



**OFFICE OF THE
TAX OMBUD**

Report by the Tax
Ombud I.T.O. Section
19 of the Tax
Administration Act 28 of
2011

For the Period 1 October 2013 to
31 March 2014



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FOR THE PERIOD 1 OCTOBER 2013 TO 31 MARCH 2014

TABLE OF CONTENTS

1.	GENERAL INFORMATION	3
2.	LIST OF ABBREVIATIONS / ACRONYMS	4
3.	FOREWORD BY THE MINISTER OF FINANCE	5
4.	INTRODUCTORY REMARKS BY THE TAX OMBUD	7
5.	STRATEGIC OVERVIEW	13
6.	BACKGROUND AND LEGISLATIVE MANDATE	14
7.	LIMITATIONS ON AUTHORITY	16
8.	GOVERNANCE	17
9.	RELATIONSHIP WITH SARS	18
10.	OPERATIONAL REPORT	19
	10.1 CASE MANAGEMENT	19
	10.2 HUMAN CAPITAL	25
	10.3 ORGANISATIONAL STRUCTURE	27
	10.4 STAKEHOLDER RELATIONS, PUBLIC EDUCATION AND OUTREACH	28
11.	FINANCIAL REPORT 1 OCTOBER 2013 TO 31 MARCH 2014	33
12.	CONTENTS OF THE REPORT IN TERMS OF SECTION 19	36
13.	SOME OF THE CHALLENGES	60
	13.1 ACCOMMODATION	60
	13.2 INADEQUATE PERSONNEL	60
	13.3 INSTITUTIONAL CONSTRAINTS	60
	13.3.1 OTO Finances	60
	13.3.2 Section 15(1) of the TAA provides:	61

1. GENERAL INFORMATION

Information about the OTO:

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CEO: Advocate Hanyana Eric Mkhawane

Registered name: Office of The Tax Ombud

Registered office address : iParioli Building

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0028

Website : www.taxombud.gov.za

Working hours : 07:30 – 16:30 (Monday to Friday)

2. LIST OF ABBREVIATIONS / ACRONYMS

CEO	Chief Executive Officer
OTO	Office of the Tax Ombud
SABC	South African Broadcasting Corporation
SAIT	South African Institute of Tax Professionals
SARS	South African Revenue Service
SSMO	SARS Service Monitoring Office
TAA	SARS Tax Administration Act, No 28 of 2011
TO	Tax Ombud

3. FOREWORD BY THE MINISTER OF FINANCE

The launch of the Office of the Tax Ombud in October last year was another marker on the long journey we have travelled since 1994. This journey of institutional reforms began immediately after the advent of democracy in 1994 when Cabinet approved the restructuring of the Inland Revenue



and Customs and Excise Directorates in the then Department of Finance into a new and autonomous entity, the South African Revenue Service (SARS).

The creation of SARS was informed by an understanding that the ability of government to implement a tax system depends to a large extent on having a capable revenue authority to administer the tax system. Over and above this, the state owes its taxpaying public a system that leaves them feeling they are being treated fairly.

In this regard, the Office of the Tax Ombud provides an additional and free avenue through which taxpayers can address their complaints which have not been resolved through the appeal processes that are offered by the SARS.

The Tax Ombud's office is modelled on similar institutions in other countries, including Canada and the United Kingdom.

The Ombud is intended to be a simple and affordable remedy to taxpayers who have legitimate complaints relating to administrative matters, poor service or failure by SARS to observe taxpayer rights. The office is expected to be independent, and treats all taxpayers' cases with confidentiality.

I would like to take this opportunity to congratulate Judge Ngoepe and his team for hitting the ground running in establishing this important institution in our democracy. We will continue to support the Office of the Tax Ombud to ensure that it is a successful machinery in helping solve the taxpayers' complaints

A handwritten signature in black ink, appearing to read 'Nene', with a long horizontal stroke extending to the right.

Honourable Mr Nhlanhla Nene, MP
Minister of Finance

4. INTRODUCTORY REMARKS BY THE TAX OMBUD

I feel honoured and privileged to serve as South Africa's first Tax Ombud. I appreciate the opportunity, as the Tax Ombud, to devote such skills and experience as I may have, towards establishing and running this office. Since this is a newly established role, it is challenging but very exciting in that all those are involved are able to draw from their own previous experiences and work together for the good of the office.



I was appointed on the 1st October 2013 in accordance with section 14 (1) of the Tax Administration Act, 28 of 2011 (TAA), and report directly to the Minister of Finance. My role is to review and address any complaint by a taxpayer regarding a service matter or procedural or administrative matter arising from the application of the provisions of a tax act by SARS. My office seeks to ensure that taxpayers receive the professional service and fair treatment that they are entitled to from SARS.

From the outset, it is important to highlight the fact that the Office of the Tax Ombud is independent of SARS. It provides taxpayers with a simple and impartial channel to resolve a service, procedural or administrative dispute which they might not have been able to resolve through SARS' complaints management channel. We offer an independent and neutral platform to engage with SARS. The OTO is therefore the last recourse after SARS' internal complaints mechanisms have been exhausted.

This report covers the period from October 1, 2013, when I was appointed, to the end of the fiscal year on March 31, 2014. The report will therefore cover the activities of our first six months of existence.

The report gives us an opportunity to report on how the establishment of the office is coming along, and to provide examples of how our work is already making a significant difference in the lives of taxpayers.

It is pleasing to report that shortly after the announcement of my appointment, the office started receiving and resolving taxpayers' complaints. While we made sure that our core operation, namely, dealing with taxpayers' complaints, was running, we spent much of the first six months developing procedures and protocols for engaging with taxpayers, SARS, and the Minister of Finance. We also had to work on the secondment of staff from SARS to our office. The work of establishing this office was not easy given the fact that we had to start everything from scratch. However, the professionalism and dedication of the seconded staff at our office has ensured that we are effective, and manage to establish our identity as a credible, impartial institution.

During the first six months we managed to employ the Chief Executive Officer in our office, who is responsible for leading the team and management. We are in the process of employing more staff.

In terms of governance, we are in the process of finalising a protocol governing our relationship with the Minister of Finance, as well as the regulations to govern the work that my office can take in accordance with section 257 of the TAA.

We are developing procedures and protocols for working with SARS, on both complaints management systems and on accessing resources for the running of our office. Whilst looking for proper office space which will cater for our business needs, we are temporarily accommodated at Hatfield, Pretoria. We are currently relying on SARS for support services on certain areas such as human capital management, finance management, Information and Technology. In due course, we will be able to stand on our own even in those areas.

Despite the fact that we are in the process of building our institution, we have already helped resolve numerous complaints from taxpayers. These case reviews also help us identify and analyse systemic service issues – issues that go beyond the individual cases and have a wide ranging impact on the tax system. We realize that our role is not only to review and address the complaints by taxpayers, but also to ensure that they are avoided. This report contains a summary of some of the important complaints that we dealt with over the first six months of our existence. We have thus far received many complimentary messages, some of which will appear in the body of this report.

We have already developed our own corporate identity, mission and vision statements, website, and our value system. A complaint form and a complaint procedure guide have been developed, and are provided to taxpayers who either want to submit their complaints, or to get an understanding of how our office operates. We have also implemented an interim case management system and changed from the manual spreadsheet that we used when we started. Taxpayers are provided with various channels of communication to approach our office. These include a toll-free telephone, fax, e-mail, post, and through walk-in.

During the period under review, the OTO was approached by 670 taxpayers. The breakdown of these approaches is given in the report under the head “Operational Report”.

As a new institution, we had to rely on the support and experiences of other institutions. Our stakeholder relations programme included building a good understanding and working relationship with the Minister of Finance, and with SARS. I have already visited some SARS branches to see how they work. I have also engaged with the SARS Commissioner and Management on numerous occasions to discuss the protocol and service level agreement between our offices. It is pleasing that SARS leadership has expressed willingness to work through the issues that we constantly identify.

As part of the benchmarking process I have also had discussions with the Public Protector, the Pension Funds Adjudicator, and the Chairperson of the Human Rights Commission. During my discussions with them, I managed to learn a lot about their organisational structures and case management systems.

We have also interacted with the South African Institute of Tax Professionals. We are planning to engage other professional and controlling bodies recognised by the Revenue authority in terms of section 240A of the TAA. We will continue to build and maintain stakeholder relations.

In order for our office to be effective and to serve the people that it has been created to serve, we had to make sure that taxpayers know about our existence and the mandate which we have been given by the TAA. It is therefore our priority and mandate to increase

awareness of the public about the existence and mandate of our office. To this end, since my appointment, I have done a number of radio and television interviews. My appointment has also been covered widely by the media in South Africa. We are also planning to have some more outreach programmes in due course; and, to this end, employ a dedicated team of communications and outreach employees.

I must indicate that it has been, and for a future while will continue to be, a challenge to articulate our identity as an office at arm's length from SARS, while depending on many of SARS's resources (including staff) to function. In the eyes of some, this might compromise our independence and impartiality. The most important weapon we can use to inspire taxpayer's confidence, is our independence from SARS; therefore, we need to manage perceptions about our independence very carefully.

We do not have a full staff complement yet. This means that we continue to operate without some important business units of our own such as communications, legal, operations and corporate services. Not having our own resources readily available and having to access same through SARS has also proved to be challenging at times. We hope that, come the next financial year, we will be having our own vital staff.

We will be developing our business and strategic plans for the next three years in order to track the achievements against our set objectives.

In conclusion, I would like to thank the Minister for the opportunity to establish the office of the Tax Ombud. I also appreciate the team of employees in my office who were seconded from SARS, who worked hard to help establish the office; without them, we would not have been where we are today in terms of progress. I thank our CEO for leading the team in my

office in the right direction, and for ensuring that systems are put in place to have taxpayers' complaints dealt with as speedily as possible. I also thank the Commissioner of SARS and his management team and staff for the support that they have given me and my office and for working hard to resolve the complaints that were brought to our attention by taxpayers. Most importantly, I thank all those who have approached our office not only for complaining but also for seeking information about our services. The trust that they have shown in us to resolve their problems will definitely keep us going, because we know that we enjoy the confidence of the people we have been established to serve.



