identifying systemic issues.

INVESTIGATING SYSTEMIC ISSUES

In terms of Section 16(2)(f) of the Tax Administration Act (TAA), the Tax Ombud must identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers.

METHODOLOGY FOR THE IDENTIFICATION OF THE MOST SERIOUS SYSTEM AND EMERGING ISSUES

The OTO considers a number of factors when identifying and evaluating various issues encountered by taxpayers, thus resulting in a formal recommendation being issued which is based on the following factors:

- The impact on taxpayer rights;
- The negative impact on SARS;
- The seriousness of the issue; and
- The number of taxpayers affected.

IDENTIFIED SYSTEMIC ISSUES

Based on the Tax Ombud's report into alleged delayed payment of refunds as a systemic and emerging issue, and taxpayers' complaints received by the OTO, the organisation has identified the systemic issues listed as the following:



1

DELAY IN PAYMENT OF REFUNDS IN SO FAR AS IT RELATES TO:

1. Failure to link submitted documentation requested by SARS to the main file;
2. The unwarranted placing of Special Stoppers;
3. Using the filing of new returns as an excuse to block refunds;
4. Delay in the lifting of stoppers and lack of a timeframe for doing so;
5. Refunds for one period being withheld while an audit/verification is in progress on another period;
6. Using historic returns to delay the payment of refunds;
7. Raising assessments to clear unallocated credits;
8. Requesting further information during an audit;
9. Assessments successfully disputed, but refund still not paid out;
10. Raising assessments prematurely;
11. Debt set-off, not with standing a request for suspension of payment; and
12. Verification assigned to the auditor but not finalised within the prescribed timeframe.

2

INCORRECT ALLOCATION BY SARS OF PAYMENTS MADE BY TAXPAYERS

Payments made by taxpayers may be incorrectly allocated, resulting in a debt being recorded on SARS's systems. In many occasions, SARS institutes collection steps to recover this incorrect debt.

3

TAXPAYERS BEING AFFECTED BY EMPLOYER'S NON-COMPLIANCE WITH LEGISLATION RELATING TO IRP55

While employers have a legal obligation to submit reconciliations, issue IRP5s and amend incorrect IRP5s, there is no mechanism to enforce these actions. This results in SARS sending these taxpayers to their employers, who refer taxpayers back to SARS. SARS branches are not consistent with following SARS's own procedure in attending to these matters.

4

INCONSISTENCY BY SARS IN PROVIDING TAXPAYERS WITH TIMELINES FOR FINALISATION OF AUDITS/VERIFICATIONS

Taxpayers are given different turnaround times for completion of an audit/verification when phoning the SARS contact centre. The turnaround times are extended every time the taxpayer follows up after the expiry of the initial turnaround time.

5

VICTIMS OF IDENTITY THEFT BEING HELD LIABLE FOR TAX DEBTS

SARS holds taxpayers who were victims of identity theft liable for the tax debt, even in instances where SARS was aware of the alleged fraud and was investigating the same.

6

NON-ADHERENCE BY SARS TO DISPUTE RESOLUTION TURNAROUND TIMES

On many occasions, SARS does not adhere to the dispute resolution turnaround time frames as envisaged in Chapter 9 and under the rules for Dispute Resolution promulgated under section 103 of the TAA.

7

SARS'S FAILURE TO TAKE INFORMATION AT ITS DISPOSAL INTO ACCOUNT

Frequently, SARS requests information during audit/verification/objection procedures and takes decisions without taking into account the information submitted by a taxpayer.

8

SARS TAKING COLLECTION STEPS WHEN LEGALLY BARRED FROM DOING SO

In many cases where taxpayers have submitted requests for suspension of payment, SARS takes recovery steps before a decision is taken on the request, regardless of an express prohibition from doing so in section 164(6).

9

TAX COMPLIANCE SYSTEM (TCS)

Currently, there are a vast number of taxpayers that are affected by the manner in which the current tax compliance system is designed. The system is devised to be live, thus indicating immediately that when there is anything outstanding, the entry will reflect as red (non-compliant). There are various factors that could lead to the taxpayers' compliance being red instead of green. These include (i) outstanding debts, even when only R1 is outstanding; (ii) outstanding returns; (iii) non-submission of certain relevant material requested by SARS and (iv) any transgression that is deemed by SARS to constitute non-compliance. As much as SARS is applauded and supported for the introduction of the TCS, there are, however, certain challenges that are causing undue hardship to various taxpayers due to the manner in which the system was designed. These challenges are based on various complaints from taxpayers.

Some government departments are using the TCS pin as part of their payment process, so that, upon discovering that there is non-compliance, payments are halted by the relevant paying department. In addition, some taxpayers even lose possible contracts/tenders due to the contract/tender awardee using the pin as verification of non-tax compliance status, notwithstanding that a printed version exists which reflects the tax clearance to be valid for a year.

The pin provided may indicate that the taxpayer is non-compliant even when there is a minimal debt such as the aforementioned R1. This creates a huge difficulty for taxpayers that are VAT vendors, or both VAT vendors and PAYE taxpayers, as their returns are submitted on a monthly basis.

The pin provided may also indicate non-compliance even when there is an outstanding return or payment, in spite of the fact that the due date has not lapsed and also where an arrangement acceptable to the appropriate SARS official has been made for the submission of the return.

Cases wherein a debt emanates from fraudulent activities conducted by SARS or ex-SARS officials also contribute to taxpayers being regarded as non-compliant; hence their failure even to obtain a tax clearance certificate.

The system is unable to reflect compliance in cases wherein payment arrangements are in place, including approved suspension of any debt in question.

10

NON-ADHERENCE TO LEGISLATIVE REQUIREMENTS IN RESPECT OF FINAL DEMAND / THIRD PARTY APPOINTMENT (TPA) IN TERMS OF SECTION 179 (5) OF THE TAA.

Letters do not contain the prescribed information. This means that letters issued by SARS are defective and may be set aside if challenged.

11

NUMEROUS FOLLOW-UPS (THIS SYSTEMIC ISSUE EXCLUDES SITUATIONS WHERE TAXPAYERS ARE REPRESENTED BY TAX PROFESSIONALS)

From the complaints that were lodged with the OTO, taxpayers had followed up numerous times with SARS, yet were not advised of the escalation process when their queries were not resolved. SARS, therefore, fails to advise taxpayers of the correct procedures to follow when they want to lodge a complaint.

12

PAY AS YOU EARN (PAYE), STATEMENT OF ACCOUNT (SOA)

The industry bodies, including large corporates, raised serious concerns with our Office with regard to the PAYE/SOA issues which are being caused by the SARS SOA system that has been problematic for the last ten years. Despite several industry forums and specific taxpayer engagements with SARS, this has not been changed. During these events SARS allegedly acknowledged that changes are needed but it seems that this has not been a priority, despite the time and effort expended by SARS officials and taxpayers to constantly reconcile the SOA and rectify the incorrect allocations.

In addition, the industry explained the basic set up of the PAYE Account System that allocates any amount paid to PAYE, the Unemployment Insurance Fund (UIF) and Skills Development Levy (SDL) in that sequence; where a debt arises in any period all subsequent payments are re-allocated in the same sequence to "recover" the debt. All re-allocations are performed without informing the affected taxpayers, which leads to interminable reconciliation issues.

Most corporates have opted to employ dedicated resources that review and reconcile SOAs daily since balances change during any particular day as a result of SARS back-end journal entries: this may result in pages of journal entries for one month where the taxpayer has no idea why the journals have been processed.