Judge B M Ngoepe
South Africa's Tax Ombud

28 August 2014

5. STRATEGIC OVERVIEW

OUR MISSION

To facilitate justice in South Africa's tax administration system by providing taxpayers with free expeditious, independent, impartial and fair redress channel.

OUR VISSION

The Tax Ombud is an effective and efficient instrument for the respect, promotion, fulfilment, and protection of taxpayer rights and responsibilities. We strengthen taxpayer confidence in tax administration and voluntary compliance with their tax obligations.

OUR MOTTO

"Fairness at all times".

OUR PRINCIPLES

Accountability – administrative justice requires that taxpayers have a rational and fair reason for decisions made and actions taken by the South African Revenue Service.

Transparency – fairness requires that information and criteria used by SARS and our office to inform decision making be made available to taxpayers.

Efficiency – our office has a duty to ensure a prompt resolution of complaints by following procedures that do not duplicate or contradict each other and cause additional administrative burden for taxpayers.

Effectiveness – ensuring that our case management system identifies bona fide cases and adequately reviews them before referring them to SARS so as to increase the possibility of a fair resolution for the taxpayer.

Honesty – as an independent and impartial redress channel for taxpayers, we assist taxpayers who act honestly in relation to their tax obligations.

Confidentiality – the Tax Ombud holds all communications with taxpayers in strict confidence unless authorised otherwise.

6. BACKGROUND AND LEGISLATIVE MANDATE

The Office of Tax Ombud (OTO) was established by, and derives its mandate from, the Tax administration Act, no 28 of 2011 (TAA).

The appointment of the Tax Ombud is provided for in section 14(1) of the TAA, which states that the Minister of Finance must appoint a person as a Tax Ombud.

Section 16(1) of the TAA gives the Tax Ombud a mandate to review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provision of a Tax Act by the South African Revenue Service (SARS).

The Tax Ombud is expected to discharge his/her mandate independently in terms of section 16(2), which provides for the fair, free and effective procedures in resolving complaints. In discharging his/her mandate, the Tax Ombud must:

- Review a complaint, and if necessary, resolve it through mediation or conciliation
- Act independently in resolving a complaint
- Follow informal, fair and expeditious procedures in resolving a complaint
- Provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint.
- Facilitate access by taxpayers to complaint resolution mechanisms within SARS.

- Identify and review systemic and emerging issues related to service matters or the application of the provisions of the TAA or procedural or administrative provisions of a tax Act that impact negatively on taxpayers.

Section 18 sets out the procedure according to which the Tax Ombud is to deal with the complaints.

7. LIMITATIONS ON AUTHORITY

According to section 17 of the TAA, the Tax Ombud may not review the following:

- Legislation or tax policy.
- SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.
- A matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal.
- A decision of, proceeding in or matter before the tax court.

Section 20(2) of the TAA also says that any recommendations made by the Tax Ombud are not binding on taxpayers or SARS. This means that if a complainant is not satisfied with the Tax Ombud's outcome of their complaint, the taxpayer has the right to pursue other channels of redress.

Furthermore section 259(2) provides as follows:

“(2) The first Tax Ombud appointed under this Act may not review a matter that arose more than one year before the day on which the Tax Ombud is appointed, unless the Minister requests the Tax Ombud to do so.”

Taxpayers must also have exhausted SARS's internal complaint systems before coming to the OTO.

8. GOVERNANCE

The OTO is a public entity, whose mandate is derived from section 16(1) of the TAA. Section 14(1) gives the Minister of Finance powers to appoint the Tax Ombud (TO). In terms of section 19(1)(a), the TO reports directly to the Minister of Finance.

Executive Authority: The Minister of Finance is the executive authority and, in terms of section 19(1)(b) the TO submits an annual report to the Minister, who must table it in the National Assembly.

Accounting Authority: In terms of section 14(2) a Tax Ombud may be removed from office by the Minister for misconduct, incapacity or incompetence.

Accounting Officer: The Chief Executive Officer is the accounting officer and reports to the TO about all the activities of the OTO.

The Tax Ombud and the Minister of Finance have signed a protocol to govern the working relationship between them.

9. RELATIONSHIP WITH SARS

The OTO is supposed to be independent of SARS, and it is not a sub-office of SARS. All information given by the taxpayer to the OTO is held in strict confidence and is not furnished to SARS without the taxpayer's consent, except to the extent required for the purpose of the performance of functions connected with the execution of the TO's mandate – section 21(3).

The OTO communicates with SARS solely for the purpose of resolving the taxpayers' complaints with SARS.

In terms of section 15(1) of the TAA the staff of the OTO are employed in terms of the SARS Act, and then seconded to the OTO at the request of the Tax Ombud in consultation with the Commissioner.

In terms of section 15(4), the expenditure connected with the functions of the OTO is paid out of the funds of SARS.

In terms of section 19(1)(c) of the TAA, the OTO submits a report to the Commissioner quarterly or as often as may be agreed, in respect of the matters the OTO handles.

The Tax Ombud and the Commissioner hold meetings from time to time to discuss issues relating to the former's execution of his mandate. These meetings have been very beneficial to the OTO.

10. OPERATIONAL REPORT

10.1 CASE MANAGEMENT

Interim Complaints Management System

The OTO endeavours to resolve complaints within 15 business working days of submission to SARS. Taxpayers are afforded an opportunity to use various available channels of communication to approach the OTO with their complaints. These include walk-ins, e-mail, telephone, fax, and through letters posted at the post office. All complainants are required to fill a complaints form which has been designed to collect as much relevant information as possible about their complaints.

The operations division (where complaints are received and assessed) is currently operating with four (4) consultants and one (1) manager.

The OTO has already developed complaints procedure guidelines which are provided to taxpayers together with the complaints form; both are freely available.

From the 1st October 2013 to 28th February 2014 an excel spreadsheet and a shared folder were used to manage approaches received and to monitor and track complaints falling within our mandate.

An interim Complaints Management System was implemented on the 1st March 2014 to log, monitor and track all approaches. All the information from 1st October 2013 to 28th February 2014 has been transferred to the Interim Complaints Management System. As with any new system, challenges have been experienced and enhancements have been made to adapt to our requirements.

A permanent Complaints Management System, customised to the OTO's needs, will be developed and implemented in the next financial year.

Interim call centre system

The OTO started off with 1 landline for Taxpayers. During December 2013, with the secondment of four (4) Consultants from SARS, an Interim Call Centre System was implemented. This system is not able to route calls and the phones ring simultaneously at all the consultants. The system is not able to provide reports on statistical data and manual statistics had to be kept.

A permanent Call Centre System will be developed and implemented in the next financial year to meet all our requirements.

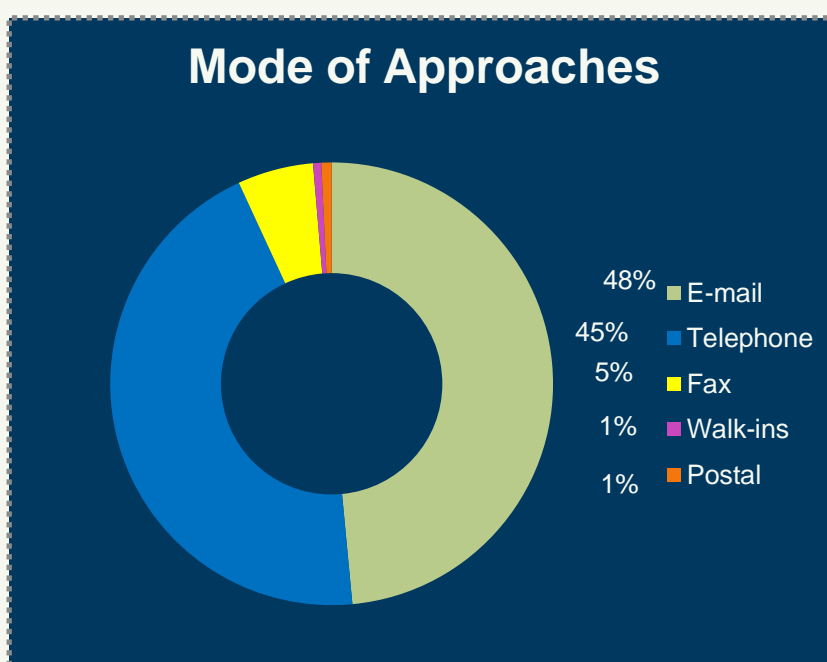
Case activity

The OTO has made a commitment to respect and treat seriously all taxpayers who approach it through various channels of communication. We make it our business to ensure that proper records are kept of all communications with taxpayers. It is due to this commitment that we maintain a record of all

approaches by taxpayers. All approaches are first properly recorded, and then categorised as valid complaints, enquiries, invalid complaints, or concerns.

During the period 1 October 2013 to 31 March 2014 the OTO had 670 approaches. These approaches were mainly received through e-mail, (324) and telephone calls (298). Other channels used by taxpayers were faxes (37), walk-ins (4), and postal (5).

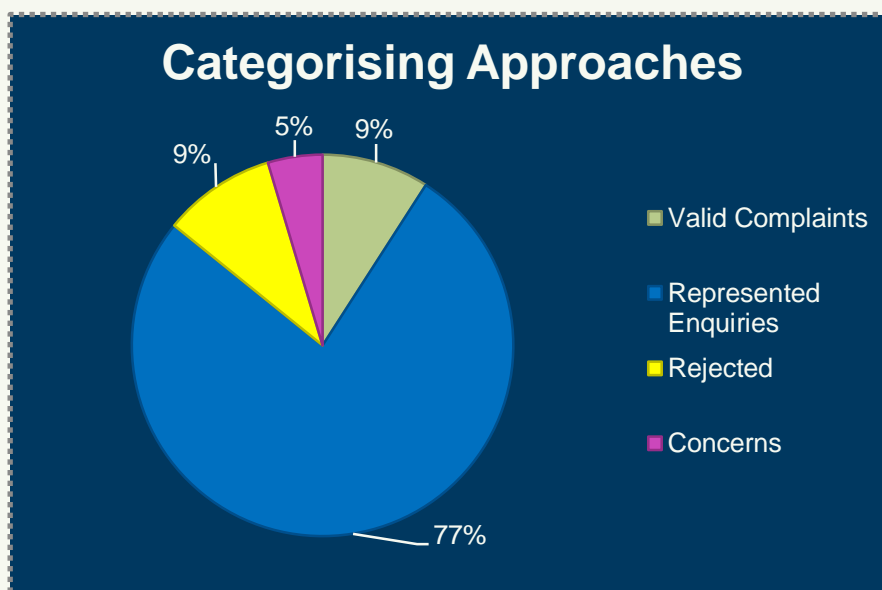
PIE CHART INDICATING MODE OF APPROACHES



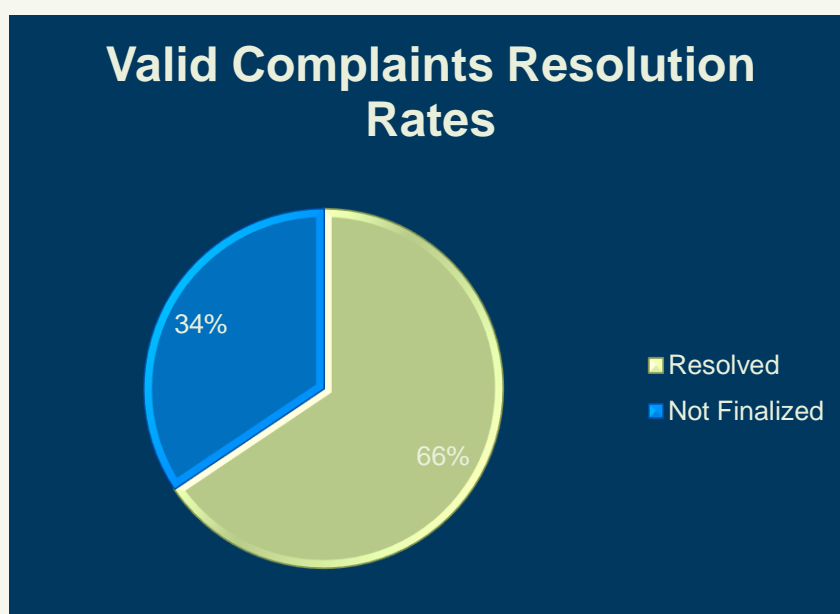
These approaches are categorised as follows:

Out of the 670 approaches, 61 (9%) represented valid complaints; 514 (77%) represented enquiries; 64 (10%) represented complaints that fell outside our mandate and thus rejected as invalid, and the remaining 31 (4%) were noted as concerns.

PIE CHART CARTEGORISING APPROACHES



Of the 61 (9%) valid complaints received, 40 (63%) were resolved.



Valid complaints:

These are cases that were found to be falling within the mandate of the OTO. They included complaints about service, procedure, and the administration of Tax Act by SARS.

Enquiries:

Enquiries received during the first six months of our existence included requests for complaint form, and complaints procedure guides. People also enquired about the e-mail, postal and physical address of the OTO.

Invalid complaints:

Complaints were classified as invalid when they did not fall within the ambit of the OTO for reasons such as time, not having exhausted SARS's complaint system, and when they were not service, procedural, or administrative matters.

Concerns:

Concerns are those complaints that do not fall within the mandate of the OTO, but raise important systemic issues. For example, cases about issues that arose more than a year before the appointment of the first Tax Ombud, which the OTO was not allowed in terms of section 259(2) of the TAA to review.

Time and effort invested:

It will be noticed that a lot of time and effort is needed to evaluate every approach, before ascertaining whether it falls under the one or the other category; sufficient staff is therefore necessary.

OTO Users:

The Office of the Tax Ombud is meant to be a simple and free complaint resolution mechanism available to all taxpayers. It has dealt with cases that were brought by taxpayers themselves or their representatives. When dealing

with cases brought by tax representatives such as practitioners, we require them to provide the power of attorney provided to them by taxpayers.

During the period 1 October 2013 to 31 March 2014, approaches were received from the following categories of taxpayers:

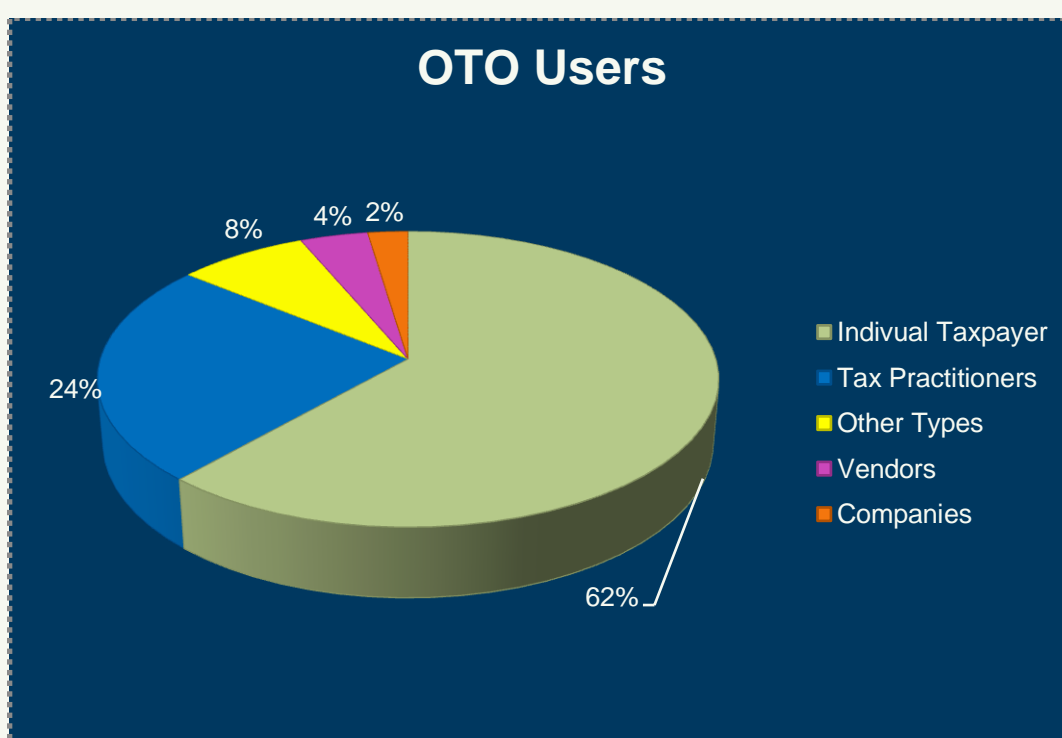
Individual taxpayers: represented 62% of users with 414 approaches.

Tax practitioners: represented 24% of users with 163 approaches.

Vendors: represented 4% with 27 approaches.

Companies: represented 3% with 16 approaches.

Others: represented 7% with 52 approaches. No queries or complaints were received from employers.



10.2 HUMAN CAPITAL

For the OTO to start operations, human capital was needed from the outset to deal with the establishment of the organisation while, at the same time, handling complaints that were being received from taxpayers. During the period 1 October 2013 to 31 March 2014 the OTO managed to employ its Chief Executive Officer. All other employees were temporarily seconded from SARS to the OTO as per section 15(1) of the TAA which states that the staff of the OTO must be employed in terms of the SARS Act and be seconded to the office of the Tax Ombud at the request of the TO in consultation with the Commissioner of SARS.

The majority of seconded staff are from the SARS Service Monitoring Office (SSMO). The OTO relied on designated staff of SARS for the provision of other support services such as Human Capital Management, Finance Management, and IT Services.

The staff compliment during the period 1 October 2013 to 31 March 2014 was as follows:

The Tax Ombud

Chief Executive Officer

Governance Executive (1)

Office Manager (1)

Operations Manager (1)

Consultants (4)

One seconded employee (Governance Executive) returned to SARS in January 2014. The total number of staff at 31 March 2014 was six (6).

The OTO has created a human capital structure which for now provides for the employment of a total of 42 employees. The structure (attached) has since been submitted to the Minister of Finance. The proposed structure will enable the Tax Ombud to have the required human capital with relevant skills and experience to help him deliver on the mandate imposed on him by the TAA. The employment of the full complement as per attached structure, dated February 2014, need to be completed by the end of this financial year to meet the increasing work of the OTO. Depending on the load of work, the structure may in future be adapted to provide for more personnel.

10.3 ORGANISATIONAL STRUCTURE



Positions filled and / or already advertised



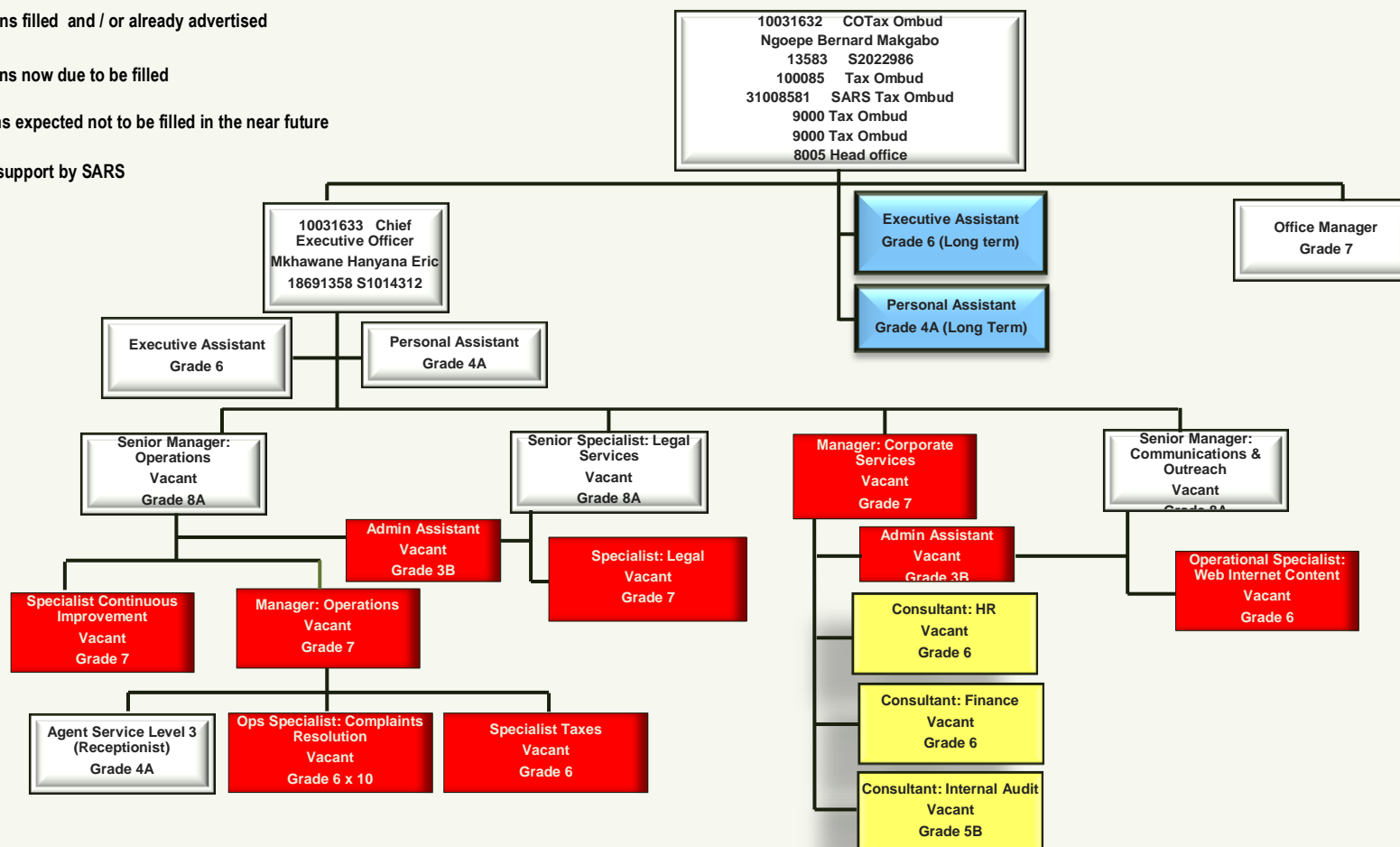
Positions now due to be filled



Positions expected not to be filled in the near future



Interim support by SARS



10.4 STAKEHOLDER RELATIONS, PUBLIC EDUCATION AND OUTREACH

The Office of the Tax Ombud regards its interaction with stakeholders and the public as integral to the discharge of its mandate. As history was being made with the establishment of the OTO, it was important to inform the public about the establishment of this new office, while also establishing strategic relations with stakeholders. It should be noted that communication of these messages requires both financial and human resources. Because the OTO was expected to start operating without these two important resources, communicating with stakeholders and the public at large was going to be a daunting task. Communications and stakeholder relations have evolved to become one of the most important business units in organisations, with specialised skills and resources which have become quite expensive. Nevertheless, the OTO did its best to reach out to the public and stakeholders with the minimal resources at its disposal.

Media Relations and Public Education:

- National Treasury also issued a media statement on 01 October 2013 titled; “MINISTER OF FINANCE APPOINTS TAX OMBUD”. The statement was released to different media houses and posted on the department’s website.
- Upon his commencement of duty in October 2013, Judge Ngoepe released his first media statement in his capacity as South Africa’s first Tax Ombud, titled “SOUTH AFRICA’S FIRST TAX OMBUD AND OFFICE

OPEN FOR BUSINESS". This media statement was released to SA Press Association.

- The media statement of October 31, 2013 was provided to media representatives in attendance at the South African Institute of Tax Professionals (SAIT) breakfast. Media interviews were conducted with the following: Mail & Guardian; Business Day Live; Business Day print & online; Sake24; Moneyweb; SA News; South African Broadcasting Corporation (SABC) and New Age. Several newspapers reported the role and functioning of the Tax Ombud, the Office of the Tax Ombud and the OTO's complaints process.
- During November 2013 Judge Ngoepe's edited audio speech was played on Talk Radio 702. The recorded speech was made during the South African Institute of Tax Professionals (SAIT) breakfast gathering. He was also interviewed by Bruce Whitfield on Talk Radio 702 on November 7th 2014.
- On Tuesday 25 February 2014 Judge Ngoepe was interviewed on a television current affairs programme called Interface on SABC 3. The TO was the main guest, speaking about his appointment as the first Tax Ombud.
- SAIT TAX TALK magazine interview with the TO by editor, Yolande Botha (including a photo shoot): 15 November 2013 at 10:00, IParioli, Hatfield
- SAIT featured an article in their magazine's January / February 2014 edition to alert people of the Ombud service and the steps to follow before

going to the Ombud. Also just to give the reader an introduction to the Ombud office and what important role it would be playing in the country's tax environment, Judge Ngoepe's picture was used as the magazine Cover page. The article was used as a friendly introduction of the OTO's needed service in this country. This journal (SAIT TAX TALK) is not sold, but only distributed to the SAIT member base of 11 000 tax professionals.

- The OTO website was launched and went live on Monday 10th March 2014, and the complaint form and complaint procedure guidelines were loaded.
- As at the end of the financial year (31 March 2014) the Office of The Tax Ombud was finalising arrangements for its official launch to be held on 7 April 2014.

Stakeholder Relations:

- Meetings were held between the Tax Ombud and the Acting Commissioner of SARS. The purpose of the meetings was to meet with the Tax Ombud and to discuss the manner in which the two institutions would work. The TO also held meetings with a number of SARS executives to discuss the provision of resources by SARS to the OTO. This is because of the arrangement that OTO will receive support from SARS in terms of resources such as financial, Information technology, human capital management, and other areas.

- The TO held discussions with leaders of other institutions such as the Human Rights commission chairperson Advocate Lawrence Mushwana, Pension Funds Adjudicator's Muvhango Lukhaimane, and Office of the Public Protector's Thuli Madonsela. These meetings were part of a benchmarking exercise. The Tax Ombud and leaders of these offices managed to discuss and compare institutional structures, as well as workflow and case management processes.
- The TO delivered the keynote address at the South African Institute of Tax Practitioners (SAIT) breakfast session for their collective membership and taxpayers on 07 November 2013 at 09:00, Gallagher Estate Convention Centre, Midrand (on invitation by Prof. Sharon Smulders: Head of Tax Technical Policy & Research: SAIT & the SAIT Chief Executive, Mr Stiaan Klue). The keynote address was preceded by an opening address by the SAIT Chairperson, Dr Beric Croome, about the office of Tax Ombud.
- The TO also met and established stakeholder relations with South African Institute of Tax Professionals and the Tax Committee.

The OTO will continue to prioritise matters of stakeholder relations and public education through working with the media and other institutions such as professional bodies and state departments. During the next financial year, the OTO will establish a fully functioning communication and public stakeholder management division which will have its own suitably qualified staff to manage all communications and stakeholder relations activities and resources. The

objective is to ensure that all taxpayers know about the OTO, its mandate and the services it offers, as well as the limitations on the mandate. We will continue to build new relationships with other stakeholders, while nurturing and maintaining the ones we have established over the first six months of our existence. We value these relationships, to the extent that they are material to the proper execution of the mandate of the OTO.

11. FINANCIAL REPORT 1 OCTOBER 2013 TO 31 MARCH 2014

Executive Summary:

The purpose of the report is to provide an overview of the financial expenditure in the business unit covering the period 1 October 2013 to 31 March 2014.

The period to be reported on is 1 October 2013 to 31 March 2014, being the first 6 months of the OTO's existence. Funding allocation (budget) was planned and provided for on an incremental basis over the period to March 2014.

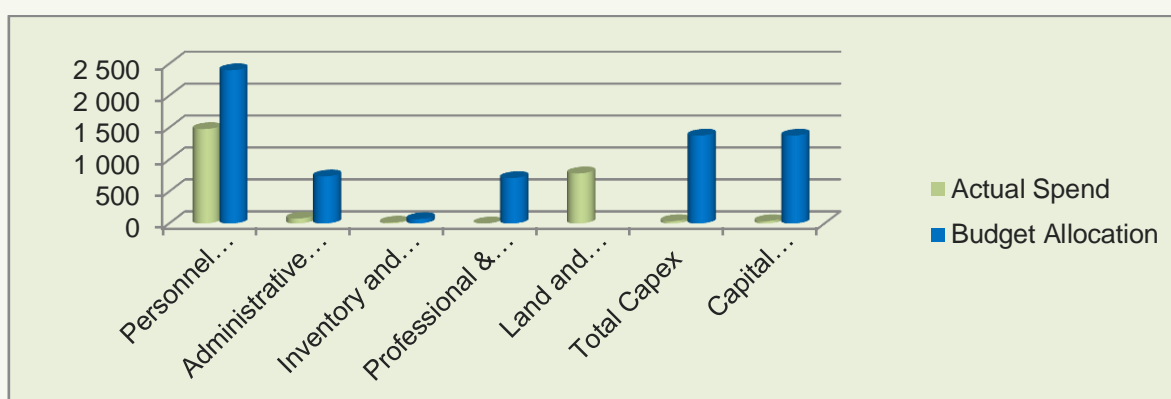
A total operating budget of R5.291m was allocated to the office. Total actual spend in the period under review was R2.389m. This represents a usage of 45% of the allocated budget.

A key driver of the under expenditure in the period was the non-filling of planned vacancies as well as the fact that no external legal services were used.

Financial Analysis:

	Actual Spend	Budget	Variance Incurred
Total SARS Opex and	2 389	5 291	2 902
Total Opex	2 353	3 916	1 563
Personnel Expenditure	1 478	2 400	922
Administrative Expenses	77	737	660
Inventory and Printing	13	68	55
Professional & Special	0	711	711
Land and Buildings	784		-784
Total Capex	36	1 375	1 339
Capital expenditure	36	1 375	1 339

Graphical Illustration of the Trend of Expenditure:



Commentary:

Personnel Expenditure:

The actual spend in the financial year related to two members, the CEO and the TO. The surplus arising against the planned budget is due to the vacant positions that were not filled as at 31 March 2014.

Administration Costs:

The administration expenditure includes a trip and related travel costs that was undertaken in the period, telephone expenditure (cell phone costs), office equipment lease, staff welfare and subscription to newspaper publications.

Inventory and Printing:

Purchases relate to computer consumables that were required by the office.

Land and Buildings

Covers the office rental as well as related building expenditure, which includes office cleaning services.

Profession and Special Services:

Covers cable maintenance cost.

Capex:

The capex purchase related to office equipment purchases.

12. CONTENTS OF THE REPORT IN TERMS OF SECTION 19

Guide into the Contents of the Report:

- The contents are divided under the following sections:
 - A. Serious Issues
 - B. Identified Systemic Issues
 - C. Identified Emerging Issues
- Under each section, there are matters which relate to service, procedural or administrative issues. Furthermore, one matter may be discussed under two or more of those issues; this is because some matters raise more than one issue.
- In appropriate instances, recommendations are made in terms of section 19(1)(c) as to what administrative action should be taken to resolve problems encountered by taxpayers. These recommendations are made apposite a case discussed where applicable.

A. SERIOUS ISSUES

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
Service failure – Conduct and Attitude. Damage caused to taxpayer's property due to the dereliction of duties by SARS custom officers. The complainant arrived at the border around 16h20 and was escorted to the inspection area at approximately 17h00. Two customs officials ordered him to remove the tarps from the trucks while a storm was approaching. The officers decided to have their dinner and order the complainant to unpack both trucks. The complainant approached the customs' office to report the incident. On his return, the officers were very irate and arrogant. The unpacked goods were damaged by the storm. A claim for damage to property was forwarded to SARS and acknowledged by them on the 6 th December 2013 and advised that the matter would be investigated. Despite numerous follow ups, no feedback from SARS has been received.	The OTO forwarded the complaint to SARS for a response.	Awaiting feedback from SARS	10	Not applicable
Systemic – Lack of sufficient security within SARS systems to prevent e-filing fraud – Bank details changed by fraudulent e-filing. This company's bank details were changed resulting in a refund being paid into a 3 rd party account. Despite several attempts made to SARS by the company and providing them with the necessary proof and documents as requested, no feedback was received on the progress of the investigation.	OTO recommended to SARS to attend to the case to bring it to finality.	The case was being resolved as at the end of March 2014.	3	Not applicable
In another case the company's bank details were changed	OTO requested SARS to	Awaiting feedback from SARS	5	Not applicable

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
resulting in two refunds of R11 1867,97 and R56 652,61 being paid into a 3 rd party account. Despite several attempts made to SARS by the company and providing SARS with the necessary proof and documents as requested, no feedback was received on the progress of the investigation.	provide them with an update on the progress of the investigation and reasons why the refunds had not yet been paid to the company.			
In yet another case a company submitted its 2009 Income Tax return via e-filing on the 31 st July 2010 without completing banking details. A fraudulent 2009 return was submitted on the 10 th November 2012 with banking details and name of unknown public officer. Banking details were updated according to the information on the fraudulent return and 2010 refund was released into this account. This was reported to SARS and the case was referred to an investigator for investigation. Complaint was escalated to the SARS Service Monitoring Office without any success. Despite numerous follow ups to SARS no feedback was forthcoming.	OTO requested SARS to provide them with an update on the progress of the investigation and reasons why the refund had not yet been paid to the company.	Awaiting feedback from SARS	4	Not applicable
Systemic – Insufficient security in SARS systems to prevent e-filing fraud. SARS Systems failing to prevent fraudulent e-filing profiles to be opened under taxpayers names, resulting in fraudulent Income Tax Returns submitted and fraudulent refunds released. The Taxpayer was not an e-filer. Two fraudulent e-filing profiles have been opened under this taxpayer's ID number with different particulars. Returns for 2008 – 2013 tax years were re-submitted after the period for submitting a request	In process of evaluating complaint. Not yet forwarded to SARS.		0	In process of evaluating complaint, before sending to SARS

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
for correction had lapsed.				
Systemic – Lack of proper systems to prevent identity theft. SARS finding it difficult to prevent identity theft on their systems. The taxpayer was a victim of identity theft. The fraudster submitted a fraudulent 2010 tax return in the name of the taxpayer. This return resulted in a duplicate 2010 assessment. In order to secure the refund, fraudulent documentation for a new bank account was submitted at a SARS Office. Despite numerous follow ups to SARS no feedback was forthcoming.	OTO recommended to SARS to investigate the issue and bring it to a closure.	The refund was released. The process of bank detail validation has significantly improved to ensure that only the taxpayer or the authorised representative can request changes to banking details. Branch Offices now only accept original documents and all banking detail changes are subject to the “AVS” check before being updated. A dedicated banking “super team” has been established. The team is specifically trained to deal with exceptions.	35	Not applicable.
Systemic – Wrong classification of taxpayers as provisional taxpayers. This is a Senior Citizen, 85 years old, and physically handicapped. This resulted in penalties and interest being charged where not legally due. Despite several attempts including a submission of a Notice of Objection (NOO) he was unsuccessful to get his issue resolved through SARS. This caused undue hardship and unnecessary stress on the elderly.	OTO recommended to SARS to investigate the case and to visit the taxpayer at home to resolve the issue.	The penalties and interest were waived in full and the taxpayer de-registered as a provisional taxpayer. This is an automated process which should be reconsidered. Paragraph 20, 20A and 27 of the Fourth Schedule of the Income Tax Act (penalties) and Section 89quat and 89bis (interest), are levied daily on unsuspecting taxpayers who are not provisional taxpayers. The system problem has been going on for years, and has still not been corrected.	15	Not applicable.
Procedural – lack of proper procedures to only register liable taxpayers. Taxpayers taken on Income Tax Register who are not liable to submit Income Tax returns. This resulted in SARS charging Administrative penalties where legally not due. This taxpayer is a Senior Citizen – 76 years old. Taxpayer approached	The OTO recommended to SARS to lift the special stopper for the refund to be released.	The refund was released on 28/03/2014. SARS' System needs to be changed to address the issue, not only for this taxpayer, but all affected taxpayers, mostly Senior Citizens.	0	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
SARS and was informed to submit a Request for the remittance of the penalties (RFR1) form. Taxpayer complied. But SARS failed to discharge all the penalties the first time around. SARS then issued an IT88, appointing the pension fund to deduct money from the monthly pension. SARS and the SSMO were again approached and again the taxpayer submitted another request for the remittance of the remainder of the administrative penalties to be waived. This was done, but the money (R192 013,57) was not refunded to the taxpayer as a Special Stopper had been placed on the account.				
Procedural – Failure by SARS; to manually capture VAT201 returns resulted in SARS withdrawing funds from the Vendor’s bank account, also prompting the Vendor to go through the appeal process unnecessarily. Company requested SARS to pay interest on the money it had erroneously withdrawn from the company bank account. SARS failed to pay interest after appeal was allowed in full in favour of the Company. SARS admitted that it could not have disallowed the input tax in terms of Section 187(1), if a tax debt or refund payable by SARS is not paid in full by the effective date, interest accrues on the amount of the outstanding balance of the tax debt or refund.	OTO recommended to SARS to pay the interest to the company	Awaiting feedback from SARS	2	Not applicable.
Procedural – Taxpayers taxed on interest earned on Trust accounts. SARS incorrectly taxing interest earned in a trust account. This Taxpayer was identified	OTO recommended to SARS to refund the money and to find a permanent	Awaiting feedback from SARS with regard to how the taxpayer will in future be treated regarding the levying of interest on monies in a	23	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
for an audit every year. The 2011 and 2012 assessments took too long to get resolved forcing the taxpayer to lodge an objection. In the interim the SARS Debt collections department issued an IT88, appointing an agent, to the bank to deduct an amount of R948 000,00 from the taxpayer's personal investment account. After the Notice of Objection was finalized it resulted in the amount refunded to the taxpayer with interest. The taxpayer approached SARS for a solution to prevent recurrence of this situation in future, without any success.	solution to prevent these cases from being identified for audit every year. It was suggested that a meeting is held with the different parties involved.	trust account.		
Procedural – SARS Systems applying a set off in respect of a debt it had granted suspension on. SARS systems not able to accommodate for Section 164 of the Tax Administration Act. A taxpayer company was indebted to SARS. The taxpayer requested a suspension of the debt which was partially granted. Company was entitled to a refund, but the system set off a refund against the debt. The company is severely dependent on the refunds in their operations and the extended period before receipt of their anticipated refunds proved almost detrimental to its survival.	SARS was requested to investigate the case and to release the refunds.	The refund plus interest was released through a manually driven process by several interdependencies. Section 164 of the TA Act creates a situation on the core systems which SARS has not yet technically adapted to. The refund process should not be compromised regardless of the system constraints. SARS recognises that this should be addressed with immediate effect else this might be a recurring issue with this taxpayer as well as others. Automatic debt equalization should be revisited to incorporate Section 164 as soon as possible. A formal communication should be released advising all offices nationally of the interim prescribed procedure to create an awareness and provide a guide in terms of this serious issue.	32	Not applicable.

B. IDENTIFIED SYSTEM ISSUES

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
Systemic and Procedural – SARS Systems not able to accommodate for S.164 of the Tax Administration Act. SARS has breached a written agreement to not set off future VAT refunds against the suspension amount. The taxpayer applied for suspension of debt which was partially granted. The company was highly dependant on the refunds in their operations and the extended period before receipt of their anticipated refunds proved almost detrimental to their survival.	SARS was requested to investigate the case and to release the refunds.	The refund plus interest was released through a manually driven process by several interdependencies. S.164 of the TA Act creates a situation on the core systems which SARS has not yet technically adapted to. The refund process should not be compromised regardless of the system constraints. SARS recognises that this should be addressed with immediate effect else this might be a recurring issue with this taxpayer as well as others. Automatic debt equalization should be revisited to incorporate S.164 as soon as possible. A Formal communication should be released advising all offices nationally of the interim prescribed procedure to create awareness and provide a guide in terms of serious issues.	32	Not applicable
Systemic and Procedural – Taxpayers taken on Income Tax Register when they are not liable to submit Income Tax returns. This resulted in SARS charging administrative penalties where legally not due. Senior Citizen and disabled and received two pensions. Her case was referred	OTO recommended to SARS to visit the taxpayer at home to resolve the issue	SARS visited the taxpayer at home and revised the assessments to waive all the administrative penalties. The taxpayer was not liable to submit returns for the 2007 and 2008 tax years as her two sources of income were only attracting SITE.	14	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
for an audit by the Risk Engine. According to her she has submitted the required supporting documentation numerous times at the SARS Branch, without the assessments being resolved. Despite all her interactions with SARS to get the assessments corrected, SARS appointed the pension fund to deduct money from her pension for outstanding debt.		Appreciation expressed: SARS: I have just spoken to the taxpayer, as I have noticed that the refund was released on the 11/01/2014. She asked me to convey her sincere appreciation to everyone involved with her case – and especially those that have visited her at home – this was very, very special and she will never forget it. Never thought that SARS would do this, the people were just wonderful		
In another case – this taxpayer is a Senior Citizen – 76 years old. Taxpayer approached SARS who was informed to submit a request for the remittance of the penalties, (RFR1) form, which was done, but SARS failed to discharge all the penalties the first time round. SARS then issued an IT88, appointing the pension fund to deduct money from the monthly pension to be paid over to SARS. SARS and the SARS Service Monitoring Office (SSMO) was again approached and again the taxpayer had to submit another two requests for the remittance of the remainder of the administrative penalties to be waived. This was done, but the money (R19 2013, 57) was not refunded to the taxpayer as a Special Stopper had been placed on the account.	The OTO recommended to SARS to lift the special stopper for the refund to be released.	The refund was released on 28/03/2014. SARS' System required a change in addressing the issue, not only for this taxpayer, but all affected taxpayers, mostly Senior Citizens.	0	Not applicable.
Systemic - SARS not updating bank details	OTO recommended to	SARS responded as follows: "The matter	20	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
within timeframes due to problems experienced with the system that verifies bank accounts - "AVS". Several attempts have been made by the taxpayer to update their bank details. The complaint was also escalated to the SARS Service Monitoring Office without any success.	SARS to investigate and resolve the problem with the updating of bank details.	relates to an "AVS" issue which is for the verification of the bank accounts". Still awaiting further feedback.		
In another case, the company updated the banking details at a Branch office on 10 October 2013. On the 19th November 2013 the company escalated the complaint to the SARS Service Monitoring Office and again without any success. On the 6th January 2014 the refund was still in approval status. SARS logged a call to the Internal Help Desk to address the problem, without any success.	OTO recommended to SARS to address the system issue for the bank details to be updated and the refund to be released.	The bank details were updated and the refund released. The vendor updated his banking details. SARS verified the details according to the process requirements. Due to a technical problem being experienced – the updated banking details could not be uploaded after the verification process. SARS investigated the issue and proposed a solution to correct the problem. After the testing phase, the solution was implemented and the refund thereafter released.	21	Not applicable.
In yet another case, VAT returns for 12/2008 to 10/2013 were submitted 29 October 2013, bank details change request was done on the 04th November 2013 at a Branch office. Confirmation for bank details verification was received on the 4th December 2013, but VAT refunds were still not finalised.	OTO recommended to SARS to address the system issue for the bank details to be updated and the refund to be released.	The bank details were updated and the refund released. His case was an AVS (Account Validation System) problem. The matter is under control, and some adjustments to the system were made. All the monies were paid.	18	Not applicable.
Systemic & Procedural - Wrong classification of	OTO recommended to	The penalties and interest were waived in	15	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
taxpayers as provisional taxpayers. This is a Senior Citizen, 85 years old, and physically handicapped . This resulted in penalties and interest being charged where not legally due. Despite several attempts including a submission of a Notice of Objection (NOO) he was unsuccessful to get this issue resolved through SARS. This caused undue hardship and unnecessary stress on the elderly.	SARS to investigate the case and to visit the taxpayer at home to resolve the issue.	full and the taxpayer de-registered as a provisional taxpayer. This is an automated process which should be reconsidered. Paragraph 20, 20A and 27 of the Fourth Schedule to the Income Tax Act (penalties) and Section 89quat and 89bis (interest), are levied daily on unsuspecting taxpayers who are not provisional taxpayers. The system problem has been going on for years, and has still not been corrected.		
Systemic - Bank details changed due to e-filing fraud committed . This company's bank details were changed resulting in a refund being paid into a 3rd party account. Despite several attempts made to SARS by the company and providing them with the necessary proof and documents as requested, no feedback was received on the progress of the investigation.	SARS was requested to attend to the case to bring it to finality.	The case was Round Robined and finalization was expected.	3	Not applicable.
In another case, this company's bank details was changed resulting in two refunds of R11 1867, 97 and R56 652, 61 being paid into a 3rd party account. Despite several attempts made to SARS by the company and providing them with the necessary proof and documents as requested, no feedback was received on the progress of the investigation.	OTO requested SARS to provide them with an update on the progress of the investigation and reasons why the refunds had not yet been paid to the company.	The refunds were released. The investigator confirmed that the bank details of the company were changed after unauthorised access to the E-filing profile of the company was obtained. The E-filing access as well as the bank details of the company were updated. Enhanced measures with regard to E-filing access and the verification of bank details has been	5	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
		implemented by SARS to prevent such occurrences.		
In yet another case, the company submitted its 2009 Income Tax return via e-filing on the 31st July 2010 without completing banking details. A fraudulent 2009 return was submitted on the 10th November 2012 with banking details and name of unknown public officer. Banking details were updated according to the information on the fraudulent return and 2010 refund was released into this account. This was reported to SARS and the case was referred to an investigator for investigation. Complaint was escalated to the SARS Service Monitoring Office without any success. Despite numerous follow ups to SARS no feedback was forthcoming.	OTO requested SARS to provide them with an update on the progress of the investigation and reasons why the refund has not yet been paid to the company.	Awaiting feedback from SARS	4	Not applicable.
Systemic - SARS Systems do not prevent fraudulent e-filing profiles to be opened under taxpayers names, resulting in fraudulent Income Tax returns submitted and fraudulent refunds released. The Taxpayer was not an e-filer. Two fraudulent e-filing profiles had been opened under this taxpayer's ID number with different particulars. Returns for 2008 - 2013 tax years were re-submitted after the period for submitting a request for correction had lapsed. We suggest that consideration be taken to resolve this case. All E-	OTO recommended to SARS to delete all the profiles and to revise all assessments raised for 2008 – 2013 tax years.	The fraudulent profiles were deleted.	0	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
Filing profiles be deleted and all revised assessment for 2008 - 2013 tax year raised on 2013-09-21 be cancelled.				
Procedural - Failure in SARS' manual capture of VAT201 returns resulted in SARS withdrawing funds from the Vendor's bank account, also prompting the Vendor to go through the ADR2 process unnecessarily. Company requested SARS to pay interest on the money withdrawn by SARS from their bank account, in respect of an error made by SARS. SARS failed to pay interest after ADR2 was allowed in full in favour of the Company. SARS admitted that they could not have disallowed the input tax. In terms of Section 187(1) - If a tax debt or refund payable by SARS is not paid in full by the effective date, interest accrues on the amount of the outstanding balance of the tax debt or refund.	OTO recommended to SARS to pay the interest to the company.	Interest of R70 262, 00 was paid to the Company. SARS agreed that it was a SARS error. The modernisation of the process by SARS currently enables vendors to file returns electronically which allows for greater control and tracking of returns as well as "real time" assessment. The risk of "lost" returns is now almost nil.	2	Not applicable.

C. IDENTIFIED EMERGING ISSUES

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
SARS failure to attend to Objections within the prescribed timeframes. Taxpayer submitted a Notice of Objection (NOO) for the 2013 tax year. The complaint was escalated to the SARS Service Monitoring Office who responded that the prescribed timeframe had not yet expired and closed their case. After the expiry of the prescribed timeframe, the taxpayer again escalated the complaint to the SSMO, SSMO did not respond to the 2nd request.	OTO recommended to SARS to attend to the Notice of Objection.	Awaiting feedback from SARS	19	Not applicable.
In another case - NOO (Notice of Objection) was submitted on 13th December 2013 for 2013 Tax Year. Another NOO was submitted on the 6th March 2014, for something different. SARS not providing detail on how the exempt lump sum amount has been calculated and did not request any other documents on the Royalty loss after submission of the Income and Expenditure statement.	OTO recommended to SARS to attend to the Notice of Objection and to bring it to finality.	Revised assessment was issued on 26 March 2014. Appreciation letter: Thank you very much. Both cases now resolved.	1	Not applicable.
SARS failure to apply its mind with the finalisation of Notice of Objections (NOO's). Senior Citizen 88 years old and hard at hearing - The Taxpayer submitted a Notice of Objection (NOO) for the 2012 Tax Year. Capital gains tax	The Office of the Tax Ombud arranged a meeting between SARS and the Taxpayer to discuss the issue and possible	Awaiting feedback from SARS	6	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
profit was wrongly calculated by his accountant. The objection was rejected on the 24th December 2013 "Objection has not been lodged within the prescribed timeframes and no exceptional reason for condonation supplied." The taxpayer sought assistance from SARS and approached various people at SARS without any success.	submission of new Notice of Objection (NOO).			
Repeated Notice of Objections submitted, without SARS providing proper guidance to taxpayer on how to proceed to get the issue resolved. The taxpayer was sequestered and needed assistance with the completion of his 2012 Income Tax return for the period after sequestration. He visited a SARS Branch office and was duly assisted. He then realised that a mistake had been made with the medical dependants and visited the Branch Office again, who duly assisted him. This correction resulted in the case being identified for a review. With the finalisation of the review SARS issued a revised assessment to include his Income for the period under sequestration and charged 50% penalties for under estimation of Income. The taxpayer again visited a SARS Branch office for assistance, and an Objection was submitted. This Objection was disallowed. He submitted two more Objections which were also disallowed for different reasons. A	OTO requested SARS to attend to the Notice of Appeal to bring the issue to finality.	Revised assessment was issued. SARS raised awareness with relevant compliance centre.	11	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
Notice of Appeal was submitted which was for over 8 months unresolved.				
SARS failure to respond to taxpayers queries and not providing full details when Notice of Objections are partially allowed/disallowed. The taxpayer's spouse is disabled and all requirements for disability have been met. The representative of the taxpayer submitted a Notice of Objection which was partially allowed. In preparation for submitting another objection, the representative spent many hours trying to reconcile the account (i.e. trying to determine which expenses were allowed/disallowed by SARS, but with no success. Another Notice of Objection was submitted without any response from SARS.	OTO requested SARS to attend to the complaint and bring the case to finality.	SARS conceded on review to grant the taxpayer the benefit of the doubt and issue a revised assessment and allow the expenses claimed. The problem occurred with the validation error on the sequence of the submission of Notices of Objections and Notices of Appeals. The representative was satisfaction with the finalization of the case. The system is being enhanced to prompt the Taxpayer when the incorrect sequence is being followed e.g appealing before objecting etc.	18	Not applicable.
SARS not applying its mind in dealing with Notice of Objections and not guiding taxpayer properly of the next step to be followed. SARS captured the business loss as a profit for the 2001 tax year. The taxpayer lodged a NOO, Notice of objection, which was disallowed. Taxpayer responded to this disallowance, but has not received a response from SARS. A NOA, Notice of appeal, was lodged, which was also disallowed. Taxpayer responded to this disallowance, but has not received a response from SARS.	OTO recommended to SARS to consider the request made by the representative on the 23rd October 2013 to apply Section 93(1)(d) read with Section 93(2) of the TA Act as this was a capturing error by SARS.	Awaiting feedback from SARS	30	Not applicable.
SARS failure to attend to Alternative dispute	SARS needs to assist the	Awaiting feedback from SARS	1	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
resolution cases within the prescribed timeframe. The taxpayer, Trust, made a profit in 2007 Tax year. After submission of the return, the accountant realised that the profit should have been distributed to the beneficiaries. An ADR 1 was submitted on the 18/08/2008 and no outcome was communicated to the accountant. The matter was then referred to the SARS Service Monitoring Office.	complainant to submit an ADR1 again and attach all the documents to the ADR1 to be finalised. SARS also have to look at all the other years thereafter to ensure that the assessments were correctly raised.			
In another case - NOA (Notice of Appeal) was submitted to SARS on the 12th February 2013 for 2012 Tax year. Complaint was escalated to the SSMO on the 19th February 2014 and closed by them on the 07th March 2014 without providing reason/s to the complainant for closure.	OTO requested SARS to attend to the Notice of Appeal to bring it to finality.	The Appeal was conceded by SARS on the 25 March 2014. Revised assessment for 2011 and 2012 Tax Years were issued on 27th March 2014.	8	Not applicable.
SARS failure to comply with rule 7(1)(a) of the rules governing dispute resolution in terms of Section103(2) of the TA Act. ADR2 submitted 12th September 2013.The taxpayer is dissatisfied with what appears to be the SARS failure to comply with rule 7 (1) (a) of the rules governing dispute resolution in terms of section 103(2) of the TA Act no 28. Of 2011. According to rule 7 (1) (a) of the rules governing dispute resolution in terms of Section 103 (2) of the Tax Administration Act No.28 of 2011 and new rules issued in terms of section 107 and of the Income Tax Act, the Commissioner	OTO requested SARS to attend to the ADR2 and bring it to finality.	Awaiting feedback from SARS	32	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
has not advised whether the matter is appropriate for Alternative Dispute Resolution, within 20 days of receipt of the notice of appeal. Where the taxpayer requests ADR in his or her notice of appeal, SARS must inform the taxpayer by notice within 20 days of receipt of the notice of appeal whether it is of the opinion that the matter is appropriate for ADR and may be resolved by way of the ADR procedures.				
Procedural - Lack of proper procedures to prevent identity theft. SARS unable to prevent identity theft on their systems. The taxpayer was a victim of identity theft. The fraudster submitted a fraudulent 2010 tax return in the name of the taxpayer. This return resulted in a duplicate 2010 assessment. In order to secure the refund, fraudulent documentation for a new bank account was submitted at a SARS Office. Despite numerous follow ups to SARS no feedback was forthcoming from them.	OTO requested SARS to investigate the issue and bring it to a closure.	The refund was released. The process of bank detail validation has significantly improved to ensure that only the taxpayer or the authorised representative can request changes to banking details. Branch Offices now only accept original documents and all banking detail changes are subject to the "AVS" checks before being updated. A dedicated banking "super team" has been established. This team is specifically trained to deal with exceptions.	35	Not applicable.
Administrative - Different interpretations of the Income Tax Act. The taxpayer has worked for a multinational company for 260 months total service of which 72 months was serviced in the United Kingdom. Since the taxpayer retired in 1991 SARS have recognised that the UK service is non-taxable after documentation was proving the source. The taxpayer sought to get a tax directive from SARS	OTO recommended to SARS to provide the taxpayer with the correct interpretation of the law or seek an external opinion.	SARS decided to obtain an external opinion and communicated this to the taxpayer. Still awaiting outcome of external opinion.	53	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
rendering the UK pension not taxable in South Africa, but was unable to do so. The taxpayer has been in correspondence with SARS for more than a year. The SARS Legal Department is of the opinion that the UK service is taxable in South Africa, but the local SARS office disagrees.				
Procedural - Failure of SARS to keep to audit timelines and to provide reasons why the delay occurred. Vendor's VAT refunds for the periods: 07/2013; 08/2013 and 09/2013 has not been finalised by SARS for more than 120 days. Despite numerous requests to SARS and escalation to the SARS Service Monitoring Office (SSMO), no response has been received as to when the refunds will be released or audit finalised.	OTO recommended to SARS to investigate the matter and to make the necessary corrections for future refunds to be released.	SARS finalised the investigation and assisted the vendor to make the necessary adjustments/corrections for the refunds to be released. There were delays in the VAT refunds for the periods: 07/2013; 08/2013 and 09/2013 which had not been finalised by SARS for more than 120 days. SARS: in all reviews, depending on volumes, this can take upwards of three months	37	Not applicable.
Procedural - SARS' failure to release PAYE refund after confirming that it was due to the employer. R71000 was withdrawn from the company's bank account without prior notice. It was later discovered that the debit related to a miscalculation on its side with the PAYE payable to SARS. The Company visited SARS and submitted documents to rectify the case. A reconciliation done by SARS concluded that they were not liable for the debt. SARS confirmed a refund of R70 090, 23 was due to the company, but had not refunded despite numerous requests to SARS.	OTO recommended to SARS to investigate reason why the refund has not been released and to release the refund.	Refund cheque in the amount of R67 206.17 and R11.55 have been released.	1	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
<p>Service – Failure to provide feedback to taxpayers delaying the finalisation of review of Income Tax return. Senior Citizen & Disabled.</p> <p>Taxpayer is an E-filer. His supporting documents file size was more than 2mb as required by e-filing hence he had to go to Branch office to submit supporting documents. The taxpayer's assessments are every year selected for a review, requiring the submission of supporting documents. Taxpayer had to visit a SARS Branch office twice or more every year in order to get supporting documents scanned and case finalised. Branch office does not accept supporting documents on flash drive or disk because of security reasons. Despite escalating the complaint to the SARS Service Monitoring Office (SSMO) the problem was not resolved.</p>	<p>OTO requested SARS to provide us with the policy on the size of files that can be submitted via the e-filing system and to finalise the review for the refund to be released.</p>	<p>Review was finalised and medical deduction of R48406.00 has been corrected from a normal medical deduction to medical disability deduction. Refund was released. SARS will look into the system accepting a maximum of 2M supporting document as highlighted as being part of complaint.</p>	9	Not applicable.
<p>Procedural - SARS failed to inform the taxpayer of the issuing of a revised assessment and the reasons thereof. The taxpayer submitted his 2013 Income Tax return with the assistance of SARS. The return was identified for an audit and taxpayer submitted the supporting documents as requested. SARS Auditor completed and finalized the audit for 2013. They revised the assessment, changed non-taxable income source code to taxable income source code. The reason for revision was updated</p>	<p>OTO recommended to SARS to have a re-look at this case as SARS had erred for not informing the taxpayer of the revision of the assessment to change non-taxable income to taxable income.</p>	<p>SARS phoned the taxpayer on 07-03-2013 and explained in detail the steps that he needed to take in terms of our processes to bring this case to finality. Taxpayer was informed to file a Notice of Appeal on grounds of Non Condonation. Awaiting further feedback from SARS.</p>	26	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
on SARS core system, but no letter was issued to the taxpayer to inform him of the changes on the assessment. Taxpayer only became aware of the assessment when he received an SMS from SARS collection division. He responded immediately by visiting the SARS branch to enquire about the debt. He lodged an Objection, NOO, which was made invalid as it was lodged more than 30 days after the issuing of the assessment and no exceptional reasons were provided for condonation.				
Service - Capturing error made by SARS resulting in case being identified for audit. The 2013 Income Tax return was completed and captured by SARS at a Branch Office. Medical expenses were wrongly captured. The taxpayer visited the Branch Office to correct the error, which resulted in the case being identified for audit. Taxpayer is not prepared to wait any longer for the refund to be released, as he is of the opinion that this would not have happened if SARS has captured the correct information in the first place. The taxpayer also requested a reason as to why the refund amount had been changed and why it took so long.	OTO recommended to SARS to attend to this audit and bring it to finality for the refund to be released.	Audit has been finalized and refund released on 3 December 2013. The delay was caused by the assurance audit. Letter of appreciation: "Just to say "Thank you" for your efficient service to solve my problem. SARS transferred the refund including interest into my account on 3.12 and phoned to apology for the delay. Your help is much appreciated!"	2	Not applicable.
Service - SARS' failure to provide guidance to taxpayer to resolve their issues. The taxpayer was originally assessed for 2009 tax year on	OTO recommended to SARS to take the issue up with the pension fund to	Taxpayer's response: I had a meeting with SARS legal Officials and they were of great help; it seems that the fault was not with	29	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
01/10/2009 after which the original assessment was revised 4 times. Taxpayer has been in contact with SARS to try and resolve the issue of her being taxed in 2009 on the portion of her pension lump sum received by her husband with the divorce settlement. Two tax directives have been requested in her name instead of the husband's name and she was taxed on it. The amount and PAYE deducted also differs from correspondence to her by the fund and IRP5 issued. This should be taken up with the Pension Fund to correct.	ensure that the wrong tax directives and IRP5's are cancelled and correct ones issued to enable SARS to revise the assessment.	SARS but with my gratification fund. You can close this case and thank you very much for your assistance I highly appreciate it. I take my hat off for your service.		
Service: In another case - an Operations audit was done on the 2013 tax year – an assessment was raised to add back medical expenses not claimable and a reduced amount was allowed for the medical aid membership fees. The case was then referred for audit. No audit commenced and the case eventually auto finalised on 6 November 2013, with the revised assessment also affected on this date. This created a debt of R1232.92. Taxpayer received confusing communication from SARS regarding liability.	OTO requested SARS to provide guidance to the taxpayer to bring the issue to finality.	Assessment was revised on 2014/01/21 to allow correct medical expenses, resulting in a refund due to the taxpayer. SARS sent a mail to the taxpayers' accountant to explain that there could have been a mistake on the IRP5 issued by ABSA – the medical aid on this IRP5 is a lot less than what was actually paid by the taxpayer. SARS suggested that accountant query this IRP5 through ABSA and then, if they are not in agreement with the assessment, to submit a notice of objection.	12	Not applicable.
Systemic - SARS not updating bank details within timeframes due to technical problems experienced with the system that verifies bank accounts - "AVS". Several attempts have been	OTO requested SARS to investigate and resolve the problem with the updating of bank details.	SARS responded as follows: "The matter relates to a "AVS" issue which is for the verification of the bank accounts." Still awaiting further feedback.	20	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
made by the taxpayer to update their bank details. The complaint was also escalated to the SARS Service Monitoring Office without any success.				
In another case, the company updated the banking details at a Branch office on 10th October 2013. SARS logged a call to the Internal Help Desk to address the problem, without any success. On the 19th November 2013 the company escalated the complaint to the SARS Service Monitoring Office and again without any success. On the 6th January 2014 the refund was still in approval status.	OTO requested SARS to address the system issue for the bank details to be updated and the refund to be released.	The bank details were updated and the refund released. The vendor updated his banking details. SARS verified the details according to the process requirements. Due to a technical problem being experienced – the updated banking details could not be uploaded after the verification process. SARS investigated the issue and proposed a solution to correct the problem. After the testing phase, the solution was implemented and the refund thereafter released.	21	Not applicable.
In yet another case, VAT returns for 12/2008 to 10/2013 were submitted 29 October 2013, bank details change request was done on the 04th November 2013 at a Branch office. Confirmation for bank details verification was received on the 4th December 2013, but VAT refunds were still not finalised. SARS does not finalise the Banking details verification as this had been referred to the Super team.	OTO requested SARS to address the system issue for the bank details to be updated and the refund to be released.	The bank details were updated and the refund released. his case was an AVS (Account Validation System) problem. The matter is under control, and some adjustments to the system were made. All the monies were paid.	18	Not applicable.
Administrative - Delay in updating of bank details to release refund, due to SARS' misinterpretation of the Company Income Tax	OTO requested SARS to resolve the issue with the updating of the bank details	Banking details were corrected and updated by SARS, refund released and paid 21st February 2014. Root cause for	3	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
modernisation changes of bank details. The Trustee struggled from 28/10/2013 to get the bank details updated for the refund to be released, without any success. Despite escalating the complaint to the SARS Service Monitoring Office, the complaint remained unresolved.	for the refund to be released.	delay- incorrect treatment of the matter at the branch. Response by SARS: We misinterpreted the CIT Modernisation of bank details to include that of Trusts. The case history on service manager shows that my team attempted to capture the change of bank details via REG01 where in fact the supporting documents should have gone to Alberton CPO. I subsequently personally addressed it with my Branch to ensure we don't repeat the oversight. Appreciation letter by Taxpayer: "Many thanks for the quick response and for sorting the problem out."		
Procedural - SARS putting a hold on bank account after refund has been released. Refund was due to the taxpayer. SARS insisted that refund be paid into an account in the name of only the taxpayer (he had a joint account with wife). Taxpayer opened own account into which SARS paid the refund. After taxpayer makes a partial withdrawal of the refund, SARS put a hold on the bank account without an explanation to the taxpayer.	OTO recommended to SARS to provide reasons to the taxpayer why a hold was placed on the bank account and what needed to be done to bring the case to finality.	Hold on Bank Account was uplifted.	55	Not applicable.
Systemic - System generated stoppers preventing refunds from being released. There is a refund outstanding on this Company's Income	OTO recommended to SARS to investigate the hold up and to release the	A system generated stopper was set after the 2010 audit was finalised. A fix on the system was implemented over a weekend	3	Not applicable.

DESCRIPTION	ACTION: TAKEN/NOT TAKEN/ TO BE COMPLETED	RESULTS	PERIOD IN INVENTORY	REASONS FOR INACTION
Tax - STOPPER INDICATOR SET (UC2N0002). The complainant followed up with the call centre and also lodged a complaint with the SARS Service Monitoring Office, without any success.	refund.	The refund was released and deposited in the company's bank account on the 25th February 2014.		
Procedural - Delay in updating of bank details to release refund, due to SARS not following Standard Operating Procedures for changing of bank details for Taxpayer who was temporarily out of the Republic and had appointed a representative to request the changes on his behalf. The representative of this taxpayer has escalated the complaint to the SARS Service Monitoring Office, without any success. The Branch Office informed the representative to wait until the taxpayer returned to the country for him to come and change the bank details.	OTO requested SARS to assist with this case. Also please advise the correct procedure to be followed to update the banking details in this situation.	The banking details were updated and the refund released. SARS apologised to the representative and also explained the Standard Operating Procedures to all staff in the applicable Branch Office.	6	Not applicable.

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13. SOME OF THE CHALLENGES

At the beginning, the OTO experienced a few teething problems. We need not dwell on them, as they were to be expected with the establishment of a new office. We do, however, mention below a few which we consider substantive.

13.1 ACCOMMODATION

The OTO is still in the process of acquiring permanent accommodation. It is hoped that this will be secured by the end of this financial year.

13.2 INADEQUATE PERSONNEL

Being a new office, we are still in the process of recruiting adequate staff, and hope to achieve that by the beginning of the next financial year. In the meantime, we are largely supported by the staff from SARS, temporarily seconded to us.

13.3 INSTITUTIONAL CONSTRAINTS

13.3.1 OTO Finances

Section 15(4) of the TAA reads:

“The expenditure connected with the functions of the office of the Tax Ombud is paid out of the fund of SARS.”

This provision may make the OTO wholly financially dependent on SARS. It may therefore seriously compromise the independence of the OTO in relation to SARS. There should be an amendment of some kind to section 15(4) to institutionalize the financial independence of the OTO in relation to SARS.

13.3.2 Section 15(1) of the TAA provides:

“The staff of the office of the Tax Ombud must be employed in terms of the SARS Act and be seconded to the office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner.”

Leaving aside the clause *“must be employed in terms of the SARS Act”* for a while, the part *“in consultation with the Commissioner”* may be problematic.

The phrase *“in consultation”* (own emphasis), as interpreted by the courts, would mean that both the Tax Ombud and the Commissioner must agree on every single person to be seconded to the OTO. Admittedly, no responsible Commissioner would want to be an obstacle; but that is not the point. Indeed, when testing the effect of legislation, the worst is sometimes assumed. The problem here lies in the fact that the OTO is meant to be some kind of a watchdog to

intercede on behalf of the public against an institution (SARS) which has drastic powers when it comes to revenue collection. It is plainly undesirable that it should be the very same SARS which should consent as to who the Tax Ombud should employ to keep an eye on it (SARS)!! As the provision stands, the Commissioner can block the secondment (appointment) to the OTO of someone the Commissioner considers would, as it were, be too effective or who would be a nuisance to SARS with difficult queries. An anomalous situation has thus been created, in terms of which SARS has to agree to the appointment of its own supposedly independent watchdogs. This gives an impression that the OTO is a mere extension of SARS. Yet this set-up was not necessary, given the fact that, in terms of section 14(5)(a) the TO is accountable to the Minister.

Sub-sections (1) and (4) of section 15 of the TAA severely compromise the independence of the Office of the Tax Ombud from SARS; actually, they make the office dependent on SARS. It is recommended that they be amended or repealed and replaced with appropriate provisions which, while realistic about the relationship between the two institutions, would nevertheless provide institutional independence of the OTO from SARS.



Judge B M Ngoepe
South Africa's Tax Ombud
28 August 2014



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